

This Video Submission Service Agreement was last modified on 06/19/09 and is effective immediately.

Smithville Video Submission Service Agreement

Please read this Video Submission Service Agreement carefully because it is a part of the Terms of Use and represents your legally binding agreement with us (Agreement) regarding your use of the **Smithville** Video Submission Service. Unless defined separately, terms used in this Agreement are defined in our Terms of Use.

When you click (select) the “ I Accept” box to upload your video, or by using or attempting to use the Service, you are signifying your agreement with and acceptance of all these terms and conditions as part of the Terms of Use that govern your legal and contractual relationship with **Smithville**. If you are acting as an officer, director or employee of an organization, by accepting, you represent and warrant you have full legal authority to bind that employer or entity.

We will inform users on this site of any updates made to the terms and conditions.

If you do not agree with all the terms and conditions of this Agreement at any time, including, without limitation, those times when we make changes, do not use, do not attempt to use, and immediately discontinue your use of the Service, because if you do any of these things you are agreeing to be bound by all of the terms and conditions of this Agreement, including, without limitation, any changes we have made.

1. Submitting Videos.

We will use the term “video” to mean and refer to any and all content, media and materials you submit to or for the Service, including, without limitation, still photographs, writings, spoken statements, music, audio, video, video recordings, audio-visual works and recordings, slides, portraits, animated and/or motion pictures, caricatures, likenesses, vocal or other sounds, sound recordings, voices, voice reproductions, computer graphics and visual effects, as well as any accompanying documentation, packaging or other materials, tangible or intangible, and to all derivative works, translations, adaptations or variations of same, regardless of the tangible medium, broadcast medium, format or form, now known or hereinafter developed or discovered, and regardless of where produced, on location, in a studio or elsewhere, in black-and-white or in colors, alone or in conjunction with other work, characters, real or imaginary, in any part of the world.

To submit videos to the Service you must upload your video (paste the link, embed code or transmit a copy of the digital video file) through the Internet through our Web site. Each time you upload or submit your video (or if you attempt to do so) you will be confirming your acceptance of, and agreement to be bound by, all the terms and conditions of this Agreement. The instructions for uploading your video are on the web page provided for the upload of your video. To be considered for posting and display to the public, your video must meet all the specifications and requirements relating to Content Requirements (See below).

When you submit a video to the Service, you may also be asked to provide some information about you and your submission. This may include, without limitation, such things as a descriptive title, some information about the content, length, your location and/or similar information. By submitting your video, you are also agreeing and you understand that the term “video” also includes, without limitation, and refers to all of the information you submit or we may receive that is related to your video and your submission. Proof that you submitted a video does not constitute proof that we or any of the **Smithville** Entities received anything.

2. Content Requirements.

You are solely responsible and liable for your communications and submissions (and the consequences, if any) made under your name. Videos do not reflect the views of **Smithville** or any of the **Smithville** Entities and neither **Smithville**, nor any of the **Smithville** Entities represents or guarantees the truthfulness, accuracy, or reliability of any video, nor endorses or supports any opinions expressed in any videos. In no event shall **Smithville** or any **Smithville** Entity have or be construed to have any responsibility or liability for or in connection with any of your videos. If we determine, in our sole discretion, you have not met our Content Requirements or if, in our judgment, you or any video you submit violates this Agreement, we reserve the right, at any time, without notice and without limiting any and all other rights we may have under this Agreement, at law or in equity, to (a) refuse to allow you to submit further videos, (b) remove and delete your videos, (c) use any technological, legal, operational or other means available to enforce the terms of this Agreement.

We make no claim the Service or any video is appropriate for any particular purpose or audience, or that any video on our Service may be accessed, used or downloaded outside of the United States, which may not be legal for certain persons or in certain countries and you do so at your own risk. You are responsible for compliance with the laws of your jurisdiction. The United States controls the export of products and information and you agree to comply with such restrictions and not to export or re-export any videos or information to countries or persons prohibited under the export control laws and regulations.

You agree you will not submit or attempt to submit, and we have the right to reject, refuse to accept, remove or otherwise handle as **Smithville** deems appropriate, any “Unauthorized Content” which is defined as any video that is or could be construed as violating any of the terms and conditions of this Agreement, and/or any of the Rules of Conduct set forth in our Terms of Use, including, without limitation:

- causing harm, harassing anyone or which may prevent, prohibit, inhibit, restrict or otherwise impair others from using or enjoying our Service;
- unauthorized access to the Service or information of other users;
- the modification, impairment, disruption, alteration or interference with the use, features, functions, operation or maintenance of the Service; or

· any requirements, rules, terms or conditions that may be applicable to the **Smithville** Entities in connection with the Service.

Neither **Smithville** nor any **Smithville** Entity controls any video submitted and we do not have any obligation to you to evaluate or monitor videos for that or any other purpose. **Smithville** reserves the right to review any submitted video and to delete, remove, move, edit or reject, without notice to you, any video that **Smithville** deems, in its sole discretion, abusive, defamatory, obscene, pornographic, in violation of copyright, trademark or other intellectual property rights, to be in violation of this Agreement or to be unacceptable to **Smithville** or any of the **Smithville** Entities, for any reason or for no reason whatsoever; provided, however, that **Smithville** shall have no obligation or liability to you for failure to do so or for doing so in any particular manner. If **Smithville** receives notice of any claim of infringement that satisfies specific legal requirements, such as notice and takedown requirements under U.S. copyright law (See below), **Smithville** may remove videos associated with such claim. **Smithville** reserves the right to provide information to law enforcement officials, governmental agencies and pursuant to judicial or regulatory compulsion, to protect their respective interests, the Service or to comply with legal, regulatory, audit and compliance obligations.

3. Copyright; Content Requirement Violations; Breach of Agreement.

If you believe any video violates the copyright of any other party, you can notify us by using our Notice and Procedure for Making Claims of Copyright Infringement. If you believe any video or the conduct of any other user violates this Agreement or in any other way infringes upon the rights of others, you may notify us by email at videos@smithville.net. We have no obligation to respond or reply to any notifications you send us, but we always reserve the right to take any action or no action in our sole discretion.

5. Rights Granted to **Smithville** and other **Smithville** entities.

In connection with each and every video you submit to or through the Service, you grant to **Smithville** and the **Smithville** Entities the unqualified, unrestricted, unconditional, unlimited royalty free right, license, authorization and permission to display, exhibit, broadcast or transmit all or any portion of your video on the **Smithville** website and other distribution platforms of **Smithville** and any **Smithville** Entity (collectively, the “Platforms”), for not-for-profit, commercial, educational or any purpose whatsoever (including, without limitation, for purposes related to the **Smithville** Network, **Smithville**, the **Smithville** Entities, the Service, and the Platforms and/or the promotion thereof) without accounting, notification or other obligation to you, and the right to license and sub-license and authorize others to exercise any of the rights granted hereunder to **Smithville** and the **Smithville** Entities, in our sole discretion. For the avoidance of doubt, without limiting the generality of the rights granted to **Smithville** and the **Smithville** Entities, these rights include, without limitation, the right to encrypt, encode and decode, and compress and decompress all or any portion of your video. By submitting your video to the Service, in addition to the rights, licenses and privileges referred to above, you are also granting **Smithville** and each of the **Smithville** Entities the unqualified, unrestricted, unconditional, unlimited, royalty free right, license, authorization and permission to use and refer to your name, image, characteristic or other distinctive identification in relation to your video,

for any purpose whatsoever, without any compensation or accounting to you, in products or services developed by any **Smithville** Entities, without limitation or restriction whatsoever.

The rights, licenses and privileges described in this Agreement and granted to **Smithville** and the **Smithville** Entities shall commence immediately upon submission of a video to or through the Service (by upload or any other means we or any of the **Smithville** Entities make available to you) and continue thereafter perpetually and indefinitely, unless and until terminated, in whole or in part, by **Smithville** on notice to you. Notwithstanding the foregoing, you acknowledge and agree that neither **Smithville**, nor any **Smithville** Entity, shall be required or have any obligation to host, index, display, accept or use any submitted video (or take advantage of any or all of the particular rights and authorities granted or otherwise available) and **Smithville** may, in its sole discretion, remove or refuse to host, index, display, accept, use or do anything at all with respect to any video. Once you submit or attempt to submit your video to or through the Service, you shall have no right to prohibit, restrict, revoke or terminate any of the rights granted to **Smithville** or the **Smithville** Entities. You are not entitled to and you will not receive any compensation or other consideration for your video or any use made of your video once submitted to or through the Service. You also understand and agree that neither all or any portion of your video, used or displayed at a Festival, Event or presentation, need to be submitted for approval prior to use.

You hereby release **Smithville** and the **Smithville** Entities from any and all claims of any rights, encumbrances, liens, claims, demands, actions or suits which you may or can have in connection with your video, including, without limitation, any and all liability for any use or nonuse of the your video, claims for defamation, libel, slander, invasion of privacy, right of publicity, emotional distress or economic loss. You also forever waive and relinquish all moral now or hereafter recognized in connection with the video and the rights granted to **Smithville** and the **Smithville** Entities hereunder.

4. Ownership.

Smithville retains all right, title and interest in and to the Service, including, without limitation, to all associated intellectual property and proprietary rights existing anywhere in the world and you acquire no ownership, proprietary or other rights, title or interest in or to the Service. If **Smithville** or any of the **Smithville** Entities provides you with software or other capabilities or makes software or capabilities available to assist you in any download, upload or other process, the software and/or such capabilities is and are provided “as is” without representations or warranties of any kind. You acquire no rights in or to such software or capabilities other than a limited, revocable, non-exclusive and non-transferable license to use same, solely in connection with our Service as specified by us or any of the **Smithville** Entities. We will not be liable for malfunctions, loss of data, damage to hardware, programs or devices resulting from use of any software, capabilities or interaction with our Service. You must use your own programs and firewalls to scan all software, to prevent intrusion, viruses, other malicious code and damage. **Smithville** is not responsible for any damage if you fail or are unable to do so.

Except for the licenses, authorizations, consents and rights granted hereunder and described in this Agreement, as comprehensive and broad as they may seem or actually be, **Smithville**

acquires no title or ownership rights in or to any videos you submit through the Service and nothing in this Agreement conveys to us any ownership rights in your videos. **Smithville** is acting only as a host, bulletin board or conduit for submitted videos in connection with our Service, with all of the specific rights granted by you hereunder. Although by your submission of each and every video you are requesting and directing us and any of the **Smithville** Entities with whom we have made arrangements, to take advantage of all of the rights and privileges granted hereunder (including, without limitation, the right to display and post the video on the Platforms), neither we, nor any of the **Smithville** Entities, have any obligation to do any of these things.

You must own the rights to each video you submit and each element of each video you submit and the right to grant all of the authorizations, permissions, approvals, consents, rights and licenses as described in this Agreement. If you do not exclusively own all of these rights, you must have all necessary authorizations, permissions, approvals, consents, rights and licenses from the owner(s) to enter into this Agreement and perform and comply with all of its obligations. You represent, warrant and covenant to **Smithville** and by submitting each video to or through the Service, you reaffirm each such representation, warranty and covenant, that (a) you have the legal right and capability to enter into this Agreement and perform and comply with all of its terms and, (b) all of the information provided by you associated with your use of the Service and each time you submit a video to or through the Service, is correct, complete and current, (c) neither your video or your submission of any video violates this Agreement, any rights of any other party, any of your obligations, any law or regulation or infringes upon or misappropriates any intellectual property, privacy, publicity or other rights of any party, (d) you make in the Terms of Use and (e) you hold and will continue to hold all the ownership, license, proprietary and other rights necessary to enter into, authorize, grant rights and perform your obligations under this Agreement as described. Upon the request of **Smithville**, you will furnish **Smithville** any documentation, substantiation and releases necessary and reasonably required to verify and substantiate your compliance with any or all of the terms and conditions of this Agreement, including, without limitation, the foregoing representations, warranties and covenants.

You acknowledge that other persons may have submitted videos to us or the **Smithville** Entities, may have made public or developed, or may originate, submit, make public or develop, material similar or identical to all or a portion of your video or concepts contained therein, and you understand and agree you will not be entitled to any compensation because of the use thereof and the submission of a video, or any posting or display thereof, is not any admission of novelty, priority or originality. Even if you subsequently see or learn of a presentation, motion picture, still photograph, film, video or any other content which appears to incorporate any idea or concept or include anything similar or identical to that contained in any video you or anyone else submits to or through the Service, that is purely coincidental and unavoidable.

7. Financial Consideration.

Smithville and each of the **Smithville** Entities reserves the sole and exclusive right to sell advertising and otherwise exploit, benefit from and/or realize revenue from the conduct of its business and hosting and operating the Service, the **Smithville** Network or other Platforms and

any and all arrangements made with respect thereto, without accounting, obligation or liability to you, notwithstanding that your video may be displayed on or otherwise used by or in connection with the Service, the **Smithville** Network or other Platforms.

8. Indemnification.

Your indemnification obligations under the Terms of Use include, without limitation, any third party claims arising from, related to or caused by your video, the submission of your video and/or in any way associated with this Agreement and/or the Service.

9. Disclaimers and Limitation of Liability.

THE SERVICE IS PROVIDED “AS IS” WITH NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED AND YOUR USE OF THE SERVICE IS AT YOUR OWN RISK. YOU ARE SOLELY RESPONSIBLE FOR YOUR VIDEO, THE REPRESENTATIONS AND OBLIGATIONS UNDER THIS AGREEMENT AND FOR ANY DAMAGES TO YOUR COMPUTER SYSTEM OR LOSS OF DATA RESULTING FROM YOUR USE OF THE SERVICE. SMITHVILLE EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES CONCERNING ACCESS TO AND/OR THE AVAILABILITY, ACCURACY, USEFULNESS AND/OR SECURITY OF THE SERVICE, ANY CONTENT, MATERIAL, SOFTWARE, INFORMATION, DATA, SOFTWARE, CAPABILITIES MADE AVAILABLE TO YOU, RESOURCES, FACILITIES, PRODUCTS AND/OR SERVICES, AND WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR THAT THE SERVICE WILL FUNCTION OR PERFORM IN ANY PARTICULAR MANNER.

THE SERVICE IS MAINTAINED ON SERVERS IN THE UNITED STATES INTENDED FOR USERS AND USE OF THE SERVICE THAT IS NOT RESTRICTED OR PROHIBITED BY LAW OR REGULATION. SMITHVILLE DISCLAIMS ALL LIABILITY FOR ANY USE NOT SPECIFICALLY AUTHORIZED OR THAT IS IN VIOLATION OF THIS AGREEMENT OR THE LAWS OR REGULATIONS THAT MAY APPLY TO YOU IN ANY JURISDICTION OR COUNTRY. SMITHVILLE EXPRESSLY DISCLAIMS ALL LIABILITY FOR ANY AND ALL DAMAGES, WHETHER DIRECT, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, HOWSOEVER ARISING OR CAUSED, WHETHER FORESEEABLE OR NOT, REGARDLESS OF THE FORM OF ACTION OR THE BASIS OR CHARACTERIZATION OF THE CLAIM AND EVEN IF ADVISED OF THE POSSIBILITY OF DAMAGES.

10. General.

The Terms of Use, incorporating this Agreement, is the entire agreement between you and us relating to the Service and the subject matter of this Agreement and supersedes any prior or inconsistent agreements. **Smithville** may terminate this Agreement with you and your right to use the Service at any time without notice to you.