



**sMedia Ventures Ltd.**  
4246 Albert St, Suite #338  
Regina, SK S4S 3R9, Canada

## Terms of Service

Last Updated: [January 3, 2025]

IMPORTANT, READ CAREFULLY: YOUR USE OF AND ACCESS TO SMEDIA VENTURES INC PRODUCTS AND SERVICES, ("sMedia") (AND ANY ASSOCIATED SOFTWARE AND WEBSITES) AND PRODUCTS AND SERVICES (COLLECTIVELY, THE "SERVICES") PROVIDED BY SMEDIA.CA AND/OR SMEDIA.IO INC. AND ITS AFFILIATES ("SMEDIA") IS CONDITIONED UPON YOUR COMPLIANCE WITH AND ACCEPTANCE OF THESE TERMS AND CONDITIONS, INCLUDING USE IN ACCORDANCE WITH THE CURRENT VERSION OF ANY SUPPORTING TECHNICAL DOCUMENTATION PROVIDED TO YOU BY SMEDIA OR AVAILABLE ON SMEDIA'S WEBSITES ("DOCUMENTATION"). PLEASE REVIEW THOROUGHLY BEFORE ACCEPTING.

BY PURCHASING, USING, OR OTHERWISE ACCESSING ANY OF THE SERVICES YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS AND ALL ORDER FORMS AND POLICIES INCORPORATED HEREIN BY REFERENCE (THE "AGREEMENT"). THE SERVICES ARE NOT AVAILABLE TO PERSONS WHO ARE NOT LEGALLY ELIGIBLE TO BE BOUND BY THESE TERMS.

### 1.The Service

#### 1.1 Services

*sMedia makes available to our customers ("Customers") and/or their employees and other end users (collectively, "Users") the sMedia Products and sMedia Services, including but not limited to web traffic analysis, lead generation tools, advertisement optimization and ad performance analysis and the following sMedia products:*

- Engaged Prospect Metric
- Performance Dashboard
- Attributely
- Smart Offer
- Video Production
- SEO services
- Direct Mail Retargeting

In addition to digital advertising with the following partner platforms:

- TikTok
- Meta
- Google
- Microsoft

- Amazon
- Youtube
- Pinterest

sMedia reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services (or any part thereof) with or without notice, including modifying features or sMedia Services packages.

## **1.2 Trials**

sMedia may offer trials of the sMedia Services at its sole discretion. If you are offered a free or discounted trial of sMedia Services or Software Services, then, subject to this Agreement, sMedia grants you a limited, personal, non-transferable, non-sub-licensable, internal license to use the sMedia Services for non-production, evaluation purposes during the applicable Trial Period. sMedia may terminate the Trial Period for any trial of sMedia Services at any time in its sole discretion and may accept or decline any request for a trial version of the sMedia Services in its sole discretion. Additional terms and conditions applicable to the trial version of the sMedia Services may appear on the applicable registration page. Any such additional terms and conditions are incorporated into this Agreement by reference.

## **1.3 Customer Responsibilities**

Customer represents and warrants to sMedia that Customer will a) comply with all applicable laws in connection with its use of the sMedia Services, including privacy, data protection and anti-spam laws; b) Customer will ensure that any User Content (as defined below), including any advertisements, will not contain or promote content or activity that is (i) pornographic, illegal, fraudulent, false, deceptive, misleading, libelous, defamatory or threatening, (ii) racist, hate speech or bullying, (iii) adware, malware, spyware or any other malicious code or drive-by download applications and/or (iv) "spam", mail fraud, pyramid schemes, investment opportunities, or advice not permitted by law; and c) the information contained on their website and/or within data feeds is compliant with local governing regulations and applicable laws.

## **1.4 Beta Services**

For purposes of this Agreement, "Beta Services" means certain services, features, or functionality that sMedia may make available to you for evaluation or testing purposes only (and not for production use) which are clearly designated as a pre-release, beta, limited release, developer preview, non-production, or by a similar description of similar import. From time to time, sMedia may make Beta Services available to you at a nominal fee or no charge in its sole discretion. sMedia reserves the right, upon prior written notice to you, to start charging or to revise the fee for such Beta Services at any time at its sole discretion. You may choose to try such Beta Services at

your sole discretion. Beta Services are not supported by sMedia and may be subject to Agreement; however, all restrictions set forth herein, sMedia's reservation of rights and your obligations concerning the Services, and your use of any non-sMedia services or products shall apply equally to your use of Beta Services. Unless otherwise stated or communicated to you by sMedia in writing, your access to any Beta Services will expire upon the date that a version of the Beta Services becomes generally available without the applicable Beta Services designation. sMedia may discontinue any Beta Services at any time in sMedia's sole discretion and may never make them generally available. sMedia will have no liability for any harm or damage arising out of or in connection with Beta Services.

## **2. Accounts**

In order to use the sMedia Services, you may be required to register for an account ("Account"), which Account may have certain permissions based on your role within the customer organization. You agree to provide accurate and up-to-date information to sMedia. Any personal information collected in the course of registering for an Account or providing you with the Services will be governed by our Privacy Policy, which is available at: <https://smedia.ca/privacy-policy>. If you are registering for an Account on behalf of a company, entity, or other organization, you represent and warrant that you have the authority to enter into this Agreement and bind the organization.

### **2.1 Eligibility**

In order to register for an Account, you must (a) be at least the age of majority in your jurisdiction of residence (or have consent from a parent/guardian); and (b) agree to these Terms as well as our Privacy Policy. You may also be required to be an employee or representative of our Customer.

## **3. Payment Terms**

### **3.1 Fees**

In consideration for the right to use the Services under the terms herein, you will pay management fees, ad fees, and ad spend in the amount agreed to via email subject to payment terms of 30 days net. You agree that in the event sMedia is unable to collect the subscription fees owed to sMedia for the Services within 60 days of invoicing, sMedia may take any other steps it deems necessary to collect such fees from you and that you will be responsible for all costs and expenses incurred by sMedia in connection with such collection activity, including collection fees, court costs, and attorneys' fees. You further agree that, if you fail to make any payment when due, then, in addition to all other remedies that may be available: (i) sMedia may collect interest at the lesser of 2.0% per month or the highest amount permitted by law on any amounts not paid when due; and (ii) if such failure continues for 7 days following written notice thereof, sMedia may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to you by reason of such suspension. Except to the extent otherwise expressly stated in this Agreement or in an Order Form, all obligations to pay management fees are non-cancelable and all payments are non-refundable. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by sMedia regarding future functionality or features.

### **3.2 Payment & Charges**

Unless otherwise stated, all Fees must be paid by credit card, electronic funds transfer (EFT) or wire transfer. Credit card payments will be processed using a third-party payment processor. You shall: (a) keep the billing, credit card and payment information you provide to sMedia or its suppliers or payment processors, including name, credit card number and expiry date, mailing address, email address and telephone number, accurate and up to date; otherwise; (b) promptly advise sMedia if credit card information changes due to loss, theft, cancellation or otherwise; (c) be liable for failure to pay any charges or fees caused by your failure to provide sMedia with up to date billing information.

### **3.3 Taxes**

The Fees payable to sMedia do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You understand and acknowledge that you are responsible for paying all Taxes associated with the purchase of the sMedia Services. If sMedia has the legal obligation to pay or collect Taxes for which you are responsible, sMedia will invoice you and you will pay that amount unless you provide sMedia with a valid tax exemption certificate authorized by the appropriate taxing authority.

### **3.4 Price Changes**

sMedia may add new services for additional fees and charges, add or amend fees and charges for existing services, at any time in its sole discretion, including, but not limited to, changing the monthly subscription plan fees for the sMedia Services. Prices of all sMedia Services, including but not limited to monthly subscription plan fees to the sMedia Services, are subject to change upon 30 days' notice from us. Such notice may be provided at any time by posting the changes to the sMedia Website or otherwise contacting you in writing. sMedia shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the sMedia Services. In some cases, a signed agreement may supersede change notifications, for the duration of the agreement.

## **4. Subscription Cancellation**

### **4.1 Subscription Term**

If you enroll for a paid subscription to the sMedia Services, the term of the Subscription will be indicated to you at the time of enrollment and will automatically renew for periods of equal length to the initial term (e.g. monthly, annually etc.).

### **4.2 Suspension**

Unless otherwise stated in a separately signed agreement, you may pause or suspend your subscription at any time by providing 30 days' notice to sMedia via email.

### **4.3 Cancellation**

Unless otherwise stated in a separately signed agreement, you may cancel your subscription at any time by providing 30 days' notice to sMedia via email. No refunds will be provided for pre-paid sMedia Services. If a cancellation falls into a partial month given the 30-day notice, a final invoice will be pro-rated to reflect the partial month charges at the next billing cycle.

## **5. Content**

### ***5.1 User Content***

All information, data, text, software, music, sound, photographs, graphics, video, messages or other materials, whether publicly posted or privately transmitted to the Website and Software Services by Users ("User Content") is the sole responsibility of such Users. This means that you, and not sMedia, are entirely responsible for all such material uploaded, posted, emailed, transmitted or otherwise made available by using the Software Services. You are responsible for obtaining all necessary consents to upload User Content, including any third-party content or personal information, to the Software Services. sMedia does not control or actively monitor user content and, as such, does not guarantee the accuracy, integrity, suitability or quality of such content. You acknowledge that by using the Software Services, you may be exposed to materials that are offensive, indecent or objectionable. Under no circumstances will sMedia be liable in any way for any materials, including, but not limited to, for any errors or omissions in any materials, or for any loss or damage of any kind incurred as a result of the viewing or use of any materials posted, emailed, transmitted or otherwise made available via the Software Services.

### ***5.2 License***

By submitting, posting or displaying User Content on or through the Software Services, you grant us (and our agents) a non-exclusive, royalty-free, worldwide, perpetual license (with the right to sublicense) to use, copy, modify, transmit, display and distribute such User Content to the extent required to provide the Software Services. You represent and warrant that you have all the rights, power and authority necessary to grant the rights granted herein to any User Content that you submit.

### ***5.3 Customer Data***

You agree that sMedia may use and disclose User Content and data as reasonably required to provide the Software Services, including disclosing such User Content to partners, such as advertising partners. In providing the Software Services, sMedia will collect, generate and otherwise create data related to your use and your end users' use of the Software Services, including but not limited to market research data (collectively, "Services Data"). You agree that all Services Data will be exclusively owned by sMedia and sMedia may use and disclose such Services Data for its own business purposes, including selling and licensing such Services Data, provided that sMedia will not disclose any Confidential Information or Personal Information related to you or your end users.

### ***5.4 Feedback***

If you provide sMedia with any suggestions, comments or other feedback relating to any aspect of the Website and/or sMedia Services ("Feedback"), sMedia may use such Feedback in the Website,

sMedia Services or in any other sMedia products or services (collectively, "sMedia Offerings"). Accordingly, you agree that: (a) sMedia is not subject to any confidentiality obligations in respect to the Feedback, (b) the Feedback is not confidential or proprietary information of you or any third party and you have all of the necessary rights to disclose the Feedback to sMedia, (c) sMedia (including all of its successors and assigns and any successors and assigns of any of the sMedia Offerings) may freely use, reproduce, publicize, license, distribute, and otherwise commercialize Feedback in any sMedia Offerings, and (d) you are not entitled to receive any compensation or reimbursement of any kind from sMedia or any of the other users of the Website in respect of the Feedback.

## **6. Restrictions on User Content and Use of the Services**

### **6.1 Restrictions**

In using the Website or Software Services you shall not: (a) Use the sMedia Services other than as permitted by the type of subscription which you have subscribed for, as further described at the time of subscription; (b) copy any content unless expressly permitted to do so herein; (c) upload, post, email, transmit or otherwise make available any material that: i. is unlawful, harmful, threatening, abusive, harassing, tortuous, defamatory, vulgar, obscene, pornographic, libelous, invasive of another's privacy, hateful, or racially or ethnically objectionable, encourages criminal behavior, gives rise to civil liability, violates any law, or is otherwise objectionable; ii. You do not have a right to make available under any law or under a contractual relationship; iii. infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party (including privacy rights); iv. is or contains unsolicited or unauthorized advertising, solicitations for business, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; v. 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 data or the Website or that of any users or viewers of the Website or that compromises a user's privacy; or vi. contains any falsehoods or misrepresentations or create an impression that you know is incorrect, misleading, or deceptive, or any material that could damage or harm minors in any way; (d) impersonate any person or entity or misrepresent their affiliation with a person or entity; (e) forge headers or otherwise manipulate identifiers in order to disguise the origin of any material transmitted to or through the Website or impersonate another person or organization; (f) interfere with or disrupt the Website, Software Services or servers or networks connected to the Website, or disobey any requirements, procedures, policies or regulations of networks connected to the Website or probe, scan, or test the vulnerability of any system or network or breach or circumvent any security or authentication measures; (g) intentionally or unintentionally violate any applicable local, state, national or international law or regulation; (h) collect or store personal data about other users or viewers; (i) license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Website or Software Services; or (j) modify, translate, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any part of the Software Services, except to the extent the foregoing restrictions are expressly prohibited by applicable law.

## **7. End User License**

Except for User Content, the Website, the Software Services and the information and materials that it contains, are the property of sMedia and its licensors, and are protected from unauthorized copying and dissemination by copyright law, trademark law, and other intellectual property laws.

Subject to the terms of this Agreement, sMedia grants you a non-transferable, non-exclusive, license to use the Software Services for your use, and (the "License"). Nothing in the Terms gives you a right to use the sMedia or sMedia names, trademarks, logos, domain names, and other distinctive brand features without our prior written consent. You shall not attempt to override or circumvent any of the usage rules or restrictions on the Website. Any future release, update, or other addition to functionality of the Website or Software Services shall be subject to the terms of these Terms.

## **8. Links & Third-Party Websites**

This Website and Software Services (including User Content) may contain links to other websites that are not owned or controlled by sMedia. In no event shall any reference to any third party, third party product or service be construed as an approval or endorsement by sMedia of that third party, third party product or service. sMedia is also not responsible for the content of any linked websites. Any third-party websites or services accessed from the Website are subject to the terms and conditions of those websites and or services and you are responsible for determining those terms and conditions and complying with them. The presence on the Website of a link to any other website(s) does not imply that sMedia endorses or accepts any responsibility for the content or use of such websites, and you hereby release sMedia from all liability and/damages that may arise from your use of such websites or receipt of services from any such websites.

## **9. Disclaimers**

### ***9.1 No product guarantees/warranties***

As part of the sMedia Services, sMedia delivers products and other consumer goods and services produced by third parties ("Third-Party Products"). You expressly agree that sMedia is not responsible for the quality or safety of any Third-Party Products and hereby indemnify and hold sMedia harmless from any third-party claims arising for your or your employees' use or consumption of such Third-Party Products.

### ***9.2 Disclaimer of Warranties***

The website, sMedia services, and all materials provided therein are provided on an "as is" and "as available" basis. sMedia is not responsible for the availability of partner platforms and will not provide a guarantee as to the availability of advertising on partner platforms. sMedia specifically disclaims all representations, warranties and conditions, either express, implied, statutory, by usage of trade, course of dealing or otherwise including but not limited to any implied warranties of merchantability, non-infringement, title, satisfactory quality or fitness for a particular purpose. Any information or material downloaded or otherwise obtained through the use of the sMedia services is at your own discretion and risk and you will be solely responsible for any damage to your computer system, loss of data, or any other loss that results from downloading or using any such material. sMedia does not warrant, endorse, guarantee, provide any conditions or representations, or assume any responsibility for any product or services advertised or offered by any third party through the website or in respect to any website that can be reached from a link on

the website or featured in any banner or other advertising on the website, and sMedia shall not be a party to any transaction that you may enter into with any such third party. sMedia will not be liable for any type of content exchanged by means of the sMedia services.

## **10. Limitation of liability**

### ***10.1 Exclusion of damages***

Under no circumstances shall sMedia be liable for any direct, indirect, incidental, special, consequential, exemplary or other damages whatsoever, including, without limitation, any damages that result from (a) your use of or your inability to use this website or the sMedia services, (b) the cost of procurement of substitute goods, data, information or services, (c) errors, mistakes, or inaccuracies in the materials on the website, (d) personal injury or property damage of any kind whatsoever arising from or relating to your use of the service, any bugs, viruses, trojan horses, or any other files or data that may be harmful to computer or communication equipment or data that may have been transmitted to or through the website or app, or (e) any errors or omissions in any material on the website or any other loss or damage of any kind arising from or relating to your use of the website or sMedia services. These limitations shall apply even if sMedia has been advised of the possibility of such damages.

### ***10.2 Total damages***

Notwithstanding anything to the contrary contained herein, sMedia's liability to you for any damages arising from or related to this agreement (for any cause whatsoever and regardless of the form of the action), will at all times be limited to the greater of (i) fifty u.s. dollars (\$50) or (ii) amounts you've paid sMedia in flat management fees for the prior 3 months (if any) the foregoing limitations shall apply to the fullest extension permitted by law in the applicable jurisdiction.

### ***10.3 Exclusion***

Some jurisdictions do not allow the exclusion or limitation of liability for incidental or consequential damages, as such, to the extent such exclusions or limitations are specifically prohibited by law, some of the exclusions or limitations set forth below may not apply to you.

## **11. Indemnification**

You agree to defend, indemnify and hold harmless sMedia and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, 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: (a) your use of and access to the Software Services, including any User Content transmitted or received by you or your Users; (b) violation of any term of this Agreement, including without limitation breach of any of the representations and warranties above, by you or your users; (c) your violation of any third-party right, including without limitation any right of privacy or intellectual property rights; (d) violation of any applicable law, rule or regulation by you or your users; (e) User Content or any content that is submitted via your account including without limitation misleading, false, or inaccurate information; (f) your gross negligence or willful misconduct; or (g) any other party's access and use of the Software Services (or access and use of any third-party service via the Software Services) with your unique username, password or other appropriate security code.



## **12. Termination**

### ***12.1 Termination by sMedia***

sMedia may, under certain circumstances and without prior notice, immediately terminate your ability to access the Website or Software Services. Cause for such termination shall include, but not be limited to, (a) breaches or violations of these Terms of Use or any other agreement that you may have with sMedia (including, without limitation, non-payment of any fees owed in connection with the website or otherwise owed by you to sMedia), (b) requests by law enforcement or other government agencies, a request by you, discontinuance or material modification to the website (or any part thereof), (e) unexpected technical, security or legal issues or problems, and/or (f) participation by you, directly or indirectly, in fraudulent or illegal activities. Termination of your access to the Website may also include removal of some or all of the materials uploaded by you to the Website.

### ***12.2 Survival***

The following sections shall survive any termination or expiration of this Agreement: 3, 4, 5, 9, 10, 11, 14, 15 and 16.

## **13. Availability & Updates**

sMedia may alter, suspend, or discontinue this Website or sMedia Services at any time and for any reason or no reason, without notice. The Website or Software Services may be unavailable from time to time due to maintenance or malfunction of computer or network equipment or other reasons.

## **14. Data Security & Privacy**

14.1. Information sent or received over the Internet is generally unsecure and sMedia cannot and does not make any representation or warranty concerning security of any communication to or from the Website or Software Services or any representation or warranty regarding the interception by third parties of personal or other information. You are responsible for safeguarding the password that you use to access the Software Services and you are responsible for any activities or actions under your password. You agree to keep your password secure. sMedia will not be liable for any loss or damage arising from your failure to comply with these requirements.

14.2. sMedia has implemented and will maintain technical, organizational, and administrative systems, policies, and procedures designed to ensure the security, integrity, and confidentiality of Customer Data and to mitigate the risk of unauthorized access to or use of Customer Data. sMedia will notify you, according to the timeframes prescribed under applicable law, if it becomes aware of unauthorized access to Customer Data. sMedia will not access, disclose, view or process Customer Data except (a) as provided for in this Agreement or in sMedia's privacy policy ("Privacy Policy"), (b) as authorized or instructed by you in writing, (c) as required to perform its obligations under this Agreement, or (d) as required by applicable law. sMedia HAS NO OTHER OBLIGATIONS OR LIABILITY WITH RESPECT TO ANY LOSS, ALTERATION, DESTRUCTION, DAMAGE, CORRUPTION, OR RECOVERY OF CUSTOMER DATA.

14.3. While using the Services, you or your Permitted Users may transfer to sMedia certain Customer Data containing personal information that, individually or in combination, does or can identify a specific individual or by or from which a specific individual may be identified, contacted, or located ("Personal Information"). The terms of the sMedia Data Processing Addendum ("DPA") are incorporated herein by reference and apply to the processing of Personal Information.

## **15. Choice of Law**

These Terms and any action related thereto shall be governed by and construed in accordance with the laws of the Province of Saskatchewan and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The parties hereby irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting in Regina, Saskatchewan.

## **16. General**

### ***16.1 Entire Agreement***

These Terms of Use, together with the sMedia Privacy Policy and any Order Form (if applicable), constitute the entire agreement between the parties relating to the Website and Software Services and all related activities. If any part of these Terms of Use is held to be unlawful, void, or unenforceable, that part shall be deemed severed and shall not affect the validity and enforceability of the remaining provisions.

### ***16.2 No waiver***

The failure of sMedia to exercise or enforce any right or provision under these Terms of Use shall not constitute a waiver of such right or provision. Any waiver of any right or provision by sMedia must be in writing and shall only apply to the specific instance identified in such writing.

### ***16.3 No Assignment***

You may not assign the terms of use, or any rights or licenses granted hereunder, whether voluntarily, by operation of law, or otherwise without sMedia's prior written consent.

### ***16.4 Contact***

If you have any questions about these Terms or if you wish to make any complaint or claim with respect to the sMedia Services, please contact us at [sales@smmedia.ca](mailto:sales@smmedia.ca).

**By signing below, you confirm that you have signing authority on behalf of the identified dealership organization to agree to the terms as laid out.**

**DEALERSHIP NAME:**

**NAME OF SIGNER:**

**DEALERSHIP URL:**

**SIGNATURE:**

**DATE:**