

# **SITE TERMS OF SERVICE**

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## **Content**

All text, graphics, user interfaces, visual interfaces, photographs, trademarks, logos, sounds, music, artwork and computer code (collectively, "Content"), including but not limited to the design, structure, selection, coordination, expression, "look and feel" and arrangement of such Content, contained on the Site is owned, controlled or licensed by or to SparkCharge, and is protected by trade dress, copyright, patent and trademark laws, and various other intellectual property rights and unfair competition laws.

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## **Your Use of the Site**

You may not use any "deep-link", "page-scrape", "robot", "spider" or other automatic device, program, algorithm or methodology, or any similar or equivalent manual process, to access, acquire, copy or monitor any portion of the Site or any Content, or in any way reproduce or circumvent the navigational structure or presentation of the Site or any Content, to obtain or attempt to obtain any materials, documents or information through any means not purposely made available through the Site. SparkCharge reserves the right to bar any such activity.

You may not attempt to gain unauthorized access to any portion or feature of the Site, or any other systems or networks connected to the Site or to any SparkCharge server, or to any of the services offered on or through the Site, by hacking, password "mining" or any other illegitimate means.

You may not probe, scan or test the vulnerability of the Site or any network connected to the Site, nor breach the security or authentication measures on the Site or any network connected to the Site. You may not reverse look-up, trace or seek to trace any information on any other user of or visitor to the Site, or any other customer of SparkCharge, including any SparkCharge account not owned by you, to its source, or exploit the Site or any service or information made available or offered by or through the Site, in any way where the purpose is to reveal any information, including but not limited to personal identification or information, other than your own information, as provided for by the Site.

You agree that you will not take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Site or SparkCharge's systems or networks, or any systems or networks connected to the Site or to SparkCharge.

You agree not to use any device, software or routine to interfere or attempt to interfere with the proper working of the Site or any transaction being conducted on the Site, or with any other person's use of the Site.

You may not forge headers or otherwise manipulate identifiers in order to disguise the origin of any message or transmittal you send to SparkCharge on or through the Site or any service offered on or through the Site. You may not pretend that you are, or that you represent, someone else, or impersonate any other individual or entity.

You may not use the Site or any Content for any purpose that is unlawful or prohibited by these Terms of Use, or to solicit the performance of any illegal activity or other activity which infringes the rights of SparkCharge or others.

### **Purchases; Other Terms and Conditions**

Additional terms and conditions may apply to purchases of goods or services and to specific portions or features of the Site, including contests, promotions or other similar features, all of which terms are made a part of these Terms of Use by this reference. You agree to abide by

such other terms and conditions, including where applicable representing that you are of sufficient legal age to use or participate in such service or feature.

SparkCharge's obligations, if any, with regard to its products and services are governed solely by the agreements pursuant to which they are provided, and nothing on this Site should be construed to alter such agreements.

SparkCharge may make changes to any products or services offered on the Site, or to the applicable prices for any such products or services, at any time, without notice. The materials on the Site with respect to products and services may be out of date, and SparkCharge makes no commitment to update the materials on the Site with respect to such products and services.

### **Collection and Use of Personal Information**

Personal information is data that can be used to identify or contact a single person.

You may be asked to provide your personal information anytime you are in contact with SparkCharge or an SparkCharge affiliated company. SparkCharge and its affiliates may share this personal information with each other and use it consistent with this Privacy Policy. They may also combine it with other information to provide and improve our products, services, content, and advertising. You are not required to provide the personal information that we have requested, but, if you chose not to do so, in many cases we will not be able to provide you with our products or services or respond to any queries you may have.

### **Disclaimers**

SPARKCHARGE DOES NOT PROMISE THAT THE SITE OR ANY CONTENT, SERVICE OR FEATURE OF THE SITE WILL BE ERROR-FREE OR UNINTERRUPTED, OR THAT ANY DEFECTS WILL BE CORRECTED, OR THAT YOUR USE OF THE SITE WILL PROVIDE SPECIFIC RESULTS. THE SITE AND ITS CONTENT ARE DELIVERED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS. ALL INFORMATION PROVIDED ON THE SITE IS SUBJECT TO CHANGE WITHOUT NOTICE. SPARKCHARGE CANNOT ENSURE THAT ANY FILES OR OTHER DATA YOU DOWNLOAD FROM THE SITE WILL BE FREE OF VIRUSES OR CONTAMINATION OR DESTRUCTIVE FEATURES. SPARKCHARGE DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF ACCURACY, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SPARKCHARGE DISCLAIMS ANY AND ALL LIABILITY FOR THE ACTS, OMISSIONS AND CONDUCT OF ANY THIRD PARTIES IN CONNECTION WITH OR RELATED TO YOUR USE OF THE SITE AND/OR ANY SPARKCHARGE SERVICES. YOU ASSUME TOTAL RESPONSIBILITY FOR YOUR USE OF THE SITE AND ANY LINKED SITES. YOUR SOLE REMEDY AGAINST SPARKCHARGE FOR DISSATISFACTION WITH THE SITE OR ANY CONTENT IS TO STOP USING THE SITE OR ANY SUCH CONTENT. THIS LIMITATION OF RELIEF IS A PART OF THE BARGAIN BETWEEN THE PARTIES.

The above disclaimer applies to any damages, liability or injuries caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft or destruction of or unauthorized access to, alteration of, or use, whether for breach of contract, tort, negligence or any other cause of action.

SparkCharge reserves the right to do any of the following, at any time, without notice: (1) to modify, suspend or terminate operation of or access to the Site, or any portion of the Site, for any reason; (2) to modify or change the Site, or any portion of the Site, and any applicable policies or terms; and (3) to interrupt the operation of the Site, or any portion of the Site, as necessary to perform routine or non-routine maintenance, error correction, or other changes.

### **Indemnity**

You agree to indemnify and hold SparkCharge, its officers, directors, shareholders, predecessors, successors in interest, employees, agents, subsidiaries and affiliates, harmless from any demands, loss, liability, claims or expenses (including attorneys' fees), made against SparkCharge by any third party due to or arising out of or in connection with your use of the Site.

### **Violation of These Terms of Use**

SparkCharge may disclose any information we have about you (including your identity) if we determine that such disclosure is necessary in connection with any investigation or complaint regarding your use of the Site, or to identify, contact or bring legal action against someone who may be causing injury to or interference with (either intentionally or unintentionally) SparkCharge's rights or property, or the rights or property of visitors to or users of the Site, including SparkCharge's customers. SparkCharge reserves the right at all times to disclose any information that SparkCharge deems necessary to comply with any applicable law, regulation, legal process or governmental request. SparkCharge also may disclose your information when SparkCharge determines that applicable law requires or permits such disclosure, including exchanging information with other companies and organizations for fraud protection purposes.

You acknowledge and agree that SparkCharge may preserve any transmittal or communication by you with SparkCharge through the Site or any service offered on or through the Site, and may also disclose such data if required to do so by law or SparkCharge determines that such preservation or disclosure is reasonably necessary to (1) comply with legal process, (2) enforce these Terms of Use, (3) respond to claims that any such data violates the rights of others, or (4) protect the rights, property or personal safety of SparkCharge, its employees, users of or visitors to the Site, and the public.

You agree that SparkCharge may, in its sole discretion and without prior notice, terminate your access to the Site and/or block your future access to the Site if we determine that you have violated these Terms of Use or other agreements or guidelines which may be associated with your use of the Site. You also agree that any violation by you of these Terms of Use will constitute an unlawful and unfair business practice, and will cause irreparable harm to SparkCharge, for which monetary damages would be inadequate, and you consent to SparkCharge obtaining any injunctive or equitable relief that SparkCharge deems necessary or appropriate in such circumstances. These remedies are in addition to any other remedies SparkCharge may have at law or in equity.

You agree that SparkCharge may, in its sole discretion and without prior notice, terminate your access to the Site, for cause, which includes (but is not limited to) (1) requests by law enforcement or other government agencies, (2) a request by you (self-initiated account deletions), (3) discontinuance or material modification of the Site or any service offered on or through the Site, or (4) unexpected technical issues or problems.

If SparkCharge does take any legal action against you as a result of your violation of these Terms of Use, SparkCharge will be entitled to recover from you, and you agree to pay, all reasonable attorneys' fees and costs of such action, in addition to any other relief granted to SparkCharge. You agree that SparkCharge will not be liable to you or to any third party for termination of your access to the Site as a result of any violation of these Terms of Use.

### **Governing Law; Dispute Resolution**

You agree that all matters relating to your access to or use of the Site, including all disputes, will be governed by the laws of the United States and by the laws of the State of New York without regard to its conflicts of laws provisions. You agree to the personal jurisdiction by and venue in the state and federal courts in Syracuse, New York, and waive any objection to such jurisdiction or venue. The preceding provision regarding venue does not apply if you are a consumer based in the European Union. If you are a consumer based in the European Union, you may make a claim in the courts of the country where you reside. Any claim under these Terms of Use must be brought within one (1) year after the cause of action arises, or such claim or cause of action is barred. Claims made under the separate terms and conditions of purchase for goods and services are not subject to this limitation. No recovery may be sought or received for damages other than out-of-pocket expenses, except that the prevailing party will be entitled to costs and attorneys' fees. In the event of any controversy or dispute between SparkCharge and you arising out of or in connection with your use of the Site, the parties shall attempt, promptly and in good faith, to resolve any such dispute. If we are unable to resolve any such dispute within a reasonable time (not to exceed thirty (30) days), then either party may submit such controversy or dispute to mediation. If the dispute cannot be resolved through mediation, then the parties shall be free to pursue any right or remedy available to them under applicable law.

### **Void Where Prohibited**

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If any of the provisions of these Terms of Use are held by a court or other tribunal of competent jurisdiction to be void or unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary and replaced with a valid provision that best embodies the intent of these Terms of Use, so that these Terms of Use shall remain in full force and effect. These Terms of Use constitute the entire agreement between you and SparkCharge with regard to your use of the Site, and any and all other written or oral agreements or understandings previously existing between you and SparkCharge with respect to such use are hereby superseded and cancelled. Other than as provided in a purchase agreement you enter into with SparkCharge, SparkCharge will not accept any counter-offers to these Terms of Use, and all such offers are hereby categorically rejected. SparkCharge's failure to insist on or enforce strict performance of these Terms of Use shall not be construed as a waiver by SparkCharge of any provision or any right it has to enforce these Terms of Use, nor shall any course of conduct between SparkCharge and you or any other party be deemed to modify any provision of these Terms of Use. These Terms of Use shall not be interpreted or construed to confer any rights or remedies on any third parties.

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### **Feedback and Information**

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