

## **Scale Down Terms of Use**

**Last update: April 20, 2016**

Scale Down™ LLC and its affiliates ("Scale Down," "we" or "us") provide online and mobile services, including, but not limited to the Scale Down website ("scaledownapp.com," "scaledown.com", "scaledown.me," "scaledown.net," or the "Site"), widgets, computer programs and mobile applications hosted by or on behalf of Scale Down (collectively, the "Scale Down Services") intended to enhance a consumer's use of the products offered by Scale Down (the "Scale Down Products"). THIS IS A LEGAL AGREEMENT BETWEEN YOU AND SCALE DOWN LLC AND GOVERNS YOUR USE OF THE SCALE DOWN SERVICES. Subject to your acceptance of and adherence to these Terms of Use (the "Terms of Use"), Scale Down hereby grants you a limited, non-exclusive license to utilize the Scale Down Services as set forth herein. The terms "you" and "user" shall refer to all individuals and entities that access the Scale Down Services.

By your affirmative actions of registering for and/or using the Scale Down Services, you signify your agreement to these Terms of Use and our Privacy Policy and consent to allow Scale Down to communicate with you electronically regarding the Scale Down Products and the Scale Down Services.

### **Modifications to the Terms of Use**

We may make changes to the Terms of Use from time to time. A link to the most current Terms of Use will be available on the Scale Down home page and we will indicate the date of the "Latest Update" at the top of the Terms of Use. We may also place a special notice on the Scale Down Services or communicate significant changes by email. Your continued use of the Scale Down Services following the posting of such changes constitutes your acceptance of the Amended Terms of Use.

### **Requirements for Use of the Scale Down Services**

The Scale Down Services are only available for individuals aged 18 years or older.

Full use of the Scale Down Services requires compatible Scale Down Products, Internet access, a mobile device with text messaging capability, an email address, and certain software; may require periodic updates; and may be affected by the performance of these factors. The Scale Down Services is not a guaranteed part of any third party product or service offering, and no purchase or obtaining of any third party product or service shall be construed to represent or guarantee you access to the Scale Down Services. Use of Scale Down Services may result in any applicable messaging charges that your mobile device carrier charges. Scale Down is not responsible for these charges. Scale Down requires the use of the Scale Down scale, which has a weight limit of 397 lbs.

Scale Down™ requires a strong cellular signal to transmit weight data from the scale. Visit [opensignal.com](http://opensignal.com) to check the signal strength in your area.

Please see the section entitled "Precautions" below for recommended precautions related to your use of the Scale Down Products and the Scale Down Services.

## Agency

You represent that you are using the Scale Down Services for its intended purpose. If you are registering or using the Scale Down Services on behalf of a company or other organization, you represent that you have authority to bind your employer by your actions.

## Precautions

Content found on [scaledown.me](http://scaledown.me), [scaledownapp.com](http://scaledownapp.com), [scaledown.net](http://scaledown.net), or through the Scale Down Services is for informational purposes only and is not intended to replace the relationship between you and your physician or other medical provider. We are not a licensed medical care provider and have no expertise in diagnosing, examining, or treating medical conditions of any kind. You should always consult a physician before starting a fitness program, changing your diet or if you have any questions regarding a medical condition. Never disregard professional medical advice or delay in seeking it because of something you have read on or through the Scale Down Services. You should understand that when participating in any weight loss program, there is the possibility of physical injury and/or death. If you think you may have a medical emergency, call your physician or 911 immediately. If you feel discomfort or pain, immediately stop the activity causing such discomfort or pain. By using the Scale Down Services, you represent that you have received consent from your physician to participate in the program described on the Scale Down Services.

We are not responsible for any health problems that may result from your use of the Scale Down Services. You agree that you are participating in the Scale Down Services at your own risk.

We try to provide helpful and accurate information on the Scale Down Services, but we make no endorsement, representation or warranty of any kind about any information, services or recommendations made available through the Scale Down Services. We are not responsible for the accuracy, reliability, effectiveness, or correct use of information you receive through the Scale Down Services. If you rely on any information provided by Scale Down, Scale Down employees, or others appearing on or contributing content to the Scale Down Services, you do so solely at your own risk.

## User-Generated Content

The Scale Down Services may contain public features such as message boards, forums, bulletin boards, user comments, and other interactive features (collectively, "**Interactive Services**") that allow you to publicly post, submit, publish, display or transmit content, including text, photographs, and other data ("User Generated Content"). You hereby grant to Scale Down a perpetual, irrevocable, non-exclusive, worldwide, royalty-free license, with the right to sublicense, to reproduce, distribute, transmit, publicly perform, publicly display, digitally perform, modify, create derivative works of, and otherwise use and commercially exploit User Generated Content you submit to the Interactive Services in any media now existing or hereafter developed, including without limitation on websites, in audio format, and in any print media format. "User Generated Content" includes but is not limited to content posted on message board posts, blogs, journals, and user comments. You hereby waive any rights of publicity and privacy with respect to

the User Generated Content and any other legal or moral rights that might preclude Scale Down's use of the User Generated Content or require your permission for Scale Down to use the User Generated Content. You agree not to assert any claim, whether based on tort, contract, or other legal theory, against Scale Down or its sublicensees relating to Scale Down's or its sublicensees' use of the User Generated Content in accordance with your privacy settings, and you hereby release Scale Down and its sublicensees from any such claims. You represent that your User Generated Content: (1) will not infringe any third party's copyright, patent, trademark, trade secret or other proprietary rights; (2) will not violate any law, statute, ordinance or regulation; (3) will not be obscene or contain child pornography; (4) will not contain any viruses, worms, time bombs or other computer programming code that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; (5) will not violate any third party's rights of publicity or privacy; and (6) will not be defamatory, unlawfully threatening or harassing, harmful to minors in any way, or otherwise offensive or inappropriate. You are responsible for complying with all laws applicable to your User Generated Content.

We caution you to be careful in the information you disclose in any User Generated Content. Scale Down is not responsible the acts of any other party with respect to the use, inability to use or misuse of any User Generated Content.

#### Registration and Password; Privacy Policy

You are responsible for maintaining the confidentiality of your login information and password. You shall be responsible for all uses of your login information, whether or not authorized by you. You agree to immediately notify us of any unauthorized use of your login information or password. Scale Down cannot and does not assume any responsibility or liability for any information submitted by someone who has fraudulently accessed your Scale Down account or for any third party's fraudulent use or misuse of information submitted by you.

You represent that the information that you provide about yourself as requested in the Scale Down account registration form (the "Registration Data") is accurate and complete, and you agree to update your account information, as necessary, including providing Scale Down with your current email address, so that you may receive notifications and other account-related communications.

The Scale Down Services are subject to the Scale Down Privacy Policy, which can be found at <https://scaledown.me/privacy.pdf>.

#### Paid Services

##### *Payments.*

You agree to pay Scale Down the stated fees for the Service for the duration of time and the amount you selected on the sign up page. You permit Scale Down to charge this fee to your credit card and automatically renew the charge for the duration of your membership until you cancel. We use a third party credit card payment processor to process all payments. This vendor may employ credit card vaulting.

If a third party (such as your employer, for instance) is sponsoring your initial membership (which may include one or more renewal periods), then you will not be charged for the initial membership (and any applicable renewal periods) and the paragraph above will not apply to you during such sponsored membership. At the expiration of your sponsored membership, you may elect to continue with the Scale Down Services directly. At such time, you will be asked to provide your credit card for payment and the above paragraph will then apply to you. If you have any questions regarding the duration or other terms of your sponsored membership, please contact the applicable third party; Scale Down is not responsible for determining the duration or any other terms of your sponsored membership.

#### *Automatic Renewal and Cancellation.*

Membership fees are charged to your credit card and may automatically renew at the price then in effect for the duration of your membership until you cancel. Yearly memberships will automatically renew once a year. Cancellation of your membership can be done in the My Account area (<https://www.scaledown.me/>) on Scale Down. If you choose to cancel, your cancellation will take effect at the end of the term in which you cancelled. If your credit card is invalid for any reason, charged back, or if Scale Down does not receive payment, we will cancel your member benefits immediately. If a third party (such as your employer, for instance) is sponsoring your membership, then this paragraph will not apply to you. However, if such third party ceases its sponsorship, then your membership will terminate unless you elect to continue the Scale Down Services at your expense and in accordance with the terms of these Terms of Use.

#### *Term.*

Unless terminated earlier, these Terms of Use will remain in force as long as you are a paid subscriber to the Services. If you terminate the Service, but continue to be a member of Scale Down, the Terms of Use and Privacy Policy will still apply.

#### *Refund Policy and Termination.*

All fees are non-cancellable and non-refundable, except as follows:

- If Scale Down cancels the entire Service, you may request a refund in writing within 30 days after the cancellation and receive a refund for the monthly prorated amount of the fees for the Service prepaid but not used.
- If you cancel within 7 days of joining, you are eligible, upon request, for a full refund. If you cancel within 7 days of renewal, you are eligible for a refund that is prorated based on service used.

Termination of your paid Service account and the refund rights above are your sole remedies under these Terms of Use and against Scale Down in connection with Scale Down's provision of the paid Service. Notwithstanding anything to the contrary in these Terms of Use, if a third party paid for your use of the Service, you are not eligible to receive any refund; your sole remedy shall be termination of the Service. In any case, refunds are only available for the Scale Down service, less the retail cost of the Scale Down scale, shipping and handling.

### *Representations, Warranties and Covenants.*

*Sponsored Membership:* You represent, warrant and covenant that (a) the membership information that you supply is true, correct and complete, (b) you will update your membership information as required, (c) you will not allow anyone else to use your membership, (d) you will not transfer your membership or password to anyone else and (e) you will report to us any unauthorized or prohibited use of your membership or this Site.

*Membership You Pay:* You represent, warrant and covenant that (a) the membership and credit card information that you supply is true, correct and complete, (b) you will pay any charges that you incur in connection with the Service, including any applicable taxes, (c) you will update your membership and credit card information as required, (d) you will not allow anyone else to use your membership, (e) you will not transfer your membership or password to anyone else and (f) you will report to us any unauthorized or prohibited use of your membership or this Site.

### Ownership of the Scale Down Services

Except for the User Generated Content, the Scale Down Services and all aspects thereof, including all copyrights, trademarks, and other intellectual property rights therein, are owned by Scale Down or its licensors. You acknowledge that the Scale Down Services and any underlying technology used in connection with the Scale Down Services contain Scale Down's intellectual property and proprietary information. You may not reproduce, distribute, host, modify or create derivative works of, publicly display (including by framing any content), or commercially exploit any part of the Scale Down Services (including, without limitation any videos contained in the Scale Down Services) except as necessary to view the content therein and to create a reasonable number of copies of portions of such content (without modification) for your personal, non-commercial use. All rights in the Scale Down Services not expressly granted to you by Scale Down are retained by Scale Down and its licensors.

If you violate any of these Terms of Use, your permission to use the Scale Down Services automatically terminates and you must immediately destroy any copies you have made of any portion of the Scale Down Services.

### Copyrighted Materials

You agree that any materials posted by you shall not infringe or violate the rights of any other party or violate any laws, contribute to or encourage infringing or otherwise unlawful conduct, or otherwise be obscene, objectionable, or in poor taste. You also agree that you have obtained all necessary rights and licenses required to allow the posting of any content posted by you.

### **Digital Millennium Copyright Act Notice**

If you believe that your copyrighted work has been copied in a way that constitutes copyright infringement and is accessible on the Site, please notify Scale Down's copyright agent, as set forth in the Digital Millennium Copyright Act of 1998 (DMCA). For

your complaint to be valid under the DMCA, you must provide the following information in writing:

1. An electronic or physical signature of a person authorized to act on behalf of the copyright owner;
2. Identification of the copyrighted work that you claim is being infringed;
3. Identification of the material that is claimed to be infringing and where it is located on the Site;
4. Information reasonably sufficient to permit eHarmony to contact you, such as your address, telephone number, and e-mail address;
5. A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or law; and
6. A statement, made under penalty of perjury, that the above information is accurate, and that you are the copyright owner or are authorized to act on behalf of the owner.

The above information must be submitted to copyright @ scaledown.me . Please note that only DMCA notices will be accepted at this email address. All other inquiries or requests will be discarded.

#### User Indemnification Of Scale Down

Upon request by us, you agree to defend, indemnify and hold Scale Down and its partners, affiliates, service providers, licensors, officers, directors, employees and agents harmless from and against any and all losses, liabilities, damages and costs, including but not limited to reasonable legal and accounting fees, arising from any claims, actions or demands related to or alleged to relate to: (a) your use of the Scale Down Services, including any User Generated Content you post, store, reproduce, display, or distribute via the Scale Down Services; (b) your violation of the Terms of Use; or (c) your violation of any intellectual property or other third party rights or any applicable law in connection with your use of the Scale Down Services. We reserve the right to assume control of the defense of any third party claim that is subject to indemnification by you, in which event you will cooperate with us in asserting and available defenses.

#### User Conduct

If we determine that any user is not using the Scale Down Services responsibly, we have the right (but not the obligation) to remove, edit, block, or delete such user's transmissions, User Generated Content, or use of the Scale Down Services. We also have the right (but not the obligation) to suspend or terminate your access to and use of Community Pages or other parts of the Scale Down Services, or delete information you have posted to the Scale Down Services, without prior notice if you engage in any conduct that we believe, in our sole discretion: (a) violates any provision of the Terms of Use, (b) violates the Community Guidelines, (c) is offensive to other users, (d) violates the rights of Scale Down or third parties, or (e) could cause Scale Down liability. Without limiting the foregoing, upon any termination of your account or access to the Scale Down Services we may delete all User Generated Content and other information related to your Community Pages. If Scale Down suspects that your Registration Data is inaccurate or incomplete, we may suspend or terminate your account.

## Changes to Scale Down Services

Scale Down may change or discontinue, temporarily or permanently, any feature or component of the Scale Down Services at any time without further notice. In addition, we may, without notice to the applicable user, terminate individual Community Pages that have been inactive for more than 30 days, but have no obligation to do so. You agree that Scale Down shall not be liable to you or to any third party for any modification, suspension or discontinuance of any feature or component of the Scale Down Services. Scale Down recommends that you retain a copy of any materials you post to the Site, as these changes may affect your ability to access or use materials you previously posted to the Site. Scale Down is not responsible for any materials you post to the Site.

## Third Party Services

The Scale Down Services may provide links or references to websites operated by third parties. We do not monitor or investigate such websites and we are not responsible for the content, functionality, or practices of such websites. Inclusion of links to third party websites on our Scale Down Services does not imply approval or endorsement of the linked website by us. If you decide to leave our Scale Down website and access these third party websites, you do so at your own risk. Scale Down suggests that you read the terms of use and privacy policies (if any) on those third party websites. You agree that Scale Down has no liability for any damage or loss of any type that is a result of your use of a third party website.

## Content And Warranty Disclaimer

THE SCALE DOWN PRODUCTS AND SERVICES ARE PROVIDED BY SCALE DOWN AND ITS AFFILIATES "AS IS." NEITHER SCALE DOWN NOR ITS PARTNERS, SUPPLIERS, OR AFFILIATES MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SCALE DOWN PRODUCTS OR SERVICES. IN ADDITION, SCALE DOWN AND ITS PARTNERS DISCLAIM ALL WARRANTIES WITH RESPECT TO THE WEBSITE, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. FURTHERMORE, SCALE DOWN DOES NOT WARRANT THAT USE OF THE WEBSITE WILL BE UNINTERRUPTED, AVAILABLE AT ANY TIME OR FROM ANY PARTICULAR LOCATION, SECURE OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE WEBSITE IS FREE OF VIRUSES OR OTHER POTENTIALLY HARMFUL COMPONENTS.

## Limitation of Liability

IN NO EVENT WILL SCALE DOWN BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION THOSE RESULTING FROM LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION) ARISING OUT OF THE USE, INABILITY TO USE, OR THE RESULTS OF USE OF THE WEBSITE, WHETHER SUCH DAMAGES ARE BASED ON WARRANTY, CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT SCALE DOWN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE AGGREGATE LIABILITY OF SCALE DOWN, ARISING FROM

OR RELATING TO THE WEBSITE (REGARDLESS OF THE FORM OF ACTION OR CLAIM, E.G. CONTRACT, WARRANTY, TORT, STRICT LIABILITY, NEGLIGENCE, OR ANY OTHER LEGAL THEORY) IS LIMITED TO \$100. SCALE DOWN'S AFFILIATES, PROVIDERS AND PARTNERS HAVE NO LIABILITY WHATSOEVER ARISING FROM THE WEBSITE. In some locations applicable law may not allow certain of the limitations described above, in which case such limitations may not apply to you.

## General

The Terms of Use and the resolution of any dispute related to the Terms of Use or the Scale Down Services shall be governed by and construed in accordance with the laws of the State of Illinois without respect to its conflict of laws principles. You shall bring any legal action or proceeding against Scale Down related to the Scale Down Services exclusively in a federal or state court of competent jurisdiction sitting in Illinois, and you agree to submit to the personal and exclusive jurisdiction of such courts. If any provision(s) of the Terms of Use is found to be

contrary to law, then such provision(s) will be construed, as nearly as possible, to reflect the intentions of the parties with the other provisions remaining in full force and effect. Scale Down's failure to exercise or enforce any right or provision of the Terms of Use will not constitute a waiver of such right or provision unless acknowledged and agreed to by Scale Down in writing. These terms and conditions constitute the entire agreement between you and Scale Down with respect to the subject matter herein and supersede any and all prior or contemporaneous oral or written agreements. You may not assign these Terms of Use to any other party and any attempt to do so is void.

## SMS Shortcode Terms of Service

1. When you sign-up to the service, we will send you an SMS message to confirm your signup.

2. You can cancel the SMS service at any time. Just text "**STOP**" to 72253. After you send the SMS message "**STOP**" to us, we will send you an SMS message to confirm that you have been unsubscribed. After this, you will no longer receive SMS messages from us.

If you want to join again, just sign up as you did the first time and we will start sending SMS messages to you again.

3. If at any time you forget what keywords are supported, just text "**HELP**" to 72253. After you send the SMS message "**HELP**" to us, we will respond with instructions on how to use

our service as well as how to unsubscribe.

4. We are able to deliver messages to the following mobile phone carriers:

Major carriers: AT&T, Verizon Wireless, Sprint, T-Mobile, U.S. Cellular, Alltel, Boost Mobile, Nextel, and Virgin Mobile.



Minor carriers: Alaska Communications Systems (ACS), Appalachian Wireless (EKN), Bluegrass Cellular, Cellular One of East Central IL (ECIT), Cellular One of Northeast Pennsylvania, Cincinnati Bell Wireless, Cricket, Coral Wireless (Mobi PCS), COX, Cross, Element Mobile (Flat Wireless), Epic Touch (Elkhart Telephone), GCI, Golden State, Hawkeye (Chat Mobility), Hawkeye (NW Missouri), Illinois Valley Cellular, Inland Cellular, iWireless (Iowa Wireless), Keystone Wireless (Immix Wireless/PC Man), Mosaic (Consolidated or CTC Telecom), Nex-Tech Wireless, NTelos, Panhandle Communications, Pioneer, Plateau (Texas RSA 3 Ltd), Revol, RINA, Simmetry (TMP Corporation), Thumb Cellular, Union Wireless, United Wireless, Viaero Wireless, and West Central (WCC or 5 Star Wireless).

5. As always, message and data rates may apply for any messages sent to you from us and to us from you. You will receive 1-2 messages per day, on average. If you have any questions about your text plan or data plan, it is best to contact your wireless provider. For all questions about the services provided by this Scale Down short code, you can send an email to [support@scaledown.me](mailto:support@scaledown.me).

6. If you have any questions regarding privacy, please read our privacy policy: [scaledown.me/privacy](http://scaledown.me/privacy)