

Through this website, SmartWeb Mobile. (“SmartWeb Mobile” or “we”) offers a service that allows users who register with SmartWeb Mobile (each a “User” or “you”) to use SmartWeb Mobile’s proprietary software platform to build and host mobile websites (the “Service”). By using the Service, you agree to comply with and be bound by the following terms and conditions (this “Agreement”), which we may change at any time. PLEASE READ THIS AGREEMENT CAREFULLY. If you do not agree to these terms and conditions, please do not use the Service. Use of the Service is limited to those individuals and entities who can form legally binding contracts under applicable law, and without limiting the foregoing, the Service is not to be accessed or used by minors.

In addition, when using any particular Service option, you may be subject to additional guidelines or terms and conditions applicable to such service that may be posted on SmartWeb Mobile.com from time to time, which are hereby incorporated into this Agreement.

#### **Registration.**

If you wish to become a User, you are required to register by creating an account. If you register, you represent and warrant to SmartWeb Mobile that: (i) you are of legal age to form a binding contract, and, if you are acting on behalf of an organization, you have the right to enter this Agreement on behalf of such organization; (ii) you will provide SmartWeb Mobile with accurate, current and complete registration information; (iii) your registration and your use of the Service is not prohibited by law; and (iv) you have all legal rights to publish and distribute mobile website versions of the User blogs and websites you input into the Service (the “User Authorized Sites”). SmartWeb Mobile reserves the right to terminate or suspend your status as a User in the event that you breach any term of this Agreement.

#### **Provision of Service.**

During the period that you are a User in good standing (the “Term”), you are entitled to use the Service to create mobile website versions of the User Authorized Sites (such mobile versions the “User Mobile Sites”). As part of the Service, SmartWeb Mobile will host the User Mobile Sites on its servers. User acknowledges that User Mobile Sites are updated at regular intervals, so that the User Mobile Sites will not immediately reflect changes to the User Authorized Sites. SmartWeb Mobile is not responsible for any errors or delays in the Service caused by any error or fault of User with the User Authorized Sites or the RSS feeds sent to SmartWeb Mobile. User

will ensure that the User Authorized Sites do not contain any computer virus, code or other feature that may harm or impair the operation of the Service.

### **Licenses.**

The Service includes the right for User to use (a) SmartWeb Mobile's online tools to optimize the User Authorized Sites for mobile delivery; and (b) SmartWeb Mobile mobile tags on User Authorized Sites to alert end users to the User Mobile Sites (such tools and tags the "SmartWeb Mobile Tools"). SmartWeb Mobile grants User a limited, non-exclusive, non-transferable right and license to use the SmartWeb Mobile Tools during the Term in connection with User's use of the Service. Except as expressly permitted herein, User shall not copy, modify, distribute, sublicense, make available, reverse engineer, reverse compile or otherwise use the SmartWeb Mobile Tools. No license is granted to User to SmartWeb Mobile Tools or any other proprietary technology or intellectual property of SmartWeb Mobile except as expressly stated herein, and SmartWeb Mobile reserves all rights therein.

User hereby grants to SmartWeb Mobile the limited, non-exclusive, right and license: (a) to use, copy and publish the User Authorized Sites to create User Mobile Sites and to display such User Mobile Sites to end-user. In addition, User hereby grants SmartWeb Mobile the limited, non-exclusive right and license to display an image of User Mobile Sites (or any part thereof) in SmartWeb Mobile's marketing materials and on SmartWeb Mobile's websites. Users may opt out of such use of User Mobile Sites by sending written notice to SmartWeb Mobile at [admin@smartwebmobile.com](mailto:admin@smartwebmobile.com), and in the event of such opt out SmartWeb Mobile will cease use of your User Mobile Sites promptly, subject to a reasonable transition period to allow SmartWeb Mobile to make changes to marketing materials and websites. Except for the limited licenses granted to SmartWeb Mobile in this Agreement, SmartWeb Mobile acquires no rights in or to the User Authorized Sites, and all such rights are retained and reserved exclusively by User.

### **SmartWeb Mobile Obligations.**

The Service includes the following benefits: (a) SmartWeb Mobile shall use commercially reasonable efforts so that the Service is available 24 hours per day, 365 days per year, subject to reasonable periodic maintenance and any necessary emergency maintenance; (b) SmartWeb Mobile shall use commercially reasonable efforts to supply access to analytics for the User

Mobile Sites 24 hours a day; and (c) SmartWeb Mobile shall use commercially reasonable efforts to allow you access to our proprietary mobile site layout tool 24 hours a day. You may cancel your subscription at any time by going to the “billing settings” section of the platform and selecting Cancel Account. Your cancellation will take effect at the end of the then-current billing cycle. You are not entitled to any refund for the period from when you give notice to the end of the billing cycle.

### **Fees.**

Use of the Service is subject to payment of the applicable fees listed on the SmartWeb Mobile website, which are paid by User by credit card or arranged invoice. If any credit card payment is dishonored or charged back to SmartWeb Mobile, the User remains liable to SmartWeb Mobile for the full amount of fees payable. SmartWeb Mobile reserves the right to collect interest at the maximum rate permitted by applicable law on overdue balances. If SmartWeb Mobile terminates your User status or use of the Service as a result of breach of this Agreement, you will not be entitled to any refund of fees paid. If any taxes, including sales, use or service taxes, are applicable to SmartWeb Mobile’s provision of the Service to you, you are responsible for payment of such taxes.

### **Advertising.**

SmartWeb Mobile employs two mobile advertising options:

#### ***Current Customers***

Your User Mobile Sites will not have ads automatically placed on them. You may choose to actively enable ads on your User Mobile Site by using the “Monetize” menu, which allows you to:

- Opt to place your own custom mobile ad tags on the User Mobile Sites
- Opt in to select either the AdMob network or the Google AdSense network

### **Rules of Conduct for the Service.**

You shall not:

- Use the Service for any purpose in violation of local, state, national or international laws;
- Impersonate any person or entity, or forge or manipulate headers to disguise the origin of any User Authorized Site;
- Harvest or otherwise collect information about others, including email addresses, without their consent;

- Harvest or collect any data from SmartWebMobile.com, or use any automated means, including spiders, robots, crawlers, data mining tools or the like to download data from SmartWeb Mobile or relating to the Service (other than Internet search engines operating on terms reasonably acceptable to SmartWeb Mobile);
- Attempt to gain unauthorized access to SmartWeb Mobile's computer systems; or
- Engage in any other conduct that restricts or inhibits any other person from using or enjoying the Service, or which, in SmartWeb Mobile's sole judgment, exposes SmartWeb Mobile to any liability or detriment of any type.
- The Service may not be used to publish, distribute or otherwise make available any material that:
  - Is libelous, defamatory, threatening, abusive, scandalous, obscene or unlawful or that encourages a criminal offense;
  - Contains material from other copyrighted works without the written consent of the owner of such copyrighted material;
  - Infringes any copyright or violates any property rights, rights of privacy or publicity, or any other rights of any third party;
  - Contains any statement, formula, direction, recipe, prescription or other matter that involves a reasonably foreseeable risk of injury or damage to the material's readers or others; or
  - Contains any software viruses or any other code, file or program that is designed to interrupt, destroy or limit the functionality of any computer software, hardware or telecommunications equipment.
- SmartWeb Mobile reserves the right (but is not obligated) to do any or all of the following:
  - Investigate any allegation that any User Authorized Site does not conform to the terms and conditions of this Agreement; or
  - Disable access to the Service with respect to any User Authorized Site that is abusive, illegal or disruptive, or that otherwise fails to conform with the terms and conditions of this Agreement.
- SmartWeb Mobile and SmartWeb Mobile Affiliates have no liability or responsibility to Users or any other person or entity for performance or nonperformance of the aforementioned activities.

## **Proprietary Rights.**

All the text, images, marks, logos, compilations (meaning the collection, arrangement and assembly of information) and other content on SmartWeb Mobile, including any Submissions (as defined below) (collectively, the “Site Content”) are proprietary to us or to third parties. SmartWeb Mobile authorizes you to view, download, and use the Site Content solely in connection with your authorized use of the Service in accordance with this Agreement. Except as expressly permitted above, copying, modifying, reproduction, redistribution, republication, uploading, posting, transmitting, distributing or otherwise exploiting in any way the Site Content, or any portion of the Site Content, is strictly prohibited without the prior written permission of SmartWeb Mobile. In addition, you may not link to any part of the Site Content or frame or otherwise display in any manner the Site Content at any other web site or elsewhere without SmartWeb Mobile’s written consent.

All software used by SmartWeb Mobile to operate the Service is proprietary to us or to third parties, and except as may be required to use the Service in accordance with this Agreement, any use, copying, redistribution, sale, decompilation, reverse engineering, disassembly, translation or reduction of such software to human-readable form is prohibited.

The mark SmartWeb Mobile is proprietary to us, and it may not be used in connection with any service or products other than those provided by SmartWeb Mobile, in any manner that is likely to cause confusion among customers, or in any manner that disparages or discredits SmartWeb Mobile. Any use of the SmartWeb Mobile mark, or any others displayed on the Service, will inure solely to the benefit of their respective owners.

Certain types of data and analytics are generated in connection with use of the Service: (a) “User Data”, meaning any data and analytics specific to User, including number of page views, the types of handsets of viewers of User Mobile Sites, and the source of mobile traffic; and (b) “Aggregated Data”, meaning data generated by SmartWeb Mobile in connection with this Agreement that does not identify User, including aggregated traffic analysis, aggregated usage reports, and aggregated information about end-user access to mobile websites. SmartWeb Mobile does not collect personally identifiable information from the Service. SmartWeb Mobile shall make the User Data available to User on SmartWebMobile.com via a secured account and login in provided by SmartWeb Mobile. As between User and SmartWeb Mobile and to the extent permitted by law: (i) User owns and retains all rights to User Data, and SmartWeb Mobile shall use User Data only for the purposes of this Agreement; and (ii) SmartWeb Mobile owns

and retains all rights to Aggregated Data. You agree, and represent and warrant, that your use or other exploitation of the Service and the Site Content, or any portion thereof, will be consistent with the licenses, covenants and restrictions in this Agreement and will neither infringe nor violate the rights of any other party or breach any contract or legal duty to any other parties. In addition, you agree that you will comply with all applicable laws, regulations and ordinances relating to the Service, the Site Content or your use of them, and you will be solely responsible for your own individual violations of any of them.

You agree that SmartWeb Mobile may refer to or feature your User Mobile Site on its own websites or promotional materials at any time, in its discretion (although you may opt out of this by contacting SmartWeb Mobile in writing).

#### **Warranty Disclaimers and Limitations of Liability.**

If you have paid all fees due, SmartWeb Mobile covenants that it will deliver the Service in accordance with applicable industry standards. In the event of any breach of such covenant, or other failure or defect with respect to the Service, the sole and exclusive remedy of the User, and the sole and exclusive liability of SmartWeb Mobile, shall be, at SmartWeb Mobile option (a) to re-perform the Service to remedy the defect or failure or (b) to refund the amount paid for the period during which the Service was alleged to be defective.

Except as stated in the previous paragraph, SmartWeb Mobile and SmartWeb Mobile Affiliates make no representations or warranties of any kind regarding the Service and the Site Content, and SmartWeb Mobile and SmartWeb Mobile Affiliates EXPRESSLY DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, AND ANY AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND USAGE OF TRADE; THAT THE SERVICE OR THE SITE CONTENT WILL MEET YOUR REQUIREMENTS, WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE OR OPERATE WITHOUT ERROR, AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE OPERATION, USE OR OTHER EXPLOITATION OF THE SERVICE OR THE SITE CONTENT, AND AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED FROM THE SERVICE OR THE SITE CONTENT. No advice or information, whether oral or written, obtained by you from SmartWeb Mobile, any of SmartWeb Mobile Affiliates or through the Service or Site Content will create any warranty not expressly stated herein.

UNDER NO CIRCUMSTANCES WILL YOU BE ENTITLED TO RECOVER FROM SmartWeb Mobile OR SmartWeb Mobile AFFILIATES ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS, LOSS OF PROFITS OR LOSS OF USE), WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE ARISING FROM OR RELATING TO THE WEB SITE OR SITE CONTENT, EVEN IF SmartWeb Mobile OR SmartWeb Mobile AFFILIATES HAS BEEN INFORMED OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. THE MAXIMUM AGGREGATE LIABILITY OF SmartWeb Mobile AND SmartWeb Mobile AFFILIATES FOR ANY AND ALL DAMAGES INCURRED BY YOU SHALL BE THE AMOUNT PAID BY YOU TO SmartWeb Mobile FOR THE SERVICE DURING THE PERIOD IN WHICH IT WAS ALLEGED TO BE DEFECTIVE.

SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF WARRANTIES OR OF LIABILITY, SO SOME OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

**Your Indemnity of SmartWeb Mobile and SmartWeb Mobile Affiliates; Termination of Use.**

You agree to indemnify, hold harmless, and at their respective options, defend SmartWeb Mobile and SmartWeb Mobile Affiliates from all causes of action, claims and allegations (whether threatened or pending), costs, fees, charges, and expenses (including reasonable attorneys' and professionals' fees), judgments, damages, losses, and liabilities arising from or relating to the breach or alleged breach of your duties or obligations under this Agreement or your use of the Service or Site Content. For any indemnified matter, SmartWeb Mobile and SmartWeb Mobile Affiliates will have full control of the response thereto and the defense thereof, including any agreement relating to the settlement thereof, and you will cooperate fully with SmartWeb Mobile and SmartWeb Mobile Affiliates in such matter.

SmartWeb Mobile may, at its option, suspend or terminate any User's access to any or all of the Service, including your password and account, at any time on notice to you. If such termination occurs due to breach of this Agreement by you, you will not be entitled to any refund on account of termination. If termination is not due to breach of this Agreement by you, termination will take effect at the end of the then-applicable billing cycle, and no further payments shall be due from you.

**Digital Millennium Copyright Act Compliance.**

SmartWeb Mobile complies with the provisions of the Digital Millennium Copyright Act applicable to internet service providers (17 U.S.C. §512, as amended). If any person has any complaints or objections to material posted on the Service or on any User Mobile Site hosted by the Service, you may contact our Designated Agent at the following address:

SmartWeb Mobile.

P.O. Box 262177

San Diego, CA 92196

870-404-7334

admin@smartwebmobile.com

Any notice alleging that materials on this Service or on any User Mobile Site hosted by the Service infringe intellectual property rights must include the following information:

- an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- a description of the copyrighted work or other intellectual property that you claim has been infringed;
- a description of the material that you claim is infringing and where it is located on the Service;
- your address, telephone number, and email address;
- a statement by you that you have a good faith belief that the use of the materials on the Site of which you are complaining is not authorized by the copyright owner, its agent, or the law;
- a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.

**Minors.**

This Service is not directed at users under the age of 13. If you are under the age of 13, you are not permitted to register as a User or send any information about yourself to us.



**Applicable Law and Jurisdiction; Compliance.**

The Service (excluding links) are controlled by SmartWeb Mobile and operated by SmartWeb Mobile from its offices in and around San Diego, CA. Because the Service is made available by means of the Internet it is accessible in all fifty states and other countries. As each of these places has laws that may differ from those of California and from each other, and as you and SmartWeb Mobile both benefit from establishing a predictable legal environment in which to operate, use or otherwise exploit the Service, by using the Service you and SmartWeb Mobile agree that all matters arising from or relating to the use and operation of the Service will be governed by the substantive laws of California, without regard to its conflicts of laws principles. You agree that all claims you may have arising from or relating to the operation, use or other exploitation of the Service will be heard and resolved in the federal and state courts located in California. You consent to the personal jurisdiction of such courts over you, stipulate to the fairness and convenience of proceeding in such courts, and covenant not to assert any object to proceeding in such courts. If you choose to gain access to the Service from locations other than California, you will be responsible for compliance with all local laws of any such other location, and in no event will you use the Service or Site Content in violation of U.S. export laws or regulations.

**Miscellaneous Provisions.**

No delay or omission by SmartWeb Mobile in exercising any of its rights occurring upon any noncompliance or default by you with respect to any of the terms and conditions of this Agreement will impair any such right or be construed to be a waiver thereof, and a waiver by SmartWeb Mobile of any of the covenants, conditions or agreements to be performed by you will not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement hereof contained. As used in this Agreement, "including" means "including but not limited to." If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement will remain in full force and effect and will be reformed to be valid and enforceable while reflecting the intent of the parties to the greatest extent permitted by law. Except as otherwise expressly provided herein, this Agreement sets forth the entire agreement between you and SmartWeb Mobile regarding its subject matter, and supersedes all prior promises, agreements or representations, whether written or oral, regarding such subject matter. This Agreement may be assigned by SmartWeb Mobile to any successor to its business, whether by merger, change of control, or sale of all or

substantially all of its assets. You agree that the electronic text of this Agreement constitutes a writing and your assent to the terms and conditions hereof constitutes a “signing” for all purposes.

*Updated on August 15, 2014*