

## USER TERMS OF SERVICE

Version of April 1, 2022

Thank you for choosing ShapeDiver!

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The column on the right provides a short explanation of the terms of use and is not legally binding.

### **I. THIS IS A CONTRACT BETWEEN YOU AND US**

§ 1.1 Our Services. These User Terms of Service (the “User Terms”) govern your access and use of our using our services (the “Services”) made available on [www.shapediver.com](http://www.shapediver.com) (the “Website”). Please read them carefully. Even though you are signing onto an existing workspace, these User Terms apply to you as a user of the Services. We are grateful you’re here.

§ 1.2 These User Terms are Legally Binding.

- (a) These User Terms are a legally binding contract between you and us.
- (b) As part of these User Terms, you agree to comply with the most recent version of our Acceptable Use Policy, which is

**Basically,**

if you use our Services, you agree to be bound by these User Terms.

incorporated by reference into these User Terms. If you access or use the Services, or continue accessing or using the Services after being notified of a change to the User Terms or the Acceptable Use Policy, you confirm that you have read, understand and agree to be bound by the User Terms and the Acceptable Use Policy.

- (c) “We,” “our” and “us” refer to the person specified in Art. VII.

§ 1.3 Entire Agreement.

- (a) The User Terms, including any terms incorporated by reference into the User Terms, constitute the entire agreement between you and us and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.
- (b) To the extent of any conflict or inconsistency between the provisions in these User Terms and any pages referenced in these User Terms, the terms of these User Terms will first prevail; provided, however, that if there is a conflict or inconsistency between the Customer Terms and the User Terms, the terms of the Customer Terms will first prevail, followed by the provisions in these User Terms, and then followed by the pages referenced in these User Terms (e.g., the Privacy Policy). Customer will be responsible for notifying Authorized Users of those conflicts or inconsistencies and until such time the terms set forth herein will be binding.

§ 1.4 Modifications.

- (a) As our business evolves, we may change these User Terms or the Acceptable Use Policy. If we make a material change to the User Terms or the Acceptable Use Policy, we will provide you with reasonable Notice prior to the change taking effect.
- (b) You can review the most current version of the User Terms at any time by visiting [shapediver.com/terms](https://shapediver.com/terms) and by visiting the following for the most current versions of the other pages that are

referenced in these User Terms: [Acceptable Use Policy](#) and [Privacy Policy](#).

- (c) Any material revisions to these User Terms will become effective on the date set forth in our Notice, and all other changes will become effective upon posting of the change. If you use the Services after the effective date of any changes, that use will constitute your acceptance of the revised terms and conditions.

## II. THE CUSTOMER CONTROLS YOUR WORKSPACE

§ 2.1 You are an Authorized User on a Workspace Controlled by a “Customer”. An organization or other third party that we refer to in these User Terms as “Customer” has invited you to a workspace i.e., a digital space where a user or a group of users may access the Services. If you are joining one of your employer’s workspaces, for example, Customer is your employer. If you are joining a workspace created by a client of the agency you are working for, that client is our Customer and the Client is authorizing you to join its workspace.

§ 2.2 What This Means for You—and for Us.

- (a) Customer has separately agreed to our Customer Terms of Service or entered into a written agreement with us (in either case, the “Contract”) that permitted Customer to create and configure a workspace so that you and others could join (each invitee granted access to the Services, including you, is an “Authorized User”).
- (b) The Contract contains our commitment to deliver the Services to Customer, who may then invite Authorized Users to join its workspace(s). When an Authorized User, including you, submits content or information to the Services, such as messages or files (“Customer Data”), you acknowledge and agree that the Customer Data is owned by Customer and the Contract provides Customer with many choices and control over that Customer Data. For example, Customer may provision or deprovision

**Basically,**

the Customer decides which individuals can access the Services as ‘Authorized Users’ in the Customer’s workspace.

access to the Services, enable or disable third party integrations, manage permissions, retention and export settings, transfer or assign workspaces, and these choices and instructions may result in the access, use, disclosure, modification or deletion of certain or all Customer Data.

§ 2.3 The Relationship Between You, Customer and Us. AS BETWEEN US AND CUSTOMER, YOU AGREE THAT IT IS SOLELY CUSTOMER'S RESPONSIBILITY TO

- (a) INFORM YOU AND ANY AUTHORIZED USERS OF ANY RELEVANT CUSTOMER POLICIES AND PRACTICES AND ANY SETTINGS THAT MAY IMPACT THE PROCESSING OF CUSTOMER DATA;
- (b) OBTAIN ANY RIGHTS, PERMISSIONS OR CONSENTS FROM YOU AND ANY AUTHORIZED USERS THAT ARE NECESSARY FOR THE LAWFUL USE OF CUSTOMER DATA AND THE OPERATION OF THE SERVICES;
- (c) ENSURE THAT THE TRANSFER AND PROCESSING OF CUSTOMER DATA UNDER THE CONTRACT IS LAWFUL; AND
- (d) RESPOND TO AND RESOLVE ANY DISPUTE WITH YOU AND ANY AUTHORIZED USER RELATING TO OR BASED ON CUSTOMER DATA, THE SERVICES OR CUSTOMER'S FAILURE TO FULFILL THESE OBLIGATIONS.

WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, TO YOU RELATING TO THE SERVICES, WHICH ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS.

### III. A FEW GROUND RULES FOR YOU

§ 3.1 You Must be Over the Legal Age. To the extent prohibited by applicable law, the Services are not intended for and should not be used by anyone under the age of sixteen. You represent that you are over the legal age

**Basically,**

don't do anything to harm us or the Customer. If you do, you will lose your access rights to the Services.

and are the intended recipient of Customer's invitation to the Services. You may not access or use the Services for any purpose if either of the representations in the preceding sentence is not true. Without limiting the foregoing, you must be of legal working age.

- § 3.2 While You Are Here, You Must Follow the Rules. To help ensure a safe and productive work environment, all Authorized Users must comply with our Acceptable Use Policy and any applicable policies established by Customer. If you see inappropriate behavior or content, please report it to the Customer and us.
- § 3.3 You Are Here At the Pleasure of Customer (and Us). These User Terms remain effective until your access to the Services has been terminated by Customer or us. Please contact Customer if you at any time or for any reason wish to terminate your account, including due to a disagreement with any updates to these User Terms or the Acceptable Use Policy.

#### IV. LIMITATION OF LIABILITY

- § 4.1 If we believe that there is a violation of the Contract, User Terms, the Acceptable Use Policy, or any of our other policies that can simply be remedied by Customer's removal of certain Customer Data or taking other action, we will, in most cases, ask Customer to take action rather than intervene. We may directly step in and take what we determine to be appropriate action, including disabling your account, if Customer does not take appropriate action or we believe there is a credible risk of harm to us, the Services, Authorized Users, or any third parties.
- § 4.2 IN NO EVENT WILL YOU OR WE HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- § 4.3 UNLESS YOU ARE ALSO A CUSTOMER (SUBJECT AT ALL TIMES TO OUR RIGHTS AND REMEDIES UNDER THE CONTRACT), YOU

WILL HAVE NO FINANCIAL LIABILITY TO US FOR A BREACH OF THESE USER TERMS.

§ 4.4 OUR MAXIMUM AGGREGATE LIABILITY TO YOU FOR ANY BREACH OF THE USER TERMS IS ONE HUNDRED EUROS (€ 100) IN THE AGGREGATE. THE FOREGOING DISCLAIMERS WILL NOT APPLY TO THE EXTENT PROHIBITED BY APPLICABLE LAW AND DO NOT LIMIT EITHER PARTY'S RIGHT TO SEEK AND OBTAIN EQUITABLE RELIEF.

§ 4.5 Application of Consumer Law. The Services constitute a tool intended for use by businesses and organizations and not for consumer purposes. To the maximum extent permitted by law, you hereby acknowledge and agree that consumer laws do not apply. If they, however, do apply and cannot otherwise be lawfully excluded, nothing in these User Terms will restrict, exclude or modify any statutory warranties, guarantees, rights or remedies you have, and our liability is limited, at our option, to the replacement, repair or resupply of the Services or the pro-rata refund to Customer of pre-paid fees for your access to the Customer workspace in your role as Authorized User covering the remainder of any paid subscription term.

## V. HOW WE HANDLE YOUR PERSONAL DATA

§ 5.1 Please review our Privacy Policy for more information on how we collect and use data relating to the use and performance of our products.

## VI. A FEW FINAL POINTS

§ 6.1 Waiver. No failure or delay by either party in exercising any right under the User Terms, including the Acceptable Use Policy, will constitute a waiver of that right. No waiver under the User Terms will be effective unless made in writing and signed by an authorized representative of the party being deemed to have granted the waiver.

### Basically,

there is a separate policy, in which we explain how we protect the privacy of your personal data.

### Basically,

if things go really wrong this is what will happen, along with some other general legal language.

§ 6.2 No Legal Services. Neither the provision of the Services nor the furnishing of the User Terms and any instructions related thereto constitute legal advice or legal services.

§ 6.3 Governing Law; Venue; Fees.

- (a) The User Terms, including the Acceptable Use Policy, and any disputes arising out of or related hereto, will be governed exclusively by the same applicable governing law of the Contract, without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The courts located in the applicable venue of the Contract will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the User Terms, including the Acceptable Use Policy, or its formation, interpretation or enforcement.
- (b) Each party hereby consents and submits to the exclusive jurisdiction of such courts. In any action or proceeding to enforce rights under the User Terms, the prevailing party will be entitled to recover its reasonable costs and attorney's fees.

§ 6.4 Assignment.

- (a) You may not assign any of your rights or delegate your obligations under these User Terms, including the Acceptable Use Policy, whether by operation of law or otherwise, without the prior written consent of us (not to be unreasonably withheld).
- (b) We may assign any of our duties and rights under the User Terms, in whole or in part, including all terms and conditions incorporated herein by reference, without your consent, including to a corporate affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. In addition, we may delegate any of our obligations under the User Terms.

§ 6.5 Severability. Any provisions of the User Terms shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability or the other provisions thereof. If any provision of the User Terms is invalid or unenforceable, a suitable and

equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision; and the remainder of the User Terms and the application of such provision to other persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

§ 6.6 Survival. Provisions herein which by their terms must survive the termination of the User Terms in order to effectuate the intent of the Parties will survive any such termination, whether by expiration of the term, termination, or otherwise, for such period as may be appropriate under the circumstances.

§ 6.7 Headings. The section headings in the User Terms do not form a part of them but are for convenience only and shall not limit or affect the meaning of the provisions.

## **VII. CONTACT INFORMATION**

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§ 7.1 The Services are provided by ShapeDiver GmbH.

§ 7.2 If you have any questions about the Services or the User Terms, please contact us as described in more detail on our Website.