

Terms of Use

Posted as of May 13, 2022

SMW Entertainment, LLC, 1680 Michigan Ave, Suite 700, Miami Beach, Florida 33139 (“SMW”) owns and operates this website (the “SMW Site”). By using the SMW Site, you affirm that you are of legal age to enter into these Terms of Use, or, if you are not, that you have obtained parental or guardian consent to enter into these Terms of Use.

1. DEFINITIONS

- **SMW** means SMW Entertainment, LLC, and/or its affiliates.
- **SMW Entities** means SMW and its affiliates; its and their suppliers, vendors, contractors, and licensors; and its and their directors, officers, employees, and agents.
- **We** means SMW Entertainment, LLC.
- **SMW Site** means www.showmethewow.com
- **You** or **Your** means you, the user of the SMW Site.
- **Terms of Use** means these Terms of Use and all other terms and policies posted by SMW on the SMW Site (and any updates by SMW to these Terms of Use and those terms and policies).
- **Content** means merchandise information, product descriptions, reviews, videos, comments, messages, communications, feedback, submissions, suggestions, questions, and other information, data, content, and materials (including page headers, images, text, illustrations, formats, logos, hashtags, designs, icons, photographs, software programs, music clips or downloads, video clips, and written and other materials).

2. **GENERAL.** These Terms of Use represent the complete agreement and understanding between you and SMW and supersede all prior agreements and representations between the parties with respect to the subject matter of these Terms of Use. These Terms of Use do not, and shall not be construed to, create any partnership, joint venture, employer-employee, agency, or franchisor-franchisee relationship between you and SMW. Headings used in these Terms of Use are for reference purposes only and in no way define or limit the scope of the section. If any provision of these Terms of Use is held to be unenforceable for any reason, such provision will be reformed only to the extent necessary to make it enforceable and the other terms of these Terms of Use will remain in full force and effect. The failure of SMW to act with respect to a breach of these Terms of Use by you or others does not constitute a waiver and will not limit SMW's rights with respect to such breach or any subsequent breaches. You may not assign, transfer, or sublicense any or all of your rights or obligations under these Terms of Use without our express prior written consent. We may assign, transfer, or sublicense any or all of our rights or obligations under these Terms of Use without restriction. Any use of the term “including” or variations thereof in these Terms of Use shall be construed as if followed by the phrase “without limitation.” Notices to you (including notices of changes to this these Terms of Use) may be made via posting to the SMW Site or by e-mail (including in each case via links), or by regular mail. Without limitation, a printed version of these Terms of Use and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based

upon or relating to these Terms of Use to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

3. **YOUR USE OF THE SMW SITE.** You certify that the Content you provide on or through the SMW Site is accurate and that the information you provide is complete. If you submit materials to be considered for the television show, Show Me the Wow!, your submission is subject to the [Show Me the Wow! Content and Contestant Submission Terms](#). You are solely responsible for maintaining the confidentiality and security of your account including any username or password, if applicable. SMW is not responsible for any losses arising out of the unauthorized use of your account. You agree that SMW does not have any responsibility if you lose or share access to your device. Any agreement between you and the issuer of your credit card, debit card, or other form of payment will continue to govern your use of such payment method on the SMW Site. You agree that SMW is not a party to any such agreement, nor is SMW responsible for the content, accuracy, or unavailability of any method used for payment. Your account may be restricted or terminated for any reason, at our sole discretion. Except as otherwise provided by law, at any time without notice to you, we may change, restrict access to, suspend, or discontinue the SMW Site or any portion of the SMW Site.

You agree that you will not make available Content in connection with the SMW Site that:

- is false, fraudulent, inaccurate, or misleading;
- contains your full name(s), or any other confidential personally identifiable information of yourself or others;
- violates any local, state, federal, or international laws or is otherwise tortious;
- is protected by or would infringe on the rights of others (including SMW), including any patent, copyright, trademark, trade secret, right of publicity or privacy, or any other proprietary right, without the express prior written consent of the applicable owner;
- is obscene, indecent, pornographic, or otherwise objectionable, derogatory, defamatory, threatening, harassing, abusive, slanderous, hateful, or embarrassing to any other person or entity as determined by SMW in its sole discretion;
- victimizes, harasses, degrades, or intimidates an individual or group of individuals on the basis of religion, gender, sexual orientation, race, ethnicity, age or disability;
- is violent or threatening, or promotes violence against, or actions that are threatening to, any individual or group;
- contains advertisements, solicitations, or spam links to other web sites or individuals, without prior written permission from SMW;
- disparages, tarnish, or otherwise harm, in our opinion, us and/or the SMW Site;
- contains or relates to junk mail, surveys, spam, chain letters, pyramid schemes or any Content that contains business solicitation of any type, including advertising a product or service, offering a product or service for sale, or directing visitors to a location for more information about a product or service or create user accounts by automated means or under false pretenses;
- impersonates another business, person, or entity, including SMW, its related entities, employees, and agents;
- violates any policy posted on the SMW Site;

- that acts as a passive or active information collection or transmission mechanism, including clear graphics interchange formats (“gifs”), 1×1 pixels, web bugs, cookies, or other similar devices (sometimes referred to as “spyware” or “passive collection mechanisms” or “pcms”); or
- is intended to cause harm, damage, disable, or otherwise interfere with the SMW Site or our partners.

4. **PROHIBITED ACTIVITIES.** As a user of the SMW Site, you agree not to:

- Systematically retrieve data or other Content from the SMW Site to create or compile, directly or indirectly, a collection, compilation, database, or directory without written permission from us;
- Make any unauthorized use of the SMW Site, including collecting and/or storing usernames, email addresses and/or personal data of users by electronic or other means;
- Make the SMW Site available over a network or other environment permitting access or use by multiple devices or users at the same time;
- Use the SMW Site to advertise or offer to sell goods and services;
- Circumvent, bypass, disable, or otherwise interfere with security-related features of the SMW Site, including features that prevent or restrict the use or copying of any Content or enforce limitations on the use of the SMW Site, any portion of the SMW Site and/or the Content contained therein;
- Engage in unauthorized framing of or linking to the SMW Site;
- Trick, defraud, or mislead us and other users, especially in any attempt to learn sensitive account information such as user passwords;
- Make improper use of our support services or submit false reports of abuse or misconduct;
- Engage in any automated use of the system, such as using scripts to send comments or messages, or using any data mining, spiders, robots, or similar data gathering and extraction tools;
- Interfere with, disrupt, or create an undue burden on the SMW Site or the networks or services connected to the SMW Site;
- Attempt to impersonate another user or person or use the username of another user;
- Sell or otherwise transfer your profile;
- Use the SMW Site as part of any effort to compete with us, directly or indirectly, or otherwise use the SMW Site and/or the Content for any revenue-generating endeavor or commercial enterprise or in any way create a substitute for the SMW Site;
- Decipher, decompile, disassemble, reverse engineer, attempt to derive the source code of, or decrypt any of the software comprising or in any way making up a part of the SMW Site;
- Delete, alter or obscure the copyright or other proprietary rights notice from any SMW Site or Content;
- Make any modification, adaptation, improvement, enhancement, translation, copy or derivative work from the SMW Site’ Content and software, including Flash, PHP, HTML, JavaScript, or other code;

- Use any proprietary information or any of our interfaces or our other intellectual property in the design, development, manufacture, licensing, or distribution of any applications, accessories, or devices; or
 - Obtain or take advantage of an account discount offer through improper means, should you be entitled to receive account discounts through proper channels, such as through our affiliates or third-party service providers.
5. **PRIVACY.** Please review our [Privacy Policy](#) which also governs your use of the SMW Site, to understand our practices.
 6. **ELECTRONIC COMMUNICATIONS.** When you use SMW Site, or send e-mails, text messages, and other communications from your desktop or mobile device to us, you may be communicating with us electronically. You consent to receive communications from us electronically, such as e-mails, texts, mobile push notices, or notices and messages on this site, and you can retain copies of these communications for your records. You agree that all agreements, notices, disclosures, and other communications that we provide to you electronically satisfy any legal requirement that such communications be in writing.
 7. **LIMITED LICENSE.** Subject to your compliance with these Terms of Use, SMW or its content providers grant you a limited, non-exclusive, non-transferable, non-sublicensable license to access and make personal and non-commercial use of the SMW Site. This license does not include any resale or commercial use of any SMW Site, or its contents; any collection and use of any product listings, descriptions, or prices; any derivative use of any SMW Site or their contents; any downloading, copying, or other use of account information for the benefit of any third party; or any use of data mining, robots, or similar data gathering and extraction tools. All rights not expressly granted to you in these Terms of Use are reserved and retained by SMW or its licensors, suppliers, publishers, rightsholders, or other content providers. No SMW Site, nor any part of any SMW Site, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without express written consent of SMW. You may not frame or utilize framing techniques to enclose any trademark, logo, or other proprietary information (including images, text, page layout, or form) of SMW without express written consent. You may not use any meta tags or any other "hidden text" utilizing SMW's name or trademarks without the express written consent of SMW. You may not misuse the SMW Site. You may use the SMW Site only as permitted by law. The licenses granted by SMW terminate if you do not comply with these Terms of Use.
 8. **USER COMMENTS.** SMW welcomes your comments about the SMW Site and Content. However, any comments, feedback, notes, messages, ideas, suggestions or other communications (collectively "Comments") sent Comments to the SMW Site shall be and remain the exclusive property of SMW. Your submission of any such Comments shall constitute an assignment to SMW of all worldwide rights, titles and interests in all copyrights and other intellectual property rights in the Comments. SMW will be entitled to use, reproduce, disclose, publish and distribute any material you submit for any purpose whatsoever, without restriction and without compensating you in any way. For this reason, we ask that you not send us any comments that you do not wish to assign to us, including

any original creative materials such as stories, product ideas, computer code or original artwork or Prohibited Content.

9. **INTELLECTUAL PROPERTY.** The SMW Site and all Content, copyrights, trademarks, trade dress, and other intellectual property rights there (collectively, the “IP”) are owned or controlled by or licensed to SMW, and are protected by U.S. and international trademark, copyright, and other intellectual property laws. Subject to your compliance with these Terms of Use, and solely for so long as you are permitted by SMW to use the SMW Site, you may access, view, download, and print the Content for your personal, non-commercial use only; provided, however, that you (1) retain all copyright, trademark, or other proprietary designations contained on all Content; (2) do not modify or alter the Content or IP in any way; and (3) do not provide or make available the Content or IP to any third party in a commercial manner.

No license, right, title, or interest in the SMW Site or any Content or IP is transferred to you as a result of your use of the SMW Site or your accessing, viewing, downloading, or printing of the Content. You may not reproduce (except as noted above), publish, transmit, distribute, display, modify, create derivative works from, sell, or participate in any sale of or exploit in any way, in whole or in part, any of the part of the SMW Site. The SMW Site and Content may be used only as a personal entertainment and shopping resource. Any other use, including the reproduction, modification, distribution, transmission, republication, display, or performance, of the SMW Site and the Content is strictly prohibited. The compilation (meaning the collection, arrangement, and assembly) of the SMW Site and Content is the exclusive property of SMW and is also protected by U.S. and international copyright laws.

SMW names and logos, and all other graphics, logos, page headers, button icons, scripts, and service names included in or made available through any of the SMW Site are trademarks or trade dress of SMW in the U.S. and other countries. All other marks are the property of their respective companies.

10. **MAKING A CLAIM OF COPYRIGHT INFRINGEMENT.** SMW respects the intellectual property of others. If you believe that your work has been copied and is accessible on the SMW Site in a way that constitutes copyright infringement, please send a takedown notice to info@showmethewow.com with the following information:

- A physical or electronic signature of a person authorized to act on behalf of the owner of the copyright or intellectual property right that has been allegedly infringed upon;
- Identification in sufficient detail of the material being infringed upon;
- Identification of the material that is claimed to be infringing upon the intellectual property. Include information regarding the location of the infringing material with sufficient detail so that SMW is capable of finding and verifying its existence;
- Contact information about the notifier including the name of the intellectual property owner, the name and title of the person contacting the web host on the owner’s behalf, the address, telephone number and, if available, e-mail address;

- A statement that the notifier has a good faith belief that the material is not authorized by the intellectual property or copyright owner, its agent, or the law; and
- A statement made under penalty of perjury that the information provided is accurate and the notifying party is authorized to make the complaint on behalf of the intellectual property or copyright owner.

11. **MERCHANDISE.** The Site may make available various products for sale (collectively, “Products”). Such Products may be made available by us or by third parties. We are not responsible for examining or evaluating, and we do not warrant, the offerings of any of these businesses or individuals (including their products and the content of their websites). We make no representations as to the completeness, accuracy, reliability, validity, or timeliness of such listings, descriptions, or images (including any features, specifications, and prices contained on the Site). Such information and the availability of any Product are subject to change at any time without notice.

We have made efforts to accurately display the attributes of Products, including the applicable colors. However, as the actual colors you see will depend on your monitor, we cannot guarantee that your monitor's display of any color will accurately reflect actual product color or finish. In addition, certain weights, measures, and similar descriptions are approximate and are for convenience only.

We may sell Products for children's use; however, these Products are intended for sale to adults.

SMW has no liability to you for content on the SMW Site that you find to be offensive, indecent, or objectionable.

SMW is not responsible for, and cannot guarantee the performance of, goods and services provided by third parties, including any SMW Entity, our advertisers, or other third parties to whose sites We link. While our goal is to provide accurate information, product packaging and material may contain more and/or different information than that provided on SMW Site, including the product description, country of origin, nutrition, ingredient, allergen, and other information. Always read labels, warnings, directions, and other information provided with the product before using or consuming the product. For additional information about a product, please contact the manufacturer. If you find a Product is not as described, your sole remedy is to return it in unused condition (excluding products that are not eligible for return), in accordance with SMW's return policy. It is your responsibility to ascertain and obey all applicable local, state, federal, and foreign laws (including minimum age requirements) regarding the purchase, possession, and use of any Product.

12. **PLACING AN ORDER.** We accept all major credit cards for online ordering. You represent and warrant that you have the right to use any credit card or other means of payment that you provide to us. All billing information you provide to us must be truthful and accurate. Providing any untruthful or inaccurate information is a breach of these Terms of Use and may result in cancellation of your

order. Prior to accepting an order, we may also request additional information from you. Verification of information may be required prior to the acknowledgment or completion of any purchase. We reserve the right to refuse or cancel an order for any reason including limitations on quantities available for purchase, inaccuracies, or errors in product or pricing information, or problems identified by our credit and fraud avoidance department. If your order is canceled after your credit card (or other payment account) has been charged, we will issue a credit to your credit card (or other applicable payment account) in the amount of the charge. We will attempt to contact you if all or any portion of your order is canceled or if additional information is required to accept your order. SMW may request a pre-authorization for some orders placed online with a credit or debit card. This pre-authorization will not be billed to you; however, your card issuer may hold this amount for a short period. Your card issuer determines the length of time the pre-authorization is held. We do this to ensure that the card details are still valid and that you have sufficient funds to complete the transaction.

By confirming your purchase at the end of the checkout process, you agree to accept and pay for the Products, as well as all shipping and handling charges and applicable taxes. You will not be charged for most orders until the order has shipped. Some exceptions (when you will be charged at the time your order is placed) are: (i) orders or preorders paid for with a Gift Card, eGift Card, or PayPal account.

SMW reserves the right, including without prior notice, to limit the quantity of items purchased per person, per household, or per order for any reason. We will attempt to notify you should such limits be applied. SMW also reserves the right, at our sole discretion, to prohibit sales to dealers or resellers. For purposes of these Terms of Use, "reselling" will be defined as purchasing or intending to purchase any Product(s) from SMW for the purpose of engaging in a commercial sale of the same Product(s) to a third party.

13. **PRICING INFORMATION; AVAILABILITY.** SMW cannot confirm the price or availability of an item until after your order is placed. Pricing or availability errors may occur on the SMW Site or through Marketplace Retailers. The receipt of an order confirmation does not constitute our acceptance of an order or our confirmation of an offer to sell a Product. SMW reserves the right to cancel any orders containing pricing or availability errors, with no further obligations to you, even after your receipt of an order confirmation or shipping notice from SMW. SMW may, at its discretion, either contact you for instructions or cancel your order and notify you of such cancellation. Pricing for products may be different on the SMW Site or from prices available in SMW stores or on SMW Apps.
14. **SHIPPING.** SMW may ship via United States Postal Service, First Class Mail, UPS, Fed Ex or other national or locally recognized providers. (the "Carriers"). SMW is not responsible for any delays or damage on behalf of the Carriers.
15. **RETURN POLICY.** SMW will gladly issue a refund on any Products. Merchandise must be returned unused, unwashed and with the original tags and packaging intact. Please contact us at info@showmethewow.com within 15 days of receipt of your order to obtain a return authorization number. SMW is not responsible for return shipping charges (all shipping charges are the customer's responsibility). Upon receipt of your returned item, we

will issue a refund for the Product purchase price (excluding shipping) in the same form of payment used for the purchase.

16. **THIRD PARTY SITES.** References on SMW Site to any names, marks, products, or services of third parties, or links to third-party sites or information, are not an endorsement, sponsorship, or recommendation of the third party or its information, products, or services. SMW is not responsible for the content of any third-party linked site or any link contained in a linked site, including any third-party social media or mobile app platform with which the SMW Site operate or otherwise interact, nor is SMW responsible for the acts or omissions of any operator of any such site or platform. Your use of any such third-party site or platform is at your own risk and will be governed by such third party's terms and policies (including its privacy policy).
17. **PROMOTIONS.** Any sweepstakes, contests, raffles, surveys, games, or similar promotions (collectively, "Promotions") made available through the SMW Site may be governed by rules that are separate from these Terms of Use. If you participate in any Promotions, please review the applicable rules as well as our Privacy Policy. If the rules for a Promotion conflict with these Terms of Use, the Promotion rules will govern.
18. **DISCLAIMER OF WARRANTIES.** THE SMW SITES, AND ALL CONTENT, MATERIALS, PRODUCTS, SERVICES, FUNCTIONALITY, AND OTHER ITEMS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SMW SITES, ARE PROVIDED BY SMW ON AN "AS IS" AND "AS AVAILABLE" BASIS. NO SMW ENTITY MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SMW SITES OR THE CONTENT, MATERIALS, PRODUCTS, SERVICES, FUNCTIONALITY, OR OTHER ITEMS INCLUDED ON OR OTHERWISE MADE AVAILABLE TO YOU THROUGH THE SMW SITES. TO THE FULLEST EXTENT PERMISSIBLE BY APPLICABLE LAW, THE SMW ENTITIES DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE FOREGOING, THE SMW ENTITIES DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, FOR ANY MERCHANDISE OFFERED ON THE SMW SITES. YOU ACKNOWLEDGE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, YOUR USE OF THE SMW SITES IS AT YOUR SOLE RISK. THIS SECTION 17 DOES NOT LIMIT THE TERMS OF ANY PRODUCT WARRANTY OFFERED BY THE MANUFACTURER OF AN ITEM THAT IS SOLD BY SMW TO YOU THROUGH THE SMW SITES. THIS DISCLAIMER CONSTITUTES AN ESSENTIAL PART OF THESE TERMS OF USE. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE SMW SITES AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE SMW SITES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OTHERWISE ACCESSED BY UNAUTHORIZED PARTIES. YOU AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NO SMW ENTITY IS RESPONSIBLE FOR ANY LOSS OR DAMAGE TO YOUR PROPERTY OR DATA THAT RESULTS FROM ANY MATERIALS YOU ACCESS OR DOWNLOAD FROM THE SMW SITES. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE FOREGOING LIMITATIONS MAY NOT APPLY TO YOU.

19. **LIMITATION OF LIABILITY.** YOU ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, SMW WILL NOT BE LIABLE TO YOU OR TO ANY OTHER PERSON UNDER ANY CIRCUMSTANCES OR UNDER ANY LEGAL OR EQUITABLE THEORY, WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES OF ANY NATURE ARISING OUT OF OR IN CONNECTION WITH THE USE OF OR INABILITY TO USE THE SMW SITES, EVEN IF AN AUTHORIZED REPRESENTATIVE OF A SMW ENTITY HAS BEEN ADVISED OF OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, THIS DISCLAIMER APPLIES TO ANY DAMAGES OR INJURY ARISING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, LOST PROFITS, LOSS OF GOODWILL, LOSS OF DATA, WORK STOPPAGE, ACCURACY OF RESULTS, COMPUTER FAILURE OR MALFUNCTION, COMPUTER VIRUSES, FILE CORRUPTION, COMMUNICATION FAILURE, NETWORK OR SYSTEM OUTAGE, THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO, ALTERATION OF, LOSS OF USE OF ANY RECORD OR DATA, AND ANY OTHER TANGIBLE OR INTANGIBLE LOSS. SUBJECT TO THE FOREGOING, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, NO SMW ENTITY WILL BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE SMW SITES DURING THE SIX (6) MONTH PERIOD PRECEDING THE DATE ON WHICH THE CLAIM AROSE.

YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PROVIDED BY APPLICABLE LAW, NO SMW ENTITY WILL BE LIABLE FOR ANY DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY SELLER (INCLUDING ANY MARKETPLACE RETAILER), SHOPPER, OR OTHER USER OF THE SMW SITES.

20. **INDEMNIFICATION.** You agree to defend (at SMW's option), indemnify, and hold the SMW Entities harmless from and against any and all liabilities, claims, damages, costs, and expenses, including attorneys' fees and costs, arising from or related to your misuse of the SMW Site or any breach by you of these Terms of Use. SMW reserves the right, at our expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in any case, you agree to cooperate with SMW if and as requested by SMW in the defense and settlement of such matter.
21. **DISPUTES & ARBITRATION; APPLICABLE LAW.** PLEASE READ THIS SECTION CAREFULLY. IT MAY SIGNIFICANTLY AFFECT YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

Using or accessing the SMW Site constitutes your acceptance of this Arbitration provision. Please read it carefully as it provides that you and SMW will waive any right to file a lawsuit in court or participate in a class action for matters within the terms of the Arbitration provision.

To the extent the arbitration provision herein is deemed unenforceable, any legal action of whatever nature brought by either you or us (collectively, the "Parties" and individually, a "Party") shall be commenced or prosecuted in the state and federal courts located in Miami-Dade County, Florida, and the Parties hereby consent to, and waive all defenses of

lack of personal jurisdiction and forum non conveniens with respect to venue and jurisdiction in such state and federal courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act (UCITA) are excluded from these Terms of Use. In no event shall any claim, action, or proceeding brought by either Party related in any way to the APP be commenced more than 1 year after the cause of action arose.

EXCEPT FOR DISPUTES THAT QUALIFY FOR SMALL CLAIMS COURT, ALL DISPUTES ARISING OUT OF OR RELATED TO THESE TERMS OF USE OR ANY ASPECT OF THE RELATIONSHIP BETWEEN YOU AND SMW, WHETHER BASED IN CONTRACT, TORT, STATUTE, FRAUD, MISREPRESENTATION, OR ANY OTHER LEGAL THEORY, WILL BE RESOLVED THROUGH FINAL AND BINDING ARBITRATION BEFORE A NEUTRAL ARBITRATOR INSTEAD OF IN A COURT BY A JUDGE OR JURY, AND YOU AGREE THAT SMW AND YOU ARE EACH WAIVING THE RIGHT TO SUE IN COURT AND TO HAVE A TRIAL BY A JURY. YOU AGREE THAT ANY ARBITRATION WILL TAKE PLACE ON AN INDIVIDUAL BASIS; CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED AND YOU ARE AGREEING TO GIVE UP THE ABILITY TO PARTICIPATE IN A CLASS ACTION.

The arbitration will be administered by Judicial Arbitration Mediation Services, Inc. ("JAMS") pursuant to the JAMS Streamlined Arbitration Rules & Procedures effective July 1, 2014 (the "JAMS Rules") and as modified by this agreement to arbitrate. The JAMS Rules, including instructions for bringing arbitration, are available on the JAMS website at <http://www.jamsadr.com/rules-streamlined-arbitration>. The Minimum Standards are available at <https://www.jamsadr.com/consumer-minimum-standards/>.

The arbitrator will conduct hearings, if any, by teleconference or videoconference, rather than by personal appearances, unless the arbitrator determines upon request by you or by us that an in-person hearing is appropriate. Any in-person appearances will be held at a location which is reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances. If the parties are unable to agree on a location, such determination should be made by JAMS or by the arbitrator. The arbitrator's decision will follow the terms of these Terms of Use and will be final and binding. The arbitrator will have authority to award temporary, interim, or permanent injunctive relief or relief providing for specific performance of these Terms of Use, but only to the extent necessary to provide relief warranted by the individual claim before the arbitrator. The award rendered by the arbitrator may be confirmed and enforced in any court having jurisdiction thereof. Notwithstanding any of the foregoing, nothing in these Terms of Use will preclude you from bringing issues to the attention of federal, state, or local agencies and, if the law allows, they can seek relief against us for you.

These Terms of Use will be governed by and construed under the laws of the United States (including federal arbitration law) and the State of Florida, without regard to conflicts of law principles.

22. **NOTICE TO CALIFORNIA RESIDENTS.** Under California Civil Code Section 1789.3, California residents are entitled to the following specific consumer rights information To file a complaint regarding the SMW Site or to receive further information regarding use of the SMW Site, send a letter to the above address or contact SMW via e-mail (with "California Resident Request" as the Subject Line). You may also contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite N 112, Sacramento CA 95834 or telephone 800.952.5210.

23. **TERMINATION.** These Terms of Use are effective unless and until terminated by either you or SMW. You may terminate these Terms of Use at any time, provided that you discontinue any further use of the SMW Site. We also may terminate these Terms of Use at any time and may do so immediately without notice, and deny you access to the SMW Site, if in our sole discretion you fail to comply with any term or provision of these Terms of Use. Upon any termination of these Terms of Use by either you or SMW, you must promptly destroy all materials and content downloaded or otherwise obtained from the SMW Site, as well as all copies of such content, whether made under these Terms of Use or otherwise. The following sections will survive any termination of these Terms of Use: “General,” “Your Use of the SMW Site,” “User Comments,” “Merchandise,” “Third Party Site,” “Placing an Order,” “Shipping” “Intellectual Property” (excluding the rights granted to you in that Section), “Making a Claim of Copyright Infringement,” “Privacy,” “Indemnification,” “Termination,” “Disclaimer of Warranties,” “Limitation of Liability,” and “Disputes & Arbitration; Applicable Law.”