

**SMG SERVICES**  
**TERMS OF SERVICE**

**Effective Date:** March 2018

These Terms of Service together with the SMG Privacy Policy ("**Terms**") describe the terms and conditions on which Service Management Group, LLC and its affiliates ("**SMG**" or "we" or "us") offer you access to websites, services and applications, including mobile applications, on or to which these Terms are linked or referenced (collectively, "**SMG Services**").

Before accessing and using SMG Services, read these Terms carefully; they constitute a legal agreement between SMG and you.

BY USING ANY SMG SERVICES, YOU AGREE TO THESE TERMS AND AFFIRM THAT YOU ARE ABLE AND LEGALLY COMPETENT TO DO SO. IF YOU ARE USING SMG SERVICES ON BEHALF OF YOUR EMPLOYER, YOUR ACCEPTANCE OF THESE TERMS IS DEEMED AN AGREEMENT BETWEEN YOUR EMPLOYER AND SMG AND YOU REPRESENT AND GUARANTEE THAT YOU HAVE AUTHORITY TO BIND YOUR EMPLOYER TO THESE TERMS.

**IMPORTANT NOTE:** These Terms contain provisions that limit our liability to you and require you to resolve any dispute with us through final and binding arbitration on an individual basis and not as part of any class or representative action. See "VALIDITY OF CONTRACT, DISCLAIMER OF WARRANTIES & LIMITATIONS OF LIABILITY" (Section 7) and "DISPUTE RESOLUTION" (Section 9) below for more information.

**IF YOU DO NOT AGREE TO ALL OF THE TERMS SET FORTH IN THESE TERMS OF SERVICE AND THE SMG PRIVACY POLICY, YOU MAY NOT USE SMG SERVICES.**

**1. CHANGES TO TERMS**

The Effective Date of these Terms is set forth at the top of this webpage. As we add new features, we may modify these Terms. SMG may modify these Terms at any time by updating the Terms. You are bound by any such modification; therefore, you should visit this page periodically to review these Terms. Your continued use of SMG Services after any modified Terms are posted constitutes your acceptance of the amended Terms. The amended Terms supersede all previous versions of agreements, notices or statements about the Terms, but changes will not apply retroactively.

**2. ADDITIONAL TERMS**

Certain services offered by or through SMG Services, such as mobile applications, sweepstakes, offers contests and other services, may be governed by additional terms and conditions presented in conjunction with them ("Additional Terms"). You must agree to the

Additional Terms before using such services. Any Additional Terms are to be applied in addition to these Terms. If any provision of the Additional Terms conflicts with any provision of these Terms, the Additional Terms will prevail over the inconsistent provision in these Terms solely to the extent of the inconsistency.

### **3. PRIVACY/SECURITY**

Before using the SMG Services, carefully read SMG's Privacy Policy to learn about personal data SMG collects on SMG Services, how we process it and with whom we may share personal data. You can find a copy of SMG's Privacy Policy at:

### **4. SMG CONTENT**

SMG Services, including any information, graphics, images, artwork, text, video clip, data compilations, software, audio clip, trademark, service marks, log, trade names and other content provided on, in or through the SMG Services (collectively, "**SMG Content**") are owned by SMG, our affiliates, partners, licensors or represented companies and protected under both United States and foreign copyright, trademark patent and other laws. Except as set forth in the limited license section below, or as required under applicable law, neither the copyrights, trademarks, other intellectual property nor any portion of SMG Services may be used, reproduced, duplicated, copied, sold, resold, accessed, modified, or otherwise exploited, in whole or in part, for any purpose without our prior written consent. Unauthorised use of SMG Content may violate copyright, trademark and other laws.

If you agree to these Terms (as well as any additional terms and conditions related to specific SMG Content), SMG grants to you a personal, revocable, nonexclusive, nontransferable and limited license (without the right to sublicense) to access and use the SMG Services and download, print and/or copy SMG Content solely for your own personal use and subject to these Terms. You acknowledge that the trade secrets and intellectual property embodied in the SMG Services have not been and will not be licensed or otherwise disclosed to you. You acknowledge that the HTML code SMG creates to generate the pages of the Services are protected by SMG's copyrights. All rights not expressly granted herein are reserved by SMG.

You agree that unless SMG provides you with prior written authorisation to do so, you will not:

- a. incorporate any SMG Content into any other work (such as your own website) or use SMG Content in any public or commercial manner;
- b. change any notice about copyright, trademarks or other intellectual property rights that may be part of the SMG Content; or
- c. "deep link" to any of the SMG Services (i.e. link to any page other than the home page of one of the SMG Services).

Trademarks, logos and service marks (the "Marks") displayed in or through SMG Services are owned by SMG or third parties. You are prohibited from using the Marks without the prior written permission of SMG or such third party. If you would like information about how to obtain SMG's permission to use SMG Content, please send an email to: [privacyofficer@smg.com](mailto:privacyofficer@smg.com).

### **5. USING THE SMG SERVICES**

- 5.1. Eligibility: SMG Services are not intended for use by children who are under the age at which they are legally permitted in their country of residence to provide their consent for their personal data to be processed. If you are under the age of consent in your country, you may not use SMG's Services.

- 5.2. Your Account: You may be required to create an account (“**Account**”) to use certain features of the SMG Services. You agree to provide, maintain and update accurate, current and complete information about yourself. You agree not to impersonate any person or entity or misrepresent your identity or affiliation with any person or entity, including using another person’s username, password, or other account information, or another person’s name, likeness, voice, image or photograph. You further agree to notify us promptly at [privacyofficer@smg.com](mailto:privacyofficer@smg.com) of any unauthorised use of your username, password, other account information, or any other breach of security of which you become aware involving the SMG Services.

**By creating an Account, you agree that SMG may contact you using the email address you provide when activating your Account.**

Do not allow others to use your Account. You are responsible for all use of your Account, including any use by others to whom you have provided access to your Account.

- 5.3. Your Responsibilities:

**Your Agreement to Use SMG Services Only for Lawful Purposes.** You agree that you will use SMG Services for lawful purposes only. You will not use SMG Services in any manner that could damage, disable, overburden or impair SMG’s servers or networks or interfere with any other party’s use and enjoyment of SMG Services.

**Your Agreement Not to Use SMG Services for Unlawful or Unauthorised Purposes.** You further agree that you will not attempt to gain unauthorised access to SMG Services, other users’ Accounts or SMG’s computer systems or networks through hacking, password mining or any other means. Without limiting any of the foregoing, you agree that you shall not (and you shall not encourage or allow any third party to):

- a. copy, modify, adapt, translate, reverse engineer, decode or otherwise attempt to derive or gain access to any portion of the SMG Services or SMG Content;
- b. remove any copyright, trademark or other proprietary rights notices contained in SMG Services or SMG Content;
- c. circumvent, disable, or otherwise interfere with security- or fraud prevention-related features of our Services or features that prevent or restrict use or copying of any SMG Content or enforce limitations on use of our Services or SMG Content;
- d. misuse Services by knowingly introducing viruses, Trojans, worms, logic bombs, spyware, malware, or other malicious or technologically harmful material;
- e. use any robot, spider, site search/retrieval application, or other automated device, process or means to access, retrieve, scrape or index any portion of SMG Services;
- f. rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the SMG Services, or any features or functionality of SMG Services, to any third party for any reason, including by making SMG Services available on a network where it is capable of being accessed by more than one device at any time;
- g. reformat or frame any portion of the web pages that are part of SMG Services;
- h. create more than one Account by automated means or under false or fraudulent pretences; or
- i. collect or store personal data about any other user without his/her prior written consent.

**Consequences for Unauthorised Use or Misuse of the SMG Services.** You agree that your right to use SMG Services will cease immediately upon your violation of any of these rules and that SMG has the discretion to terminate your access to the SMG Services without further notice if you violate any of the requirements or prohibitions set forth in these Terms or in any additional Applicable Terms. You further agree to return or destroy any copies of any Site Materials you have made if we ask you to do so.

Unauthorised use and misuse of the SMG Services are strictly prohibited and, depending on the circumstances, may subject you to a civil claim for damages and/or criminal prosecution. SMG reserves the right to report any breach of these Terms or unauthorised use or misuse of SMG Services to law enforcement authorities. In the event of any unauthorised use or misuse of SMG Services, your right to use SMG Services will cease immediately and SMG may terminate your access to SMG Services without notice.

**Your Responsibility for Charges, Fees and Other Costs related to Use of the SMG Services (including Text Messaging Fees).** You are solely responsible for any and all charges, fees and other costs related to use of SMG Services. If you access and use SMG Services on your smartphone, tablet or other mobile device, you must have wireless service through Wi-Fi or a participating mobile service provider. Certain services may require text messaging (SMS or MMS) capability. You agree that you are solely responsible for all message and data charges you incur from your mobile service provider. We do not impose a separate charge for any text messaging services we may offer but message and data rates may apply. All charges are billed by and payable to your mobile service provider. Contact your mobile service provider for pricing plans and details. SMG is not liable for any delays in delivery of text messages or any failure to deliver text messages because delivery is subject to effective transmission from your mobile service provider. Text messages may not be available in all areas at all times.

**Consequences of Your Agreement to Opt-In to Receive Text Messages.** Once you opt-in to receive text messages from us, the frequency of text messages we send to you will depend on your transactions with us. **By agreeing to receive text messages, you understand and agree that SMG may use an automatic dialling system to deliver text messages to you and further understand that your consent to receiving text messages is not required in order for you to be allowed to purchase any goods or services.**

- 5.4. Submissions. SMG may from time to time offer opportunities for you and other users to voluntarily post or otherwise submit ratings, suggestions, video comments, ideas, notes, concepts or other information or materials to or through SMG Services (collectively, "**Submissions**").

You are and will remain solely responsible for your Submissions and for the consequences of submitting and posting such Submissions. You will be solely liable for any damage resulting from any infringement of copyrights, proprietary rights, or any other harm resulting from your Submissions. When submitting or posting Submissions, you should limit, to the fullest extent possible, the amount of personal data you provide because it may be possible to link Submissions to you based on the details you provide.

By sending, posting or transmitting Submissions to SMG (and/or our designee[s]) or any area of the SMG Services, you automatically grant, or warrant that you or any other owner of the material you submit has expressly granted, SMG and our designees a worldwide,

non-exclusive, sub-licensable (through multiple tiers), transferable, royalty-free, perpetual, irrevocable right to use, reproduce, sublicense (through multiple tiers), distribute, create derivative works of, perform and import your Submissions (in whole or in part) in any media now known or hereafter developed, for any purpose whatsoever, commercial or otherwise, without compensation to you. In other words, SMG has the automatic right to use your Submissions -- including reproducing, disclosing, publishing or broadcasting your Submissions -- anywhere, anytime, in any medium and for any purpose without paying any fee or owing any obligation to you. You also permit any other user to access, view, store, or reproduce your Submission for that user's personal use. You hereby grant SMG (and/or our designees) the right to use any of your Submissions for any purpose anywhere. Under no circumstances are you entitled to any type of payment if SMG (and/or its designee[s]) uses one of your Submissions. All Submissions are deemed non-confidential and non-proprietary.

Submissions you post may be made publicly available. You acknowledge that you have no expectation of privacy with respect to any of your Submissions. You further acknowledge that you make Submissions voluntarily and at your own risk. You should use good judgment when posting information, remarks, or other content regarding SMG, SMG's Clients, or any other entity or person. You may be held legally responsible for any damages suffered by other users, SMG, or third parties as a result of defamatory or otherwise legally actionable Submissions by you. When posting a Submission, you may choose to link the Submission to your username or to a pseudonym unless applicable laws in your country of residence require otherwise.

SMG is not legally responsible for any Submissions made by users even if such Submissions are defamatory or otherwise actionable. SMG is not responsible for and does not endorse, opinions, advice, or recommendations posted or otherwise submitted to or through SMG Services. SMG specifically disclaims any and all liability in connection with such Submissions. SMG does not confirm nor verify qualifications, background, or abilities of users or the information they post to or through any SMG Services. Therefore, SMG urges you to use common sense and good judgment in preparing your Submissions.

By posting a Submission, you agree, represent and guarantee that your Submission:

- a. is true and accurate;
- b. pertains to a designated topic or theme of the SMG Services;
- c. does not infringe, misappropriate or violate any third party's copyright, trademark, patent, literary, trade secret, privacy, publicity, proprietary, contractual or other right;
- d. does not contain information that identifies any person or information that otherwise includes personal data of any person unless you have such person's prior written consent;
- e. does not make unsubstantiated claims about any third party or its products or services;
- f. does not contain any slanderous, defamatory, false, misleading, vulgar, obscene, pornographic, violent, bigoted, sexually explicit, hateful, abusive, threatening, harassing, antisocial, sexually or racially offensive comments or other content that either harms or can be reasonably expected to harm any person or entity;
- g. is not illegal and does not encourage or advocate illegal activity or the discussion of illegal activities with the intent to commit them;
- h. is not commercial or business-related and does not advertise or offer to sell any products or services (whether or not for profit), or solicit others (including solicitations for donations and contributions);

- i. does not contain a virus or other harmful component, or otherwise tamper with, impair or damage SMG Services or any connected network, or otherwise interfere with any person or entity's use and enjoyment of the SMG Services; and
- j. complies with all applicable laws, regulations, rules, policies and contractual terms pertaining to your Submission, as well as to SMG Services to or through which you are posting or otherwise providing your Submission, including age restrictions.

You acknowledge and agree that SMG has the right, but not the obligation, to alter, remove or refuse to post or allow to be posted any Submission. SMG takes no responsibility and assumes no liability for any Submission posted by you or any third party. SMG cannot and does not ensure that all users are complying with these provisions and, as between you and SMG, you hereby assume all risk of harm or injury resulting from any such lack of compliance.

SMG strongly encourages you to minimise the disclosure of any personal data in your Submissions because other people can see and use the personal data in your Submissions. SMG is not responsible for information you choose to communicate via Submissions.

## **6. THIRD-PARTY SITES & SERVICES**

The SMG Services may contain links to third-party websites and services, including social media (collectively, "**Linked Services**"). Linked Services are not under the control of SMG and SMG is not responsible for Linked Services or for any information or materials on, or any form of transmission received from, any Linked Service. The inclusion of a link does not imply endorsement by SMG of the Linked Service or any association with the operators of the Linked Service. SMG does not investigate, verify or monitor Linked Services. SMG provides links to Linked Services for your convenience only. You access Linked Services at your own risk.

## **7. VALIDITY OF CONTRACT, DISCLAIMER OF WARRANTIES & LIMITATIONS OF LIABILITY**

SMG warrants that SMG has validly entered into these Terms and has the legal power to do so. You warrant that you have validly entered into these Terms and have the legal power to do so.

**EXCEPT AS EXPRESSLY PROVIDED ABOVE, THE SMG SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED.**

SMG makes no representations or warranties about the accuracy, reliability, completeness, or timeliness of the SMG Content or the results to be obtained from using SMG Services and SMG Content. Use of SMG Services and Content is at your own risk. Changes are periodically made to SMG Services and SMG Content. These changes can be made at any time. Some content within SMG Services may be provided by third parties. SMG is not responsible for any such third-party content.

SMG SERVICES AND SMG CONTENT ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SMG SPECIFICALLY DISCLAIMS ALL GUARANTEES AND CONDITIONS OF ANY KIND, INCLUDING ALL IMPLIED GUARANTEES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-

INFRINGEMENT OF PROPRIETARY OR THIRD PARTY RIGHTS, FREEDOM FROM DEFECTS, UNINTERRUPTED USE AND ALL GUARANTEES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE.

SMG DOES NOT GUARANTEE THAT (A) SMG SERVICES WILL MEET YOUR REQUIREMENTS, (B) OPERATION OF SMG SERVICES WILL BE UNINTERRUPTED OR VIRUS OR ERROR-FREE OR (C) ERRORS WILL BE CORRECTED. IF YOUR USE OF SMG SERVICES OR SMG CONTENT RESULTS IN THE NEED FOR SERVICING OR REPLACING EQUIPMENT, OR LOSS OF PROFITS OR DATA, SMG WILL NOT BE RESPONSIBLE FOR THOSE COSTS. ANY ORAL OR WRITTEN ADVICE PROVIDED BY SMG OR ITS AUTHORISED AGENTS DOES NOT AND WILL NOT CREATE A GUARANTEE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED GUARANTEES WHICH MEANS THAT SOME OR ALL OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

**YOUR USE OF SMG SERVICES IS AT YOUR OWN RISK.** If you are dissatisfied with SMG Services, including any content of SMG Services, your sole remedy is to discontinue use of SMG Services.

YOU AGREE THAT IN NO EVENT WILL SMG OR ANY THIRD PARTIES REFERENCED ON ANY OF THE SMG SERVICES BE LIABLE (A) FOR DAMAGES OF ANY KIND, INCLUDING DIRECT, INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR ANY OTHER TYPE OF DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, LOSS OF USE, DATA OR PROFITS, OR BUSINESS INTERRUPTION), HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY ARISING IN ANY WAY IN CONNECTION WITH THESE TERMS OR THE USE OR INABILITY TO USE SMG SERVICES AND THEIR CONTENT, WHETHER BASED IN GUARANTEE, CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE OR OTHERWISE), OR ANY OTHER LEGAL THEORY EVEN IF SMG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, OR (B) FOR ANY OTHER CLAIM, DEMAND OR DAMAGES WHATSOEVER RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF SMG SERVICES. THIS DISCLAIMER OF LIABILITY DOES NOT APPLY TO LIABILITY RESULTING FROM OUR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AND WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW.

IF FOR ANY REASON THE DISCLAIMERS OF GUARANTEES OR LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 7 IS/ARE INAPPLICABLE OR UNENFORCEABLE FOR ANY REASON, SMG'S MAXIMUM LIABILITY FOR ANY TYPE OF DAMAGES HEREUNDER SHALL BE LIMITED TO \$1,000.

**You acknowledge and agree that the above asserted limitations of liability, together with the other provisions in these Terms that limit liability, are essential terms and that SMG would not be willing to grant you the rights set forth in these Terms but for your agreement to the above asserted limitations of liability.**

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE YOUR RIGHTS WITH RESPECT TO 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 FAVOUR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## **8. INDEMNIFICATION**

You agree, at your own expense, to defend, indemnify and hold harmless SMG and its clients, directors, officers, employees and agents from and against all losses, liabilities, claims, actions or demands, including without limitation, any money damages, expenses, costs of defence, including reasonable attorneys' and accounting fees, brought against SMG by any third party arising from (a) your Submissions, (b) your use of SMG Services or (c) your violation of any of these Terms, the rights of a third party or applicable law. This indemnification provision does not apply to the extent prohibited by applicable law. SMG reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification hereunder. No settlement that affects the rights or obligations of SMG may be made without SMG's prior written approval.

## **9. DISPUTE RESOLUTION**

Except for any disputes relating to intellectual property rights or obligations, or any infringement claims, which shall be governed by U.S. federal law, any disputes between you and SMG arising from, or relating to these Terms shall be governed by and construed and enforced in accordance with the laws of the State of Missouri (United States) regardless of your country of origin or where you access the Services and notwithstanding any conflicts of law principles. All such disputes shall be construed in accordance with the laws of Missouri applicable to contracts entered into and performed within the State of Missouri. You and SMG agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the interpretation or construction of these Terms.

**YOU AND SMG AGREE THAT EACH 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.**

**YOU AND SMG AGREE THAT ALL CLAIMS WILL BE RESOLVED BY BINDING ARBITRATION IN THE MANNER SPECIFIED IN THIS SECTION 9 AND THAT YOU AND SMG WAIVE ANY RIGHT TO BRING SUCH CLAIMS BEFORE ANY COURT OF LAW. RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT, SUCH AS ACCESS TO DISCOVERY, MAY BE UNAVAILABLE OR LIMITED IN ARBITRATION.**

Any dispute between you and SMG and its agents, employees, officers, directors, principals, successors, assigns, subsidiaries or affiliates arising from or relating to these Terms and their interpretation or the breach, termination or validity thereof, the relationships which result from these Terms, including disputes about the validity, scope or enforceability of these Terms to arbitration (collectively, "**Covered Disputes**") will be subject to binding arbitration in the State of Missouri administered by the American Arbitration Association (AAA) in accordance with its rules (including its rules and procedures for consumer-related disputes) in effect on the date thereof. Prior to initiating any arbitration, the initiating party will give the other party at least 60 days' advanced written notice of its intent to file for arbitration. SMG will provide such notice by email to the email address you provided when you created your account or by email to an email address you have otherwise provided to SMG; you must provide such notice to SMG by email at [privacyofficer@smg.com](mailto:privacyofficer@smg.com).

Payment of all filing, administration and arbitrator fees will be governed by the AAA's rules. If, however, you are able to demonstrate that the costs of arbitration will be prohibitive for you as compared to the costs of litigation, SMG will pay as much of the filing, administration and arbitrator fees as the arbitrator deems necessary to prevent the arbitration from being cost-prohibitive for you. If the arbitrator determines the claim(s) you assert in the arbitration are



frivolous, you agree to reimburse SMG for all fees associated with the arbitration that SMG paid on your behalf which you otherwise would be obligated to pay under the AAA's rules.

A single arbitrator will be selected in accordance with the AAA Commercial Arbitration Rules. The arbitration shall be conducted in the English language. The arbitrator will have the power to grant whatever relief would be available in court under law or in equity and any award of the arbitrator will be final and binding on each of the parties and may be entered as a judgment in any court of competent jurisdiction. The arbitrator will not, however, have the power to award punitive or exemplary damages, the right to which each party hereby waives. The arbitrator will apply applicable law and the provisions of these Terms; the failure to do so will be deemed an excess of arbitral authority and grounds for judicial review. The arbitrator's decision must be with written explanation and remain confidential. SMG and you agree that any Covered Dispute will be submitted to arbitration on an individual basis only. **NEITHER SMG NOR YOU ARE ENTITLED TO ARBITRATE ANY COVERED DISPUTE AS A CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION AND THE ARBITRATOR WILL HAVE NO AUTHORITY TO PROCEED ON A CLASS, REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL BASIS.** If any provision of the agreement to arbitrate in this Section 9 is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced (but in no case will there be a class, representative or private attorney general arbitration). Regardless of any statute or law to the contrary, notice on any claim arising from or related to these Terms must be made within one (1) year after such claim arose or be forever barred. For purposes of this Section 9, these Terms and related transactions will be subject to and governed by the Federal Arbitration Act, 9 U.S.C. sec. 1-16 (FAA).

**Note:** By agreeing to these Terms, you explicitly agree that any claims or actions that you may otherwise have against SMG under the laws of any jurisdiction outside the United States are hereby waived, including without limitation, any claims or actions under the laws of your own country and that your sole location and applicable law for any disputes is in the United States according to the terms of this Section 9.

## **10. REWARDS**

From time to time, SMG may offer you the opportunity to receive rewards, such as reward points, discounts or special offers (collectively, "**Rewards**"). We will notify you when Rewards are available to you through SMG Services. The benefit of the Rewards may differ as may the validity period, so check the details of each Reward when you receive it. For SurveyMini, after ninety (90) days of inactivity, your rewards points will expire. Your Rewards are for your personal use. You may not transfer, assign, sell, trade or barter your Rewards. Unless required by law, Rewards are not redeemable for cash and may not be combined with any other SMG or client promotion, offer or other discount. No credits or refunds will be issued for any reason after you redeem your Rewards. SMG reserves the right to modify, terminate or suspend the availability of Rewards. You agree to be bound by the decisions of SMG, which are final and binding in all matters relating to the Rewards.

## **11. UPDATES TO MOBILE APPLICATIONS**

We may from time to time (at our sole discretion) develop and provide updates for our mobile applications, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, "**Updates**"). Updates may also modify or delete in their entirety certain features and functionality. You agree that SMG has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality.

Based on your mobile device settings, when your mobile device is connected to the Internet either: (a) the Updates will automatically download and install; or (b) you may receive notice of or be prompted to download and install available Updates.

Promptly download and install all Updates. If you do not, portions of SMG Services may not properly operate. You further agree that all Updates will be deemed part of SMG Services and be subject to all terms and conditions of these Terms.

## **12. ELECTRONIC CONTRACTING**

Your affirmative act of using and/or registering for SMG Services constitutes your consent to enter into agreements with us electronically.

## **13. GEOGRAPHIC RESTRICTIONS/EXPORT CONTROLS**

SMG Services and SMG Content are based in the State of Missouri in the United States and although each may be provided for access and use by persons located outside the United States, you acknowledge that for legal or operational reasons you may not be able to access SMG Services or SMG Content in your jurisdiction. If you access SMG Services or SMG Content from outside the United States, you are responsible for compliance with local laws, including local laws regarding the import, export, or re-export of SMG Content.

SMG Services may be subject to export control laws in certain countries, including the US Export Administration Act and its associated regulations. You agree you will comply with such laws and regulations and you will not, directly or indirectly, export, re-export or release SMG Services to, or make SMG Services accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You further agree you will 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, releasing or otherwise making SMG Services available outside the US. Additionally, by downloading any SMG Content, you are agreeing that you are not in a country to which such export is prohibited and you are not on the U.S. Commerce Department's Table of Denial Orders or the U.S. Treasury Department's list of Specially Designated Nationals.

## **14. US GOVERNMENT RIGHTS**

SMG Services are commercial computer software, as defined in 48 C.F.R. §2.101. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the SMG Services as are granted to all other users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

## **15. TERMINATION**

At its sole discretion, SMG may modify or discontinue SMG Services, or may modify, suspend, or terminate your account or your access to SMG Services, with or without notice to you, at any time for any reason, without liability to you or any third party. For example, your Account may be terminated and your access to SMG Services denied, with or without notice, if SMG has reason to believe you are a minor. As another example, SMG may terminate your Account and your ability to use SMG Services, with or without notice, if SMG has reason to believe that you have provided untrue, incomplete or inaccurate information, or have otherwise failed to comply with these Terms or any applicable Additional Terms.

You agree to return or destroy any copies of any Site Materials you have made if we ask you to do so.

Termination will not limit any of SMG's other rights or remedies. These Terms will expressly survive and will still be in effect, despite any such modification, discontinuation, suspension and/or termination.

## **16. CLAIMS OF COPYRIGHT INFRINGEMENT**

SMG respects intellectual property rights of others. We respond to notices of alleged infringement as required by the US Digital Millennium Copyright Act ("**DMCA**"), including, where appropriate, by removing or disabling access to material claimed to be the subject of infringing activity.

If you have a good faith belief that your work has been copied in a way that constitutes copyright infringement or that your intellectual property rights otherwise have been violated in or through SMG Services, send your claim or notice of infringement to our DMCA agent, either by post:

DMCA Agent  
Service Management Group, LLC  
1737 McGee Street  
Kansas City, MO 64108

Or sending an email to:

[privacyofficer@smg.com](mailto:privacyofficer@smg.com)

Your notification must include the following information:

- a. a physical or electronic signature of a person authorised to act on behalf of the owner of an exclusive right that is allegedly infringed;
- b. identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
- c. identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit the service provider to locate the material;
- d. information reasonably sufficient to permit the service provider to contact the complaining party, such as an address, telephone number and, if available, an electronic mail address at which the complaining party may be contacted;
- e. a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorised by the copyright owner, its agent, or the law; and
- f. a statement that the information in the notification is accurate and under penalty of perjury, the complaining party is authorised to act on behalf of the owner of an exclusive right that is allegedly infringed.

Our DMCA Agent will only respond to notices and inquiries that comply with the requirements of the DMCA. See [www.copyright.gov](http://www.copyright.gov) for more information.

## 17. INFORMATION FOR CALIFORNIA RESIDENTS

Under California Civil Code Section 1789.3, we are required to provide California residents with the following specific consumer rights information:

- a. SMG Services are owned and/or operated by Service Management Group, LLC, 1737 McGee Street, Kansas City, MO 64108. SMG's contact telephone number is 1-800-764-0439;
- b. unless otherwise expressly stated, SMG Services are provided without charge;
- c. in order to file a complaint regarding SMG Services or to receive further information regarding use of SMG Services, send a letter to Service Management Group, LLC, FAO: Data Protection Officer, 1737 McGee Street, Kansas City, MO 64108 or contact us via email at [privacyofficer@smg.com](mailto:privacyofficer@smg.com) (with "California Resident Request" as the Subject Line). You also may contact the Complaint Assistance Unit of the Division of Consumer Services of California's Department of Consumer Affairs in writing at 400 R Street, Suite 1080, Sacramento, California 95814 or by telephone at 916.445.1254 or 800.952.5210.

## 18. MISCELLANEOUS

- a. These Terms and the privacy policies listed on the respective sites contain the entire understanding by and among SMG and you with respect to matters contained herein.
- b. These Terms are written in English. This English-language Agreement will be controlling in all respects. Any versions of this Agreement in any other language will be for accommodation only and will not be binding upon either party.
- c. These Terms inure to the benefit of and will be binding upon SMG's and your successors and assigns, respectively.
- d. These Terms may be assigned by SMG, but you may not assign them without the prior written consent of SMG.
- e. If any provision of these Terms is or becomes unenforceable or invalid, the remaining provisions will continue with the same effect as if such unenforceable or invalid provision had not been used.
- f. If SMG fails or you fail to perform any obligation under these Terms and the other party does not enforce such obligation, failure to enforce on any occasion will not constitute a waiver of any obligation and will not prevent enforcement on any other occasion.
- g. Nothing contained in these Terms will be deemed to constitute SMG or you as the agent or representative of the other or as joint venturers or partners.
- h. If SMG is or you are prevented from performing or unable to perform any obligation under these Terms due to any cause beyond the reasonable control of the party invoking this provision, the affected party's performance will be extended for the period of delay or inability to perform due to such cause.
- i. Headings and captions are for convenience only.

## QUESTIONS?

If you have any questions about these Terms of Use or the SMG Services, contact us at [privacyofficer@smg.com](mailto:privacyofficer@smg.com).

You can also write to us at:  
Service Management Group, LLC  
FAO: Data Protection Officer  
1737 McGee Street  
Kansas City, MO 64108

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