

# Terms & Conditions

Welcome to Shockwave Digital, a website and service (the "Service") which is operated by Shockwave Digital. ("SWD").

**By accessing this website and or provided services or contracts you agree to be bound by these Terms & Conditions for a period of no less than 72 months from the date of access or contract order activation date. These terms are viable indefinitely after 72 months unless otherwise legally ordered by augmentation or active cease under the governing state court order. ("terms"), please read them carefully. If you do not agree to be bound by these terms you should not access or view this website request media services, advertising, online marketing, web design, eSports media, social media marketing, mobile marketing, lead generation, email marketing, video ad services or any other services provided by SWD. These Terms of Use are subject to change by SWD from time to time , effective when posted on the Service. Your continued use after such notice will constitute acceptance by you of such changes.**

In the event that any or any part of the terms contained in these terms & conditions shall be determined by any competent authority to be invalid, unlawful or unenforceable to any extent, such term shall to that extent be severed from the remaining terms, which shall continue to be valid and enforceable to the fullest extent permitted by law.

## Acceptable Use Policy

The Service may provide you with an opportunity to interact with others and share your thoughts, information and materials. SWD expects all of its users, clients and customers to be respectful of other people. If you notice any violation of this Acceptable Use Policy or other unacceptable behavior by any user, you should report such activity to SWD at [shockcompliance@shockwavedigital.io](mailto:shockcompliance@shockwavedigital.io) You are solely responsible for the content, information and other materials (together the "Content") that you post or request from the Service, Agency or transmit to other users and agree that you will not hold SWD responsible or liable for any Content from other users that you access on the Service.

Categories of prohibited Content actions and intent and projects below are merely examples and are not intended to be exhaustive. SWD will make the sole determination as to whether or not content and or client request is acceptable for the Service. Without limitation, you agree that you will not request, post, email or transmit to other users, clients, or customers privately or publicly, anything that contains, undermine, or represent conflicts of interest with SWD agency including but not limited to Content, Reviews, Media Projects or Request that: • is defamatory, abusive, obscene, profane or offensive;

- unsanctioned, project communication, resource distribution, augmentation or circumvention of agency or efforts; non-consent contact of a third party revealing project details and or particulars
- infringes or violates another party's intellectual property rights (such as music, videos, photos or other materials for which you do not have written authority from the owner of such materials to post on the Service);

- violates any party's right of publicity or right of privacy;
- service request that devalue, reduce, threaten or deplete internal resource and management;
- is threatening, harassing or that promotes racism, bigotry, hatred or physical harm of any kind against any group or individual;
- is inaccurate, false or misleading in any way;
- is illegal or promotes any illegal activities;
- promotes illegal or unauthorized copying of another person's copyrighted work or links to them or providing information to circumvent security measures;
- contains "masked" profanity (i.e., F\*@&#)
- contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment; or
- contains any advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation.

You may not include in your member profile or Content any telephone numbers, street addresses, last names, email addresses, employment information, or any other non-public information of any third party.

SWD is under no obligation to screen or monitor Content, but may review Content from time to time at its sole discretion to review compliance with this Acceptable Use Policy. SWD will make all determinations as to what Content is appropriate in its sole discretion. We may include, edit or remove any Content at any time without notice.

You understand that when using the Service, you will be exposed to Content from a variety of sources, and that SWD is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such Content.

You may not use spiders, robots, data mining techniques or other automated devices or programs to catalog, download or otherwise reproduce, store or distribute content available on the Service. Further, you may not use any such automated means to manipulate the Service or attempt to exceed the limited authorization and access granted to you under these Terms of Use. You may not resell use of, or access to, the Service to any third party.

## **Termination of Access & Project Cancellations**

In addition to any right or remedy that may be available to us under these Terms of Use or applicable law, we may suspend, limit or terminate your account and projects, or all or a portion of your access to SWD Services at any time with or without notice and with or without cause.

Due to the labor intensive nature of projects, account management and or production processes, Mid-Term project cancellations past 3 days in active production with non-full completion are subject to full cancellation fees by Shockwave Digital Agency up to or in excess of 90% of total production cost. Lead-based lead generation projects which do not yield or

produce a minimum of two leads, unique prospects within lead run time terms, automatically qualify for re-do at SWD's discretion. Projects canceled before completion are not eligible for refund nor applied to new projects accounts or media teams. In addition, we may refer any information on illegal activities, including your identity, to the proper authorities.

## **Your License to RTM**

In consideration of SWD granting you access to the Service you hereby grant SWD a perpetual license to use, redact, republish, copy, perform and distribute your Content and screen name, including any intellectual property contained therein, in any medium now known or hereinafter developed without payment or compensation to you and without seeking any further approval from you.

## **Contests**

From time to time, we may run certain contests or sweepstakes. Each such contest or sweepstakes will have its own rules and conditions, which shall be in addition to the terms in these Terms of Use. Participation in any such contest or sweepstakes requires your acceptance of such rules and conditions.

## **Privacy Policy**

SWD respects the privacy of visitors and users of this website, and will only collect personally identifiable data, such as your name or email address, when it is voluntarily submitted to us at this website. Please read our Privacy Policy in full.

## **Links**

This Service may contain links to other websites not maintained by us. We encourage you to be aware when you leave our Service and to read the terms and conditions and privacy statements of each and every web site that you visit. We are not responsible for the practices or the content of such other websites or services. Despite any links that might exist on the Service, we do not endorse and are not affiliated with such third parties.

## **Our Proprietary Rights**

SWD or its licensors are the exclusive owners of all copy, software, graphics, designs and all copyrights, trademarks and other intellectual property or proprietary rights contained on or used in connection with the Service. Except as set forth herein, you agree not to copy, distribute,

modify or make derivative works of any materials without the prior written consent of the owner of such materials. All rights not granted under these Terms of Use are reserved by SWD. **No**

## **Warranties**

THE SERVICE, INCLUDING ALL CONTENT MADE AVAILABLE ON OR ACCESSED THROUGH THE SERVICE, IS PROVIDED "AS IS" AND WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER FOR THE CONTENT ON THE SERVICE. FURTHER, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, WE DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, NON-INFRINGEMENT, TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICE OR ANY MATERIALS OR CONTENT CONTAINED THEREIN WILL BE COMPLETELY SECURE, UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE SERVICE OR THE SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE SHALL NOT BE LIABLE FOR THE USE OF THE SERVICE, INCLUDING, WITHOUT LIMITATION, THE CONTENT AND ANY ERRORS CONTAINED THEREIN PROVIDED BY THIRD PARTIES. IN NO EVENT WILL WE BE LIABLE IN TORT, CONTRACT, OR OTHERWISE IN LAW OR IN EQUITY FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR OTHER CONSEQUENTIAL EXEMPLARY AND/OR PUNITIVE DAMAGES, LOST PROFITS, LOST DATA, LOST OPPORTUNITIES, COSTS OF COVER, PERSONAL INJURY/WRONGFUL DEATH (SAVE AS SET OUT BELOW), EACH OF WHICH IS HEREBY EXCLUDED BY AGREEMENT OF THE PARTIES REGARDLESS OF WHETHER OR NOT WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES HOWEVER NOTHING IN THESE TERMS SHALL LIMIT OR EXCLUDE EITHER PARTY'S LIABILITY FOR PERSONAL INJURY/WRONGFUL DEATH CAUSED BY NEGLIGENCE OR ANY LIABILITY WHICH MAY BE EXCLUDED OR LIMITED AS A MATTER OF LAW .

If any part of these warranty disclaimers or limitations of liability is found to be invalid or unenforceable for any reason or if we are otherwise found to be liable to you in any manner, then our aggregate liability for all claims under such circumstances for liabilities, shall not exceed the lesser of (i) the amount paid by you for your use of the Service during the prior twelve (12) months or (ii) ten dollars (\$10).

## **Indemnity**

You agree to defend, indemnify and hold harmless SWD, its officers, directors, employees, business partners and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) any breach by you of any of these Terms of Use, (ii) your Content, (iii) your use of materials or features available on the Service (except to the extent a claim is based upon infringement of a third party right by materials created by SWD) or (iv) a violation by you of applicable law or any agreement or terms with a third party to which you are subject.

## **Governing Law**

US law will govern these Terms and you hereby expressly consent to the exclusive jurisdiction of the State of Delaware for all matters arising in connection with these Terms of use or the use of or your access to the Service.

Any claims asserted by you in connection with the Service must be asserted in writing to SWD within one (1) year of the date such claim first arose, or such claim is forever waived by you. Each claim shall be adjudicated individually, and you agree not to combine your claim with the claim of any third party.

## **Copyright**

If you believe any materials on the Service infringe a copyright, you should provide us with written notice that at a minimum contains:

1. A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
2. Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;
3. Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;
4. Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;
5. A statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
6. A statement that the information in the notification is accurate, and that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

All notices should be sent to our designated agent as follows:

Email: [shockcompliance@shockwavedigital.io](mailto:shockcompliance@shockwavedigital.io)

It is our policy to terminate relationships regarding content with third parties who repeatedly infringe the copyrights of others.

## **Severability**

If any part of these Terms of Use shall be held or declared to be invalid or unenforceable for any reason by any court of competent jurisdiction, such provision shall be ineffective but shall not affect any other part of these Terms of Use.

# **Refunds - Reactivations - Asset Transfers**

## **The Shock Factor Promise**

Shockwave Digital in no way guarantees any project performance results or success levels, sales and or conversions. Shockwave Digital's Refund policy covers refunds full or in part being partial. Refund clauses can only be exercised for consideration on fully completed and paid

campaigns or project services. Additional services, redo, or other amicable solutions in the case of unsatisfactory results. Excluding set up cost and special project fees. This refund policy will not cover all circumstances that may occur outside of Shockwave Digital's control. Such circumstances can include, but are not limited to the following. No response and or follow up to customers, agency or production team. Poorly communicated or unreasonable changes that can affect inter-agency production or affect non-related account projects. Breakdown in client side tracking, communication, technology or follow up protocols. Inactive or non-response campaign activity. "e.g / Inactive campaign for more than 10 calendar days." Campaigns, projects creative, media or files being restricted from agency access or augmentation without agency consent and agreement during active project dates.

Websites, web properties and or any other digital assets produced, bought and or created by SWD will be subject to asset transfer and evaluation cost minimum of \$1750.00 per published site or page with valid domain containing all produced and published materials. Including but not limited to managed assets, accessible by UI, or portal log-in, direct URL and QR coded sharable access.

Non-Agency consent publishing to live assets, sites, blogs, creative, emails, transmissions and dedicated media. Communications of any project details to a 3rd party without Shockwave consent. Such instances whether intended or not can lead to gross delays in project development, halts in production and will be subject to reactivation fees of \$385.00 USD per affected contract per project. Repetitive adjustments and or unreasonable requests outside of the original work order. Failure on the client side to effectively communicate the project goals, limits and expectations of work requested. In all cases where a refund is requested Shockwave Digital reserves the right to investigate refund request issues, complaints or any other circumstance that may or may not justify a refund for a period of 60 days prior to refund approval or remedy attempt. Additional \$275 campaign asset transfer fee will be applied to any augmented campaign after execution of work order. Including targeting, campaign goals and or delivery method changes.

A client or project refund request must also contain an itemized summary report, feedback or detailed description on why and how the affected performance of the project was negatively impacted by the agency's doing. Failure to produce such information will result in a forfeit of refund monies until provided and investigated by SWD. Shockwave Digital also at its discretion can choose to attempt to remedy the issue with campaign augmentations, redesigns,

re-targeting, re-launches, redos, and creative adjustments when and if applicable. Approved refunds will be processed at the end of project investigation within 90 days of investigation completion.

## **Waiver; Remedies**

The failure by us to partially or fully exercise any rights or the waiver of any breach of these Terms of Use by you, shall not prevent a subsequent exercise of such right by us or be deemed

a waiver by us of any subsequent breach by you of the same or any other terms of these Terms of Use. Our rights and remedies under these Terms of Use shall be cumulative, and the exercise of any such right or remedy shall not limit our right to exercise any other right or remedy.

## **Contact Information**

Should you have any questions you may contact us at  
shockcompliance@shockwavedigital.agency

References to "SWD", "we", "us", agency, media company, and "our" are references to Shockwave Digital and their respective affiliates.

Return to [www.shockwavedigital.agency](http://www.shockwavedigital.agency)