

**Sparkswap  
TERMS OF SERVICE**

**Date of Last Revision: March 5, 2019**

**Welcome to Sparkswap!**

Sparkswap Hub, Inc. (“Sparkswap,” “we,” “us,” “our”) provides its services (described below) to you through its website located at <https://sparkswap.com> (the “Site”) and through its applications and related services (collectively, such services, including any new features and applications, and the Site, the “Service(s)”), subject to the following Terms of Service (as amended from time to time, the “Terms of Service”). We reserve the right, at our sole discretion, to change or modify portions of these Terms of Service at any time. If we do this, we will post the changes on this page and will indicate at the top of this page the date these terms were last revised. We will also notify you, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Services or changes made for legal reasons will be effective immediately. Your continued use of the Service after the date any such changes become effective constitutes your acceptance of the new Terms of Service.

***PLEASE READ THESE TERMS OF SERVICE CAREFULLY, AS THEY CONTAIN AN AGREEMENT TO ARBITRATE AND OTHER IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES, AND OBLIGATIONS. THE AGREEMENT TO ARBITRATE REQUIRES (WITH LIMITED EXCEPTION) THAT YOU SUBMIT CLAIMS YOU HAVE AGAINST US TO BINDING AND FINAL ARBITRATION, AND FURTHER (1) YOU WILL ONLY BE PERMITTED TO PURSUE CLAIMS AGAINST SPARKSWAP ON AN INDIVIDUAL BASIS, NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION OR PROCEEDING, (2) YOU WILL ONLY BE PERMITTED TO SEEK RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ON AN INDIVIDUAL BASIS, AND (3) YOU MAY NOT BE ABLE TO HAVE ANY CLAIMS YOU HAVE AGAINST US RESOLVED BY A JURY OR IN A COURT OF LAW.***

In addition, when using certain services, you will be subject to any additional terms applicable to such services that may be posted on the Service from time to time, including, without limitation, the Privacy Policy located at <https://sparkswap.com/privacy>. All such terms are hereby incorporated by reference into these Terms of Service.

If you are registering to use the Service on behalf of a legal entity, you represent and warrant that (i) such legal entity is duly organized and validly existing under the applicable laws of the jurisdiction of its organization; and (ii) you are duly authorized by such legal entity to act on its behalf. In addition, references herein to “you” will mean, collectively, you and such legal entity.

**Access and Use of the Service**

**Services Description:** The Service is designed to allow users to trade cryptocurrencies, virtual currencies, and tokens (“Digital Currencies”) with one another.

**Your Registration Obligations:** You may be required to register with Sparkswap in order to access and use certain features of the Service. If you choose to register for the Service, you agree to provide and maintain true, accurate, current and complete information about yourself as prompted by the Service’s registration form. Registration data and certain other information about you are governed by our Privacy Policy. If you are under 13 years of age, you are not authorized to use the Service, with or without registering. In addition, if you are under 18 years old, you may use the Service, with or without registering, only with the approval of your parent or guardian.

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT-** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all

financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**Member Account, Private Key, and Security:** You are responsible for maintaining the confidentiality of your account and any private key(s) associated with your account, if any, and are fully responsible for any and all activities that occur under your private key(s) or account. You agree to immediately notify Sparkswap of any unauthorized use of your private key(s) or account or any other breach of security. Sparkswap will not be liable for any loss or damage arising from your failure to comply with this Section.

**Modifications to Service:** Sparkswap reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. You agree that Sparkswap will not be liable to you or to any third party for any modification, suspension or discontinuance of the Service.

**Restricted Locations:** Sparkswap may not make the Service available in all markets and jurisdictions, and may restrict or prohibit use of the Services from certain jurisdictions ("**Restricted Locations**"). You represent and warrant that you are not located or transacting in, under the control of, or a national or resident of any Restricted Locations or any other country to which the United States has embargoed goods or services.

#### **General Practices Regarding Use and Storage:**

You acknowledge that Sparkswap may establish general practices and limits concerning use of the Service. We may refuse to process or cancel any pending Digital Currency transaction or impose transaction limits. We cannot reverse a Digital Currency transaction which has been initiated. The Digital Currencies that the Service supports may change from time to time. Under no circumstances should you attempt to use the Service to transact in Digital Currencies that are not supported by us. We assume no responsibility or liability in connection with any attempt to use the Service for Digital Currencies that we do not support.

We facilitate Digital Currency transactions according to your instructions and we do not guarantee the identity of any receiver or other person. You should verify all transaction information prior to submitting instructions to us. We reserve the right to delay or not facilitate any Digital Currency transaction for any reason, including if you do not have sufficient Digital Currency to support the transaction or we perceive a risk of fraud, illegal activity or any other risk.

Sparkswap does not own or control the underlying protocols, networks or exchanges which support or execute your transactions. By using the Service, you acknowledge and agree that we are not responsible for the operation of such protocols, networks or exchanges and we make no guarantee of their functionality, security, operation or execution..

We may limit the maximum period of time that data or other content will be retained by the Service and the maximum storage space that will be allotted on Sparkswap's servers on your behalf. You agree that Sparkswap has no responsibility or liability for the deletion or failure to store any data or other content maintained or uploaded by the Service. You acknowledge that Sparkswap reserves the right to terminate accounts that are inactive for an extended period of time. You further acknowledge that Sparkswap reserves the right to change these general practices and limits at any time, in its sole discretion, with or without notice.

**Mobile Services:** The Service includes certain services that are available via a mobile device, including (i) the ability to upload content to the Service via a mobile device, (ii) the ability to browse the Service and the Site from a mobile device and (iii) the ability to access certain features through an application downloaded and installed on a mobile device (collectively, the "Mobile Services"). To the extent you access the Service through a mobile device, your wireless service carrier's standard charges,

data rates and other fees may apply. In addition, downloading, installing, or using certain Mobile Services may be prohibited or restricted by your carrier, and not all Mobile Services may work with all carriers or devices.

## **Conditions of Use**

**User Conduct:** You are solely responsible for all code, video, images, information, data, text, software, music, sound, photographs, graphics, messages or other materials (“content”) that you upload, post, publish or display (hereinafter, “upload”) or email or otherwise use via the Service. The following are examples of the kind of content and/or use that is illegal or prohibited by Sparkswap. Sparkswap reserves the right to investigate and take appropriate legal action against anyone who, in Sparkswap’s sole discretion, violates this provision, including without limitation, removing the offending content from the Service, suspending or terminating the account of such violators and reporting you to the law enforcement authorities. You agree to not use the Service to:

- a) email or otherwise upload any content that (i) infringes any intellectual property or other proprietary rights of any party; (ii) you do not have a right to upload under any law or under contractual or fiduciary relationships; (iii) contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; (iv) poses or creates a privacy or security risk to any person; (v) constitutes unsolicited or unauthorized advertising, promotional materials, commercial activities and/or sales, “junk mail,” “spam,” “chain letters,” “pyramid schemes,” “contests,” “sweepstakes,” or any other form of solicitation; (vi) is unlawful, harmful, threatening, abusive, harassing, tortious, excessively violent, defamatory, vulgar, obscene, pornographic, libelous, invasive of another’s privacy, hateful racially, ethnically or otherwise objectionable; or (vii) in the sole judgment of Sparkswap, is objectionable or which restricts or inhibits any other person from using or enjoying the Service, or which may expose Sparkswap or its users to any harm or liability of any type;
- b) interfere with or disrupt the Service or servers or networks connected to the Service, or disobey any requirements, procedures, policies or regulations of networks connected to the Service; or
- c) violate any applicable local, state, national or international law, or any regulations having the force of law;
- d) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with a person or entity;
- e) solicit personal information from anyone under the age of 18;
- f) harvest or collect email addresses or other contact information of other users from the Service by electronic or other means for the purposes of sending unsolicited emails or other unsolicited communications;
- g) advertise or offer to sell or buy any goods or services for any business purpose that is not specifically authorized;
- h) further or promote any criminal activity or enterprise or provide instructional information about illegal activities; or
- i) obtain or attempt to access or otherwise obtain any materials or information through any means not intentionally made available or provided for through the Service.

**Fees:** To the extent the Service or any portion thereof is made available for any fee, you will be required to remit payment via means specified by Sparkswap, which may include (but is not limited to) payments via the Lightning Network or other Payment Channel Networks using cryptocurrencies, virtual currencies, or tokens. You represent and warrant to Sparkswap that you are authorized to use the payment instrument. You agree to pay Sparkswap the amount that is specified in the payment plan in accordance with the terms of such plan and this Terms of Service. If you dispute any payments you must let Sparkswap know within sixty (60) days after the date of remitting payment to Sparkswap. We reserve the right to change Sparkswap’s prices. If Sparkswap does change prices, Sparkswap will provide notice of the change on the Site or in email to you, at Sparkswap’s option, at least 15 days before the change is

to take effect. Your continued use of the Service after the price change becomes effective constitutes your agreement to pay the changed amount. You shall be responsible for all taxes associated with the Services other than U.S. taxes based on Sparkswap's net income.

**Special Notice for International Use; Export Controls:** Software (defined below) available in connection with the Service and the transmission of applicable data, if any, is subject to United States export controls. No Software may be downloaded from the Service or otherwise exported or re-exported in violation of U.S. export laws. Downloading or using the Software is at your sole risk. Recognizing the global nature of the Internet, you agree to comply with all local rules and laws regarding your use of the Service, including as it concerns online conduct and acceptable content.

**Open Source Software:** Some of the software provided in connection with the Service may be offered under an open source software license. Your use of such open source software is governed by the applicable open source software license, and not these Terms of Service, and such open source software does not constitute "Software" for purposes hereof. If we provide you with any open source software, we will use reasonable efforts to provide you with documentation that lists the open source software.

### **Intellectual Property Rights**

**Service Content, Software and Trademarks:** You acknowledge and agree that the Service may contain content or features ("Service Content") that are protected by copyright, patent, trademark, trade secret or other proprietary rights and laws. Except as expressly authorized by Sparkswap, you agree not to modify, copy, frame, scrape, rent, lease, loan, sell, distribute or create derivative works based on the Service or the Service Content, in whole or in part, except that the foregoing does not apply to your own User Content (as defined below) that you legally upload to the Service. In connection with your use of the Service you will not engage in or use any data mining, robots, scraping or similar data gathering or extraction methods. If you are blocked by Sparkswap from accessing the Service (including by blocking your IP address), you agree not to implement any measures to circumvent such blocking (e.g., by masking your IP address or using a proxy IP address). Any use of the Service or the Service Content other than as specifically authorized herein is strictly prohibited. The technology and software underlying the Service or distributed in connection therewith are the property of Sparkswap, our affiliates and our partners (the "Software"). You agree not to copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code, sell, assign, sublicense, or otherwise transfer any right in the Software. Any rights not expressly granted herein are reserved by Sparkswap.

The Sparkswap name and logos are trademarks and service marks of Sparkswap (collectively the "Sparkswap Trademarks"). Other Sparkswap, product, and service names and logos used and displayed via the Service may be trademarks or service marks of their respective owners who may or may not endorse or be affiliated with or connected to Sparkswap. Nothing in this Terms of Service or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any of Sparkswap Trademarks displayed on the Service, without our prior written permission in each instance. All goodwill generated from the use of Sparkswap Trademarks will inure to our exclusive benefit.

**Third Party Material:** Under no circumstances will Sparkswap be liable in any way for any content or materials of any third parties (including users), including, but not limited to, for any errors or omissions in any content, or for any loss or damage of any kind incurred as a result of the use of any such content. You acknowledge that Sparkswap does not pre-screen content, but that Sparkswap and its designees will have the right (but not the obligation) in their sole discretion to refuse or remove any content that is available via the Service. Without limiting the foregoing, Sparkswap and its designees will have the right to remove any content that violates these Terms of Service or is deemed by Sparkswap, in its sole discretion, to be otherwise objectionable. You agree that you must evaluate, and bear all risks associated with, the use of any content, including any reliance on the accuracy, completeness, or usefulness of such content.

**User Content Transmitted Through the Service:** With respect to the content or other materials

you upload through the Service or share with other users or recipients (collectively, "User Content"), you represent and warrant that you own all right, title and interest in and to such User Content, including, without limitation, all copyrights and rights of publicity contained therein. By uploading any User Content you hereby grant and will grant Sparkswap and its affiliated companies a nonexclusive, worldwide, royalty free, fully paid up, transferable, sublicensable, perpetual, irrevocable license to copy, display, upload, perform, distribute, store, modify and otherwise use your User Content in connection with the operation of the Service or the promotion, advertising or marketing thereof, in any form, medium or technology now known or later developed.

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Service ("Submissions"), provided by you to Sparkswap are non-confidential and Sparkswap will be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

You acknowledge and agree that Sparkswap may preserve content and may also disclose content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process, applicable laws or government requests; (b) enforce these Terms of Service; (c) respond to claims that any content violates the rights of third parties; or (d) protect the rights, property, or personal safety of Sparkswap, its users and the public. You understand that the technical processing and transmission of the Service, including your content, may involve (a) transmissions over various networks; and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

**Copyright Complaints:** Sparkswap respects the intellectual property of others, and we ask our users to do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, or that your intellectual property rights have been otherwise violated, you should notify Sparkswap of your infringement claim in accordance with the procedure set forth below.

Sparkswap will process and investigate notices of alleged infringement and will take appropriate actions under the Digital Millennium Copyright Act ("DMCA") and other applicable intellectual property laws with respect to any alleged or actual infringement. A notification of claimed copyright infringement should be emailed to Sparkswap's Copyright Agent at [dmca@sparkswap.com](mailto:dmca@sparkswap.com) (Subject line: "DMCA Takedown Request"). You may also contact us by mail or facsimile at:

Sparkswap  
1288 Columbus Ave, Suite 279  
San Francisco, CA 94133

Fax: (650) 332-4815

To be effective, the notification must be in writing and contain the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other intellectual property interest;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of where the material that you claim is infringing is located on the Service, with enough detail that we may find it on the Service;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright or intellectual property owner, its agent, or the law;
- a statement by you, made under penalty of perjury, that the above information in your Notice is accurate and that you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

**Counter-Notice:** If you believe that your User Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to upload and use the content in your User Content, you may send a written counter-notice containing the following information to the Copyright Agent:

- your physical or electronic signature;
- identification of the content that has been removed or to which access has been disabled and the location at which the content appeared before it was removed or disabled;
- a statement that you have a good faith belief that the content was removed or disabled as a result of mistake or a misidentification of the content; and
- your name, address, telephone number, and email address, a statement that you consent to the jurisdiction of the federal court located within Northern District of California and a statement that you will accept service of process from the person who provided notification of the alleged infringement.

If a counter-notice is received by the Copyright Agent, Sparkswap will send a copy of the counter-notice to the original complaining party informing that person that it may replace the removed content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the content provider, member or user, the removed content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at our sole discretion.

**Repeat Infringer Policy:** In accordance with the DMCA and other applicable law, Sparkswap has adopted a policy of terminating, in appropriate circumstances and at Sparkswap's sole discretion, users who are deemed to be repeat infringers. Sparkswap may also at its sole discretion limit access to the Service and/or terminate the memberships of any users who infringe any intellectual property rights of others, whether or not there is any repeat infringement.

### **Third Party Websites**

The Service may provide, or third parties may provide, links or other access to other sites and resources on the Internet. Sparkswap has no control over such sites and resources and Sparkswap is not responsible for and does not endorse such sites and resources. You further acknowledge and agree that Sparkswap will not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any content, events, goods or services available on or through any such site or resource. Any dealings you have with third parties found while using the Service are between you and the third party, and you agree that Sparkswap is not liable for any loss or claim that you may have against any such third party.

### **Indemnity and Release**

You agree to release, indemnify and hold Sparkswap and its affiliates and their officers, employees, directors and agents (collectively, "Indemnitees") harmless from any from any and all losses, damages, expenses, including reasonable attorneys' fees, rights, claims, actions of any kind and injury (including death) arising out of or relating to your use of the Service, any User Content, your connection to the Service, your violation of these Terms of Service or your violation of any rights of another. Notwithstanding the foregoing, you will have no obligation to indemnify or hold harmless any Indemnitee from or against any liability, losses, damages or expenses incurred as a result of any action or inaction of such Indemnitee. If you are a California resident, you waive California Civil Code Section 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor." If you are a resident of another jurisdiction, you waive any comparable statute or doctrine.

### **Disclaimer of Warranties**

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. SPARKSWAP EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE

## AND NON-INFRINGEMENT.

SPARKSWAP MAKES NO WARRANTY THAT (I) THE SERVICE WILL MEET YOUR REQUIREMENTS, (II) THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (III) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, OR (IV) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS.

### **Risk Disclosure**

Your use of the Services is at your own risk. The risk of loss in trading Digital Currencies can be substantial. You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. You are solely responsible and liable for any and all trading or other activity (and all gains and losses) under your private key(s) or account, and for knowing the true status of any position or contract with any other user of the Service, even if presented incorrectly by the Service at any time. Without limiting the foregoing, you acknowledge that:

- You may sustain a total loss of the funds in your account, and, in some cases, you may incur losses beyond such funds.
- Markets for Digital Currencies have varying degrees of liquidity. There is never a guarantee that there will be an active market for one to sell, buy, or trade Digital Currencies. Furthermore, any market for Digital Currencies may abruptly appear and vanish, and any such Digital Currencies are subject to delisting without notice or consent.
- The legal status of certain Digital Currencies (and the legality of holding or trading them) may be uncertain. You are responsible for knowing and understanding how Digital Currencies will be addressed, regulated and taxed under applicable law.
- Having Digital Currencies on deposit or with any third party in a custodial relationship has attendant risks, including security breaches, risk of contractual breach, and risk of loss.
- There are risks associated with utilizing an Internet-based trading system, including the failure of hardware, software and Internet connections. You agree that we shall not be responsible for any communication failures, disruptions, errors, distortions or delays you may experience when trading via the Service, however caused.
- Values in any Digital Currency marketplace are volatile and can shift quickly, and you must pay close attention to your position and holdings, and how they may be impacted by sudden and adverse shifts in trading and other market activities.
- The Service may, in the future, be subject to regulatory changes that impact the Service's operations or business model.

THE FOREGOING IS NOT AN EXHAUSTIVE LIST OF ALL POTENTIAL RISKS INVOLVED IN USING THE SERVICE.

### **Unclaimed Property**

If for any reason Sparkswap is holding funds in your account on your behalf, and Sparkswap is unable to return your funds to you after a period of inactivity, then Sparkswap may report and remit such funds in accordance with applicable state unclaimed property laws.

### **Limitation of Liability**

YOU EXPRESSLY UNDERSTAND AND AGREE THAT SPARKSWAP WILL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY DAMAGES, OR DAMAGES FOR LOSS OF PROFITS INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES (EVEN IF SPARKSWAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICE; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES

RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE SERVICE; (III) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (IV) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (V) ANY OTHER MATTER RELATING TO THE SERVICE. IN NO EVENT WILL SPARKSWAP'S TOTAL LIABILITY TO YOU FOR ALL DAMAGES, LOSSES OR CAUSES OF ACTION EXCEED THE AMOUNT YOU HAVE PAID SPARKSWAP IN THE LAST SIX (6) MONTHS, OR, IF GREATER, ONE HUNDRED DOLLARS (\$100).

SOME JURISDICTIONS DO NOT ALLOW THE DISCLAIMER OR EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS SET FORTH ABOVE MAY NOT APPLY TO YOU OR BE ENFORCEABLE WITH RESPECT TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICE OR WITH THESE TERMS OF SERVICE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USE OF THE SERVICE.

IF YOU ARE A USER FROM NEW JERSEY, THE FOREGOING SECTIONS TITLED "DISCLAIMER OF WARRANTIES" AND "LIMITATION OF LIABILITY" ARE INTENDED TO BE ONLY AS BROAD AS IS PERMITTED UNDER THE LAWS OF THE STATE OF NEW JERSEY. IF ANY PORTION OF THESE SECTIONS IS HELD TO BE INVALID UNDER THE LAWS OF THE STATE OF NEW JERSEY, THE INVALIDITY OF SUCH PORTION SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THE APPLICABLE SECTIONS.

**Dispute Resolution By Binding Arbitration: PLEASE READ THIS SECTION CAREFULLY AS IT AFFECTS YOUR RIGHTS.**

**a. Agreement to Arbitrate**

This Dispute Resolution by Binding Arbitration section is referred to in this Terms of Service as the "Arbitration Agreement." You agree that any and all disputes or claims that have arisen or may arise between you and Sparkswap, whether arising out of or relating to this Terms of Service (including any alleged breach thereof), the Services, any advertising, any aspect of the relationship or transactions between us, shall be resolved exclusively through final and binding arbitration, rather than a court, in accordance with the terms of this Arbitration Agreement, except that you may assert individual claims in small claims court, if your claims qualify. Further, this Arbitration Agreement does not preclude you from bringing issues to the attention of federal, state, or local agencies, and such agencies can, if the law allows, seek relief against us on your behalf. You agree that, by entering into this Terms of Service, you and Sparkswap are each waiving the right to a trial by jury or to participate in a class action. Your rights will be determined by a neutral arbitrator, not a judge or jury. The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement.

**b. Prohibition of Class and Representative Actions and Non-Individualized Relief**

***YOU AND SPARKSWAP AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. UNLESS BOTH YOU AND SPARKSWAP AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, OR CLASS PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE, AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S), EXCEPT THAT YOU MAY PURSUE A CLAIM FOR AND THE ARBITRATOR MAY AWARD PUBLIC INJUNCTIVE RELIEF UNDER APPLICABLE LAW TO THE EXTENT REQUIRED FOR THE ENFORCEABILITY OF THIS PROVISION.***



### **c. Pre-Arbitration Dispute Resolution**

Sparkswap is always interested in resolving disputes amicably and efficiently, and most customer concerns can be resolved quickly and to the customer's satisfaction by emailing customer support at support@sparkswap.com. If such efforts prove unsuccessful, a party who intends to seek arbitration must first send to the other, by certified mail, a written Notice of Dispute ("Notice"). The Notice to Sparkswap should be sent to 1288 Columbus Ave, Suite 279, San Francisco, CA, 94133 ("Notice Address"). The Notice must (i) describe the nature and basis of the claim or dispute and (ii) set forth the specific relief sought. If Sparkswap and you do not resolve the claim within sixty (60) calendar days after the Notice is received, you or Sparkswap may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by Sparkswap or you shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Sparkswap is entitled.

### **d. Arbitration Procedures**

Arbitration will be conducted by a neutral arbitrator in accordance with the American Arbitration Association's ("AAA") rules and procedures, including the AAA's Consumer Arbitration Rules (collectively, the "AAA Rules"), as modified by this Arbitration Agreement. For information on the AAA, please visit its website, <http://www.adr.org>. Information about the AAA Rules and fees for consumer disputes can be found at the AAA's consumer arbitration page, [http://www.adr.org/consumer\\_arbitration](http://www.adr.org/consumer_arbitration). If there is any inconsistency between any term of the AAA Rules and any term of this Arbitration Agreement, the applicable terms of this Arbitration Agreement will control unless the arbitrator determines that the application of the inconsistent Arbitration Agreement terms would not result in a fundamentally fair arbitration. The arbitrator must also follow the provisions of these Terms of Service as a court would. All issues are for the arbitrator to decide, including, but not limited to, issues relating to the scope, enforceability, and arbitrability of this Arbitration Agreement. Although arbitration proceedings are usually simpler and more streamlined than trials and other judicial proceedings, the arbitrator can award the same damages and relief on an individual basis that a court can award to an individual under the Terms of Service and applicable law. Decisions by the arbitrator are enforceable in court and may be overturned by a court only for very limited reasons.

Unless Sparkswap and you agree otherwise, any arbitration hearings will take place in a reasonably convenient location for both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, the determination shall be made by AAA. If your claim is for \$10,000 or less, Sparkswap agrees that you may choose whether the arbitration will be conducted solely on the basis of documents submitted to the arbitrator, through a telephonic hearing, or by an in-person hearing as established by the AAA Rules. If your claim exceeds \$10,000, the right to a hearing will be determined by the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the award is based.

### **e. Costs of Arbitration**

Payment of all filing, administration, and arbitrator fees (collectively, the "Arbitration Fees") will be governed by the AAA Rules, unless otherwise provided in this Arbitration Agreement. If the value of the relief sought is \$75,000 or less, at your request, Sparkswap will pay all Arbitration Fees. If the value of relief sought is more than \$75,000 and you are able to demonstrate to the arbitrator that you are economically unable to pay your portion of the Arbitration Fees or if the arbitrator otherwise determines for any reason that you should not be required to pay your portion of the Arbitration Fees, Sparkswap will pay your portion of such fees. In addition, if you demonstrate to the arbitrator that the costs of arbitration will be prohibitive as compared to the costs of litigation, Sparkswap will pay as much of the Arbitration Fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. Any payment of attorneys' fees will be governed by the AAA Rules.

### **f. Confidentiality**

All aspects of the arbitration proceeding, and any ruling, decision, or award by the arbitrator, will be strictly confidential for the benefit of all parties.

#### **g. Severability**

If a court or the arbitrator decides that any term or provision of this Arbitration Agreement (other than the subsection (b) titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" above) is invalid or unenforceable, the parties agree to replace such term or provision with a term or provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable term or provision, and this Arbitration Agreement shall be enforceable as so modified. If a court or the arbitrator decides that any of the provisions of subsection (b) above titled "Prohibition of Class and Representative Actions and Non-Individualized Relief" are invalid or unenforceable, then the entirety of this Arbitration Agreement shall be null and void, unless such provisions are deemed to be invalid or unenforceable solely with respect to claims for public injunctive relief. The remainder of the Terms of Service will continue to apply.

#### **h. Future Changes to Arbitration Agreement**

Notwithstanding any provision in this Terms of Service to the contrary, Sparkswap agrees that if it makes any future change to this Arbitration Agreement (other than a change to the Notice Address) while you are a user of the Services, you may reject any such change by sending Sparkswap written notice within thirty (30) calendar days of the change to the Notice Address provided above. By rejecting any future change, you are agreeing that you will arbitrate any dispute between us in accordance with the language of this Arbitration Agreement as of the date you first accepted these Terms of Service (or accepted any subsequent changes to these Terms of Service).

#### **Termination**

You agree that Sparkswap, in its sole discretion, may suspend or terminate your account (or any part thereof) or use of the Service and remove and discard any content within the Service, for any reason, including, without limitation, for lack of use or if Sparkswap believes that you have violated or acted inconsistently with the letter or spirit of these Terms of Service. Any suspected fraudulent, abusive or illegal activity that may be grounds for termination of your use of Service, may be referred to appropriate law enforcement authorities. Sparkswap may also in its sole discretion and at any time discontinue providing the Service, or any part thereof, with or without notice. You agree that any termination of your access to the Service under any provision of this Terms of Service may be effected without prior notice, and acknowledge and agree that Sparkswap may immediately deactivate or delete your account and all related information and files in your account and/or bar any further access to such files or the Service. Further, you agree that Sparkswap will not be liable to you or any third party for any termination of your access to the Service.

#### **User Disputes**

You agree that you are solely responsible for your interactions with any other user in connection with the Service and Sparkswap will have no liability or responsibility with respect thereto. Sparkswap reserves the right, but has no obligation, to become involved in any way with disputes between you and any other user of the Service.

#### **General**

These Terms of Service constitute the entire agreement between you and Sparkswap and govern your use of the Service, superseding any prior agreements between you and Sparkswap with respect to the Service. You also may be subject to additional terms and conditions that may apply when you use affiliate or third party services, third party content or third party software. These Terms of Service will be governed by the laws of the State of California without regard to its conflict of law provisions. With respect to any disputes or claims not subject to arbitration, as set forth above, you and Sparkswap agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within San Francisco County, California. The failure of Sparkswap to exercise or enforce any right or provision of these Terms of Service will not constitute a waiver of such right or provision. If any provision of these Terms of Service is

found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Service remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or these Terms of Service must be filed within one (1) year after such claim or cause of action arose or be forever barred. A printed version of this agreement and of any notice given in electronic form will be admissible in judicial or administrative proceedings based upon or relating to this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You may not assign this Terms of Service without the prior written consent of Sparkswap, but Sparkswap may assign or transfer this Terms of Service, in whole or in part, without restriction. The section titles in these Terms of Service are for convenience only and have no legal or contractual effect. Notices to you may be made via either email or regular mail. The Service may also provide notices to you of changes to these Terms of Service or other matters by displaying notices or links to notices generally on the Service.

### **Your Privacy**

At Sparkswap, we respect the privacy of our users. For details please see our Privacy Policy. By using the Service, you consent to our collection and use of personal data as outlined therein.

### **Notice for California Users**

Under California Civil Code Section 1789.3, users of the Service from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. You may contact us at Sparkswap, 1288 Columbus Ave, Suite 279, San Francisco, CA 94133 or by calling (415) 997-2457.

### **Questions? Concerns? Suggestions?**

Please contact us at [support@sparkswap.com](mailto:support@sparkswap.com) to report any violations of these Terms of Service or to pose any questions regarding this Terms of Service or the Service.