

Terms of Service

Date of Last Revision: February 10, 2015

1 Acceptance of Terms.

- 1.1 Smyte, Inc. ("Company") provides its Service (as defined below) to you through its web site located at <http://www.smyte.com> (the "Site"), subject to this Terms of Service agreement ("TOS"). By accepting this TOS or by accessing or using the Service or Site, you acknowledge that you have read, understood, and agree to be bound by this TOS. If you are entering into this TOS on behalf of a company, business or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this TOS, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with this TOS, you must not accept this TOS and may not use the Service.
- 1.2 Company reserves the right to modify this TOS from time to time. Company will post changes on this page and will indicate at the top of this page the date these terms were last revised. Company will also notify you, either through the Services user interface, in an email notification or through other reasonable means. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Services or changes made for legal reasons will be effective immediately. Your continued use of the Service after the date any such changes become effective constitutes your acceptance of the new TOS.

2 Description of Service. The "Service" includes (a) the Site, (b) the Smyte spam, abuse and fraud identification platform, and (c) all software (including the Software, as defined below), data, reports, text, images, sounds, video, and content made available through any of the foregoing (collectively referred to as the "Content"). Any new features added to or augmenting the Service are also subject to this TOS.

3 General Conditions/ Access and Use of the Service.

- 3.1 Subject to the terms and conditions of this TOS, you may access and use the Service only for lawful purposes. All rights, title and interest in and to the Service and its components will remain with and belong exclusively to Company. You shall not (a) sublicense, resell, rent, lease, transfer, assign, time share or otherwise commercially exploit or make the Service available to any third party; (b) use the Service in any unlawful manner (including without limitation in violation of any data, privacy or export control laws) or in any manner that interferes with or disrupts the integrity or performance of the Service or its components, or (c) modify, adapt or hack the Service to, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks. You shall comply with any codes of conduct, policies or other notices Company provides you or publishes in connection with the Service, and you shall promptly notify Company if you learn of a security breach related to the Service.
- 3.2 Any software that may be made available by Company in connection with the Service ("Software") contains proprietary and confidential information that is protected by applicable intellectual property and other laws. Subject to the terms and conditions of this TOS, Company hereby grants you a personal, non-transferable, non-sublicensable and non-exclusive right and license to use the object code of any Software on a single device solely in connection with the Service, provided that you shall not (and shall not allow any third party to) copy, modify, create a derivative work of, reverse engineer, reverse assemble or otherwise attempt to discover any source code or sell, assign, sublicense or otherwise transfer any right in any Software. You agree not to access the Service by any means other than through the interface that is provided by Company for use in accessing the Service. Any rights not expressly granted herein are reserved and no license or right to use any trademark of Company or any third party is granted to you in connection with the Service.
- 3.3 You are solely responsible for all data, information, feedback, suggestions, text, content and other materials that you or your customers or end users provide or otherwise transmit or store in connection with or relating to the Service ("Customer Data"). You and/or your customers or end users own all rights to Customer Data. Company shall have the right during and after the term of this TOS to use Customer Data to provide you the Service and improve and enhance the Service and other Company offerings, provided that Company shall not use or disclose any Customer Data in any manner that identifies you or any of your customers or end users. Company has the right, but not the obligation, to monitor the Service, Content, or Customer Data. You further agree that Company

may remove or disable Content or Customer Data at any time for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Content), or for no reason at all. Please visit <http://www.smyte.com/legal/privacy> to understand how Company collects and uses personal information contained in Customer Data.

- 3.4 You understand that the operation of the Service, including Customer Data, may be unencrypted and involve (a) transmissions over various networks; (b) changes to conform and adapt to technical requirements of connecting networks or devices and (c) transmission to Company's third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Service. Accordingly, you acknowledge that you bear sole responsibility for adequate security, protection and backup of Customer Data. Company will have no liability to you for any unauthorized access or use of any of Customer Data, or any corruption, deletion, destruction or loss of any of Customer Data.
- 3.5 The failure of Company to exercise or enforce any right or provision of this TOS shall not be a waiver of that right. You acknowledge that this TOS is a contract between you and Company, even though it is electronic and is not physically signed by you and Company, and it governs your use of the Service and takes the place of any prior agreements between you and Company.
- 3.6 Company reserves the right to use your name and/or company name as a reference for marketing or promotional purposes on Company's website and in other communication with existing or potential Company customers. To decline Company this right you need to email support@smyte.com stating that you do not wish to be used as a reference.
- 4 Payment.** To the extent the Service or any portion thereof is made available for any fee, you will be required to select a payment plan and provide Company information regarding your credit card or other payment instrument. You represent and warrant to Company that such information is true and that you are authorized to use the payment instrument. You will promptly update your account information with any changes (for example, a change in your billing address or credit card expiration date) that may occur. You agree to pay Company the amount that is specified in the payment plan in accordance with the terms of such plan and this TOS. You hereby authorize Company to bill your payment instrument in advance on a periodic basis in accordance with the terms of the applicable payment plan until you terminate your account, and you further agree to pay any charges so incurred. If you dispute any charges you must let Company know within sixty (60) days after the date that Company invoices you. We reserve the right to change Company's prices. If Company does, Company will provide notice of the change on the Site or in email to you, at Company's option, at least 30 days before the change is to take effect. Your continued use of the Service after the price change becomes effective constitutes your agreement to pay the changed amount.
- 5 Representations and Warranties.** You represent and warrant to Company that (i) you have full power and authority to enter into this TOS; (ii) you own all Customer Data or have obtained all permissions, releases, rights or licenses required to engage in your posting and other activities (and allow Company to perform its obligations) in connection with the Services without obtaining any further releases or consents; (iii) Customer Data and other activities in connection with the Service, and Company's exercise of all rights and license granted by you herein, do not and will not violate, infringe, or misappropriate any third party's copyright, trademark, right of privacy or publicity, or other personal or proprietary right, nor does Customer Data contain any matter that is defamatory, obscene, unlawful, threatening, abusive, tortious, offensive or harassing; and (iv) you are eighteen (18) years of age or older.
- 6 Termination.** You have the right to terminate your account at any time in accordance with the procedures set forth on the Site. Company reserves the right to (i) modify or discontinue, temporarily or permanently, the Service (or any part thereof) and (ii) refuse any and all current and future use of the Service, suspend or terminate your account (any part thereof) or use of the Service and remove and discard any of Customer Data in the Service, for any reason, including if Company believes that you have violated this TOS. Company shall not be liable to you or any third party for any modification, suspension or discontinuation of the Service. Company will use good faith efforts to contact you to warn you prior to suspension or termination of your account by Company. Company has the right, but not the obligation, to permanently delete all Customer Data upon any termination of your account in its sole discretion. If Company terminates your account without cause and you have signed up for a fee-bearing service, Company will refund the pro-rated, unearned portion of any amount that you have prepaid to Company for such Service. However, all accrued rights to payment and the terms of Section 3.3 and 4-12 shall survive

termination of this TOS.

7 DISCLAIMER OF WARRANTIES. THE SERVICE, INCLUDING THE SITE AND CONTENT, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND Company EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT Company DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM Company OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TOS.

8 LIMITATION OF LIABILITY.

8.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL COMPANY BE LIABLE TO YOU OR ANY THIRD PARTY FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA OR BUSINESS INTERRUPTION, OR (B) FOR ANY DIRECT DAMAGES, COSTS, LOSSES OR LIABILITIES IN EXCESS OF THE FEES ACTUALLY PAID BY YOU IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR, IF NO FEES APPLY, ONE HUNDRED (\$100) U.S. DOLLARS. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS UNDER THIS TOS BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS TOS.

8.2 Some states do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to you. IN THESE STATES, COMPANY’S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

9 Indemnification. You shall defend, indemnify, and hold harmless Company from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from your breach of this TOS, any of Customer Data, or your other access, contribution to, use or misuse of the Service. Company shall provide notice to you of any such claim, suit or demand. Company reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Company’s defense of such matter.

10 Assignment. You may not assign this TOS without the prior written consent of Company, but Company may assign or transfer this TOS, in whole or in part, without restriction.

11 Governing Law. This TOS shall be governed by the laws of the State of California without regard to the principles of conflicts of law. Unless otherwise elected by Company in a particular instance, you hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the State of California for the purpose of resolving any dispute relating to your access to or use of the Service.