



User Terms and Conditions

Revised: March 10, 2021

Welcome to SparkAuction! This website and any other affiliated websites (the “Site”) are owned and operated by Spark Technologies, LLC, a [Colorado] limited liability company (“SparkAuction”, “us,” “our,” or “we”). These User Terms and Conditions (together with all policies, additional terms posted on and in our Site or referenced herein, the “Terms”) and the applications, tools and services (collectively, the “Services”) form the agreement that governs your use of and access to our Services. **Please read these Terms carefully before you use or access this Site or our Services. By using or accessing the Site, you accept and agree to be bound by and to abide by these Terms. If you do not agree to these Terms, you must not access or use the Site or our Services.** In these Terms, you may be referred to as “User,” “you” or “your.”

SparkAuction operates an online platform that connects sellers and buyers of real property (each, a “Property”), and assists sellers to market their Properties to prospective buyers, but SparkAuction is not an auctioneer in the traditional or legal sense; rather, SparkAuction provides the Services and this Site solely to introduce sellers and buyers to one another for the purpose of entering into transactions to buy and sell real property through our online portal using our proprietary software. SparkAuction does not own or sell any Property listed on the Site and is not a party or principal to any purchase or sale transaction. Any contract for sale upon the successful completion of an Event (as described below) will be solely between the Seller and the Buyer and those parties will determine the terms and conditions of any sale. Any information, guidance, or advice that we provide to you as part of our Services is made available solely for general information purposes and you may decide to follow it or not. We have no control over and do not guarantee the condition, character, feasibility, or value of any Property; the terms of any sale; the truth, completeness or accuracy of User Content or Property listing information; the ability of Sellers to sell a Property; the ability of Buyers to purchase a Property; or that a User will actually complete a transaction. By using our Services, you acquire no exclusive rights whatsoever, including but not limited the right to sell any particular type of property or within any geographic area. Any qualifying User may use our Services and multiple Events (even for similar properties) may be conducted at any time or at the same time.

Additional Agreements

Additional policies, rules and guidelines of SparkAuction govern your use of the Site and our Services. Those rules and guidelines (including our Privacy Policy, found at <https://spark.auction/privacy-policy> Registration Forms and/or Data Privacy Policy, found at <https://sparkauction.paperform.co>) are incorporated by reference into these Terms. Please refer to each Property-specific web page on the Site for specific details regarding any particular Event or Property (for example, whether a Property is being sold furnished or unfurnished).

Your Access to the Services

As a condition of your right to access and use our Services or the Site, you represent that you are of legal age to enter into a binding contract and that you are not a person barred from accessing the Services under the laws of the United States or any other country. You may access our Services solely for your personal, non-commercial use. SparkAuction reserves the right to terminate your access if you violate these Terms or any other SparkAuction agreement, rules or guidelines. **YOU ARE ENTIRELY RESPONSIBLE FOR ALL ACTIVITIES CONDUCTED IN CONNECTION WITH THE USE OF THE SERVICES ON YOUR DEVICE(S) OR UNDER YOUR ACCOUNT.**

Geographic Restrictions

SparkAuction is based in the Commonwealth of Massachusetts in the United States of America. We make no claims that the Site or any of its content is accessible or appropriate outside of the United States. Access to the Site may not be legal by certain persons or in certain countries. If you access the Site from outside the United States, you do so on your own initiative and are responsible for compliance with local laws.

NOT AN OFFER TO SELL; SOLICITATION ONLY

Any information on any website, in any brochure, e-mail or postcard and any and all information available regarding any Property shall not constitute an offer to sell or a solicitation of any offer to buy any Property by SparkAuction. In addition, and without limiting the foregoing, any website, advertisement or statement shall not constitute an offer to sell or a solicitation of any offer to buy in any state in which such offer, solicitation, or Event would be unlawful. Offers made at the Event are void where prohibited by law.

Registration:

To be eligible to participate in the sale of any real property on the Site (each, an “**Event**”), either as a Seller or a Buyer, you must first register with SparkAuction.

Sellers

To offer to sell your property on the Site using our Services, you must agree to be bound to these Terms and complete the Seller Registration form found at <https://sparkauction.paperform.co> or otherwise provided to you by SparkAuction. In addition to its other Services, Seller may engage SparkAuction to assist Seller and its listing agent to market the Property for sale through its Site for a period to be determined by the Parties in Seller’s Registration Form (the “**Term**”). Following the expiration of the Term, SparkAuction shall continue to be entitled to its Technology Fee (as defined below) in the event the Property is placed under contract within 60 days after the expiration of the Term or termination of our agreement and is ultimately sold to such buyer or an affiliate thereof (the “**Holdover Term**”).

Buyers

To offer to purchase property on the Site using our Services, you must agree to be bound to these Terms and complete the Buyer Registration form found at <https://sparkauction.paperform.co> or otherwise provided to you by SparkAuction.

User Representations and Warranties

Each User (either a Seller or Buyer, as appropriate) represents, warrants and acknowledges that:

1. Seller has the authority to sell the Property and that no third-party approval or permission is required to sell the Property using our Services.
2. Seller will cooperate with SparkAuction in all ways consistent with these Terms.
3. Seller has good, marketable, and insurable fee simple title (or the equivalent) to the Property. Seller can convey good, marketable and insurable title to a buyer of the Property by typical warranty deed if the Property is sold. At closing the Property will be free and clear of all monetary liens, claims and/or encumbrances of any nature.
4. The sale of the Property is not a “short sale,” meaning that the reserve price is sufficient to cover all monetary liens, obligations, taxes and closing costs related to the sale of the Property. If it is a short sale, Seller represents that its lender has consented to the sale of the Property and that Seller has the ability to cover all liens, obligations, taxes and closing costs if the Property is sold.
5. If the Property is sold, prior to closing Seller shall remove or clear any title defects and other monetary liens if they may impact a sale of the Property. Seller will not allow the Property to become subject to any mortgages, liens or encumbrances that are not disclosed to prospective bidders on the Site and will remain current on all payment obligations under any existing mortgages against the Property.
6. You have the capacity and financial wherewithal to consummate any sale transaction pursuant to the terms of any applicable purchase and sale contract.
7. At all relevant times, Seller has and shall maintain adequate property insurance covering the Property and liability insurance covering bodily injury and property damage insurance pertaining to the Property.
8. These Terms and Seller’s obligations hereunder do not conflict with any other agreement to which Seller is a party; and Seller has not granted any option or right to purchase the Property.
9. Seller is solely obligated to pay any real estate agent commissions due in connection with the sale of the Property.
10. All information regarding the Property provided to SparkAuction by Seller and its agents and representatives is accurate and complete.
11. SparkAuction is not performing any real estate brokerage services or acting as your real estate agent in any capacity in connection with your efforts to sell the Property. YOU ARE ADVISED TO SEEK ADVICE FROM LEGAL COUNSEL OR A REAL ESTATE BROKER LICENSED IN THE STATE WHERE THE PROPERTY IS LOCATED. ANY PURCHASE AND SALE AGREEMENT ENTERED INTO WITH RESPECT TO THE PROPERTY HAS IMPORTANT LEGAL CONSEQUENCES. SPARKAUCTION IS NOT PROVIDING ANY LEGAL OR REAL ESTATE ADVICE OR COUNSEL.

12. There is no guarantee that the Property will be sold, that any registered bidder will place a bid, that a buyer will perform its obligations or that Seller will receive any specific amount or sale price for the Property, except that the Property cannot sell below the reserve price.
13. You have not received from SparkAuction or any of its employees or agents, and you are not relying on, any representations, warranties or guarantees as to the Event or the Property, express or implied – any such statements are opinions only and should not be construed promises or guarantees about the outcome of the Event or the condition, character, feasibility or value of the Property, including but not limited to information made available on-line at the Site, in our advertising, or provided or made available by SparkAuction, or its affiliates, agents, officers, employees or representatives.
14. SparkAuction shall have no responsibility whatsoever for any act associated with the closing, escrow, title or consummation of any sale of the Property. Users and/or their third-party agents are solely responsible for such acts and SparkAuction is not affiliated with any such third parties.
15. SparkAuction expressly disclaims all warranties of any kind, whether express, implied or statutory, including but not limited to, any implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement, related to its Site and its Services.
16. Seller is solely responsible for the accuracy and completeness of the information about the Property provided to SparkAuction and Users expressly release SparkAuction, its officers, directors, managers, members, employees, attorneys, agents, successors and assigns from any liability, claim, loss or damages arising out of or in connection with or related to information disseminated in connection with the sale of the Property. SparkAuction may use any information conveyed by Seller, its listing agent or any prospective bidder in connection with the Event and its Services.

Bidding

Each Property in an Event shall have a minimum reserve price that is determined by the Seller, meaning that the Property cannot sell below that minimum reserve price, which may or may not be disclosed to bidders. Seller is obligated to sell the Property to the highest or winning bidder (the “**Buyer**”) only if the winning bid equals or exceeds the reserve price. SparkAuction shall have sole and absolute authority to regulate all aspects of the bidding process, including but not limited to starting the bidding at any threshold amount (which may be below the reserve price) and determining the amount of any subsequent bidding increments. SparkAuction reserves the right to reject any bid in its reasonable discretion.

Seller may not collude with any bidder, or bid, instruct, or permit any other person to bid on Seller’s behalf at the Property Event. In the event of any dispute among bidders, or in the event of doubt on the part of SparkAuction as to the validity of any bid, SparkAuction will have the final discretion to determine the winning bid, the successful Buyer, to cancel or reschedule the Event, or to re-offer the subject Property for sale. If any dispute arises after the Event, SparkAuction’s record shall determine conclusively all bidding issues, including but not limited to the winning bid and the Buyer.

We try to keep our Services safe, secure, and functioning properly and efficiently, but we cannot guarantee the continuous operation of or access to our Services or the Site. Bid update and other notification functionality in SparkAuction’s applications may not occur in real time. Such functionality is subject to delays and other issues beyond our control. SparkAuction is not responsible for any errors or omissions in connection with the submission of bids, including, without limitation, poor connections, Internet or power outages, poor reception, etc.

Technology Fee; Payment Terms; Late Fee

If an Event results in a sale of a Property, the winning bidder shall pay to SparkAuction a technology fee equal to a percentage of the winning bid (gross sale price) for the Property. The Technology Fee is fully earned upon completion of the Event and due and payable within two business days following the completion of the Event. It is not a real estate commission. A sale shall be defined as the voluntary transfer or exchange of any interest in the Property or the voluntary creation of the obligation to convey any interest in the Property that is essentially the equivalent of a sale. It also includes an agreement to transfer any ownership interest in an entity or trust which owns the Property.

If Seller has engaged Spark Auction to assist Seller and its listing agent in marketing the Property for sale through its Site, Seller shall pay to SparkAuction an additional Technology Fee equal to a percentage of the gross sale price for the Property. This Technology Fee is not a real estate commission and shall be fully earned and payable upon the closing of the “sale” of the

Property (as defined above) pursuant to a purchase and sale contract executed within the Term or the Holdover Term. **A current schedule of SparkAuction's fees can be found at <https://sparkauction.paperform.co>**

You must have a payment method on file with us to satisfy the Technology Fee. If your payment method fails or your account is past due, we may collect amounts owed by charging other payment methods on file with us, retain collection agencies and legal counsel, suspend or limit Services. In addition, you will be subject to late fees equal to 10% of any amount that is past due. SparkAuction, or the collection agencies we retain, may also report information about your account to credit bureaus, and as a result, late payments, missed payments, or other defaults on your account may be reflected in your credit report. If you wish to dispute the information SparkAuction reported to a credit bureau (i.e., Experian, Equifax or TransUnion) please contact us as set forth below. If you wish to dispute the information that a collection agency has reported to a credit bureau regarding your SparkAuction account, you must contact the collection agency directly.

In any jurisdiction where SparkAuction has an obligation to collect sales taxes in connection with the Technology Fee, you agree to pay such taxes and that we may collect such sales taxes from you via the payment method you have on file or via any other means available to us.

Default

When Buyer has been declared by SparkAuction after the conclusion of an Event, Buyer and Seller shall have two hours after receipt to execute a formal purchase and sale contract. If Buyer fails to do so, Seller shall have no further obligation to sell the Property to Buyer and may re-offer the Property to someone else. If, after a successful sale, Seller refuses to execute a formal purchase and sale contract or to consummate the sale to Buyer, then Seller shall owe the Technology Fee to SparkAuction.

Seller Content

Seller, directly or indirectly through its listing real estate agent, is expected to provide to SparkAuction or to upload to the Site any and all information, documents and disclosures reasonably pertinent to the sale of the Property to assist bidders in investigating the condition, character, feasibility, title and value of the Property. For all Seller-generated content and material provided to SparkAuction in connection with its Services or posted by Seller on the Site (collectively, "**Seller Content**"), you grant to SparkAuction a perpetual, irrevocable, royalty-free, worldwide, sublicensable and transferable license to copy, publish, translate, modify, reformat, create derivative works from, distribute, reproduce, sell, display, transmit, publish, broadcast, host, archive, store, cache, use or otherwise exploit all or any portion of the Seller Content. Seller Content is the sole responsibility of the Seller. It is a condition of your use of the Site that all information provided is correct and complete. Under no circumstances will SparkAuction be liable in any way for any Seller Content made available through the Services by you or any third party. By submitting Seller Content, you represent and warrant that (i) you own or control any and all rights in and to the Seller Content, and the right to grant all of the rights and licenses in this Agreement, and if you are not the holder of such rights, the holder of such rights has completely and effectively waived all such rights and irrevocably granted you the right to use the Seller Content and to grant the licenses stated above without the need for payment to you or any other person or entity; (ii) you have obtained permission from any individuals or other third parties that appear in the Seller Content to use, and grant others the right to use, their name, image, voice and/or likeness without the need for payment to you or any other person or entity; (iii) you are 18 years of age or older; and (iv) the Seller Content does not (a) contain false or misleading information, (b) infringe on the intellectual property, proprietary, privacy, publicity, statutory, contractual or other rights of any third party, (c) contain any defamatory, obscene, profane, offensive, inappropriate, threatening or otherwise harassing or hateful content, (d) contain any addresses, email addresses, phone numbers or any contact or personal information or (e) contain computer viruses, worms or other harmful files or malware. Upon request by SparkAuction, you will furnish SparkAuction any documentation, substantiation or releases necessary to verify your compliance with these Terms.

Because SparkAuction does not control or claim ownership to the Seller Content posted on the Service, it does not guarantee the truthfulness, integrity, accuracy, suitability, or quality of that Seller Content, and it does not endorse such Seller Content. You agree and understand that by accessing the Service, you may encounter content that you may consider to be objectionable. SparkAuction reserves the right (but has no obligation) in its sole discretion to pre-screen, edit, refuse, move or remove any Seller Content that is posted on the Site. You agree that the exercise by SparkAuction of such discretion shall not convert or transform Seller Content to content owned or provided by SparkAuction, and the Seller who made such Seller Content available on the Site will retain ownership thereof as described below.

Buyer Due Diligence and Investigation

Prior to the commencement of the Event, it is the Buyer's sole responsibility to perform any inspections, investigations, tests and due diligence Buyer deems pertinent to the purchase of the Property, to be satisfied as to the condition, character, feasibility, value and title of the Property prior to bidding and to review all due diligence and other materials provided by Seller or anyone else with respect to the Property. EACH BUYER ASSUMES ANY AND ALL RISKS ASSOCIATED WITH ANY SUCH

INSPECTIONS AND ITS DUE DILIGENCE ACTIVITIES. Personal on-site inspection of the Property is strongly recommended, and you are advised to independently verify all information you deem important.

Right to Publicize Sale Terms

After any sale of the Property at an Event, and consistent with our Privacy Policy, Seller authorizes SparkAuction to publicize the sale and the detailed terms of the sale including but not limited to the purchase price, in its marketing materials and on the Site; provided, however, that SparkAuction may not disclose any of a User's personal information.

Third-party Sites and Content

We provide access to the Site to Users of our Services that are party to or engaged in a potential real estate transaction or services ancillary to such transactions. Additionally, we may use third party service providers to provide the Services to you, in whole or in part. Except in connection with their use of our Service, these transaction parties and other third parties are not governed by these Terms. You acknowledge that any reliance on representations and warranties provided by any party other than SparkAuction will be at your own risk. Your use of any third-party-operated websites/services is governed by the terms and use and policies of those websites and not our Service.

Consent to Electronic and Telephonic Communications

By using the Service, you agree that SparkAuction may communicate with you electronically regarding your use of the Services and related matters, and that any notices, agreements, disclosures or other communications that SparkAuction sends to you electronically will satisfy any legal communication requirements, including that the communications be in writing. To withdraw your consent to your receipt of electronic notice, please notify SparkAuction at info@spark.auction.

We may contact you using autodialed or prerecorded calls and text messages, at any telephone number that you have provided us during the registration process or otherwise. We may, without further notice or warning and in our discretion, monitor or record telephone conversations you or anyone acting on your behalf has with SparkAuction or its agents for quality control and training purposes, or for our protection.

Modifications and Interruption to the Service

We reserve the right to modify or discontinue all or any portion of our Services with or without notice to you. We will not be liable if we choose to exercise this right. You acknowledge and accept that we do not guarantee continuous, uninterrupted or secure access to our Site or the Services, or that our Site or the Services will be error free. You understand that usage of our Services may be interfered with or adversely affected by numerous factors or circumstances outside of our control.

Your continued use of the Site after the posting of revised Terms means that you accept and agree to the changes.

Restricted Activities

You may not engage in any of the following with regard to the Services (including without limitation posting or transmitting content through the Services or on the Site):

1. violate or encourage the violation of any local, state, national, or international law, rule or regulation;
2. collect or store personal data about other users of our Services or solicit personal information from any individual without proper rights or consent of the individual;
3. send or promote any message that is unlawful, libelous, defamatory, abusive, sexually explicit, threatening, vulgar, obscene, profane, disparaging regarding racial, gender or ethnic background, any statement that you have reason to know is false or misleading, or otherwise objectionable content, as determined by SparkAuction in its sole discretion;
4. infringe any patent, trademark, trade secret, copyright, right of publicity or privacy, or other right of any party, or distribute any content you do not have a right to make available under any law or under contractual or fiduciary relationships;
5. promote or distribute any unauthorized advertising, promotional materials, or material which can be characterized as "junk mail," "spam," "chain letters," "pyramid schemes," or similar material, any request for or solicitation of money, goods, or services for private gain, or any information posted primarily for advertising, promotional, or other commercial purposes;
6. disrupt or interfere with the security or use of the Services or the Site or content linked to them;
7. interfere with or damage the integrity of the Service, including, without limitation, through the use of viruses, Trojan horses, harmful code, denial of service attacks, packet or IP spoofing, forged routing or email address information or similar methods or technology or disobey any requirements, procedures, policies, or regulations of networks connected to our Service;
8. use the Services to store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs or Trojan horses;

9. attempt to use another user, person or entity, misrepresent your affiliation with a person or entity, including (without limitation) SparkAuction or create or use a false identity;
10. attempt to obtain unauthorized access to the Services or portions thereof that are restricted from general access;
11. use any meta tags, adwords, or any other "hidden text" or search keywords utilizing SparkAuction name, trademarks, or product names;
12. attempt to reverse engineer or otherwise derive or obtain the code in any form for any software used in the Service;
13. engage in any activity that interferes with any third party's ability to use or enjoy the Service; or
14. assist any third party in engaging in any activity prohibited by these Terms.

Further, without our written consent, you may not:

1. reproduce, duplicate, copy, sell, resell, create derivative works, or exploit for any commercial purpose any SparkAuction content or any use of or access to the Service;
2. use any high volume, automated, or electronic means (including, without limitation, robots, spiders, scripts, or other automated devices) to access the Services or monitor or copy our web pages or the content contained thereon;
3. deep link to the Services for any purpose; or frame the Service, place pop-up windows over any content, or otherwise affect the display of the Service;
4. access the Services in order to build a competitive service or to benchmark with a non-SparkAuction service; or
5. reverse engineer the Services (to the extent such restriction is permitted by law).

DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY AND RELEASE

TO THE FULLEST EXTENT PERMITTED BY LAW, SPARKAUCTION, ITS RELATED ENTITIES, ITS SERVICE PROVIDERS, ITS LICENSORS, AND ITS OR THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES AND AGENTS (COLLECTIVELY, THE "**COMPANY PARTIES**") EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, RELATED TO OUR SERVICES. YOU UNDERSTAND AND AGREE THAT YOUR USE OF OUR SERVICES IS AT YOUR SOLE RISK. OUR SERVICES AND ALL CONTENT AND SERVICES OFFERED THROUGH THE SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. THE COMPANY PARTIES ARE NOT RESPONSIBLE FOR THE TIMELINESS OF DELIVERY OF CONTENT, ANY FAILURES OF DELIVERY, ERRONEOUS DELETION, OR ANY LOSS OR DAMAGE OF ANY KIND YOU CLAIM WAS INCURRED AS A RESULT OF THE USE OF ANY SERVICES. UNDER NO CIRCUMSTANCES, WILL ANY OF THE COMPANY PARTIES BE LIABLE TO YOU OR TO ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR ANY LOSS, INJURY, LIABILITY OR DAMAGES ARISING OUT OF OR IN CONNECTION WITH YOUR ACCESS TO, USE OF, INABILITY TO USE, OR RELIANCE ON ANY OF OUR SERVICES OR ANY CONTENT, PRODUCT OR SERVICE PROVIDED TO YOU THROUGH OR IN CONNECTION WITH ANY OF OUR SERVICES. THIS IS A COMPREHENSIVE LIMITATION OF LIABILITY THAT APPLIES TO ALL LOSSES AND DAMAGES OF ANY KIND WHATSOEVER, WHETHER DIRECT OR INDIRECT, GENERAL, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR OTHERWISE, INCLUDING WITHOUT LIMITATION, LOSS OF DATA, GOODWILL, REVENUE OR PROFITS. THIS LIMITATION OF LIABILITY APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY OR ANY OTHER BASIS; EVEN IF ANY COMPANY PARTY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES; AND WITHOUT REGARD TO THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. IF ANY PART OF THIS LIMITATION OF LIABILITY IS FOUND TO BE INVALID, ILLEGAL OR UNENFORCEABLE FOR ANY REASON, THEN THE AGGREGATE LIABILITY OF THE COMPANY PARTIES UNDER SUCH CIRCUMSTANCES TO YOU OR ANY PERSON OR ENTITY CLAIMING THROUGH YOU FOR LIABILITIES THAT OTHERWISE WOULD HAVE BEEN LIMITED WILL NOT EXCEED ONE HUNDRED U.S. DOLLARS.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. ACCORDINGLY, SOME OF THE ABOVE DISCLAIMERS OF WARRANTIES AND LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

You acknowledge that you may have or may in the future have claims against us or another User which you do not know or suspect to exist in your favor when you agreed to these Terms and which if known, might materially affect your consent to these Terms. You release us (and our affiliates and subsidiaries, and our and their respective owners, officers, directors, employees, representatives and agents) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected or unsuspected, fixed or contingent, arising out of or in any way connected with such disputes. In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the scope or coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release, and agree to the risk of unknown or unsuspected claims and to release all such claims.

Indemnification

You agree to indemnify, defend and hold the Company Parties harmless from any claim or demand of any kind or nature, including reasonable attorney's fees and costs, made by any third party (including another User) due to or arising out of your posting of any content on our Services, or other use of our Services or the Site in a manner not permitted by these Terms, including without limitation your actual or alleged violation of these Terms, or infringement of a third party's intellectual property or other rights by you or by anyone else using your computer, device or account.

Intellectual Property Rights

All content, copyrights and other intellectual property rights in the content available on our Service, excluding Seller Content but including without limitation design, text, graphics, interfaces, and the selection and arrangements thereof (collectively "Content"), are owned by SparkAuction, with all rights reserved, or in some cases may be licensed to SparkAuction by other third parties (including without limitation MLS or other listing services). This Content is protected by the intellectual property rights of SparkAuction or those third party owners. All Content which qualifies for protection under U.S. Federal Copyright Law is subject to the exclusive jurisdiction of the Federal Court System, whether registered or unregistered. All trademarks displayed on our Services are the trademarks of their respective owners, and constitute neither an endorsement nor a recommendation of such parties. In addition, such use of trademarks or links to the Sites of third parties is not intended to imply, directly or indirectly, that those third parties endorse or have any affiliation with SparkAuction.

Permitted Use of the Content

Any use of Content on the Service, including without limitation reproduction for purposes other than those noted herein, modification, distribution, replication, any form of data extraction or data mining, or other commercial exploitation of any kind, without prior written permission of an authorized officer of SparkAuction or as part of a Client agreement with SparkAuction, is strictly prohibited. With the exception of search engines, you agree that you will not use any robot, spider, or other automatic device, or manual process to monitor or copy our web pages or the Content contained therein without prior written permission of an authorized officer of SparkAuction. You may not make any use of Content owned by any third parties which is available on the Service, without the express consent of those third parties.

Technology Disclaimer. USER ACKNOWLEDGES THAT SPARKAUCTION MAY UTILIZE THIRD PARTY TECHNOLOGY IN ORDER TO CONDUCT THE SERVICES AND/OR TO OPERATE THE SITE, ALL IN SPARKAUCTION'S DISCRETION. SPARKAUCTION DOES NOT WARRANT THAT THE FUNCTIONS, FEATURES OR CONTENT CONTAINED IN ITS SITE, 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.

Complaints

If you believe that any Content on our Services violates these Terms or is otherwise inappropriate, please report the Content by contacting us at info@spark.auction

Links from the Site

If the Site contains links to other websites and resources provided by third parties, these links are provided for your convenience and information only and do not constitute an endorsement. This includes links contained in advertisements, banner advertisements and sponsored links. We have no control over the content of those websites or resources, and accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites or services linked to this Website, you do so entirely at your own risk and subject to the terms and conditions of use of those websites.

Monitoring and Enforcement; Termination

We have the right to:

- Remove or refuse to post any User Content for any or no reason in our sole discretion.
- Take any action with respect to any User Content that we deem necessary or appropriate in our sole discretion, including if we believe that such User Content violates the Terms, infringes any intellectual property right or other right of any person or entity, threatens the personal safety of users of the Site or the public or could create liability for the Company.
- Disclose your identity or other information about you to any third party who claims that material posted by you violates their rights, including their intellectual property rights or their right to privacy.
- Take appropriate legal action, including referral to law enforcement, for any illegal or unauthorized use of the Site.

- Terminate or suspend your access to all or part of the Site for any or no reason, including any violation of these Terms.

Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Site. YOU WAIVE AND HOLD HARMLESS THE COMPANY AND ITS AFFILIATES, LICENSEES AND SERVICE PROVIDERS FROM ANY CLAIMS RESULTING FROM ANY ACTION TAKEN BY ANY OF THE FOREGOING PARTIES DURING OR AS A RESULT OF ITS INVESTIGATIONS AND FROM ANY ACTIONS TAKEN AS A CONSEQUENCE OF INVESTIGATIONS BY EITHER SUCH PARTIES OR LAW ENFORCEMENT AUTHORITIES.

However, we cannot and do not undertake to review all material before it is posted on the Site and cannot ensure prompt removal of objectionable material after it has been posted. Accordingly, we assume no liability for any action or inaction regarding transmissions, communications or content provided by any user or third party. We have no liability or responsibility to anyone for performance or nonperformance of the activities described in this section.

Notification of Claimed Copyright Infringement

In the event that you find content posted on our Services which you believe to infringe the copyright of any third party, please immediately contact SparkAuction's Copyright Agent as described below. To report any alleged infringement, please contact us in writing by providing a signed statement containing the following information pursuant to the Digital Millennium Copyright Act ("DMCA"):

Your name, address, telephone number, and email address, and if you are acting on behalf of the owner of the intellectual property, the name of the owner;

1. a statement, made under penalty of perjury, that you are the owner of the copyright or are authorized to act on behalf of the owner;
2. a detailed description of the copyrighted work or other intellectual property that you claim has been infringed;
3. if your claim is based on a registered work, the registration number, and the date of issuance of the registration;
4. a description of the infringing material and the URL where such material is located on the Service, or a description of where on our Services you found such material;
5. your written statement that you believe, in good faith, that the use of the work on our Services has not been authorized by the true owner of the work, its agent, or as a matter of law; and
6. a statement that all of the information you have provided is true.

Please send your notice of alleged infringement to us:

Spark Technologies, LLC

Attn: DMCA

470 Atlantic Ave, 4th Floor, Boston, MA 02210

E-mail: info@spark.auction, subject line "DMCA Notice"

In accordance with the DMCA, it is the policy of SparkAuction to terminate use of our Services by repeat infringers in appropriate circumstances.

Governing Law

The enforcement and interpretation of the rights and obligations of the parties under this Agreement, including, to the extent applicable, any negotiations, arbitrations or other proceedings hereunder, will be governed in all respects exclusively by the laws of the State of Massachusetts, U.S.A.

Dispute Resolution

Any claims arising out of, relating to, or connected with these Terms that is not subject to the jurisdiction of an applicable Small Claims Court (and any such disputes must be adjudicated in Small Claims Court in Boston, Massachusetts, U.S.A.) must be asserted individually and shall be resolved by binding arbitration conducted in accordance with the then-current commercial arbitration rules of the American Arbitration Association ("AAA") and judgment upon the award rendered by the arbitral tribunal may be entered in any court having jurisdiction thereof. The arbitration tribunal shall consist of a single arbitrator mutually agreed upon by the parties, or in the absence of such agreement within thirty (30) calendar days from the first referral of the dispute to the AAA, designated by the AAA. The arbitration shall be conducted exclusively in Boston, Massachusetts, U.S.A., unless the parties shall have agreed to another location within fifteen (15) calendar days from the first referral of the dispute to the AAA. The parties waive any right to appeal the arbitral award, to the extent a right to appeal may be lawfully waived. Each party retains the right to seek judicial assistance: (i) to compel arbitration; (ii) to obtain interim measures of protection prior to or pending arbitration, (iii) to seek injunctive relief in the courts of any jurisdiction as may be necessary and appropriate to protect

the unauthorized disclosure of its proprietary or confidential information, (iv) to enforce any decision of the arbitrator, including the final award, and (v) to address claims of infringement of intellectual property rights.

CLASS ACTION WAIVER: The Parties agree to bring any dispute in arbitration on an individual basis only, and not on a class or collective basis. There will be no right or authority in arbitration for any dispute to be brought, heard, or arbitrated as a class, collective, or representative, or for either party to be a participant in any purported class, collective, or representative, including without limitation pending but not certified class actions. (This agreement will be referred to as the “**Class Action Waiver**”.) Disputes regarding the validity and enforceability of this Class Action Waiver may be resolved only by a civil court of competent jurisdiction and not by an arbitrator. In any case in which (1) the dispute is filed as a class, collective, or representative action, and (2) a civil court of competent jurisdiction finds all or part of the Class Action Waiver unenforceable, the class, collective, and/or representative action to that extent must be litigated in a civil court of competent jurisdiction, but the portion of the Class Action Waiver that is enforceable shall be enforced in arbitration.

Subject to the foregoing paragraph, each party agrees that it will only bring any action or proceeding not subject to arbitration, and arising from or relating to this Agreement, solely in the federal and state courts in Boston, Massachusetts, and you irrevocably submit to the personal jurisdiction and venue of any such court in any such action or proceeding or in any action or proceeding brought in such courts by SparkAuction.

Each party to the arbitration shall promptly pay a pro rata share of the arbitrator’s expenses and fees, and the other arbitration expenses incurred or approved by the arbitrator, excluding attorney’s fees, witness fees, and other expenses incurred by a party for its own benefit. The parties must estimate their costs in good faith and pay their estimated share before commencement of the arbitration. Any extra arbitration costs will be paid within 10 business days after the close of the proceeding and before the award. A party that fails to pay its share will not be allowed to participate in the arbitration. If a party fails to pay its share, the other parties will pay pro rata the cost of the party that failed to pay. The arbitrators will add that payment to the final award in a manner as to return the parties to the position they would have been in, to the greatest extent possible, if all had paid their share.

Notwithstanding the foregoing, the arbitrator or the Small Claims Court, as the case may be, may award the prevailing party its litigation expenses and fees, including reasonable attorney’s fees, witness fees and costs, in whatever proportion the arbitrator or court decides.

If a claim proceeds in court, we each waive any right to a jury trial.

Limitation on Time to File Claims

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

Compliance with Laws

You assume all knowledge of applicable law and you are responsible for compliance with any such laws. You may not use the Services in any way that violates applicable state, federal, or international laws, regulations or other government requirements.

Changes to These Terms and the Services

We reserve the right, at any time, to modify, alter, or update these Terms and/or the Services, without prior notice. You are encouraged to check this page regularly for changes to the Terms. Modifications will become effective immediately upon being posted to our Services, without further notice to you. Your continued use of any of our Services after such modifications are posted constitutes your acknowledgement and acceptance of such modifications, and you may not amend these Terms.

Accessing the Site and Account Security

We will not be liable if for any reason all or any part of the Site is unavailable at any time or for any period. From time to time, we may restrict access to some parts of the Site, or the entire Site, to users, including registered users.

You are responsible for:

- Making all arrangements necessary for you to have access to the Site.
- Ensuring that all persons who access the Site through your internet connection are aware of these Terms and comply with them.

To access the Site or some of the resources it offers, you may be asked to provide certain registration details or other information. It is a condition of your use of the Site that all the information you provide on the Site is correct, current and complete. You agree

that all information you provide to register with this Site or otherwise, including through the use of any interactive features on the Site, is governed by our Privacy Policy, and you consent to all actions we take with respect to your information consistent with our Privacy Policy.

If you choose, or are provided with, a user name, password or any other piece of information as part of our security procedures, you must treat such information as confidential, and you must not disclose it to any other person or entity. You also acknowledge that your account is personal to you and agree not to provide any other person with access to this Site or portions of it using your user name, password or other security information. You agree to notify us immediately of any unauthorized access to or use of your user name or password or any other breach of security. You also agree to ensure that you exit from your account at the end of each session. You should use particular caution when accessing your account from a public or shared computer so that others are not able to view or record your password or other personal information.

We have the right to disable any user name, password or other identifier, whether chosen by you or provided by us, at any time in our sole discretion for any or no reason, including if, in our opinion, you have violated any provision of these Terms.

Assignment

These Terms will be binding upon each party hereto and its successors and permitted assigns. These Terms are not assignable or transferable by you without the prior written consent of SparkAuction. You agree that these Terms and any other agreements referenced herein may be assigned by us, in our sole discretion, to a third party in the event of a merger or acquisition, or otherwise.

Integration

These Terms (including all of the policies described in these Terms, which are incorporated herein by this reference) contain the entire understanding of the parties regarding its subject matter, and supersede all prior and contemporaneous agreements and understandings between the parties regarding its subject matter.

Waiver

No failure or delay by a party in exercising any right, power or privilege under these Terms will operate as a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other such right, power, or privilege.

Severability

If any provision of these Terms is determined by a court of law or arbitrator to be unlawful, void or unenforceable for any reason, the other provisions (and any partially-enforceable provision) shall not be affected thereby and shall remain valid and enforceable to the maximum possible extent, and the invalid provision will be modified as necessary to make it valid and enforceable while as closely as possible reflecting the original intentions of SparkAuction.

No Relationship

The parties are independent contractors, and nothing contained in these Terms shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, or fiduciary relationship between them.

Force Majeure

SparkAuction will not be liable or responsible to you, nor be deemed to have defaulted or breached these Terms, for any failure or delay in our performance under these Terms when and to the extent such failure or delay is caused by or results from acts or circumstances beyond our reasonable control, including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest, national emergency, revolution, insurrection, epidemic, pandemic, lockouts, strikes or other labor disputes (whether or not relating to our workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

Providing Feedback to SparkAuction

We welcome your comments and feedback about our Service. All information and materials submitted to SparkAuction through the Services or otherwise, such as any comments, feedback, ideas, questions, designs, data or the like regarding or relating to the Services or the business of SparkAuction (collectively, “**Feedback**”), will be considered NON-CONFIDENTIAL and NON-PROPRIETARY with regard to you, but SparkAuction reserves the right to treat any such Feedback as the confidential information of SparkAuction.

By submitting Feedback to SparkAuction, you assign to the SparkAuction Parties, free of charge, all worldwide rights, title and interest in all copyrights and other intellectual property rights in such Feedback. The SparkAuction Parties will be entitled to use any Feedback you submit, and any ideas, concepts, know-how or techniques contained in any such Feedback, for any purpose

whatsoever, including but not limited to developing, manufacturing and marketing products and services using such Feedback without restriction and without compensating you in any way. You are responsible for the information and other content contained in any Feedback you submit to us, including, without limitation, its truthfulness and accuracy.

This Site uses Mouseflow

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If you want a copy of your data, wish to make a correction, or to have your data erased, please contact us first or, as a secondary option, visit Mouseflow at mouseflow.com/privacy/ or contact Mouseflow at privacy@mouseflow.com.

For more information on the General Data Protection Regulation visit <https://mouseflow.com/gdpr/>.

For more information on the California Consumer Privacy Act visit <https://mouseflow.com/ccpa>.

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