



## Participation Terms

These Participation Terms (“Terms”) apply to each sale or other marketing or transaction event (each, an “Event”) conducted by Spark Technologies, LLC also doing business as SparkAuction or SparkOffer (“Spark”) on behalf of a seller (each, a “Seller”) of real property (each, a “Property”, and collectively, “Properties”). As used in these Terms, each user who participates in any Event conducted through the Website (as defined below) or visits the Website is a “Participant”. As used in these Terms, the terms “Spark”, “Seller” and “Participant” also refer to the respective principals, agents, and affiliates of each. “Winning Buyer” is the Participant that (a) submits the highest bid in an Event and is acknowledged by Spark by email or telephone as the winning bidder, or (b) submits any offer during any Event that is accepted by Seller. As used in these Terms, each bid or offer submitted in any Event is an “Offer”.

Spark conducts Events solely on behalf of Seller, and is not acting as an agent or real estate broker for any Participant in any capacity. By registering for an Event or submitting an Offer at [www.sparkoffer.com](http://www.sparkoffer.com), [www.spark.auction](http://www.spark.auction) or any other Spark website (“Website”), Participant acknowledges having read and accepted these Terms. By submitting an Offer on a Property, Participant is deemed to have accepted any additional terms and conditions posted on the Property’s details page on the Website (“Property Page”) at the time the Offer was submitted, and such terms and conditions govern and control over these Terms to the extent of any conflict.

Spark's Website Terms of Service (<https://sparkoffer.com/terms-of-service>) and Privacy Policy (<https://sparkoffer.com/privacy-policy>) are incorporated into these Terms by reference.

## **1. ACCOUNT CREATION AND REGISTRATION PROCESS**

Participants must create a Spark account in order to participate in any Event.

Spark may modify, waive, or impose additional requirements for certain Properties or Participants in its sole and absolute discretion or at the request of Seller. Those additional requirements will be disclosed on the Event-specific Property page, so Participants should check those requirements regularly.

## **2. DUE DILIGENCE**

Purchase Documents. Prior to submitting an Offer, Participants must review the purchase and sale agreement, any applicable addenda, Seller's disclosure documentation, and all other transaction documents (collectively, "Purchase Documents"), which can be accessed on the Property Page. All Offers must be based on the posted Purchase Documents. The Purchase Documents are non-negotiable and the Winning Buyer will be required to execute the Purchase Documents promptly after being identified by Spark as the Winning Bidder as described below.

Due Diligence. All Properties are sold in their "as is, with all faults" condition. It is each Participant's responsibility to conduct its own due diligence and to investigate all matters relating to each Property that Participant is interested in purchasing, including, without limitation, legal matters, physical condition and attributes, environmental matters, economic matters, feasibility for buyer's intended use, title matters, encumbrances, and all other aspects. Participant must coordinate any such due diligence activities and inspections

with Seller or Seller's broker. Participant Offers are valid and irrevocable regardless of whether Participant has physically inspected the Property. All Offers should be based solely on Participant's independent due diligence and any information contained in the Purchase Documents.

Property information has been gathered from a variety of sources and has not been independently verified by Spark. Spark makes no representation or warranty that the information contained in the Purchase Documents or otherwise made available to Participants is correct or complete. Participants are encouraged to consult with a licensed real estate broker, contractor, attorney, financial advisor, tax advisor, and other relevant professionals prior to participating in any Event. SPARK IS NOT PROVIDING ANY LEGAL OR REAL ESTATE ADVICE OR COUNSEL. SPARK IS SOLELY PROVIDING ACCESS TO ITS WEBSITE FOR MARKETING AND AUCTION PURPOSES.

Participant may not be permitted to conduct invasive tests or investigations, and Participant is responsible for all liability, damages and costs directly or indirectly arising from Participant's inspection, visit, or investigation of the Property. Participant agrees to indemnify, defend and hold harmless Seller and Spark from any such liability, damages and costs, and to maintain all applicable policies of insurance insuring over such liability, damages and costs.

### **3. BUYING**

Irrevocability of Offers. All Offers submitted during any Event are irrevocable, except where an Offer withdrawal option is expressly made available to Participants through the Website.

Signing Purchase Documents. The final Purchase Documents will be emailed to Winning Buyer for electronic signature using the email address associated with Winning Buyer's Spark account. Winning Buyer must sign the Purchase

Documents within two hours after they are sent to Winning Buyer (unless a longer timeframe is specified in writing by Spark), time being of the essence. If Winning Buyer fails to timely sign the Purchase Documents, (a) Spark may declare Winning Buyer to be in default of these Terms, (b) Seller may reject Winning Buyer's Offer, and/or (c) Seller may declare Winning Buyer to be in default of the Purchase Documents and/or these Terms and pursue claims against Winning Buyer for specific performance, payment of the "Earnest Money Deposit" (defined below), and all other remedies available at law; Seller is an express, intended, third party beneficiary of the foregoing clauses (b) and (c). Spark shall have no responsibility whatsoever for any act associated with the closing, escrow or consummation of any sale of the Property, and Seller and/or its third party agents are solely responsible for such acts.

Payment of Earnest Money Deposit. The Purchase Documents for each Property require Winning Buyer to pay a deposit to the escrow/closing agent ("Earnest Money Deposit"). The amount of the Earnest Money Deposit is specified in the Purchase Documents or the Property Page for each Property. Unless otherwise specified in the Purchase Documents, the Earnest Money Deposit must be received no later than 5:00 PM in the time zone where the Property is located on the first business day after Winning Buyer is notified that Seller has countersigned the Purchase Documents, time being of the essence. If the Earnest Money Deposit is not timely received, Spark or Seller may declare Winning Buyer to be in default of these Terms and Seller may reject Winning Buyer's Offer.

Proof of Funds and Additional Information. Spark or Seller may require Participants to provide proof of readily available funds or additional information at any time prior to registration approval, submission of an Offer, or acceptance of an Offer. If Spark or Seller requires Winning Buyer to provide proof of funds or additional information and such proof of funds or additional

information is not timely received, Spark or Seller may reject Winning Buyer's Offer.

Entity Buyers. Winning Buyers wanting to take title in the name of an entity may be required to provide entity formation documents and resolutions authorizing the purchase within the timeframe specified by Spark, which may be before or after the Event, in Seller's sole discretion. Seller or the escrow/closing agent may require additional documentation prior to closing, including but not limited to personal guarantees from the owner(s) of such entity.

Transaction Fee. If the Property Page for a Property states that a buyer's premium or transaction fee ("Transaction Fee") applies to the sale, then Winning Buyer will be required to pay the Transaction Fee to Spark in addition to Winning Buyer's purchase price and other applicable closing costs at closing. Unless otherwise specified for a particular Property, the Transaction Fee will be added to Winning Buyer's Offer amount to establish the total purchase price payable by Winning Buyer. If the Property is anything other than a one to four unit residential property and Participant purchases it from the Seller outside of Spark's platform within 180 days after the date Participant acknowledges these Terms, Participant agrees to pay to Spark at closing the Transaction Fee that would have been payable if Participant had purchased the Property through Spark's platform.

Short Event Properties. Some Properties involve a sale in which the proceeds may fall short of the balance of debt secured by the Property ("Short Event"). All Offers for Short Event Properties are subject to the approval of the applicable lien holders ("Short Event Lender's Consent"). If Short Event Lender's Consent is not received, the transaction will be cancelled, and the Earnest Money Deposit will be returned to Participant.

## 4. EVENTS

Reserve Price. Except for Properties noted “Absolute Auction” or “No Reserve Auction”, all Properties offered for sale have a minimum selling price established by Seller which may not be disclosed to Participants (“Reserve Price”). The starting bid is not the Reserve Price. Except where prohibited by law, Spark may counter bid on behalf of Seller on any Property up to the amount of the Reserve Price, and no such bid will result in a sale of the Property. If the Reserve Price is not met, Seller is under no obligation to sell the Property; however, Seller may accept a bid that is below the Reserve Price in its sole and absolute discretion.

Absolute Auction Events. Properties to be auctioned without a Reserve Price will be described as an “Absolute Auction” and will be sold to the highest bidder.

Bidding; Extension of Event Time. Spark controls all aspects of the bidding process, including the determination of bidder increments, reserves the right to accept or reject any bid and has the sole and absolute right to resolve all bidding issues and disputes. Spark may extend the time for bidding in any Event even at or near the end of the Event in its sole and absolute discretion. Participants acknowledge that there may be a lag or delay in the receipt of bids and that Spark has the sole discretion to determine the applicable bid and to resolve disputes over bids including in the case of bids submitted concurrently.

## 5. BROKER/AGENT PARTICIPATION

Spark encourages real estate broker and agent participation. A cooperating broker commission or referral fee may be offered for some Properties and will be stated on the Property page. Please see the broker registration page for eligibility requirements and additional information regarding broker/agent

participation, and the applicable Property Page for cooperating broker commissions or referral fees applicable to a specific Property.

## **6. GENERAL INFORMATION**

Seller and Spark reserve the right to deny, limit, or impose conditions on submitting Offers or access to the Website or any Event at any time, for any reason, including, without limitation, Participant's solvency, credit history, and transaction history.

Spark may postpone, modify or cancel an Event, rearrange the order or sequence of the Properties in the Event, modify these Terms by posting notice of modification on the Property Page, remove any Property from the Event, or reject any or all Offers in its sole and absolute discretion and without any liability to Participants whatsoever.

Spark, Sellers and their agents may issue press releases and other public communications regarding the Event and any Property offered or sold during an Event.

These Terms and the conduct of each Event shall be governed by, construed and enforced in accordance with the laws of Massachusetts, without regard for conflicts of laws principles.

Spark may place Offers on behalf of Participants in accordance with their instructions.

Any information on any website, in any brochure, e-mail, or postcard, and any information available regarding the Properties shall not constitute an offer to sell or a solicitation of any offer to buy any of the Properties. Offers submitted or solicitations made during any Event are void where prohibited by law. If any sale would require registration or qualification under applicable state

securities laws, no such sale may be consummated until such applicable requirements have been met.

As between Seller and Participant, no obligation to sell shall be binding on Seller unless and until the Purchase Documents have been signed and delivered by all parties and the Earnest Money Deposit has been received as required under the Purchase Documents. After the Purchase Documents have been fully signed, the Purchase Documents shall govern the relationship between Winning Buyer and Seller.

## **7. DISCLAIMERS; PARTICIPANT REPRESENTATIONS; CANCELLATION; LIQUIDATED DAMAGES**

SPARK MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO ANY PROPERTY, OR THE LEGAL SUFFICIENCY OR TAX CONSEQUENCES OF ANY DOCUMENT PROVIDED BY SPARK. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTICIPANT HEREBY RELEASES SPARK AND ITS EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS, BROKERS AND AGENTS (COLLECTIVELY, "REPRESENTATIVES") FROM ANY AND ALL CLAIMS THAT ANY SUCH PARTICIPANT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SPARK OR ANY OF ITS REPRESENTATIVES FOR ANY DAMAGE OR INJURY RESULTING FROM OR RELATING TO ANY ERRORS, OMISSIONS OR OTHER CONDITIONS AFFECTING ANY PROPERTY, THE DOCUMENTS USED IN EVALUATING OR ACQUIRING ANY PROPERTY, OR THE CONDUCTING OF ANY EVENT. THIS RELEASE INCLUDES CLAIMS OF WHICH PARTICIPANT IS PRESENTLY UNAWARE OR DOES NOT PRESENTLY SUSPECT TO EXIST IN PARTICIPANT'S FAVOR WHICH, IF KNOWN BY PARTICIPANT, WOULD MATERIALLY AFFECT PARTICIPANT'S RELEASE OF SPARK.

ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS, THE WEBSITE OR A SALE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES, OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

LIMITATION OF LIABILITY. SPARK'S MAXIMUM LIABILITY FOR THE BREACH OF ANY OF ITS OBLIGATIONS TO YOU, AND FOR DAMAGES OF ANY TYPE OR NATURE (WHETHER IN CONTRACT OR IN TORT, COMPENSATORY, CONSEQUENTIAL OR PUNITIVE IN NATURE) SUSTAINED OR CLAIMED BY YOU OR ANY OTHER PERSON IN CONNECTION WITH THESE TERMS, EVEN IF SUCH PARTY SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR COULD HAVE FORESEEN SUCH DAMAGES, SHALL BE LIMITED TO THE COMPENSATION ACTUALLY RECEIVED BY SPARK UNDER THESE TERMS. IN NO EVENT WILL SPARK BE LIABLE TO YOU FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CANCELLATION; LIQUIDATED DAMAGES. IF WINNING BUYER BREACHES THESE TERMS, WINNING BUYER'S OFFER MAY BE REJECTED BY SPARK OR SELLER, THE PROPERTY MAY BE IMMEDIATELY SOLD TO ANOTHER PARTICIPANT OR PLACED IN ANOTHER EVENT, AND WINNING BUYER WILL BE RESPONSIBLE FOR PAYING SPARK LIQUIDATED DAMAGES IN AN AMOUNT EQUAL TO 2% OF WINNING BUYER'S OFFER FOR THE PROPERTY. WINNING BUYER ACKNOWLEDGES THAT THE ACTUAL DAMAGES RESULTING FROM WINNING BUYER'S BREACH OF THESE TERMS WOULD BE DIFFICULT AND IMPRACTICAL TO CALCULATE, AND THAT THE LIQUIDATED DAMAGES AMOUNT SET FORTH HEREIN IS A

REASONABLE PRE-ESTIMATE OF THE RESULTING DAMAGES TO SPARK AND IS NOT A PENALTY OR FORFEITURE.

Participant shall indemnify, defend, and hold harmless Spark and its members, officers, directors, employees, agents, affiliates, successors, and permitted assigns against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees and costs, incurred by Spark (collectively, "Losses"), relating to/arising out of or resulting from or occurring in connection with: (a) bodily injury, death of any person or damage to real or tangible, personal property resulting from Participant's willful, fraudulent or grossly negligent acts or omissions; (b) Participant's misrepresentation, negligence, misconduct, or breach of these Terms, including but not limited to breach of any representation or warranty made by Participant in these Terms; or (c) you breach of any purchase and sale agreement entered into in connection with the purchase of any Property.

In the event a claim, dispute or controversy arises out of, concerns or relates to these Terms, and Event or any Property, we agree that such claim or controversy shall be resolved exclusively by final, binding, in-person arbitration in accordance with the then applicable Commercial Arbitration Rules of the American Arbitration Association (the "Rules"), which are incorporated herein by reference, in Boston, Massachusetts, *provided, however,* that all persons nominated to act as arbitrator of such claim or controversy shall be duly licensed attorneys at law or retired judges and shall have significant experience with the subject matter of the claim or controversy. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Notwithstanding the Rules, depositions may be taken and other discovery may be obtained during such arbitration proceedings to the same extent as authorized in Massachusetts civil judicial proceedings. The unsuccessful party shall pay the filing fees and costs of conducting the arbitration.

Notwithstanding the foregoing, we agree that claims for injunctive relief, specific performance or any form of emergency relief are not subject to this binding arbitration provision, but shall be brought in the federal or state courts located in Boston, Massachusetts. With respect to any dispute (whether or not subject to arbitration), Seller agrees to submit to the personal and exclusive jurisdiction of the federal and state courts located in Boston, Massachusetts. Participants further agree to accept service of process by mail, and hereby waive any and all jurisdictional and venue defenses that might otherwise be available. The prevailing party in any dispute, litigation or arbitration, whether or not litigation or arbitration is commenced, shall be entitled to recover its reasonably necessary costs and expenses and reasonable attorneys' fees incurred therein from the unsuccessful party.

YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS DESCRIBED ABOVE DECIDED EXCLUSIVELY BY ARBITRATION AND YOU ARE GIVING UP ALL RIGHTS TO HAVE THE DISPUTE LITIGATED IN COURT OR TO A JURY TRIAL AND CERTAIN RIGHTS TO DISCOVERY AND APPEAL. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY. BY USING THE WEBSITE AND/OR PARTICIPATING IN ANY SALE, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD AND AGREED TO THE FOREGOING.

Time. Time is of the essence of every provision of this Agreement.

Technology Disclaimer. YOU ACKNOWLEDGE THAT ALL SALES WILL BE CONDUCTED ONLINE OVER THE INTERNET, THROUGH THE WEBSITE AND THAT SPARK MAY UTILIZE THIRD PARTY TECHNOLOGY IN ORDER TO CONDUCT THE SALES AND/OR TO ACCEPT BIDS, ALL IN SPARKOFFER'S DISCRETION. SPARK DOES NOT WARRANT THAT THE FUNCTIONS, FEATURES OR CONTENT CONTAINED IN ITS WEBSITE, PORTAL, OR ANY OTHER ONLINE PLATFORM, APPLICATION OR SOFTWARE, INCLUDING WITHOUT LIMITATION ANY THIRD-PARTY SOFTWARE, TECHNOLOGY, PRODUCTS OR OTHER MATERIALS USED IN CONNECTION WITH ITS SERVICES, WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS WILL BE CORRECTED.

Force Majeure. No Party shall be chargeable with, liable for, or responsible to any other Party for anything or in any amount for any delay caused by fire or other casualty, earthquake, flood, inclement weather, explosion, acts of God or the public enemy, any action, inaction, delay or interference by third parties or governmental authorities, war, invasion, insurrection, rebellion, riots, strikes or lockouts, epidemic, pandemic or any other cause, whether similar or dissimilar to the foregoing, which is beyond any Party's reasonable control (collectively, "Force Majeure Delays"), but Force Majeure Delays shall not in any event excuse a Party's failure timely to pay amounts when, pursuant to this Agreement, they are due. Any delay in a Party's performance under this Agreement (other than payment of amounts when due) arising out of or in connection with Force Majeure Delays shall not be deemed to be a breach by such Party under this Agreement, and any time period within which such delayed Party is obligated to perform under the Agreement shall be extended for a period of time which is reasonable in light of such Force Majeure Delays (which extension shall in no event be less than the duration of the events causing such delay).