SparkPost Terms of Use (Previous Version 3.1)

Thanks for choosing SparkPost! Please carefully read these terms of use as they form a part of the legal agreement between you and SparkPost. If you have any questions about these terms of use, please contact us at legal@sparkpost.com.

BY ACCEPTING THESE TERMS OF USE, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER THAT REFERENCES THESE TERMS OF USE, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS "*YOU*", "*YOUR*" OR "*CUSTOMER*" WILL REFER TO SUCH ENTITY AND ITS AFFILIATES AS APPLICABLE. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS OF USE, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE.

These terms of use including the URL links referenced herein ("*Terms of Use*"), together with the applicable Order(s) form the full legal agreement (the "*Agreement*") between Customer and MessageBird USA Inc. (dba SparkPost) (f/k/a Message Systems, Inc. (dba SparkPost)), a Delaware corporation ("*SparkPost*") regarding the Service and is made as of the date the Customer first completes an Order and accepts these Terms of Use ("*Effective Date*"). If you are a User of the Service on behalf of Customer, and SparkPost and Customer have entered into a separate written agreement regarding the Service which is signed by Customer and SparkPost, then the terms of that agreement (and not these Terms of Use) define the terms and conditions under which Customer and User is permitted to use the Service.

DEFINITIONS.

1. "*Affiliate*" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "*Control*," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
2. "*Applicable Law*" means international, federal, state or local treaties, laws, rules, regulations, ordinances and orders applicable to the provision or use of the Service.

3. "*Customer*" means the person, company, or other legal entity on behalf of which the Order and these Terms of Use are accepted and to whom the Service will be provided to.

4. "*Customer Applications*" mean the applications, web domains, devices, software applications, and communication channels owned or controlled by Customer and used in connection with the Service.

5. "*Customer Data*" means all data and content submitted by Customer and processed or stored by the Service.

6. "*Documentation*" means the SparkPost online documentation for the Service, which is available at: www.sparkpost.com/docs.

7. "*Email*" is an electronic message sent by Customer through the Service.

8. "*Order*" means an ordering document (online or otherwise) entered into between Customer and SparkPost specifying the Service to be provided, including any addenda, exhibits, schedules, and additional terms relevant to a specific Service referenced therein.

9. "*Recipient*" means a person receiving an Email.

10. "*Service*" means SparkPost's proprietary email delivery, analytics, and intelligence software as a service and other related services as may be specified in the Order. For clarity, "Service" includes the SparkPost Library but excludes Third Party Applications.

11. "*SparkPost Data*" means all software, documentation, scripts, images, videos, data, logs, templates, information, and other content provided with the Website or Service, other than Customer Data.

12. "*SparkPost Library*" means SparkPost's proprietary code and binary library made available by SparkPost for use in connection with the Service and includes SparkPost's software development kits (SDKs) and application program interfaces (APIs).

13. "*User*" means an individual who is authorized by Customer to use the Service on its behalf and to whom Customer (or SparkPost at Customer's request) has supplied a login ID, password, and/or API key to access and use the Service ("*User ID*"). Users may include Customer's employees, consultants, contractors and agents, but may not include directly or indirectly any competitors of SparkPost.

14. "*Website*" means the URL www.sparkpost.com or such other URLs designated by SparkPost from time to time.

SERVICE.

1. **Eligibility**. To use the Service, Customer must: (a) be at least 18 years old if a natural person; (b) be legally able to enter into contracts; (c) complete an Order; and (d) accept these Terms of Use.

2. **Ordering**. Customer may complete an Order either through the automated signup process found on the Website or by executing a manual order form signed by SparkPost. The specifics of Customer's order will be set forth on one or more Orders that reference these Terms of Use. Customer's execution of an Order and SparkPost's acceptance of such Order constitute a binding commitment to purchase the products and services described on such Order under the terms and conditions of these Terms of Use.

3. **Subscriptions**. The Service is purchased as a subscription to access and use the Service, in accordance with the applicable Order, only during the Term.

4. **Account**. After Customer has completed its first Order under these Terms of Use, SparkPost will grant Customer a unique account to access the Service (an "*Account*"). Except in connection with an Affiliate Agreement or otherwise expressly specified in an Order, Customer and its Affiliates may only have one (1) Account per available geographic hosting region regardless of the number of Orders completed. However, Customer's Account will support multiple subaccounts and multiple Users. Users authorized by Customer will each be provided a separate User ID. A User ID may not be shared with any other individual. Customer is responsible for the confidentiality and use of all User IDs. Customer acknowledges that any transaction completed through Customer's Account or under any User ID is deemed authorized by Customer. Customer remains solely responsible for all costs, fees, liabilities, and damages arising out of access to the Account through its User ID(s).

5. **Affiliate Orders**. Customer's Affiliates may procure its subscription to the Service directly from SparkPost under the terms and conditions of these Terms of Use by executing Orders hereunder (an "*Affiliate Agreement*"). These Terms of Use will apply to such Affiliates, and such Affiliate will be deemed "Customer" under these Terms of Use. Each Affiliate of Customer that enters into a separate Order will be provided separate pricing and a separate account on the Service. Alternatively, Customer may allow its Affiliates to use the Service purchased by Customer without entering into a separate Order by providing such Affiliate(s) a User ID. In such case, this Agreement applies to each authorized Customer Affiliate, and Customer is directly and primarily responsible for all access to and use of the Service by such Affiliate.

6. **Term of Agreement**. This Agreement commences on the Effective Date and continues until all Orders entered into under these Terms of Use have expired or have been terminated.

7. **Term of Order**. Customer's subscription to the Service is as specified in the applicable Order (the "*Initial Term*"). Except as may otherwise be expressly specified in an Order, subscriptions will automatically renew for additional successive periods of equal duration to the Initial Term (each, a "*Renewal Term*", and together with the Initial Term, the "*Term*") unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the Term. The applicable fee for any Renewal Term will be determined using SparkPost's then-current list price applicable for such renewed Service unless different renewal pricing is specified in the Order.

8. **Service Provisioning**. SparkPost will: (a) make the Service available to Customer pursuant to these Terms of Use, the Documentation, and the applicable Order; and (b) provide technical support for the Service in accordance with Customer's Service subscription. Customer's access to and use of the Service is conditioned on connecting to the Service using the applicable SparkPost Library; connecting to the Service using any other method, code or libraries is prohibited. Customer is solely responsible for procuring, installing and maintaining any hardware, software, or other equipment as may be necessary for Customer and its Users to connect to, access, and use the Service.

9. **SparkPost Library License**. SparkPost hereby grants to Customer a worldwide, limited-term, non-exclusive, non-transferable license (except pursuant to a permitted assignment under these Terms of Use) to use the SparkPost Library solely in connection with the Service and in accordance with this Agreement and Documentation during the applicable Term.

10. **SparkPost Responsibilities**. SparkPost will: (a) maintain a written and comprehensive information security program, which includes appropriate physical, technical, and administrative controls to protect the security, integrity, confidentiality, and availability of Customer Data including, without limitation, protecting Customer Data against any unauthorized or unlawful acquisition, access, use, disclosure, or destruction (the "*Security Policy*"), a summary of which is available at www.sparkpost.com/policies/security; (b) be responsible for the performance of the SparkPost personnel (including employees and contractors) and their compliance with SparkPost's obligations under the Agreement; (c) make the Service available to Customer in accordance with Applicable Laws, when used according to these Terms of Use; and (d) comply with its Privacy Policy.

SERVICE USE.

1. **Applicable Policies**. In addition to these Terms of Use, Customer's and its Users' access to and use of the Service is subject to SparkPost's messaging policy, available at: www.sparkpost.com/policies/messaging (the "*Messaging Policy*") and SparkPost's privacy policy, available at: www.sparkpost.com/policies/privacy (the "*Privacy Policy*", and together with the Messaging Policy, the "*Policies*"). The Policies are incorporated into these Terms of Use by reference.

2. **Customer Responsibilities**. Customer is responsible for all access to and use of the Service by Customer and its Users, and will: (a) access and use the Service only in accordance with this Agreement and Documentation; (b) promptly notify SparkPost of any breach of security or unauthorized access or use of Customer's Account or any loss or unauthorized disclosure of any User IDs; (c) comply with reasonable requests made by SparkPost regarding configuration of Customer's Account to optimize performance of the Service generally; (d) comply with all Applicable Laws in accessing and using the Service; (e) have sole responsibility for the accuracy of Customer Data; (f) maintain and abide by a privacy policy that complies with Applicable Law for each Customer Application that connects to the Service; and (g) provide notice and obtain all legally required rights, releases, and/or consents to allow Customer Data to be collected, processed, stored, used, transmitted and disclosed in the manner contemplated by this Agreement and the Documentation.

3. **Restrictions**. Customer will not: (a) sell, resell, license, sublicense, distribute, rent, lease, or otherwise make the Service directly available to any third party; (b) use the Service to store or transmit code, files, scripts, agents or programs intended to do harm including, for example, viruses, worms, time bombs and Trojan horses; (c) interfere with or disrupt the integrity or performance of the Service or third party data contained therein; (d) attempt to gain unauthorized access to the Service or its related systems or networks; (e) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit, or bypass or breach any security device or protection included in the Service; (f) copy the Service or any part, feature, function or user interface thereof; (g) access the Service in order to build a competitive product or service or for other competitive purposes; (h) to make a decision regarding an individual based solely on automated processing which produces legal effects concerning such individual or similarly significantly affects such individual including, for example, establishing an individual's eligibility for credit, employment or insurance; or (i) use the Service for any high risk activities where the use or failure of the Service could lead to death, personal injury, or environmental or

property damage. SparkPost may, in its reasonable discretion, remove or refuse to store or transmit any Customer Data that violates these Terms of Use. However, SparkPost has no obligation to review Customer Data (including, for example, any Email content).

4. **Third Party Applications**. The Service may enable Customer to link, or otherwise use, third party web-based or offline software applications, operating systems, platforms, networks, certificates, or devices that interoperate with the Service ("*Third Party Applications*"). For clarity, Third Party Applications do not include any subcontractors of SparkPost. By linking or using a Third Party Application with the Service, Customer: (a) authorizes SparkPost to access, receive and, in certain cases, store data from the Third Party Application via the Service (all such data accessed, received and/or stored being Customer Data); and (b) grants SparkPost permission to allow the provider of that Third Party Application to access Customer Data via the Service, in each case solely as required for the interoperation of that Third Party Application with the Service. SparkPost is not responsible for any usage, transmission, disclosure, loss, modification or deletion of Customer Data or any other content sent to, provided by or accessed by a Third Party Application that Customer links to, or uses with, the Service. Customer is solely responsible for obtaining and securing from the Third Party Application provider all rights and permissions necessary for Customer to link such Third Party Application to the Service, and SparkPost will have no liability in connection therewith. Customer's access to and use of any Third Party Application (including the linking of the Third Party Application to the Service) is subject to such Third Party Application provider's terms and conditions that govern the access and use of the Third Party Application, or any separate agreement or transaction that Customer enters into with the Third Party Application provider, and SparkPost will have no liability in connection therewith

5. **Regulated Use**. Customer is responsible for determining whether the Service is suitable for Customer to use in light of Applicable Laws such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or the Gramm-Leach-Bliley Act (GLBA). SparkPost does not intend Customer's use of the Service to create additional obligations under such possible Applicable Laws and SparkPost is not liable if the Service does not meet the requirements of those Applicable Laws.

6. **Content Privacy**. Customer acknowledges and understands that the Service includes the transmission of emails over the public Internet. Email sent using the Service may be unsecured, may be intercepted by other users of the public Internet, and may be stored and disclosed by third parties (such as a Recipient's mailbox

provider). Although the Service include support for Transport Layer Security (TLS), Email content may be exploited if the Recipient's mailbox provider does not also support TLS, resulting in an unencrypted transmission.

FEES AND PAYMENT.

1. **Fees**. Customer will pay all fees specified in all applicable Orders ("*Fees*"). Except as otherwise expressly specified herein or in an Order: (a) Fees are based on the Service subscribed to and the usage metrics specified in the applicable Order; (b) payment obligations are non-cancelable and Fees paid are non-refundable; and (c) the purchased Service subscription cannot be decreased during the relevant Term.

2. **Invoicing and Payment**. Unless the Order specifies otherwise, Fees are electronically billed upon execution of the Order and due net ten (10) days from the billing date. Some features and services are offered as add-ons to the Service. If Customer adds on a feature that has a fee, then Customer will be billed that additional amount with each billing cycle for as long as the add-on is active. Customer is responsible for providing complete and accurate billing and contact information to SparkPost and notifying SparkPost of any changes to such information. If Customer has specified credit card, or direct withdrawal or ACH payment from a bank account, as an applicable payment mechanism under this Agreement, Customer authorizes SparkPost or its applicable processing agent to charge the credit card, or debit the bank account, on file for all Fees due. If Customer is using a credit card, Customer represents and warrants that Customer is authorized to use that credit card, and that any and all Fees may be billed to that credit card and will not be rejected. If SparkPost is unable to process Customer's credit card, SparkPost will try to contact Customer by email and may suspend Customer's Account until payment is processed. Unless otherwise stated in the Order, all amounts payable will be United States Dollars.

3. **Payment Disputes**. In the event Customer disputes any portion of the Fees paid or payable by Customer (a "*Payment Dispute*"), Customer must provide written notice to SparkPost within seven (7) days of the billing ("*Payment Dispute Period*") and the parties will work together in good faith to resolve the Payment Dispute promptly. If Customer does not provide written notice of the Payment Dispute within the Payment Dispute Period, Customer will not be entitled to dispute such Fees paid or payable.

4. **Late Payments**. Customer's failure to pay any undisputed amounts due under this Agreement on a timely basis will be deemed a material breach of this Agreement. If any amount owed by Customer under this Agreement is overdue, SparkPost may, without limiting its other rights and remedies, accelerate Customer's unpaid fee

obligations under this Agreement so that all Fees become immediately due and payable. SparkPost will not exercise such acceleration right specified above if Customer timely exercises its right to dispute payments in accordance with Section 4.3 (Payment Disputes). If SparkPost must take action to collect overdue fees under this Agreement, Customer agrees to pay all reasonable costs and expenses incurred by SparkPost for collecting such overdue fees including, for example, collection fees, reasonable attorney fees and court costs.

5. **Taxes**. Fees do not include any taxes, levies, duties, or similar governmental assessments of any nature on the Service including, for example, value-added, sales, use, or withholding taxes assessable in any jurisdiction whatsoever (collectively, "*Taxes*"). Customer is responsible for paying all Taxes associated with its purchase(s) of the Service hereunder, excluding any taxes that relate to the income, property, or payroll of SparkPost. If Customer does not provide SparkPost with a valid tax exemption certificate authorized by the appropriate taxing authority and SparkPost pays Taxes for which Customer is responsible under this Section, SparkPost will bill Customer and Customer will pay that amount to SparkPost.

DATA.

1. **Ownership of the Service**. SparkPost (and its licensors, where applicable) will own all right, title and interest, including all inventions (whether patented or not), patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and trade secrets, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world, in and to the Service and all modifications, extensions, customizations, scripts or other derivative works of the Service ("*Intellectual Property Rights*"). No such rights are granted to Customer hereunder other than as expressly set forth herein, and SparkPost (and its licensors, where applicable) reserve all rights not expressly granted herein. Customer agrees not to challenge the validity of, or SparkPost's ownership of, Intellectual Property Rights in and to the Service or Website or any part thereof. Customer agrees to provide SparkPost with reasonable assistance with enforcing its rights at SparkPost's 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.

2. **SparkPost Data**. Unless otherwise noted within the Website or Service, SparkPost owns SparkPost Data. SparkPost retains all rights, title, and interest including, without limitation, all Intellectual Property Rights to the SparkPost Data and all

derivatives thereof. SparkPost hereby grants to Customer a worldwide, limited-term, non-exclusive, non-transferable (except pursuant to a permitted assignment under these Terms of Use), royalty-free license during the applicable Term to access and use the SparkPost Data solely for Customer's own business purposes in connection with the use of the Service.

3. **Customer Data**. As between Customer and SparkPost, Customer exclusively own all rights, title and in and to all Customer Data and all Customer Applications. Customer hereby grants to SparkPost a worldwide, non-exclusive, non-transferable (except pursuant to a permitted assignment under these Terms of Use), royalty-free: (a) limited-term license during the applicable Term to receive, copy, modify, display, store, perform and distribute copies of Customer Data solely for the purpose of providing the Service (including interoperation of the Service with any linked Third Party Applications) in accordance with this Agreement; and (b) perpetual, irrevocable license to use, copy, store, modify, create derivative works of, and otherwise process certain Customer Data, specifically the email addresses of its Recipients; provided that for each Recipient: (i) Customer is not identified as the source of such data; (ii) the email address is pseudonymized (i.e., hashed); (iii) the email address is not EEA Personal Data; (iv) the email address is not disclosed to any other customer; and (v) SparkPost does not itself use the email address to send any of its own emails to the Recipient. Customer has all rights, permissions (including, but not limited to, permissions from any Third Party Application providers), and/or consents necessary to grant SparkPost the rights in the Customer Data as provided in this Agreement.

4. **EEA Personal Data**. If Customer is located in the European Economic Area (EEA) or sends Email to Recipients in the EEA, Customer represents and warrants that, in sending Email and collecting data including, for example, analytics such as frequencies or rates, as a result of those Emails, Customer: (a) will clearly describe to such Recipients in writing how Customer plans to use any data collected, including for Customer's use of the Service; (b) will obtain express consent from Recipients to transfer data to SparkPost and be processed by SparkPost; (c) will comply with Customer's posted privacy policy; (d) will comply with all regulations, as well as data protection, electronic communication, and privacy laws that apply to the countries where Customer is sending Email to and from; (e) has collected, stored, used, and transferred all data relating to any individual in compliance with all Applicable Law including applicable data protection laws and regulations; (f) has the necessary permission to allow SparkPost to receive and process data and send communications to that Recipient on Customer's behalf; and (g) has signed the

SparkPost Data Protection Addendum available at: www.sparkpost.com/policies/DPA.

5. **Usage Data**. Subject to the limitations in this Section, SparkPost and its Affiliates may: (a) collect, extract, compile, synthesize, analyze, attribute, store, and otherwise use data resulting from Customer's use and operation of the Service ("*Usage Data*") including, without limitation, routing data (e.g., server hostnames, server IP addresses, and timestamps), delivery data (e.g., whether, when, where, and how an Email was sent or delivered), engagement data (e.g., whether, when, where, and how an Email was opened or clicked), and message data (e.g., message type, tone, length, and presentation); and (b) aggregate or compile Usage Data with other data, including data obtained via third parties and the usage data of other SparkPost customers ("*Aggregate Data*"). Usage Data and/or Aggregate Data: (i) will not include any identifiers of Customer as a source of such data; (ii) constitutes "SparkPost Data" hereunder; and (iii) will only be used by SparkPost and its Affiliates to: (1) provide aggregate research statistics and insights (e.g., publishing average email open rates by city, benchmarking by industry vertical, and analyzing industry trends); (2) optimize delivery, engagement, and conversion of Customer's and other customers' email campaigns (e.g., send time optimization, recipient validation, predictive filtering based on a recipient's propensity to engage, convert, and/or complain, and content selection optimization); and (3) for its own lawful business purposes including operational support and planning, research and development, and additional product functionality.

6. **Feedback**. Providing any suggestions, enhancement requests, recommendations, corrections, or other feedback (collectively, "*Feedback*") is strictly voluntary. Customer hereby grants to SparkPost and its Affiliates a worldwide, perpetual, irrevocable, transferable, sub-licensable, royalty-free license to use and incorporate any Feedback Customer provides to SparkPost, orally or in writing, into the Service, Documentation, and/or Website.

7. **Backups**. Customer will maintain an adequate backup of all Customer Data. SparkPost will not be responsible or liable for any failure to store or backup any Customer Data.

8. **Security Breach**. Unless, and to the extent, notification is delayed by the actions or demands of a law enforcement agency or Applicable Law, SparkPost will report to Customer the unauthorized acquisition, access, use, disclosure or destruction of Customer Data (a "*Security Breach*") promptly following determination by SparkPost that a Security Breach occurred. The report will be made to Customer's email

address on file for the Account. SparkPost will take reasonable measures to promptly address the circumstances giving rise to the cause of the Security Breach and will take reasonable corrective measures to prevent future Security Breaches. Promptly after information is collected or otherwise becomes available to SparkPost, and unless prohibited by Applicable Law, SparkPost will provide information regarding the nature and consequences of the Security Breach as reasonably requested to allow Customer to notify affected individuals, government agencies and/or credit bureaus. Customer is solely responsible for determining its own obligations to notify impacted individuals, for providing such notice, and for determining if regulatory bodies or enforcement agencies applicable to Customer or Customer Data need to be notified of a Security Breach.

CONFIDENTIALITY.

1. **Confidential Information**. "*Confidential Information*" means all information disclosed by one party ("*Disclosing Party*") to the other party ("*Receiving Party*"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure including, for example, business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by the Disclosing Party. Customer's Confidential Information includes Customer Data. SparkPost's Confidential Information includes the Service and all non-public information relating to the Service and Website. However, Confidential Information does not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party without obligation of confidentiality prior to its disclosure by the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Receiving Party without breach of this Agreement or any obligations owed to the Disclosing Party.

2. **Protection**. The Receiving Party will use the same degree of care to protect the Confidential Information of the Disclosing Party as it uses to protect its own Confidential Information of like kind (but not less than reasonable care). The Receiving Party may not use any Confidential Information of the Disclosing Party for any purpose except as expressly permitted in this Agreement. The Receiving Party may disclose Disclosing Party's Confidential Information to its Affiliates, respective officers, directors, principals, employees, attorneys, and accountants ("*Representatives*") only to the limited extent necessary to carry out the purpose of

this Agreement. Each party may disclose the existence and terms of this Agreement, in confidence, to a potential purchaser or successor to any portion of such party's business resulting from the reorganization, spin-off, or sale of all or a portion of all of the assets of any business division, or group of such party. To the extent the Receiving Party discloses any Confidential Information of the Disclosing Party to any persons other than its Representatives, as condition precedent to disclosure, such recipient must execute a confidentiality agreement no less protective of such Confidential Information before disclosure is made.

3. **Compelled Disclosure**. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or court order to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law or court order to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

WARRANTIES AND DISCLAIMERS.

1. **SparkPost Warranty**. SparkPost represents and warrants that it will provide the Service to Customer in accordance with this Agreement and the Documentation. SparkPost's sole obligation, and Customer's 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 Service or refund the Fees paid or payable for the defective Service provided during the period of the failure.

2. **Mutual Warranties**. Each party represents and warrants that: (a) such party has the legal right and authority to enter into this Agreement, to perform its obligations under this Agreement, and to grant the rights and licenses described in this Agreement; (b) this Agreement will constitute such party's legal, valid, and binding obligation, enforceable against such party in accordance with its terms; and (c) no consent, approval or authorization of, or exemption by, or filing with, any governmental authority or third party is required to be obtained by such party 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.

3. **Disclaimers**. EXCEPT FOR THE WARRANTIES EXPRESSLY PROVIDED FOR IN SECTION 7.1 (SPARKPOST WARRANTY) AND SECTION 7.2 (MUTUAL WARRANTIES): (a) 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 INCLUDING THOSE THAT MAY ARISE BY COURSE OF DEALING OR PERFORMANCE; (b) THE SERVICE AND ANY AND ALL CONTENT OF ANY KIND PROVIDED BY SPARKPOST IN CONNECTION WITH THE SERVICE OR THIS AGREEMENT IS PROVIDED "AS IS," "AS AVAILABLE" AND WITHOUT WARRANTY; AND (c) SPARKPOST DOES NOT WARRANT OR GUARANTEE INBOX PLACEMENT RATE BECAUSE OF THE GREAT NUMBER OF CONDITIONS, PRACTICES, AND REPUTATIONAL ISSUES OUTSIDE SPARKPOST'S CONTROL. IF CUSTOMER MAKES ANY UNAUTHORIZED CHANGES OR MODIFICATIONS TO THE SERVICE, THE WEBSITE, OR THE DOCUMENTATION, THE WARRANTY IN SECTION 7.1 (SPARKPOST WARRANTY) WILL BE NULL AND VOID. IF ANY PART OF THIS SECTION IS DETERMINED TO BE UNENFORCEABLE, THEN ALL SUCH 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.

INDEMNIFICATION.

1. **SparkPost Indemnification**. SparkPost will defend, indemnify and hold Customer harmless from and against any third party claim, demand, suit or proceeding ("*Claim*") and related fees and expenses (including reasonable attorney's fees) made or brought against Customer alleging the Service, as made available by SparkPost under this Agreement to Customer, infringes or misappropriates such third party's patents, copyrights, trademarks, or trade secret rights under the laws of the United States. If SparkPost receives information about an infringement or misappropriation claim related to the Service, SparkPost may, in its discretion, and at no cost to Customer: (a) modify the Service so that it no longer infringes or misappropriates; (b) obtain a license for Customer's continued use of that Service in accordance with this Agreement; or (c) terminate Customer's subscriptions for that infringing Service upon thirty (30) days' prior written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. The above defense and indemnification obligations do not apply to the extent a Claim arises from or relates

to: (i) Customer Data; (ii) Third Party Applications; (iii) Customer's or any User's breach of this Agreement; (iv) any modifications of the Service by or for Customer; (v) use of the Service in combination with another product or service not provided by SparkPost; or (vi) failure to timely implement any modifications, upgrades, replacements or enhancements made available by SparkPost to Customer at no additional cost. This Section provides SparkPost's sole and exclusive liability, and Customer's sole and exclusive remedy, for any third party claims related to the Service or this Agreement.

2. **Customer Indemnification**. Customer will defend, indemnify, and hold SparkPost harmless from and against any Claim and related fees and expenses (including reasonable attorney's fees) made or brought against SparkPost in connection with or arising from: (a) Customer Data (including, for avoidance of doubt, any Emails); (b) Customer's or any User's infringement or misappropriation of intellectual property rights; (c) Customer's violation of its obligation to a third party; (d) violation of Applicable Laws; and/or (e) Customer's or any User's breach of Section 3.2 (Customer Responsibilities), Section 3.3 (Restrictions), or Section 5.4 (EEA Personal Data) above.

3. **Indemnification Process**. The indemnifying party's obligations are conditioned upon the indemnified party: (a) giving the indemnifying party prompt written notice of the claim (provided however, the failure to give timely notice will not relieve the indemnifying party of its obligations under this Agreement except to the extent such failure materially impairs the ability of the indemnifying party to defend); (b) granting full control of the defense and settlement to the indemnifying party (provided however, the indemnified party may participate with counsel of its choosing at its own expense); (c) reasonably cooperating with the indemnifying party, at the indemnifying party's expense with regard to out-of-pocket expenses, in defense and settlement of any such claim; and (d) not admitting any fault or liability of the indemnifying party or itself.

LIMITATION OF LIABILITY.

1. **Limitation of Liability**. SPARKPOST'S CUMULATIVE LIABILITY TO CUSTOMER FOR ALL CLAIMS ARISING FROM OR RELATING TO THE AGREEMENT OR THE SERVICE, WHETHER IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID TO SPARKPOST IN ACCORDANCE WITH THE AGREEMENT AND ALL ORDERS HEREUNDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE DATE UPON WHICH ANY SUCH LIABILITY ARISES. THE ABOVE LIMITATIONS

WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF SPARKPOST WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. SPARKPOST HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER THE RIGHTS TO ACCESS AND USE THE SERVICE PROVIDED FOR IN THIS AGREEMENT AT THE CHARGES AGREED TO BY THE PARTIES.

2. **Exclusion of Consequential and Related Damages**. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW IN THE APPLICABLE STATE OR JURISDICTION. EACH PARTY AGREES THAT THE CONSIDERATION SPARKPOST IS CHARGING HEREUNDER DOES NOT INCLUDE CONSIDERATION FOR ASSUMPTION BY A PARTY OF THE OTHER PARTY'S INCIDENTAL OR CONSEQUENTIAL DAMAGES.

SUSPENSION AND TERMINATION.

1. **Maintenance and Downtime**. SparkPost may, without any liability to Customer (except as set forth in the applicable Order), suspend access to the Service at any time: (a) to perform scheduled or unscheduled maintenance, modifications, or upgrades; (b) due to hardware failures, power outages, or failures of third party providers; (c) to mitigate or prevent the effects of any threat or attack to the Service or any other network or systems on which the Service relies; (d) as necessary in SparkPost's sole discretion because the Service may violate Applicable Law, or as might be required for other legal or regulatory reasons; or (e) there is another event for which SparkPost reasonably believes the suspension of the Service is necessary to protect the SparkPost network or other customers (each, a "*Service Suspension*"). SparkPost will make a reasonable effort when possible to notify Customer in advance of any scheduled Service Suspension but SparkPost will have no liability for

any damages, losses (including loss of data or profits), or any other consequences incurred as a result of a Service Suspension or the failure to provide notice thereof.

2. **Account Suspension**. SparkPost may immediately suspend the Account, in whole or in part, without prior notice, for any reason and/or time that is reasonable under the circumstances including, for example, Customer's failure to timely pay Fees or a suspected breach of the Messaging Policy (an "*Account Suspension*"). During each such Account Suspension: (a) Customer's, and all Users', access to the Account and the Service will be suspended; (b) Customer's obligations pursuant to this Agreement, including the obligation to pay Fees, will continue to accrue; and (c) unless SparkPost deems the Account and/or any of Customer Data to be potentially harmful in any way or potentially in violation of any Applicable Law, SparkPost will maintain the Account and not take action to delete or remove any or Customer Data stored on or within the Service.

3. **Termination**. SparkPost may immediately terminate this Agreement and/or the applicable Order: (a) for any or no reason during any free subscription to the Service; (b) if Customer breaches the Messaging Policy; or (c) if Customer fails to timely pay Fees. Notwithstanding the previous sentence, either party may terminate this Agreement for cause: (i) upon fifteen (15) days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.

4. **Consequences of Termination or Expiration**. Upon the effective date of termination or expiration of this Agreement: (a) all rights, licenses, and subscriptions granted to Customer under any Order will immediately terminate; (b) Customer and all Users will immediately cease all use of, and access to, the Account, User IDs, and the Service; (c) Customer will immediately either return to SparkPost or, in SparkPost's discretion, destroy all SparkPost Data, SparkPost Confidential Information, and User IDs that are in Customer's and Users' possession; and (d) SparkPost will delete any Customer Confidential Information or Customer Data stored by the Service or otherwise by SparkPost within forty-five (45) days after the effective date of expiration or termination, or as required by Applicable Law. Notwithstanding the previous sentence, SparkPost may retain: (i) certain Customer Data as expressly permitted by Section 5.3 (Customer Data); and (ii) Customer Confidential Information or Customer Data for a longer period after the effective date of termination or expiration of this Agreement to comply with Applicable Law or as

necessary to prosecute or defend any legal claim, in which case SparkPost may retain such information only for a reasonable time pending resolution of such obligation or issue.

5. **Refund or Payment upon Termination**. If this Agreement is terminated by Customer in accordance with Section 10.3 (Termination), SparkPost will refund to Customer any prepaid Fees covering the remainder of the term of all Orders after the effective date of termination. If this Agreement is terminated by SparkPost in accordance with Section 10.3 (Termination), Customer will pay any unpaid Fees covering the remainder of the Term of all Orders. In no event will termination relieve Customer of its obligation to pay any Fees payable to SparkPost for the period prior to the effective date of termination.

6. **Survival**. Customer's obligation to pay any fees accruing before termination and Section 1 (Definitions), Section 5 (Data), Section 6 (Confidentiality), Section 7 (Warranties and Disclaimers), Section 8 (Indemnification), Section 9 (Limitation of Liability), Section 10 (Suspension and Termination), and Section 11 (General Provisions) will survive any termination or expiration of this Agreement.

GENERAL PROVISIONS.

1. **Notice**. Except as otherwise specified in this Agreement, all notices, permissions, and approvals hereunder to Customer will be in writing and will be deemed to have been given upon: (a) personal delivery; (b) the second business day after mailing; or (c) the first business day after sending by email (provided email will not be sufficient for notices of termination or an indemnity claim). Billing-related notices to the Customer will be addressed to the relevant billing contact designated by the Customer. All other notices to the Customer will be addressed to the relevant Service system administrator designated by the Customer. Notwithstanding the foregoing, SparkPost occasionally may need to notify Customer and Users of important announcement regarding operation of the Service, such as notice of downtime, and may provide such information by online notice. It is Customer's responsibility to keep all email addresses associated with the Account current. Customer will be deemed to have received any email sent to any such email address, upon SparkPost sending of the email, whether or not Customer actually receives the email (unless SparkPost receives a bounce notice). All notices made by Customer to SparkPost must be sent to SparkPost, Attn: Legal, 9160 Guilford Road, Columbia, MD 21046, USA, with a copy to legal@sparkpost.com.

2. **Modifications**. SparkPost reserves the right to prospectively change or modify any of the terms and conditions contained in this Agreement including, for example, the

Policies by posting the new version at: www.sparkpost.com/policies. SparkPost will make reasonable efforts to notify Customer of such changes, which may include posting an announcement on the Website, in-application notices, or via email. SparkPost additionally reserves the right to change or modify the Service and SparkPost Library at any time provided the Service continue to function in accordance with the Agreement Documentation. When circumstances warrant, SparkPost will use reasonable efforts to notify Customer of such changes, which may include posting an announcement on the site, in-application notices, or via email. An explanation of Service modifications can be found on SparkPost's change log available at: www.sparkpost.com/docs/tech-resources/change-log-sparkpost. Customer's continued use of the Service following SparkPost's posting or notice of the change(s) will constitute Customer's acceptance of such change(s). If Customer does not agree to such change, Customer may cancel its subscription to the Service by providing SparkPost with at least seven (7) days' prior written notice within thirty (30) days of SparkPost posting or providing notice of the change(s) to this Agreement.

3. **Marketing**. Customer agrees that SparkPost may use Customer's name and logo to identify Customer as a customer of SparkPost on the Website, and as a part of a general list of SparkPost's customers for use and reference in its corporate, promotional, and marketing literature.

4. **Linked Sites**. The Service and Website 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 Customer access any such website, Customer does so at its own risk and SparkPost will have no liability in connection therewith.

5. **Export Compliance**. The Service, the SparkPost Library, other technology SparkPost makes available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not located in any jurisdiction in which the provision of the Service, the SparkPost Library, or Customer Data is prohibited under U.S. or other Applicable Laws or regulations (a "*Prohibited Jurisdiction*") and Customer will not provide access to the Service, the SparkPost Library, or Customer Data to any government, entity or individual located in any Prohibited Jurisdiction. Each party covenants that: (a) it is not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) it is not a national of, or a company registered in, any Prohibited Jurisdiction; (c) it will not permit Users to

access or use the Service, the SparkPost Library, or Customer Data in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (e) it will comply with all Applicable Laws regarding the transmission of technical data exported from the United States and the country in which the Customer and any of its Users are located.

6. **Force Majeure**. Except for the payment of Fees, each party will be excused from any failure or delay caused by or the result of causes beyond its reasonable control and could not have been avoided or corrected through the exercise of reasonable diligence, including, but not limited to, acts of God, fire, flood, hurricane or other natural catastrophe, terrorist actions, laws, orders, regulations, directions or actions of governmental authorities having jurisdiction over the subject matter hereof, or any civil or military authority, national emergency, insurrection, riot or war, labor strikes not involving either party's employees, general failure of telecommunication or digital transmission links, general failure of the Internet, failure of Third Party Applications, failure of any third party operating systems, platforms, applications or networks not under reasonable control of SparkPost, or other similar occurrence.

7. **Assignment**. Customer may not assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without SparkPost's prior written consent (not to be unreasonably delayed or withheld); provided, however, Customer may assign this Agreement in its entirety (including all Orders), without SparkPost's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets to a party that is not a competitor of SparkPost. SparkPost may at any time assign, transfer, charge, subcontract, or deal in any other manner with any or all of its rights or obligations under this Agreement. Subject to the foregoing, 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.

8. **Governing Law; Jurisdiction**. Each party agrees to: (a) the laws of the State of Maryland without regard to choice or conflicts of law rules and excluding the 1980 United Nations Convention on Contracts for the International Sale of Goods; and the Uniform Commercial Code of the State of Maryland (or any other state that could otherwise apply to this Agreement); and (b) to the exclusive jurisdiction of the courts located in Baltimore, Maryland.

9. **Disputes**. 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 accordance with the rules of the American Arbitration Association (the "*Rules*"). The

arbitration will be conducted before a sole neutral arbitrator selected by agreement of the parties. If the parties cannot agree on the appointment of a single arbitrator within thirty (30) days after either party to this Agreement delivers a request for arbitration, a neutral arbitrator will be selected as provided in the Rules. The arbitration will be conducted exclusively in the English language at a site specified by SparkPost in Baltimore, Maryland U.S.A. The award of the arbitrator will be the exclusive remedy of the parties for all claims, counterclaims, issues or accountings presented or plead to the arbitrator. The award of the arbitrators will require payment of the costs, fees and expenses incurred by the prevailing party in any such arbitration by the non-prevailing party. Judgment upon the award may be entered in any court or governmental body having jurisdiction thereof. Any additional costs, fees or expenses incurred in enforcing the award may be charged against the party that resists its enforcement.

10. **Injunctive Relief**. Both parties acknowledge that any unauthorized use of the Service or breach of the confidentiality or intellectual property provisions herein may cause irreparable harm to the other party, the extent of which would be difficult to ascertain. Accordingly, both parties agree that, in addition to any other remedies to which a party may be legally entitled to, either party will have the right to seek injunctive relief in the event of such a breach.

11. **Copyright Infringement**. SparkPost respects the intellectual property of others and conditions use of the Service on customers doing the same. Customer may not upload, embed, post, email, transmit or otherwise make available any material that infringes any copyright, patent, trademark, trade secret or other proprietary rights of any person or entity. If a third party believe that his or her work has been copied in a way that constitutes copyright infringement, or such third party's intellectual property rights have been otherwise violated ("*Third Party Copyright Owner*"), SparkPost's Copyright Agent can be reached as follows: SparkPost, Attn: Legal, 9160 Guilford Road, Columbia, MD 21046, USA. Please provide the following information in the notice: (a) a description of the copyrighted work or other intellectual property claimed to be infringing; (b) a description of where the allegedly infringing material is located; (c) the Third Party Copyright Owner's contact address, telephone number, and email address; (d) a statement by the Third Party Copyright Owner's that he or she has a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) a statement by the Third Party Copyright Owner, made under penalty of perjury, that the information provided pursuant to clauses (a) through (d) above is accurate and that the Third Party Copyright Owner is the copyright or

intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf; and (f) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest.

12. **Federal Government End Use Provisions**. This Section applies only if the Customer is the United States federal government or one of its agencies. SparkPost provides the Service, including related software and technology, for federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in these Terms of Use. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with SparkPost to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

13. **Relationship of the Parties**. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, and fiduciary or employment relationship between the parties. Nothing in this Agreement will be construed to prevent SparkPost from marketing, licensing, selling, or otherwise providing Service or any aspects SparkPost's technology or services to any third party. Nothing in this Agreement will be construed to prevent the Customer from obtaining services similar to the Service from a third party.

14. **Third Party Beneficiaries**. There are no third party beneficiaries under this Agreement.

15. **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 these Terms of Use will not be construed as a waiver of any other default. No waiver of any provision in the 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 the Agreement.

16. **Severability**. If any provision of the 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.

17. **Headings**. The section headings appearing in these Terms of Use 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.

18. **Electronic Signature**. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included on these Terms of Use and any Order are intended to authenticate the writing and to have the same force and effect as manual signatures. Electronic signature means any electronic, symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record, including e-mail electronic signatures.

19. **Order of Precedence**. In the event of any conflict or inconsistency among the following documents, the order of precedence will be: (a) the applicable Order (which includes the terms included in any on any schedules, exhibits, or annexes attached to the Order and the terms included on any URL links referenced therein); (b) these Terms of Use (which includes the terms included in any URL links referenced herein and the terms included on any exhibits, schedules or annexes attached to the Terms of Use); and (c) the Documentation.

20. **Entire Agreement**. This Agreement is agreed to by the parties that reference these Terms of Use and all expressly referenced documents. Collectively, the foregoing constitutes the entire agreement between the parties with respect to the subject matter hereof, and therefore the parties expressly disclaim all prior discussions, emails, RFPs and/or agreements between the parties. This Agreement supersedes all prior and contemporaneous agreements or communications including, without limitation, any quotations or proposals submitted by SparkPost. The terms on any purchase order or similar document submitted by Customer to SparkPost will have no effect. Unless otherwise expressly permitted in these Terms of Use, the terms of this Agreement may be amended only by a written agreement signed by both parties that expressly refers to this Agreement.