



## Terms of Service, Privacy, and Acceptable Use Policy

This document is referenced by the Master Service Agreement and applicable to all services delivered directly to Customers of Spark::red.

### **Terms of Service.**

Customer agrees to a month to month contract term for services unless otherwise agreed to in writing. The month to month contract for services is automatically renewed each month in perpetuity subject to written cancellation by the Customer. Fees for service(s) ordered by the Customer shall begin on the date of the initial order and that date shall serve as the monthly anniversary date for all future billings including one time fees, upgrades, additional services, cancellations and service credits. Fees are due in advance of the monthly service cycle and will be billed on the anniversary date of each month. Additional services ordered on the billing anniversary date will be billed for the full month service and will continue each month on the anniversary date. Additional services ordered after the normal anniversary billing date will be pro-rated to the next anniversary date and billed as a one time pro-rata charge. Future charges will appear as full monthly fees added to your existing anniversary billing date. One time fees, such as setup fees, administrative fees and late fees are due and payable at the time they are incurred, and agreed upon in writing with approval. Service credits will be issued to your Customer account and shall be used to offset future billable services. Service credits shall not be issued as cash back to the Customer nor are service credits transferable to other account holders.

The Company requires a thirty (30) day written cancellation notice prior to the anniversary billing date for discontinuance or downgrades of month to month services. Failure to supply the requisite thirty (30) days written notice of cancellation will result in a full billable monthly cycle prior to cancellation. All services rendered by The Company are non-refundable. All payments are due in full on the monthly anniversary date. Failure to remit payment for services on the monthly anniversary date is a violation of the TOS.

Customer agrees to abide by all local, state, and federal laws pursuant to services delivered in the United States of America. Proper venue for legal remedies shall be King County, Redmond, Washington. All contact terms found herein shall be bound by State Law or the Uniform Commercial Code whichever may be applicable.

Each party agrees to indemnify and hold harmless the other party, the other party's affiliates, and each of their respective officers, directors, attorneys, agents, and employees from and against any and all claims, demands, liabilities, obligations, losses, damages, penalties, fines, punitive damages, amounts in interest, expenses and disbursements of any kind and nature whatsoever (including reasonable attorneys' fees) brought by a third party under any theory of legal liability arising out of or related to the indemnifying party's actual or alleged infringement or misappropriation of a third party's copyright, trade secret, patent, trademark, or other proprietary right.

Except as described in the SLA, The Company shall not be liable to Customer for harm caused by or related to Customer's services or inability to utilize the services unless caused by gross negligence or willful misconduct. Neither Party shall be liable to the other for lost profits, direct or indirect, special or incidental, consequential or punitive, or damages of any kind whether or not they were known or should have been known. Notwithstanding anything else in this agreement, the maximum aggregate liability of The Company and any of its employees, agents or affiliates, under any theory of law shall not exceed a payment of money not to exceed the amount paid by the customer for hosting services for the six months prior to the occurrence of the event(s) giving rise to the claim.

Any controversy or claim arising from service or related to this contract or breach therein in excess of \$500.00 shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The resulting judgment rendered by a licensed arbitrator may be entered in any court having valid jurisdiction.

**Privacy.**

Spark::red considers customer privacy its utmost responsibility. We will never sell or otherwise disclose customer data to unaffiliated third parties without your consent except as otherwise stated in this policy.

In general, we use personal information to serve our customers, to enhance and extend our customer relationship, and to enable our customers to take maximum advantage of products and services we think they would enjoy. More specifically, we use personal information for billing purposes, to provide services or complete transactions you have requested, to anticipate and resolve problems with your services.

Spark::red may share personal information with third parties as necessary to complete a transaction, perform a service on our behalf, or perform a service that you have requested. When the third party acts solely on our behalf, Spark::red does not allow them to use your information for other purposes.

Spark::red may release personal information when we believe release is appropriate to comply with the law or in good faith reliance on legal process (e.g., court orders, subpoenas, etc.); enforce or apply our customer agreements; initiate, render, bill, and collect for services; protect our rights or property, or protect users of those services from fraudulent, abusive, or unlawful use of such services; facilitate or verify the appropriate calculation of taxes, fees, or other obligations due to a local, state, or federal government; or if we reasonably believe that an emergency involving immediate danger of death or serious physical injury to any person requires disclosure of communications, or justifies disclosure of records, to a governmental entity without delay.

Spark::red is concerned with the security of customer data. We have placed commercially reasonable measures to prevent unauthorized access to this information.

Spark::red may revise or update this policy as it deems appropriate, including if the law requires such change.

**Acceptable Use.**

Spark::red is dedicated to providing professional service to companies seeking high-performance ATG hosting solutions. Our goal is not to assess the morality of the products or services that you provide, in the use of our services or otherwise, however we also pride ourselves in partnering with clients that act responsibly, legally, and ethically. Spark::red will not actively monitor your content or practices; we enter into agreements in good faith that our clients are upstanding and responsible. Spark::red may view content on your servers in investigation of a complaint. This document is intended to act as a guideline between You and the Company. Specific actions, including but not limited to those actions described below, will be perceived as a violation this Acceptable Use Policy, and may result in action up to and including immediate termination of Our services to You:

- Intentional violation, misuse, or interference in the public or private network.
- Intentional violation, misuse, of supplied systems and hardware.
- Violation of federal, state, or local laws while using our services.
- Sharing of proprietary information on systems, setup, procedures, partners, other customers, or employees to unauthorized third parties.
- Any attempt to circumvent in-place security systems, including but not limited to sharing passwords, attempted decryption of encrypted software, or brute force attacks.
- Hosting content that is deemed inappropriate, including but not limited to illegal content, promotion of racism, obscenity, discrimination, or harassment.
- Sending of SPAM messages, via email, text message, or other electronic means.
- Practices deemed inappropriate or unsafe for children.
- Any direct copyright infringement of software or content hosted on Spark::red systems, as defined under Title 17, Section 512 of the United States Code.
- Fraudulent activities and/or business practices, including but not limited to Phishing, High Yield Investment Plan/PONZI schemes.
- Distribution, fabrication, or storage of malware, including but not limited to virus software, key loggers, password crackers, or root kits.
- Use of systems to launch any type of denial of service attack.
- Attempts to gain information regarding other Spark::red customers, or customers of our partners or vendors.

Spark::red and its vendors may be required by law to submit customer information to law enforcement officials when presented with a valid subpoena from a court with proper jurisdiction. Information requested is disclosed as directed pursuant to the subpoena. Spark::red will notify customers of Subpoenas served to us.

Spark::red accepts reports of alleged violations of this policy via email sent to [abuse@sparkred.com](mailto:abuse@sparkred.com). Reports of alleged violations must be verified and include name, contact information, IP address, and description of the violation. Spark::red will not issue reports to third parties regarding acknowledgement or resolution of alleged violations.

Spark::red will notify customer of alleged violations before action is taken in order to allow customer to address the situation, except where required by law or by partners or vendors. The customer shall acknowledge genuine violations and take appropriate action in a timely manner to resolve the problem. Spark::red may investigate to assure that the action was completed and adequate. Failure to address and repeated violations will result in termination of service. See the Spark::red master Service Agreement for information regarding billing, refunds, and mitigations for these situations.