

Terms of Use

These SparkPost Terms of Use (this “**Agreement**”) apply to the SparkPost service, which includes the sending of digital messages and related digital messaging services (the “**Services**”) offered by Message Systems, Inc., d/b/a SparkPost, a Delaware corporation, (“**SparkPost**”) to any individual, organization, business entity, and/or user (“**You**” or “**Your**”), through the website SparkPost.com or any other websites or mobile applications (collectively, the “**Site**”) that reference or link to this Agreement.

To use the Services, You must: (i) if a natural person, be at least 18 years old; (ii) be legally able to enter into contracts on Your behalf; (iii) agree to and comply with terms of this Agreement; and (iv) complete an order by either: (A) completing an automated order process found on the Site; or (B) executing a manual order provided by SparkPost (each, an “**Order**”). The effective date of this Agreement will be the earlier of the date You complete an Order, or access or use the Services (the “**Effective Date**”).

PLEASE CAREFULLY READ THIS AGREEMENT. BY SUBMITTING AN ORDER, OR ACCESSING OR USING THE SERVICES, YOU AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THIS AGREEMENT AND MEET ALL OF THE ELIGIBILITY REQUIREMENTS IN THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, OR DO NOT MEET ALL OF THE ELIGIBILITY REQUIREMENTS IN THIS AGREEMENT, SPARKPOST DOES NOT GRANT YOU PERMISSION TO, AND YOU MUST NOT, ACCESS OR USE THE SITE OR THE SERVICES.

1. **Definitions.** The terms used in this Agreement will have the definitions provided in this Agreement. If not defined herein, the terms will have their plain English meaning as commonly understood in the United States of America.
2. **Acceptance of Agreement and Policies.** All access to and use of the Services, including any Site, is subject to the terms of: (i) this Agreement; (ii) the SparkPost Privacy Policy as made available and updated from time to time at <http://www.sparkpost.com/policies/privacy> (<http://www.sparkpost.com/policies/privacy>)(the “**Privacy Policy**”); (iii) the SparkPost Messaging Policy as made available and updated from time to time at <http://www.sparkpost.com/policies/messaging> (<http://www.sparkpost.com/policies/messaging>) (the “**Messaging Policy**”, and together with the Privacy Policy, the “**Policies**”); and (iv) the Order. The terms of this Agreement and the Policies are accepted by either: (i) executing an Order; (ii) clicking to accept this Agreement when completing an automated order process found on the Site; or (iii) gaining access to or using the Services. The Policies and any Orders are incorporated into and deemed a part of this Agreement.
3. **Orders.** An Order is required for any free use of the Services (such as a free subscription or a trial subscription, each a “**Free Subscription**”) and for any paid use of the Services (a “**Paid Subscription**”). In connection with any Order, You must provide SparkPost with true, accurate, complete, up-to-date contact information, and remit payment as specified in the applicable Order. All Orders completed by You will be governed by the terms of this Agreement. If the terms of this Agreement or any of the Policies conflict with Your Order, the specific terms of Your Order will govern but only with respect to the use of the Services specified in the applicable Order.

4. **Access.** After You have completed an Order, SparkPost may grant you a unique account (an “**Account**”). In connection with the Account, You may be provided with one or more unique user identifiers and passwords (each, an “**Account ID**”). Each Account ID is personal in nature and may only be used by You, or if You are an organization only by Your designated employees or contractors who are contractually required to comply with the terms of this Agreement (such individual, as applicable, the “**User**” of the Account). You are solely responsible for all use of the Services by each User (and anyone who accesses the Services through Your Account, other than SparkPost employees and contractors) and for compliance by each such User or other person with the terms of this Agreement. You will ensure the security and confidentiality of each Account ID and will notify SparkPost immediately if any Account ID is lost, stolen or otherwise compromised. You acknowledge that You are fully responsible for all costs, fees (including, without limitation, attorneys and professional fees), liabilities and damages incurred through use of each Account ID. You also acknowledge that any Services ordered or transactions completed through any Account or under any Account ID will be deemed to have been authorized and lawfully completed by You. In no event will SparkPost be liable for the foregoing obligations or the failure by You to fulfill such obligations. You, at Your own expense, will be solely responsible for procuring, installing and maintaining any hardware, software, or other equipment as may be necessary for You and each User to connect to, access, and use the Services or the Site.
5. **Term.** This Agreement is effective beginning on the Effective Date and will continue for the period specified in the Order (the “**Initial Term**”). In the case of a Free Subscription, this Agreement and all of Your rights to use the Services will expire at the end of the Term unless: (i) You complete another Order; or (ii) SparkPost previously terminated Your Account, which it may do

at any time. In the case of a Paid Subscription, the Term, including all associated payment obligations, will automatically renew for successive periods equal in length to the Initial Term (each, a “**Renewal Term**”, and together with the Initial Term, the “**Term**”), unless either party sends the other written notice of its intent not to renew the Term not later than thirty (30) days prior to the end of the current Term. In the case of a Paid Subscription with an Initial Term of more than one (1) year, each Renewal Term length will be one (1) year.

6. **Modifications to this Agreement.** SparkPost may modify this Agreement and any of the Policies at any time by: (a) posting the revised version on the Site; (b) asking You to re-verify Your login credentials; (c) electronically sending You a link to the modified Agreement or Policies; or (d) through other reasonable means. Your continued use of the Services after SparkPost has notified you in one of the above manners will be deemed to constitute Your acceptance of any such modification, provided that: (A) with respect to Free Subscriptions, such modifications will apply retroactively to the inception of Your access to or use of the Site or Services unless expressly prohibited by applicable law; and (B) with respect to Paid Subscriptions, such modifications will (i) not modify any financial terms in the then current Order for the initial Term thereof and will apply only to future Terms or Orders; (ii) apply only prospectively and will not affect any prior rights You may have; and (iii) not be construed to modify any other terms or conditions in any material manner during the then current Order for the initial Term thereof (any such material modifications will apply only to subsequent Terms or new Orders). In addition to the above, all modifications to this Agreement or any of the Policies will be effective immediately upon posting for all Orders subsequent thereto, unless otherwise provided.

7. **Downtime and Maintenance.** You acknowledge that SparkPost is entitled, without any liability, to suspend access to any or all of the Services at any time: (i) to perform scheduled or unscheduled maintenance, modifications or upgrades; (ii) due to hardware failures, power outages, failures of third-party providers, or because of interruptions of any other kind; (iii) to mitigate the effects of or prevent any attack or threat to the Site, Services, or any other network or systems on which the Services rely; or (iv) as necessary in SparkPost's sole discretion because the Services or Your Use thereof are or may violate a law or regulation, or as might be required for other legal or regulatory reasons (collectively, "**Approved Service Suspensions**"). SparkPost has no obligation to provide You notice of the cause of any particular Approved Service Suspension. However SparkPost will attempt to notify You in advance of any scheduled Approved Service Suspension, but other than as may be expressly stated in the applicable Order, SparkPost will have no liability for any damages, losses (including loss of data or profits), or any other consequences incurred as a result of an Approved Service Suspension or the failure to provide notice thereof.
8. **Fees and Payment Terms.** You agree to pay SparkPost all fees in accordance with the applicable Order ("**Fees**"). If the Order does not specify any invoicing terms, such Fees will be invoiced annually in advance. Unless some other date is specified on the Order, You agree to pay SparkPost the amount set forth on any invoice, submitted in accordance with the Order, within thirty (30) days after receipt thereof. If You have specified payment by credit card or direct withdrawal from a bank account, then You authorize SparkPost or its applicable processing agent to charge the credit card, or debit the bank account, on file for all Fees due. SparkPost may change its rates prospectively for any Renewal Term by posting the new rates on the Site, or by providing you advance notice through other reasonable means.

SparkPost may charge You interest on any overdue Fees at a rate of 1.5% per month or, if such rate of interest is unlawful, the maximum rate of interest permitted by law. You will reimburse SparkPost for all reasonable costs and expenses (including reasonable attorneys' fees) incurred in collecting any overdue amounts, as permitted by law. All Fees are non-cancelable and non-refundable, including upon any termination or suspension of this Agreement.

9. **Taxes.** You will be responsible for all applicable taxes, however designated, incurred in connection with this Agreement, including but not limited to federal, state, or local sales or use taxes, value-added taxes (VAT), excises, and other taxes or duties which may now or hereafter be levied on the Services provided hereunder or on payments made under this Agreement (the "**Taxes**"). If at any time SparkPost or a taxing authority determines that SparkPost is required to pay any Taxes not previously collected from You, You will promptly submit such Taxes (including applicable penalties and interest, if any) to SparkPost (or if applicable to the taxing authority) within thirty (30) days of receipt of notice. You hereby indemnify and agree to defend and hold SparkPost harmless from any claim by a taxing authority for any Taxes, penalties or interest.
10. **Ownership.** You acknowledge and agree that except for the limited use rights expressly provided in this Agreement, as between You and SparkPost, SparkPost owns and retain all rights, title, and interest, including, without limitation, all Intellectual Property Rights (as defined below) in and to the Service, the Site, and all software and other technology utilized to provide such services and all derivatives thereof (whether or not derived from suggestions, input or comments from You). No such rights are conveyed to You through this Agreement. You agree not to challenge the validity of or SparkPost's ownership of Intellectual Property Rights in and to the Service or any part thereof or any of SparkPost's associated rights. You agree to

provide SparkPost with reasonable assistance with enforcing its rights at its own expense. Any enforcement of SparkPost's rights, however, will remain within SparkPost's sole discretion, including, whether and how to proceed with any enforcement activity. Any failure to proceed with any enforcement activity will not be deemed a waiver of SparkPost's rights to do so later. **"Intellectual Property"** means and includes all algorithms, application programming interfaces, apparatuses, software, circuit designs and assemblies, databases and data collections, diagrams, formulae, inventions (whether or not patentable), know-how, logos, marks (including brand names, product names, logos, and slogans), methods, network configurations and architectures, net lists, photomasks, processes, proprietary information, protocols, schematics, specifications, software code (in any form including source code and executable or object code), subroutines, test results, test vectors, user interfaces, techniques, URLs, web sites, works of authorship, and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing such as instruction manuals, laboratory notebooks, prototypes, samples, studies, and summaries). **"Intellectual Property Rights"** means all rights of the following types, which may exist or be created under the laws of any jurisdiction in the world: (i) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights, and mask works; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents and industrial property rights; (v) other proprietary rights in Intellectual Property of every kind and nature; and (vi) all registrations, renewals, extensions, continuations, divisions, or reissues of, and applications for, any of the rights referred to in clauses (i) through (v) above.

11. **SparkPost Content.** Unless otherwise noted within the Services, all software, documentation, scripts, images, videos, data, templates, information, and other content found on the Site or within the Services (“**SparkPost Content**”) is owned by SparkPost. Any and all Intellectual Property Rights contained within SparkPost Content, or that are derivatives thereof, are retained by SparkPost.

12. **Your Content.** In connection with Your use of the Services, You may enter, store or otherwise use data, text, information, contact lists, email addresses, Personally Identifiable Information (PII) (as defined in the Privacy Policy), templates, and other content provided by You or any of Your Users in connection with the Services (“**Your Content**”). You grant SparkPost all necessary rights and licenses in and to Your Content as necessary for SparkPost to provide the Services under this Agreement, which includes, without limitation, the processing and delivery of any and all email or other digital messages. You represent and warrant that none of Your Content violates this Agreement, applicable law or the Policies and that You have all necessary right, title, interest, and consent necessary to allow SparkPost to use Your Content to provide the Services. As between You and SparkPost, You retain all rights and all responsibilities in and to Your Content and do not convey any interest or responsibility to SparkPost other than as provided in this Agreement and in the Privacy Policy. You will maintain an adequate backup of all Your Content. SparkPost will not be responsible or liable for any deletion, correction, destruction, damage, loss, or failure to store or backup any of Your Content. SparkPost may take remedial action (such as deleting Your Content) if any of Your Content violates this Agreement or the Policies. However, SparkPost is under no obligation to review any of Your Content for accuracy, completeness, or potential liability.

13. **Feedback.** You may: (i) provide SparkPost with periodic information about Your use of the Services and with respect to any problems, including, the nature and frequency of problems, encountered with use of the Services and any resolutions arrived at for those problems; and (ii) communicate to SparkPost any suggested modifications, changes, or enhancements of the Services (collectively, “**Feedback**”). You represent that nothing in that Feedback constitutes Your proprietary or Confidential Information (as defined below) and You disclaim all rights in the Feedback and agree that SparkPost may freely use, without any obligation to You, any of the Feedback.
14. **Confidentiality.** During the Term and for three (3) years after any expiration or termination hereof (but in the case of information that is a trade secret, until such information is no longer a trade secret under applicable law), each party (each party considered a “**Receiving Party**” as well as a “**Disclosing Party**”) will retain in confidence, and will not use for its own benefit, any non-public information disclosed by or relating to the other party that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential (“**Confidential Information**”). Confidential Information includes, without limitation, all non-public information relating to each party’s trade secrets, software, computer programs, technology, know-how, documentation, customers, business plans marketing activities, employees, finances and other business affairs, but excludes information that: (i) was rightfully in the Receiving Party’s possession, without any obligation to hold it in confidence, before receipt from the Disclosing Party; (ii) is or becomes a matter of public knowledge through no fault of the Receiving Party; (iii) is received by the Receiving Party from a third party who has the lawful right, without any duty of confidentiality, to disclose the information; (iv) is

independently developed by the Receiving Party without use of or reference to the Confidential Information of the Disclosing Party; or (v) is disclosed by the Receiving Party with the Disclosing Party's prior written approval. For the avoidance of doubt: (i) this Agreement, all Orders, any pricing information, the Services, the Site, SparkPost Content, and any Confidential Information of SparkPost's affiliates, partners, and subcontractors is SparkPost Confidential Information; and (ii) Your Content is Your Confidential Information. Each party will protect all Confidential Information from disclosure to any third party (except to such party's employees, contractors and agents who have a need to know) by using the same degree of care that it uses to prevent the unauthorized disclosure of its own confidential information of a like nature, but in no case less than a reasonable degree of care. Notwithstanding the foregoing, either party may disclose Confidential Information without the other party's consent to the extent such disclosure is required by law, rule, regulation, or government or court order, provided that the Receiving Party first provides prompt written notice of such required disclosure to the Disclosing Party to enable the Disclosing Party to seek a protective order or otherwise prevent or restrict such disclosure. Notwithstanding anything in this Section or this Agreement to the contrary, You agree that SparkPost may use or disclose any of Your Confidential Information in accordance with the Privacy Policy.

15. **Restrictions.** Your use of the Services will not extend beyond the scope of this Agreement. Specifically, You will not (and will not directly or indirectly assist any third party or person to): (i) copy, reproduce, transmit, distribute, publish, display, modify, alter, sell, resell, lend, loan, lease, assign, license, sublicense, or transfer any or all of Your rights or licenses under this Agreement; (ii) access or use the Services except as explicitly provided in this Agreement; (iii) use the Services in violation of any law, including

without limitation, the U.S. CAN-SPAM Act or any other similar law or regulation; (iv) use automated scripts to collect information from or otherwise interact with the Service; (v) use the Services to harass or intimidate any person or entity; (vi) reverse engineer, decompile, reverse compile, disassemble, reconstruct, translate, or create any derivative work of the Service or any part thereof; (vii) attempt to circumvent any technological protection measures which are in place to restrict access to any portion of the Services; (viii) erase or remove any proprietary or intellectual property notice contained in the Service; (ix) use or permit use of the Services for or by any person or entity other than Your employees and agents, who are each bound to treat the Services as SparkPost Confidential Information and to otherwise comply with the terms of this Agreement; or (x) have more than one (1) Account.

16. **Warranties by You.** You hereby represent, warrant, and covenant that: (i) You have the legal right and authority to enter into this Agreement and, if You are accepting this Agreement on behalf of a company or other entity, to bind the company or other entity to the terms of this Agreement; (ii) You have the legal right and authority to perform Your obligations under this Agreement and to grant the rights and licenses described in this Agreement; (iii) Your Content, and any other data, information or content You provide to Us in connection with this Agreement and Your access to the Site and use of the Services, is correct and current, and does not constitute defamation, violate a third party's privacy, publicity or other personal rights, and will not violate applicable law or a third party's contractual rights; (iv) this Agreement will constitute Your legal, valid, and binding obligation, enforceable against You in accordance with its terms; and (iv) no consent, approval or authorization of, or exemption by, or filing with, any governmental authority or third party is required to be obtained by You in

connection with the execution, delivery and performance by it of this Agreement or the taking of any other action contemplated hereby, which has not been obtained.

17. **Warranties by SparkPost.** Except in the case of a Free Subscription (for which no warranties of any kind are made), SparkPost represents and warrants that it will use commercially reasonable efforts to provide You the Services in accordance with Your Order and this Agreement. However, SparkPost's sole obligation, and Your sole and exclusive remedy with respect to any failure by SparkPost to perform in accordance with the warranty in the preceding sentence, is for SparkPost, in its sole discretion, to take commercially reasonable efforts to re-perform the affected Services or refund the Fees paid or payable for Services provided during the period of the failure.
18. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 17: (i) SPARKPOST DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY OTHER WARRANTY IMPLIED BY APPLICABLE LAW; (ii) THE SITE, THE SERVICE (AND ANY AND ALL CONTENT OF ANY KIND PROVIDED BY SPARKPOST IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT) IS PROVIDED "AS IS," "AS AVAILABLE" AND WITHOUT WARRANTY; AND (iii) SPARKPOST DOES NOT WARRANT OR GUARANTEE INBOX PLACEMENT RATE (SOMETIMES REFERRED TO AS MESSAGE "DELIVERY") BECAUSE OF THE GREAT NUMBER OF CONDITIONS, PRACTICES, REPUTATIONAL ISSUES OUTSIDE SPARKPOST'S CONTROL, AND/OR THE POSSIBILITY THAT MESSAGE RECIPIENTS MAY, AT ANY TIME, BE USING HARDWARE OR SOFTWARE THAT IS NO LONGER SUPPORTED PURSUANT TO THE

MANUFACTURER'S END-OF-LIFE POLICY. ANY USE OF THE SERVICES BY YOU IS ENTIRELY AT YOUR OWN RISK. IF YOU MAKE ANY CHANGES OR MODIFICATIONS TO THE SERVICE (OR ANY CONTENT OF ANY KIND PROVIDED BY SPARKPOST IN CONNECTION WITH THE SERVICES OR THIS AGREEMENT), THE WARRANTIES IN SECTION 17 WILL BE NULL AND VOID. IF ANY PART OF THIS SECTION IS DETERMINED TO BE UNENFORCEABLE, THEN ALL EXPRESS AND IMPLIED WARRANTIES WILL BE LIMITED IN DURATION FOR A PERIOD OF THIRTY (30) DAYS AFTER THE EFFECTIVE DATE, AND NO WARRANTIES OR CONDITIONS WILL APPLY AFTER THAT PERIOD.

19. **Indemnification.** You agree to defend, indemnify, and hold harmless SparkPost and its affiliates, stockholders, successors, officers, directors, employees, and agents, from and against any and all actions, proceedings, claims, judgments, liabilities, losses, and damages and related fees and expenses (including reasonable attorneys' fees) arising out of or relating to: (i) Your Content; (ii) Your breach of this Agreement; (iii) the violation of rules, generally recognized industry best practices, regulations or laws with respect to any content or rights, including, but not limited to, obscenity, defamation, publicity, information security, and privacy; or (iv) Your negligence or willful misconduct. SparkPost will promptly provide You with notice of any such claim and will have the right to participate in the defense of any such claim.
20. **Limitation of Liability.** SPARKPOST'S CUMULATIVE LIABILITY TO YOU FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SERVICES, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO SPARKPOST BY YOU ON ACCOUNT OF SERVICES USED DURING THE THREE MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE UPON WHICH ANY SUCH

LIABILITY ARISES (AND IF NO SUCH FEES HAVE BEEN PAID, THEN \$100). IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, LOSSES, COSTS OR EXPENSES OF ANY KIND, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, LOSSES, COSTS OR EXPENSES. THE LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE BEEN DETERMINED BY A COURT OF COMPETENT JURISDICTION TO BE INVALID, VOID OR UNENFORCEABLE. MOREOVER, THE PARTIES AGREE THAT THE LIMITATIONS IN THIS SECTION ARE A BARGAINED-FOR EXCHANGE AND A MATERIAL CONDITION AND PREMISE OF THIS AGREEMENT.

21. **Suspension.** SparkPost will have the right to immediately suspend Your Account, in whole or in part without prior notice, for any reason and/or time that is reasonable under the circumstances, including, without limitation, Your failure to timely pay Fees or a suspected data security breach. During such suspension period: (i) You and all of Your User's access to Your Account and the Services will be suspended; (ii) Your obligations pursuant to this Agreement will continue to accrue and all payments will be made in accordance with Your Order and this Agreement; (iii) if You are in breach of this Agreement, all Fees will continue to accrue; and (iv) unless SparkPost deems Your Account and/or any of Your Content to be potentially harmful in any way or potentially in violation of any applicable law, SparkPost will maintain your Account and not take action to intentionally delete or remove any or Your Content stored on or within the Service.

22. Termination. Unless earlier terminated in accordance with this Section, this Agreement will continue in full force and effect through the end of the Term. SparkPost will have the right to terminate this Agreement: (i) for any or no reason upon notice to you during any Free Subscription; or (ii) upon any breach by You of the terms of this Agreement, including without limitation, the failure to timely pay Fees, that remains uncured for ten (10) days after notice of such breach. However, if You violate the Messaging Policy, SparkPost may terminate this Agreement immediately upon notice to You, without any obligation to allow You an opportunity to cure. Upon termination or expiration of this Agreement for any reason: (i) all rights, licenses, and subscriptions granted to You under this Agreement will immediately terminate; (ii) You and all of your Users will immediately cease all use of and access to Your Account and the Services; (iii) all Fees then owed by You will become immediately due and payable; (iv) You will immediately either return to SparkPost or, in SparkPost's discretion, destroy all of the following that is in Your possession: (A) SparkPost Content; (B) SparkPost Confidential Information; (C) Account IDs; and (v) SparkPost may delete any of Your Content stored and/or in process in the Site, the Services or otherwise by SparkPost within ten (10) business days after the effective date of expiration or termination, or as required by applicable law. This Section notwithstanding, upon termination or expiration of this Agreement, SparkPost may retain Your Content to comply with applicable law or as necessary to prosecute or defend any legal claim (in which case SparkPost may retain Your Content for a reasonable time pending resolution of such obligation or issue). The following sections of this Agreement will survive any expiration or termination of this Agreement: 2 (Acceptance of Agreement and Policies); 8 (Fees and Payment Terms); 9 (Taxes); 10 (Ownership); 11 (SparkPost Content); 12 (Your Content); 14 (Confidentiality); 15

(Restrictions); 18 (Disclaimer); 19 (Indemnification); 20 (Limitation of Liability); and 21 through 37.

23. **Linked Sites.** The Services and the Site through which the Services are provided may contain links to third party websites not under SparkPost's control. As such, SparkPost is not responsible or liable for the content on or the policies regarding use and privacy of any such website. If You access any such website, You do so at your own risk.
24. **Export Control.** You agree not to export, re-export, or import the Services to any country in contravention of any applicable law.
25. **U.S. Federal Government Use.** When the Service is licensed for use in the performance of a U.S. Government prime contract or subcontract, the Services and any software incorporated therein is designated as a "commercial item" (as defined in 48 C.F.R. 2.101), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. The Services and technical data is licensed only under the commercial terms herein and is subject to the provisions of Subpart 12.2 of the Federal Acquisition Regulations and other applicable acquisition regulations and are provided to the U.S. Government only as a commercial item.
26. **Notice.** Except as expressly provided in this Section, any notice required for or permitted by this Agreement will be in writing and will be delivered as follows with notice deemed given as indicated: (i) by personal delivery when delivered personally, (ii) by overnight courier upon written verification of receipt, (iii) by telecopy or facsimile transmission when confirmed by telecopier or facsimile transmission report, or (iv) by certified or registered mail, return receipt requested, upon verification of receipt. Notices made by SparkPost that affect customers generally will be posted on the Site or sent

via email. Notices made by SparkPost to You or Your Account specifically (including notices of breach and/or suspension) will be provided to You via the email address provided to SparkPost during Your Order completion process or to any updated email address You provided to SparkPost in accordance with standard account information update procedures that SparkPost may provide from time to time. It is Your responsibility to keep Your email address associated with Your Account current. You will be deemed to have received any email sent to any such email address, upon SparkPost sending of the email, whether or not You actually receive the email. Notices made by You to SparkPost should be sent to legal@sparkpost.com (mailto:legal@sparkpost.com), with a copy sent first class mail to: SparkPost Message Systems, Inc.
9130 Guilford Road
Columbia, MD 21046
USA
c/o Legal

27. **Assignment.** Each and all of the provisions hereof will be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns. You may not assign this Agreement, in whole or in part, without SparkPost's prior written consent. SparkPost may terminate this agreement immediately in its sole discretion if You have attempted to assign this Agreement contrary to this Section. A merger involving You or change in control event involving You, including, by operation of law, will qualify as an assignment for the purposes of this Section. SparkPost may at any time assign, transfer, charge, sub-contract or deal in any other manner with any or all of its rights or obligations under this Agreement.

28. **Governing Law; Disputes.** This Agreement is governed by the laws of the State of Maryland, excluding conflict of laws provisions and excluding (i) the 1980 United Nations Convention on Contracts for the International Sale of Goods, and (ii) the Uniform Commercial Code of the State of Maryland or any other state that could otherwise apply to this Agreement. The parties agree that any right to a jury trial is hereby waived and that any disputes arising out of this Agreement will be resolved by binding arbitration in Baltimore, Maryland in accordance with the rules of the American Arbitration Association.
29. **Force Majeure.** In the event either party is unable to carry out its material obligations under this Agreement, except for the payment of money, by reason of Force Majeure (as defined below), those obligations will be suspended during the continuance of the Force Majeure, provided that the party relying on this Section takes all reasonable action to remedy the effect of the Force Majeure as quickly as practicable. “**Force Majeure**” includes, without limitation: labor strikes, shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, telecommunications outages, acts of God, war, terrorism, governmental action, or any other cause that is beyond the reasonable control of such party.
30. **Waiver.** No waiver of any term or condition of this Agreement will be construed as a waiver of any other term or condition. Waiver of any default under this Agreement will not be construed as a waiver of any other default. No waiver of any provision in this Agreement or any right or remedy hereunder will be effective, unless in writing and signed by the party against whom such waiver is sought to be enforced. There will be no waiver even if there is a delay in exercising or a partial exercising of any right or remedy under this Agreement.

31. **Injunctive Relief.** You acknowledge that any unauthorized use of the Services, breach of the confidentiality or intellectual property provisions of this Agreement may cause irreparable harm to SparkPost, the extent of which would be difficult to ascertain. Accordingly, You agree that, in addition to any other remedies to which SparkPost may be legally entitled to, SparkPost will have the right to seek injunctive relief in the event of such a breach.
32. **Publicity.** You agree that SparkPost may use Your name and logo in customer lists (both in print and on the Site) and in connection with other reasonable marketing activities related to the Services.
33. **Headings.** The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or extent of such paragraph, or in any way affect such agreements.
34. **Prohibition on Competitive Use.** SparkPost provides the Site, Services, and SparkPost Content to You, subject to this Agreement, only for non-competitive use. For the avoidance of doubt, You will not use, access or otherwise view or interact with the Site, Services, SparkPost Content, or any of the information or content therein to directly or indirectly establish, maintain, or otherwise provide a competing service or software solution to the Service.
35. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision will be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement will remain in full force and effect.

36. **Relationship.** The performance by SparkPost of its duties and obligations under this Agreement will be that of an independent contractor, and nothing in this Agreement will create or imply an agency relationship between SparkPost and You, nor will the Agreement be deemed to constitute a joint venture or partnership between SparkPost and You.
37. **Entire Agreement.** This Agreement constitutes the entire agreement between You and SparkPost with respect to the subject matter found within this Agreement. This Agreement supersedes, and the terms of this Agreement govern, any other prior or collateral agreements with respect to the subject matter hereof. You acknowledge that in entering into this Agreement You have not relied on, and will have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set forth in this Agreement. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement will be valid or binding except in accordance with the terms of this Agreement.

**Ver. 2.0 August 26, 2016

Previous version (<https://media.sparkpost.com/uploads/2016/09/SparkPost-Terms-of-Use-v.1-November-2014-1.pdf>)