

Client Subscription Terms

This subscription agreement (the “**Agreement**”) is between SharpSpring Technologies, Inc. (“**SharpSpring**” or “**Company**”) and each client (the “**Client**”) of a premium partner identified in the SaaS (defined below). The parties agree as follows.

1. This Agreement describes the terms applicable for a Client of a premium SharpSpring agency partner (“**Partner**”). Partner shall agree and accept the SharpSpring Partner Terms agreement in conjunction with Client’s use of the SaaS and Partner’s use of the SaaS on behalf of a Client.

2. SaaS. “**SaaS**” means the SharpSpring software-as-a-service marketing automation and SharpSpring Mail+ technology platforms, which are provided as software as a service, hosted by SharpSpring.

3. Grants and Restrictions.

3.1. Grant of Access to SaaS Service. Company hereby grants Client a limited, non-exclusive, revocable, non-transferable (subject to Section 13.1 (Assignment)), worldwide right to use the SaaS only for Client’s internal business purposes, and subject to the terms of this Agreement.

3.2. Field of Use Restriction. Client’s use of the SaaS is limited to the Field of Use specified in this Agreement (the “Field of Use”). Any use beyond the Field of Use is outside the scope of this Agreement, and shall be negotiated as an amendment to this Agreement or a separate agreement between Company and Client.

3.3. No Sublicensing. Client shall not license, sublicense, sell, resell, transfer, assign, distribute, or otherwise make available to any third party the SaaS.

3.4. No Modifications. Client shall not modify or make derivative works based upon the SaaS.

3.5. No Unauthorized Access. Client shall not exceed any access Company allows it, access Company services or resources without Company’s authorization, or reverse engineer the SaaS. Breach of this section may violate the Computer Fraud and Abuse Act, Economic Espionage Act, or other laws.

3.6. No Intellectual Property License. Although Client may access and use the SaaS under the terms and conditions of this Agreement, this Agreement does not convey any Intellectual Property Rights to Client, either by license or by assignment. Company owns all right, title, and interest, including all related Intellectual Property Rights, in and to the SaaS. This Agreement is not a sale, and does not convey any ownership rights in the SaaS (including its underlying software). “**Intellectual Property Rights**” means patent rights, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and trade secret rights, and all other intellectual property rights, derivatives of those rights, and other forms of protection of a similar nature.

3.7. License To Company of Client Marks. Client hereby grants Company a limited, personal, nontransferable, royalty-free license during the Term to link to, download, and reproduce those trademarks Client posts to its website in the normal course of business, and to identify Client and display Client’s trademarks in Company’s marketing materials and the portions of Company’s website relating to its Clients. Client may at any time opt out of this Section 3.7 (License To Company of Client Marks) by emailing notice to Client’s Client Success Manager, after which Company will remove any posted materials in a commercially reasonable timeframe.

4. Fees. Company shall collect payment for Client’s use of the SaaS from Partner. Partner shall promptly pay for all SaaS charges, including any volume-based or incremental optional charges incurred by Client. In the even that Company is unable to collect amounts owed by Partner, Client shall pay for all SaaS charges owed by Partner to Company related to Client’s use of the SaaS, including volume-based charges and

license fees at Company's then-current direct customer pricing. Client acknowledges that payments made by Client to Partner do not provide Client with any right of refund from Company and does not obligate Company to continue to provide the SaaS to Client in the event that Partner does not provide timely payment to Company.

5. Client Data. "**Client Data**" means any data, information, or material that Client provides to the SaaS. Company does not own Client Data. Client Data is Client's proprietary and confidential information, and will not be accessed, used, or disclosed by Company except for the limited purpose of supporting Client's use of the SaaS or as described in Section 15 (Legal Disclosures). Notwithstanding the forgoing, Client grants to Company, and Company accepts from Client, a non-exclusive, limited license to study Client Data and to use data to develop better algorithms for the SaaS ("Algorithms"), and for additional products and/or features developed by the Company. Under no circumstances shall Company have any right to include or incorporate any personally identifiable information in the Algorithms or to disclose to any third party any personally identifiable information. Client is solely responsible for the accuracy, legality, reliability, and intellectual property ownership of the Client Data. Company is not obligated to provide Client a way to download or otherwise export Client Data out of the SaaS. Company may access Clients' data and may discuss Client's data with Partner for the purpose of providing the SaaS, and for any other purpose Company deems necessary.

5.1. Transfer of Client Data. Company agrees not to intentionally solicit Client to become a direct customer of Company. However, if Client approaches Company, Company may engage that Client directly. In such cases, at Client's request, Company may transfer Client data from a Partner account to enable Client to continue using the SaaS as a direct customer.

6. Client Responsibilities. Client is responsible for all activity occurring under Client user accounts, and will abide by all applicable laws, treaties, and regulations in connection with its use of the SaaS. Client's administrators shall have the authority to act on behalf of Client to perform administrative duties, enter into binding agreements and accept charges. If Partner has administrative duties for Client, Partner has explicit authority to act in such capacity.

7. No Spam.

7.1. Spam Definition. "**Spam**" means unsolicited bulk email, as defined in more detail by Spamhaus: <http://www.spamhaus.org/consumer/definition/>. This definition is intentionally broader than those used in certain laws, including the CAN-SPAM Act of 2003 (15 U.S.C. 7701 et seq.), California law (Cal. Bus. Prof. Code 17529 et seq.), and Canadian law (S.C. 2010, c. 23).

7.2. Spam Policy. SharpSpring does not tolerate sending Spam through its SaaS. Client agrees not to use the SaaS to send Spam, and acknowledges that sending Spam is a material breach of this Agreement for which immediate termination is appropriate (see Section 10.1 (Early Termination)), and that Company may immediately suspend Client's account for sending Spam. Company will not make any refunds, full or partial, if it terminates Client for non-compliance with this spam policy.

7.3. Spam Laws. Client agrees that it is solely responsible for remaining in compliance with applicable Spam laws such as the CAN-SPAM Act of 2003, the Canadian Anti-Spam Legislation (CASL) and other applicable laws. The SaaS is designed to provide Client with the ability to remain in compliance with such laws through the use of its features. Additional information on using the SaaS and compliance with anti-spam laws can be found in the Springboard section of the SaaS.

7.4. Email Filtering. Company may filter out and not deliver Client emails it believes, in its discretion, may harm the reputation of its SaaS, email service, or IP addresses. If emails are not delivered for this reason, non-delivered emails shall count toward Client's monthly charges as though they were delivered.

8. Separate Website Agreements. In addition to this Agreement, Client is also bound by Company's separate website agreements: the "**Terms of Service**" (located at <http://sharpspring.com/legal/terms-of->

service/), and the “**Privacy Policy**” (located at <http://sharpspring.com/legal/privacy/>). If there is any conflict between agreements, the terms of this Agreement shall prevail.

9. No Equipment. Client shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Service, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (“**Equipment**”). Client shall also be responsible for maintaining the security of the Equipment, Client account, passwords (including but not limited to administrative and user passwords), and files, and for all uses of Client account or the Equipment with or without Client’s knowledge or consent.

10. Term and Termination.

10.1. Term. This Agreement shall start on the date Client is added to the SaaS and shall be effective until Client is removed from the SaaS. Company may remove Client from the SaaS due to abuse of the SaaS, non-payment by Partner or for any other reason as determined solely by the Company.

10.2. Surviving Terms. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

11. Support Terms.

11.1. Company will provide technical support to Partner via both telephone and electronic mail on weekdays during the hours of 9:00 am through 5:00 pm Eastern time, with the exclusion of Federal Holidays (“**Support Hours**”). Client must seek technical support from Partner.

12. Notifications and Service Messages. For purposes of service messages and notices about the SaaS, Company may place a banner notice across its pages to alert you to certain changes such as modifications to this Agreement. Alternatively, notice may consist of an email from Company to an email address associated with your account, even if we have other contact information. You also agree that Company may communicate with you through your account or through other means including email, mobile number, telephone, or delivery services including the postal service, about your account or services associated with Company. You acknowledge and agree that we shall have no liability associated with or arising from your failure to maintain accurate contact or other information, including, but not limited to, your failure to receive critical information about the SaaS.

13. Assignment and Change of Control.

13.1. Assignment. This Agreement is not assignable, transferable, or sublicensable by Client except with Company’s prior written consent. Company may transfer and assign any of its rights and obligations under this Agreement without consent.

13.2. If Company gives consent to any assignment, Client’s assignee shall be deemed a “**New Party**”.

13.3. If Client undergoes a Change of Control, its acquirer or successor shall be deemed a New Party. “**Change of Control**” means the sale of more than 50% of a party’s stock, a sale of all or substantially all the assets of a party, or a change in a majority of a party’s board members.

13.4. Any New Party’s use of the SaaS shall be limited to the Field of Use specified in this Agreement. Any use beyond the Field of Use is outside the scope of this Agreement, and shall be negotiated as a separate agreement between Company and the New Party.

14. Referrals. Company may, from time to time, offer referral incentives to Client or individuals associated with Client whereby Company shall offer and provide payments or other incentives upon referrals leading to new sales.

15. Legal Disclosures. Company may disclose information about Client, or Client Data, to third parties if it determines that disclosure is reasonably necessary to comply with the law or an enforceable government request, to protect any person from death or serious bodily injury, to investigate or prevent fraud or abuse of Company or its Clients, or to protect Company's property or other legal rights. Company may in the future publish transparency reports describing requests it receives for Client Data or other Client information.

16. Warranty and Disclaimer. *The SaaS may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Company or by third-party providers, or because of other causes beyond Company's reasonable control, but Company shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption. However, Company does not warrant that the services will be uninterrupted or error free; nor does it make any warranty as to the results that may be obtained from use of the services. Except as expressly set forth in this section, the services and implementation services are provided "as is", and Company disclaims all warranties, express or implied, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose and non-infringement.*

17. Indemnity. Company shall hold Client harmless from liability to third parties resulting from infringement by the SaaS of any United States patent or any copyright or misappropriation of any trade secret, provided Company is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; Company will not be responsible for any settlement it does not approve in writing. The foregoing obligations do not apply with respect to portions or components of the Service (i) not supplied by Company, (ii) made in whole or in part in accordance with Client specifications, (iii) that are modified after delivery by Company, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Client continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Client's use of the SaaS is not strictly in accordance with this Agreement. If, due to a claim of infringement, the SaaS is held by a court of competent jurisdiction to be or are believed by Company to be infringing, Company may, at its option and expense (a) replace or modify the SaaS to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Client a license to continue using the SaaS, or (c) if neither of the foregoing is commercially practicable, terminate this Agreement and Client's rights hereunder and provide Client a refund of any prepaid, unused fees for the SaaS.

18. Limitation of Liability. *Notwithstanding anything to the contrary, except for bodily injury of a person, Company and its suppliers (including but not limited to all equipment and technology suppliers), officers, affiliates, representatives, contractors and employees shall not be responsible or liable with respect to any subject matter of this Agreement or terms and conditions related thereto under any contract, negligence, strict liability or other theory: (a) for error or interruption of use or for loss or inaccuracy or corruption of data or cost of procurement of substitute goods, services or technology or loss of business; (b) for any indirect, exemplary, incidental, special or consequential damages; (c) for any matter beyond Company's reasonable control; or (d) for any amounts that, together with amounts associated with all other claims, exceed the fees paid by Client to Company for the services under this Agreement in the 12 months prior to the act that gave rise to the liability, in each case, whether or not Company has been advised of the possibility of such damages.*

19. Export Regulation. The SaaS, including any software, documentation, and any related technical data included with, or contained in, the SaaS, and any products utilizing any such SaaS, software,

documentation, or technical data (collectively, “**Regulated Items**”) may be subject to US export control laws and regulations, including the Export Administration Regulations and the International Traffic in Arms Regulations. Client shall not, and shall not permit any third parties to, directly or indirectly, export, re-export or release any Regulated Items to any jurisdiction or country to which, or any party to whom, the export, re-export or release of any Regulated Items is prohibited by applicable federal law, regulation, or rule. Client shall be responsible for any breach of this Section 19 (Export Regulation) by its, and its successors’ and permitted assigns’, parent, affiliates, employees, officers, directors, Clients, agents, distributors, resellers or vendors. Client shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, or releasing any Regulated Items.

20. Dispute Resolution.

20.1. Arbitration. Any dispute, claim, or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate (“**Claim**”), shall be determined by arbitration in Gainesville, Florida before one arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction. This clause shall not preclude parties from seeking provisional remedies in aid of arbitration from any federal or state court that has jurisdiction over the subject matter and is located in the state of Florida (“**Court of Competent Jurisdiction**”).

20.2. Restrictions Against Joinder of Claims. *You and Company agree that any arbitration shall be limited to each Claim individually. You and Company hereby agree that each may only bring claims against the other in your or Company’s individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. If this specific provision is found to be unenforceable in a Court of Competent Jurisdiction, the Claim will still be finally and exclusively resolved by binding arbitration upon the election of either party, and any election to arbitrate by one party shall be final and binding on the other(s). In addition: (1) no arbitration shall be joined with any other arbitration, and (2) there is no right for any Claim to be arbitrated on a class-action basis or to employ class action procedures, and (3) there is no right of authority for any dispute to be brought in a purported representative capacity on behalf either of the general public or any other individuals.*

20.3. Attorneys’ Fees. If either party institutes any action, suit, or other legal or administrative proceeding against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys’ fees and court costs from the non-prevailing party.

21. HIPAA. The SaaS utilizes advanced security and data storage protocols designed to protect Client information. The SaaS may be used by businesses governed by HIPAA, however, the SaaS was not designed to be utilized for health records, and was not designed to be HIPAA compliant. Partner and Clients have full responsibility to comply with HIPAA and Partner and Clients agree not to use the SaaS to collect health records.

22. Data Privacy. Company shall maintain commercially appropriate administrative, physical and technical safeguards to protect data in the SaaS. Client agrees that Company may process data in the United States. Company shall comply with applicable data privacy regulations regarding transfer and safe-keeping of data in the SaaS from European Union and other jurisdictions to the United States.

23. General.

23.1. Relationship of the Parties. The parties shall be independent contractors pursuant to this Agreement. 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, or authority to act or create an obligation, express or implied, on behalf of the other party.

23.2. Governing Law. This Agreement shall be governed by laws of Florida, without regard to the choice or conflicts of law provisions of any jurisdiction. The application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act are expressly excluded.

23.3. Construction. This Agreement is the result of negotiations between the parties, and has been reviewed by each of them and their respective counsel, if any. This Agreement will be deemed product of all the parties, not to construed against any of them for playing any greater part in its preparation.

23.4. Amendments and Waivers. No change or amendment to this Agreement, nor any waiver of any rights under this Agreement, shall be effective unless written and signed by the parties. No delay or failure to require performance of any obligation under this Agreement will constitute a waiver, then or in the future.

23.5. Entire Agreement. This Agreement states the entire agreement and understanding of the parties on its subject matter, and supersedes all prior or contemporaneous discussions, understandings, and agreements between the parties, oral or written, on that subject matter.

23.6. Severability. If one or more provisions of this Agreement are held unenforceable, the parties agree to renegotiate those provisions in good faith. If the parties cannot agree on enforceable replacements, then those provisions shall be excluded from this Agreement, the rest of the Agreement shall be interpreted as if the provisions were excluded, and the Agreement shall be enforceable in accordance with its remaining terms.

23.7. Acceptance and Signature. Acceptance of this Agreement shall be made via “click-through” acceptance. Client agrees that the representative accepting this Agreement has the authority to act on behalf of the Client. Additionally, a written or electronically signed copy of this Agreement delivered by fax, electronic mail, or other means has the same legal effect as delivery of a printed and signed original.