

Notice: Because we value you as a customer, we want you to know that we have updated our Terms of Service as of March 15, 2023. Your continued use of our Services is your agreement to these updated terms and policies. We encourage you to read the Terms of Service.

## Terms of Service

**Last updated on November 25, 2024**

### Terms of Service

CONSTANT CONTACT PROVIDES A VARIETY OF SERVICES SUBJECT TO THIS AGREEMENT. BY CHECKING THE BOX OR CLICKING THE BUTTON NEXT TO A LINK TO THIS AGREEMENT ON ANY OF OUR SIGN-UP PAGES, BY EXECUTING AN ORDER FORM OR STATEMENT OF WORK THAT REFERENCES THIS AGREEMENT, BY SIGNING UP FOR AN ACCOUNT, BY LOGGING IN TO YOUR ACCOUNT, BY ACCESSING ANY PART OF THE SERVICES (INCLUDING BY MEANS OF ANY API INTERFACE), YOU, AS A CUSTOMER OF THE SERVICES OR A REPRESENTATIVE OF AN ORGANIZATION THAT IS A CUSTOMER OF THE SERVICES (COLLECTIVELY, "YOU"), REPRESENT AND WARRANT (1) YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THIS AGREEMENT, (2) YOU ARE AT LEAST EIGHTEEN (18) YEARS OF AGE, (3) THE INFORMATION YOU PROVIDED IN CONNECTION WITH YOUR REGISTRATION FOR THE SERVICES IS TRUE, ACCURATE, CURRENT AND COMPLETE, AND (4) YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT PERSONALLY OR ON BEHALF OF THE ORGANIZATION YOU HAVE NAMED AS THE AUTHORIZED USER, AND TO BIND THAT ORGANIZATION TO THIS AGREEMENT. NOTE THAT BY REPRESENTING AND WARRANTING TO THE ABOVE, YOU ARE MAKING A LEGALLY

## ENFORCEABLE AGREEMENT.

We may change any terms of this Agreement by posting a revised Agreement and the revised Agreement will be effective immediately upon posting or the effective date indicated in the new Agreement, as applicable, and apply to any continued or new use of the Services. We may change the Services, or any features of the Services at any time, and we may discontinue the Services or any features of the Services at any time. If you do not agree with the terms of this Agreement, you must immediately discontinue your use of the Services. Otherwise, your continued use of the Services constitutes your acceptance of such changes. We recommend that you regularly check our website to view the then-current terms.

We may refuse service, close your accounts or the accounts of any Authorized Users, and change eligibility requirements at any time, in our sole discretion.

## DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meaning indicated below. Whenever the words "include", "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".

*"Agreement"* means these Terms of Service and any guidelines, rules or operating policies that we post on our website(s), including our Acceptable Use Policy, our Privacy Notice, and any other policy referenced herein, which are specifically incorporated herein by reference, each, as may be amended, supplemented or modified from time to time.

*"Constant Contact"*, *"we"*, *"us"* or *"our"* means Constant Contact, Inc. or its applicable subsidiaries as specified in the "Contracting Entity" section of this Agreement.

*"Intellectual Property Rights"* means any and all intellectual property, industrial property, and other proprietary rights throughout the world, including all rights in, to, or arising out of patents, patent applications, inventions (whether

patentable or not), invention disclosures, trade secrets, know-how, proprietary information, works of authorship, copyrights, mask works, moral rights, trademarks, service marks, software, data, technology, layout designs and design rights, and all registrations, applications, renewals, extensions, or reissues of any of the foregoing.

"*Order Form*" means the form evidencing the initial order for Services, including any addendum or online confirmation form, and any subsequent orders separately entered into by you and us. Each Order Form shall be incorporated into and become a part of this Agreement.

"*Professional Services*" means, collectively, any consulting, marketing, managed design, customizations and development services specifically set forth in a Statement of Work.

"*Services*" means, collectively, all our products and services and related offerings, features and functionalities, including email and digital marketing services, Communities and Marketplaces, Website Builder, SMS (as defined below), and lead generation and customer relationship management services, our website and any related sub-site, user interface designs, applications, including our mobile application, processes, software, source code, application programming interfaces, systems delivered or accessible through any media or device, images that are made available by us through any email or website builder tools, designs, templates, text, graphics, video, information, audio and other files, support, additional services and all related materials and documentation, and any and all enhancements and modifications thereto howsoever made, provided by or on behalf of us to you pursuant to this Agreement.

"*Statement of Work*" means a statement of work or similar document mutually agreed by Customer and us for the provision of Professional Services and that is governed by this Agreement.

## **1. Provision of Services.**

1.1 Access. Upon the terms and subject to the conditions of this Agreement, you are granted a limited, non-exclusive, revocable, non-transferable, non-sublicensable, worldwide limited right to access and use the Services. We may, in our sole discretion, permit you to authorize additional users to use your account(s). For purposes of this Agreement, you are the "Account Owner" and any other users you authorize will be deemed "Authorized Users." To the extent applicable, Authorized Users that you appoint as your administrators shall have the authority to act on your behalf to perform administrative duties, enter into binding agreements and accept Fees (as defined below). You will be responsible for all activity occurring under your account(s), including each Authorized User's compliance with this Agreement.

1.2 Restrictions. You will not, and will not permit any Authorized User or other party to: (a) modify, adapt, alter, translate, or create derivative works of the Services; (b) sublicense, lease, rent, loan, distribute, or otherwise transfer the Services to any third party; (c) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Services, except to the extent expressly permitted by applicable law (and then only upon advance written notice to us); (d) tamper, bypass, delete, or disable any copy protection or security mechanisms of the Services; (e) use or demonstrate the Services in any other way that is in competition with us; (f) remove any notice of proprietary rights from the Services; (g) attempt to gain unauthorized access to, or disrupt the integrity, performance or security of the Services or the data contained therein; (h) attempt to probe, scan or test the vulnerability of any Service or to breach the security or authentication measures without proper authorization; (i) use or copy the Services, except as expressly allowed herein or (j) use the Services in violation of our Acceptable Use Policy.

1.3 Contracting Entity. The Constant Contact entity that you are contracting with is Constant Contact, Inc., unless you have subscribed to or are subscribing solely to our lead generation and customer relationship management services or any or related Service, in which case, the Constant Contact entity that you are contracting with is SharpSpring Technologies, Inc., a wholly owned subsidiary of Constant Contact, Inc. While the Constant Contact entity



contracting with you remains fully liable and responsible for all applicable obligations under this Agreement, the parties acknowledge that certain obligations under this Agreement may be fulfilled by other Constant Contact subsidiaries, including Constant Contact, Inc.

## **2. Use of the Services.**

2.1 General Rules of Use. By agreeing to this Agreement, you agree to comply with our Acceptable Use Policy and with the following in connection with the use of the Services:

- (a) You may not use our Services to send spam.
- (b) You may not use our Services to promote or incite harm toward others or that promote discriminatory, hateful, or harassing content. We may suspend or terminate your account if you send or distribute content through the Services that we determine, in our sole discretion, contains either of the following:
  - (i) Any statement, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to threaten, advocate, or incite physical harm to or violence against others; or
  - (ii) Any statement, image, photograph, advertisement, or other content that in our sole judgment could be reasonably perceived to harm, threaten, promote the harassment of, promote the intimidation of, promote the abuse of, or promote discrimination against others based solely on race, ethnicity, national origin, sexual orientation, gender, gender identity, religious affiliation, age, disability, disease, or immigration status.
- (c) You may not use our Services if you are a person or you are a member of an organization that has publicly stated or acknowledged that its goals, objectives, positions, or founding tenets include statements or principles that could be reasonably perceived to advocate, encourage, or sponsor hateful content or a threat of physical harm.
- (d) You may not distribute content that is materially false, inaccurate, or misleading in a way that could deceive or confuse others about important

events, topics, or circumstances.

In the event that we determine, in our sole discretion, that you are not complying with this Section and/or our Acceptable Use Policy, we may terminate your access to or use of the Services, disable your account or access to the Services, and/or remove all or a portion of your content, in each case, without notice or liability and without refund.

2.2 Username and Password. You are responsible for maintaining the security of your account, usernames, passwords and files (including the passwords and files that your Authorized Users, if any, have access to). You may not share your username and/or password with other individuals. You authorize us to act on any instructions reasonably believed by us to be authentic communications from you or any individual who claims to be authorized by you with respect to the management of your account. You will be solely responsible and liable for any activity that occurs under your username and the activities of your Authorized Users, if any, and we shall not be responsible for the actions of any individuals who misuse or misappropriate your contact lists or other assets using your username and password or other appropriate account identifying information. You agree to notify us immediately of any unauthorized use or access of your account or any other known or suspected breach of security. We are not responsible for any losses due to stolen or hacked passwords. We do not have access to your current password, and for security reasons, we may only provide you with instructions on how to reset your password. We have the right to update any of your contact information in your account for billing purposes. We may contact you, or any Authorized User, or log-in added to your account, based on the information provided for your account.

2.3 Account Disputes. You will not request access to, or information about, an account that is not yours, and you will resolve any account-related disputes directly with the other party. We decide who owns an account based on a number of factors, including the content in that account, and the contact and profile information listed for that account. In cases where differing contact and profile information is present or we are unable to reasonably determine ownership, we may require you to resolve the matter through proper channels

outside of the Company. When a dispute is identified, we may suspend any account associated with the dispute, including disabling login and sending capabilities, to protect the security and privacy of the data held within the account until the dispute is properly resolved.

**2.4 Equipment.** You are responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including modems, hardware, servers, software, operating systems, networking, web servers (together, the “Equipment”). You are also responsible for maintaining the security of the Equipment and for all uses of the Equipment with or without your knowledge or consent.

**2.5 Backups.** You are responsible for making frequent backup copies of your contacts and content. We are not obligated to provide you with a way to download or otherwise export your contacts and content out of the Services.

**2.6 Communities and Marketplace.** Communities and Marketplace. The Services may contain areas where you may be able to publicly post information or communicate with others (for example, discussion boards or blogs), review products and merchants and otherwise submit content, including the Constant Contact Community and the Constant Contact Marketplace (the “Communities”). You agree to abide by the Constant Contact Community Terms of Use with respect to your use of the Constant Contact Community and the Constant Contact Marketplace Terms Use with respect to your use of the Constant Contact Marketplace. Any information you post may be accessible to anyone with internet access, and any personal or other information you include in your posting may be read, collected and used by others.

**2.7 Footers.** For every listing, message or campaign sent or distributed via the Services, you agree that we may add a link to the Services and a statement such as “Email Marketing by Constant Contact”, “Powered by Constant Contact” or similar statements in the footer or other similar location that does not unreasonably obscure the message or campaign.

**2.8 LogoMaker.** If you elect to use the functionality in our Services to create a logo or design for your use (any such service from time to time, “LogoMaker”),

you acknowledge that LogoMaker uses certain elements, including colors, fonts, icons, and other designs that we also make available to our other customers. Any logo created by LogoMaker may be similar or identical to logos created by our other customers who use LogoMaker. LOGOS CREATED BY LOGOMAKER ARE PROVIDED ON AN "AS-IS" AND "AS-AVAILABLE" BASIS AND WE MAKE NO WARRANTIES THAT THE LOGOS DO NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. It is your responsibility to determine (a) whether any logo created by LogoMaker is subject to any third party rights and (b) whether you may use and/or register your logo as a trademark. You may not assign or resell your LogoMaker logo to any third party, and you may not challenge the use or registration of any other logo created by LogoMaker on behalf of our other customers.

2.9 Domain Names. In the event you register a domain through our Website Builder Service, you are subject to the Constant Contact Website Builder Domain Registration Agreement and the Domain Name Renewal Notification Policy.

2.10 Short Message Service ("SMS"). In the event you use the SMS as part of the Services, you are subject to our Text Messaging Terms and Conditions of Use.

2.11 Automated Data Collection. You consent to us collecting data from your website, including websites not provided, maintained, or hosted by us, through automated means, such as through harvesting bots, robots, spiders, or scrapers ("Automated Data Collection") and the use of that data for internal business purposes, including to provide you with automatic email templates and to better understand our customer base. We will not use Automated Data Collection to collect data from your website if you have set the /robots.txt file to disallow such collection.

2.13 Delivery of Content. You understand that not all content, including messages and campaigns, sent through the Services will be received by or will be capable of being viewed by their intended recipients or will be viewable by your recipients in the same way they appear in our Services environment. You further understand that delivery of content by means of the Services may



involve transmissions over various networks, and that the content could be reformatted or otherwise revised to conform to the formatting or technical requirements of such networks. You also understand and agree that content exceeding maximum character limitations may be truncated, abbreviated, reduced or otherwise abruptly cut short.

**2.14 Assistance.** You acknowledge that we may from time to time provide you with marketing advice and other coaching, template design, frequently asked questions and general tips on best practices and compliance with applicable law, including, any sample offer terms or any automated and artificial intelligence generated content. You acknowledge that such assistance and information is provided as a convenience to you and that such assistance and information are not intended to and do not constitute legal advice and that no attorney-client relationship is formed.

**3. Monitoring and Suspension.** Although we have no obligation to monitor the content provided by you or your use of the Services, including Your Products (as defined below), we may do so. We shall be entitled, without liability to you, to immediately suspend, terminate or limit your access to the Services at any time, delete or confiscate all or a portion of your contacts, files, content, and/or domain name registrations and/or terminate this Agreement for any reason in our sole discretion, including a determination by us that (a) the Services are being used by you, or your Authorized Users, in violation of any applicable laws or regulations or this Agreement, including our Acceptable Use Policy and Privacy Notice, (b) the Services are being used by you in an unauthorized, inappropriate, or fraudulent manner, (c) the use of the Services by you adversely affects our equipment or service to others, (d) we are prohibited by an order of a court or other governmental agency from providing the Services, (e) there is a security incident or other disaster that impacts the Services or the security of the Services, your account or your content, or (f) any amount due under this Agreement is not received by us within fifteen (15) days after it was due. You further understand and agree that we and any applicable third party that supports, posts, publishes or distributes any content provided by you, including content provided through Your Products, has the right to reformat, edit, monitor, reject, block or remove any such content at any time or for any other reason.

**4. Professional Services.** If, at your request, we agree to perform Professional Services for your benefit, the parties will execute a Statement of Work. Each Statement of Work will be governed by this Agreement. Any conflict between this Agreement and a Statement of Work will be resolved in favor of such Statement of Work solely with respect to the professional or consulting services described therein.

## **5. Your Products.**

5.1 The Services may permit you to, among other things, (a) create an e-commerce store ("Store") for selling your products and/or services ("Store Content"), (b) book appointments with your users ("Appointments"), (c) communicate about or administer contests, competitions, sweepstakes, or other similar promotional events ("Promotions"), (d) sell your products and services and tickets to your events to your subscribers and others in the form of various promotional deals, coupons, tickets, vouchers, passes or cards (each, a "Deal"), or (e) collect donations (each a "Donation Campaign," and together with Store, Store Content, Appointments, Promotions, collectively, "Your Products").

5.2 You are solely responsible for Your Products, including any and all injuries, illnesses, damages, claims, liabilities and costs suffered in respect thereto. You shall be responsible for all costs of procuring and delivering Your Products, including any associated shipping, taxes and any other fees associated therewith.

5.3 You will be solely responsible for any and all statements and promises you make and for all user assistance, warranty and support of Your Products, and to comply with any promises you make to your customers, users, donors and donees. You further agree to provide your contact information for any end-user questions, complaints or claims. To the extent applicable, you shall ensure that the rules for each Promotion (a) state that each entrant or participant unconditionally releases us of any liability arising from the Promotion, and (b) inform each entrant or participant that the Promotion is in no way sponsored, endorsed or administered by, or associated with, us.

## **6. Communication With You.**

6.1. We reserve the right to send messages to you to (a) inform you of changes or additions to the Services, this Agreement or the Fees (defined below), (b) to inform you of violations of this Agreement or actions relating to your access and use the Services, or (c) for marketing and other purposes. You may unsubscribe from our marketing communications at any time, although you will continue to receive transactional messages from us.

6.2 You acknowledge that we may contact you via telephone (either by a live person, automatic dialer, prerecorded message or a combination of the foregoing) to discuss the Services and you consent to such contact. Further, you consent to receive such phone calls at the telephone number you entered in your account. You do not need to agree to this provision in order to use or procure the Services and if you would like us not to contact you by telephone, please complete [this form](#). Upon request, we may also contact you via telephone (including by automatic dialer or prerecorded message) or text you in order to provide you with your password or other information you request.

6.3 You agree that we may, but are not obligated to, monitor or record any of your telephone conversations and chat texts with us for quality control purposes, for purposes of training our employees, and for our own protection. You further agree that any Authorized Users or anyone else you authorize to use your account consents to such monitoring or recording as well. You acknowledge that not all telephone lines or calls may be recorded by us and that we do not guarantee that recordings of any particular telephone calls will be retained or are capable of being retrieved or even if retained and retrievable will be made available to you.

## **7. Intellectual Property.**

7.1 We own and shall retain all right, title and interest in and to all Intellectual Property Rights in the Services and Professional Services. Except as expressly set forth herein, no express or implied license or right of any kind is granted to you regarding the Services or Professional Services, including any right to obtain possession of any software, source code, data or technical material

related to the Services or Professional Services. Any use of the Services other than as specifically authorized herein, including our Acceptable Use Policy, is prohibited and will automatically terminate your rights with respect to your use of the Services and Professional Services.

7.2 You own any information that you provide to us in connection with your use of the Services, such as contact lists (including email addresses and phone numbers of your contacts) and other content (including your website) (collectively, "Customer Data"). You grant us a limited, non-exclusive, royalty-free, worldwide license, with the right to sublicense, use, reproduce, publish, distribute, perform and display your Customer Data in order (a) to provide the Services under this Agreement, (b) to develop services, and (c) to comply with any court order, legal process, law, regulation or any request from a governmental, regulatory or supervisory body. We may use and disclose aggregated data that does not identify Customer or any natural person for our legitimate business purposes, including improvements to the Services, product development, research and marketing.

7.3 You are solely responsible for the accuracy, quality, integrity, legality, reliability and appropriateness of Customer Data, and you are responsible for maintaining, securing and storing your contacts and content in accordance with applicable law and any contractual obligations you may have (including this Agreement).

7.4 If you submit any suggestions, business information, ideas, concepts or inventions or content to us through the Services or otherwise ("Submissions"), you agree that each such Submission is non-confidential for all purposes and you automatically grant, or warrant that the owner of such content or intellectual property has expressly granted, us a non-exclusive, royalty-free, perpetual, irrevocable, worldwide license, with the right to sublicense, to use, reproduce, create derivative works from, modify, publish, edit, translate, distribute, perform and display such Submission in any manner or in any media now known or hereafter created.

## **8. Fees; Payment; Taxes.**



8.1 Fees. In consideration for the Services and Professional Services, you agree to pay us the then-current fees set forth in the "Account" section of your account unless otherwise set forth in an applicable Order Form or Statement of Work ("Fees"). We may change any of our Fees at any time by posting a new pricing schedule to the Services or in your account and/or sending you a notification by email. You are responsible for reviewing the Fees from time to time and remaining aware of the Fees charged by us and any applicable discounts. You acknowledge and agree that our measurements are the definitive measurements for any payment due and owed hereunder.

8.2 Other Billing Arrangements. If you receive the Services by means of one of our resellers or partners (each, a "Reseller"), the Reseller may be responsible for billing you for the Services and you may be subject to a different fee schedule and additional terms and conditions. You are responsible for reviewing your fee schedule and any additional terms and conditions. In the event of any conflict between this Agreement and the Reseller's terms and conditions, this Agreement shall control except with respect to the payment provisions set forth in this Section. If you cease to be a customer of a Reseller, any special pricing, benefits or terms may no longer be available to you. We may rely on information provided by the Reseller, if any, with respect to the status of your account.

8.3 Disputes. Notwithstanding anything set forth herein to the contrary, any disputes about any charges to you under this Agreement or applicable Order Form or Statement of Work must be submitted to us in writing within sixty (60) days of the date such charges are incurred. You agree to waive all disputes not brought within the sixty (60) day period, and all such charges will be final and not subject to challenge.

8.4 Payment. We will charge you the Fees for the Services in advance, unless otherwise set forth in an applicable Order Form. We will charge you the Fees for Professional Services as set forth in an applicable Statement of Work. Payment shall be made by a payment method accepted by us. Fees are only payable in the currencies made available to you when you purchase the Services or as set forth in the applicable Order Form or Statement of Work. Checks (including e-checks or those sent by mail) may be accepted for

prepayments of at least six (6) months. If you are paying by credit card, (a) you hereby irrevocably authorize us to charge the credit card or other payment method provided for any such amounts when due, (b) amounts due will be automatically charged, (c) if your credit card is declined, we will attempt to reach out to you for a new payment method, and (d) if your credit card expires, you hereby give us permission to submit the credit card charge with a later expiration date. If we fail to resolve an issue with you resulting from a credit card decline or expiration, we may terminate the account due to non-payment. Late payments, including those resulting from credit card declines, may accrue interest at a rate of one and one-half percent (1.5%) per month, or the highest rate allowed by applicable law, whichever is lower. If we must initiate a collections process to recover Fees due and payable hereunder, then we shall be entitled to recover from you all costs associated with such collections efforts, including reasonable attorneys' fees.

**8.5 Taxes.** "Tax" or "Taxes" means all applicable taxes, including indirect taxes such as goods and services tax ("GST"), value added tax ("VAT"), sales tax, fees, duties, levies, or other similar taxes. Unless otherwise stated, any Fees or any other amounts are exclusive of Taxes. In the event that any amount payable by you to us is subject to Taxes, we will collect the full amount of those Taxes from you and the collection shall not reduce or somehow impact the amount to which we are entitled. You must pay any applicable Taxes. In the event that any payments and/or amount payable by you to us is subject to (a) any withholding or similar tax, (b) any Taxes not collected by us, or (c) any other Taxes or other government levy of whatever nature, the full amount of that Tax or levy shall be solely your responsibility and shall not reduce the amount to which we are entitled under this Agreement. You will reimburse us and indemnify and hold us harmless against any and all claims by any competent tax authority related to any Taxes, including withholding or similar Taxes, penalties and/or interest that we may be compelled to pay on account of your non-payment.

## **9. Compliance with Laws.**

9.1 You represent and warrant that your use of the Services, including in connection with Your Products, will comply with all applicable laws and

regulations. You are responsible for determining whether the Services are suitable for you to use in light of your obligations under any applicable laws or regulations. You may not use the Services for any unlawful or discriminatory activities, including acts prohibited by the Federal Trade Commission Act, Fair Credit Reporting Act, Equal Credit Opportunity Act, or other laws that apply to commerce.

9.2 If you collect any personal information pertaining to a minor and store such information within your account, you represent and warrant that you have obtained valid consent for such activities according to the applicable laws of the jurisdiction in which the minor lives.

## **10. Privacy.**

10.1 Privacy Laws. Each party shall comply with all laws and regulations of the relevant jurisdictions that apply to its respective performance of obligations and exercise of rights under this Agreement, including the Regulation (EU) 2016/679 of 27 April 2016, General Data Protection Regulation (the “GDPR”), the California Consumer Privacy Act (the “CCPA”), as amended by the California Privacy Rights Act (the “CPRA”), Brazil’s Lei Geral de Proteção de Dados Pessoais (“LGPD”), and other U.S. federal or state data privacy and data protection laws, and related implementing regulations (collectively, “Data Privacy Laws”).

10.2 Customer Warranties. You warrant that (a) you have complied, and shall continue to comply, with Data Privacy Laws in your collection, processing and provision to us of personal information; and (b) you shall not process any personal information using the Services, or permit us to process any personal information, in breach or contravention of any order issued to, or limitation of processing imposed on, you by any regulatory authority.

10.3. Privacy Notice. Please read our Privacy Notice for information regarding how we collect, use, and disclose your personal information and personal information in Customer Data, and the privacy rights available to you when you use and interact with the Services

10.4 Data Processing Addendum. To the extent we process your contacts' or customers' personal information that is protected by Data Privacy Laws as a processor on your behalf (all as defined in our Data Processing Addendum ("DPA")), you and us will be subject to and comply with the DPA, which is incorporated into and forms an integral part of this Agreement. The DPA sets out our obligations with respect to data protection and security when processing your personal information on your behalf in connection with the Services.

10.5 Sensitive Information. You will not import or incorporate into any contact lists or other content you upload to our servers any of the following information: social security numbers; national insurance numbers; credit card numbers; passwords; security credentials; protected health information; or nonpublic personal information of any kind. If you are a covered entity under the Health Insurance Portability and Accountability Act of 1996 and you believe the content you import to our servers may constitute protected health information due to its association with your account, you should contact us at [legal@constantcontact.com](mailto:legal@constantcontact.com) to request a business associate agreement ("BAA") prior to using the Services with your contacts. Whether or not we enter into a BAA with you, this Agreement, including the prohibition on importing or incorporating nonpublic personal information, remain in effect for your account. You agree not to import or incorporate any protected health information in the Services other than the fact that the individuals on your contact lists may have a relationship with your business.

10.6 Customer Privacy Notice. You will adopt and comply with a legally sufficient "customer privacy notice." Your privacy notice will be posted so that your contacts have notice of your data collection and use practices, including your practices with respect to contact data that you obtain from us, and will otherwise comply with Data Privacy Laws. We have provided you with information regarding our use of contact data in our Customer Contact Data Notice, which may be modified by us from time to time. Your customer privacy notice will either adopt the Customer Contact Data Notice or include substantially similar disclosure (and update such disclosure from time to time) so that your contacts are aware of how their data is used by you and us.



**11. Unsubscribe.** Every email message sent in connection with the Services must contain an “unsubscribe” link that allows contacts to remove themselves from your mailing list and a link to the then-current Customer Contact Data Notice description. Each such link must remain operational for at least sixty (60) days after the date on which you send the message, and must be in form and substance satisfactory to us. You agree that you will not remove, disable or attempt to remove or disable either link. You shall monitor and process unsubscribe requests received by you directly within ten (10) days of submission and update the email addresses to which messages are sent through your account. You cannot charge a fee, require the recipient to give you any personally identifying information beyond an email address, or make the recipient take any step other than sending a reply email or visiting a single page on an Internet website as a condition for honoring an unsubscribe request. As required under the CAN-SPAM Act and other applicable laws, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe requests following termination of your account and this Agreement.

## **12. Term and Termination.**

12.1 Term and Automatic Renewal. The term of this Agreement shall be monthly, or to the extent applicable, the period specified in your Order Form (the “Initial Term”). The Initial Term shall automatically renew for additional monthly periods or as specified in your Order Form (each a “Renewal Term”, and together with the Initial Term, the “Term”).

12.2 Termination. To terminate your account or subscription for any of the Services, you must request termination at least thirty-one (31) days prior to the end of the current Term by calling Customer Support. Except as otherwise agreed to by us in writing, there are no refunds for any pre-paid Fees. We may terminate this Agreement at any time without cause. WE ARE NOT RESPONSIBLE FOR YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND/OR SUBSCRIPTION TO THE SERVICES OR FOR ANY CREDIT CARD OR OTHER CHARGES OR FEES YOU INCUR AS A RESULT OF YOUR FAILURE TO PROPERLY TERMINATE YOUR ACCOUNT AND/OR SUBSCRIPTION.

12.3 Effect of Termination or Expiration. Upon termination or expiration of your account and/or subscription for the Services, this Agreement and any rights or licenses granted to you hereunder shall immediately terminate, except that (a) all sections of this Agreement that by their nature should survive termination will survive termination, including, Sections 7- 10, 12-15, and 19, and (b) you will continue to be responsible for redemption of coupons and fulfillment for Store Content sold or Promotions and Deals run prior to such termination in accordance herewith and any promises you made with respect to the funds associated with any Donation Campaigns. Under the CAN-SPAM Act, Canada's Anti-Spam Legislation and the GDPR, as applicable, you acknowledge that you are responsible for maintaining and honoring the list of unsubscribe requests following termination of your account and/or subscription. If your account is classified (in our sole discretion) as inactive for over 120 days, we have the right to permanently delete any of your contacts and content.

**13. Indemnification.** You hereby agree to defend, indemnify and hold us, our officers, directors, employees, affiliates, subsidiaries, licensors, agents, members, sponsors, investors, agents, and representatives (each, an "Indemnified Party") harmless from any losses, damages, judgments, fines, reasonable attorneys' fees, and costs, in connection with any third party claims arising out of or relating to (a) any actual or alleged breach by you of this Agreement, (b) your contacts and content, including the content or effects of any messages you distribute, websites you publish, events you host, surveys you administer, social media campaigns you publish, or Your Products (including claims relating to violations of law, false advertising, injuries, illness, damages, death, taxes, fulfillment, defective products or services or unclaimed property), or (c) otherwise arises from or relates to your use of the Services. Any settlement that does not fully release the Indemnified Party from liability or which would impose any monetary, injunctive or other obligation or restriction upon the Indemnified Party shall be subject to the Indemnified Party's prior written approval. The Indemnified Party may participate in the defense of the claim with counsel of its choosing at its expense; provided, that if you fail to promptly assume the defense or settlement of the claim, the Indemnified Party may assume sole control of the defense of the claim at your expense.

## 14. Representation and Warranties.

14.1 You represent and warrant that (a) you have all necessary rights and consents to post and distribute Your Products and the Customer Data through the Services, (b) that Your Products and Customer Data will (i) not infringe, misappropriate, or otherwise violate the Intellectual Property Rights or other rights of any third party, (ii) not constitute defamation, invasion of privacy or publicity, or otherwise violate any similar rights of any third party, (iii) not be used in any activity in violation of the law or to promote such activities, including a manner that might be illegal or harmful to any person or entity, and (iv) comply with applicable industry standards, and (c) that your use of the Services will not violate any rules, restrictions, policies, or requirements of your email service provider, internet service provider or other applicable service provider.

### 14.2 Warranty Disclaimer; Remedies; Release.

(i) YOU EXPRESSLY AGREE THAT THE SERVICES (INCLUDING ANY CUSTOM SERVICE OFFERINGS) ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. USE OF THE SERVICES, INCLUDING IN CONNECTION WITH YOUR PRODUCTS, AND ANY RELIANCE BY YOU UPON THE SERVICES, INCLUDING ANY ACTION TAKEN BY YOU BECAUSE OF SUCH USE OR RELIANCE, IS AT YOUR SOLE RISK. WE DO NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR COMPLETELY SECURE, NOR DO WE MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SAME. WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM US IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT.

(ii) NO CLAIM MAY BE ASSERTED BY YOU AGAINST US MORE THAN 12 MONTHS AFTER THE DATE OF THE CAUSE OF ACTION UNDERLYING SUCH CLAIM. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR

NONPERFORMANCE OF THE SERVICES SHALL BE FOR US TO USE COMMERCIALY REASONABLE EFFORTS TO ADJUST OR REPAIR THE SERVICES.

(iii) TO THE EXTENT APPLICABLE LAW PERMITS, YOU RELEASE US FROM ANY CLAIMS OR LIABILITY RELATED TO (A) YOUR PRODUCTS, (B) ANY CONTENT POSTED ON OUR SERVICES OR IN ANY MATERIALS YOU SEND USING THE SERVICES, AND (C) ANY PROBLEMS THAT MAY ARISE FROM ANY REMOTE ACCESS TO YOUR COMPUTERS OR OTHER SYSTEMS YOU PROVIDE TO OUR PERSONNEL OR AGENTS FOR THE PURPOSE OF TROUBLESHOOTING ISSUES. YOU HEREBY WAIVE CALIFORNIA CIVIL CODE SECTION 1542 (IF YOU ARE A CALIFORNIA RESIDENT), AND ANY SIMILAR PROVISION IN ANY OTHER JURISDICTION (IF YOU ARE A RESIDENT OF SUCH JURISDICTION).

## **15.Limitation of Liability.**

15.1 EXCEPT WITH RESPECT TO DEATH OR PERSONAL INJURY DUE TO OUR GROSS NEGLIGENCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL CONSTANT CONTACT OR ANY OF ITS UNDERLYING SERVICE PROVIDERS, BUSINESS PARTNERS, ACCOUNT PROVIDERS, LICENSORS, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, DISTRIBUTORS OR AGENTS (COLLECTIVELY REFERRED TO FOR PURPOSES OF THIS SECTION AS "CONSTANT CONTACT") BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY MONEY DAMAGES, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF CONSTANT CONTACT SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY, AND REGARDLESS OF THE FORM OF ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), THE MAXIMUM AGGREGATE LIABILITY TO YOU ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT YOU PAID FOR THE APPLICABLE SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE ACCRUAL OF THE APPLICABLE CLAIM, LESS ANY DAMAGES PREVIOUSLY PAID BY US TO YOU IN THAT TWELVE (12) MONTH PERIOD. SOME JURISDICTIONS DO NOT



ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

15.2 You agree that we have set our Fees and entered into this Agreement in reliance upon the disclaimers of warranty and the limitations of liability set forth herein, that they reflect an allocation of risk between the parties (including the risk that a contract remedy may fail of its essential purpose and cause consequential loss), and that they form an essential basis of the bargain between the parties.

**16.Restricted Persons;** Export of the Services or Technical Data.The Services are subject to export control and economic sanctions laws and regulations administered or enforced by the U.S. Department of Commerce, U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), U.S. Department of State, and other U.S. authorities (collectively, "U.S. Trade Laws"). You may not use the Services to export or re-export, or permit the export or re-export, of software or technical data in violation of U.S. Trade Laws. In addition, by using the Services, you represent and warrant that you are not (a) an individual, organization or entity organized or located in a country or territory that is the target of OFAC sanctions (including Cuba, Iran, Syria, North Korea, or the Crimea region of Ukraine), (b) designated as a Specially Designated National or Blocked Person by OFAC or otherwise owned, controlled, or acting on behalf of such a person, (c) otherwise a prohibited party under U.S. Trade Laws, or (d) engaged in nuclear, missile, chemical or biological weapons activities to which U.S. persons may not contribute without a U.S. Government license. Unless otherwise provided with explicit written permission, we do not register, and prohibit the use of any of the Services in connection with, any Country-Code Top Level Domain Name ("ccTLD") for any country or territory that is the target of OFAC sanctions.

## **17.Third Party Websites and Services.**

17.1 The Services contain links to websites operated by third parties, including our partners and Resellers and third-party suppliers and providers, which may include marketing and advertising services, social bookmarking services,

social network platforms, publication and delivery services, payment processing services and other payment intermediaries or websites (each, a "Third Party Service"), some of which may have established relationships with us and some of which may not. We do not have control over the content and performance of Third Party Services. We have not reviewed, and cannot review or control, the material, including computer software or other goods or services, made available on Third Party Services, and we do not represent, warrant, or endorse any Third Party Services, or the accuracy, currency, content, fitness, lawfulness, or quality of the information, material, goods, or services available through Third Party Services. We disclaim, and you agree to assume, all responsibility and liability for any damages or other harm, whether to you or to third parties, resulting from your use of Third Party Services. We may terminate any Third Party Services' ability to interact with the Services at any time, with or without notice, and in our sole discretion, with no liability to you or to any third party.

17.2 You agree to abide by the terms and conditions of any applicable Third Party Service (including Facebook, Paypal, Google and Apple).

Notwithstanding anything set forth herein to the contrary, you will abide by this Agreement regardless of anything to the contrary in your agreement with any third party and you shall not use such Third Party Service to avoid the restrictions set forth in this Agreement

## **18. Notice and Take Down Procedures.**

18.1 If you believe any materials accessible on or from the Services infringe your copyright or other intellectual property, you may request removal of those materials (or access thereto) from the Services by contacting our copyright agent (identified below) and providing the following information:

- (i) Identification of the copyrighted work that you believe to be infringed. Please describe the work, and where possible include a copy or the location (for example, the URL) of an authorized version of the work.
- (ii) Identification of the material that you believe to be infringing and its location. Please describe the material, and provide us with its URL or any other pertinent information that will allow us to locate the material.

- (iii) Your name, address, telephone number and (if available) email address.
- (iv) A statement that you have a good faith belief that the complaint of use of the materials is not authorized by the copyright owner, its agent, or the law.
- (v) A statement that the information that you have supplied is accurate, and indicating that "under penalty of perjury," you are the copyright owner or are authorized to act on the copyright owner's behalf.
- (vi) A signature or the electronic equivalent from the copyright holder or authorized representative.

Our agent for copyright issues relating to the Services is as follows:

Compliance Manager

Constant Contact, Inc.

1601 Trapelo Road

Waltham, MA 02451

Phone: (781) 472-8100

Email:DMCA@constantcontact.com

For all email submissions please include the subject line: DMCA Takedown Request.

18.2 In an effort to protect the rights of copyright owners, we maintain a policy for the termination, in appropriate circumstances, of our customers who are repeat infringers.

## **19.Miscellaneous.**

19.1 Full Force and Effect. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable.

19.2 Entire Agreement. Each party agrees that this Agreement, together with any Order Form or Statement of Work entered into by the parties, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of

this Agreement and any Order Form or Statement of Work entered into by the parties pertaining to such subject matter, and that all waivers and modifications must be in writing signed by both parties, except as otherwise provided herein. However, in the event of a conflict between the provisions of this Agreement and any Order Form or Statement of Work entered into by the parties, the terms of such Order Form or Statement of Work, as applicable, shall prevail. No delay or omission by either party in exercising any right or remedy under this Agreement, an Order Form or Statement of Work, or existing at law or equity shall be considered a waiver of such right or remedy.

19.3 Assignment. You may not assign any of your rights hereunder. We may assign all rights to any other individual or entity in our sole discretion.

19.4 Further Assurances. You agree to execute any and all documents and take any other actions reasonably required or necessary to effectuate the purposes of this Agreement.

19.5 Force Majeure. We are not liable for any failure, default or delay in the performance of any part of the Services or of our obligations under this Agreement if such default or delay is caused, directly or indirectly, by forces beyond our reasonable control, including fire, flood, acts of God, changes to law or regulations, embargoes, labor disputes, accidents, insurrection, epidemic, pandemic, acts of war (declared or undeclared) or terrorism, riots, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for us to perform our obligations hereunder, including acts of hackers or third-party internet service providers.

19.6 Third Party Beneficiaries. Our affiliates, underlying service providers, business partners, third-party suppliers and providers, account providers, licensors, officers, directors, employees, distributors and agents are expressly made third party beneficiaries of this Agreement. Except as set forth in the immediately preceding sentence, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective permitted successors or assigns of the



parties, any rights, remedies, obligations or liabilities whatsoever.

19.7 Titles. The titles of the paragraphs of this Agreement are for convenience only and have no legal or contractual effect.

19.8 Relationship of the Parties. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties. Neither party, by virtue of this Agreement, will have any right, power, nor authority to act or create an obligation, express or implied, on behalf of the other party.

19.9 Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover its costs and attorneys' fees.

19.10 Governing Law and Legal Actions. You hereby submit to the exclusive jurisdiction of the American Arbitration Association ("AAA") in connection with any dispute relating to, concerning or arising out of this Agreement, whether in contract, tort, fraud, misrepresentation or any other legal theory. The arbitration will be conducted before a single arbitrator and will be held at the AAA location in Boston, Massachusetts, unless you are a "consumer" as defined under the AAA rules. Disputes with consumers, as therein defined, will be resolved by binding arbitration conducted under the AAA's Consumer Arbitration Rules, as applicable. Consumers may request that the arbitration occur in or near the city/state stated in your account record with us. The procedures for commencing an arbitration are available [here](#) (provided however, that you may assert claims in small claims court, if your claims qualify and so long as the matter remains in such court only on an individual, non-class basis).

ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER CUSTOMERS, SUBSCRIBERS OR USERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. Only a court, and

not an arbitrator, shall determine the validity and effect of the class action waiver. Even if all parties have opted to litigate a claim in court, you or we may elect arbitration with respect to any claim made by a new party or any new claims later asserted in that lawsuit. Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules, unless otherwise stated in this Section. In the event you are able to demonstrate that the costs of arbitration will be prohibitive as compared to the costs of litigation, we will pay as much of your filing, administrative, and arbitrator fees in connection with the arbitration as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive. No arbitration award or decision will have any preclusive effect as to issues or claims in any dispute with anyone who is not a named party to the arbitration. If you initiate a litigation or any other proceeding against us in violation of this paragraph, you agree to pay our reasonable costs and attorneys' fees incurred in connection with its enforcement of this paragraph. The parties shall maintain the confidential nature of the arbitration proceeding and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. This Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, exclusive of conflict or choice of law rules. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted pursuant to the terms of this Agreement shall be governed by the Federal Arbitration Act (9 U.S.C., Secs. 1-16).

19.11 Equitable Relief. Your violation of this Agreement may cause irreparable harm to us. Therefore, we have the right to seek injunctive relief or other equitable relief if you violate this Agreement.

19.12 Additional Information. If you have any questions about the rights and restrictions above, or would like to report any inaccuracies or errors, please

contact us by email at [legal@constantcontact.com](mailto:legal@constantcontact.com).

## 20. Additional Terms.

- [Accessibility Statement](#)
- [Cookie Notice](#)
- [Information Security Policy](#)
- [Website Builder Terms](#)

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