



TERMS AND CONDITIONS, SHAPEDIVER SOFTWARE SUPPORT SERVICES

Version December 1st, 2020

Applicability, Amendments and Modifications

The party contracting with ShapeDiver GmbH ("ShapeDiver") shall be referred to as "Customer" for purposes of these Terms and Conditions, ShapeDiver Support Services, (the "Conditions"). ShapeDiver and the Customer together are referred to as the "Parties", each being a "Party".

Any use of the ShapeDiver's Software-as-a-Service products (the "ShapeDiver Technology") by the Customer will at all times be subject to ShapeDivers "Terms and Conditions, Software-as-a-Service Products" (available at shapediver.com/terms).

Unless superseded by a separate written agreement between the two parties, these Conditions shall apply to and be binding with regards to all software support services (the "Services") provided by ShapeDiver to the Customer. ShapeDiver hereby expressly rejects any and all of the Customer's terms and conditions, such rejection to extend to all confirmations or communications made by the Customer which attempt to incorporate the Customer's terms and conditions by way of reference. The Customer acknowledges and agrees that these Conditions (including any documents referred to herein) will be applicable to all Services provided by ShapeDiver.

ShapeDiver reserves the right to modify these Conditions at any time and for any reason; such changes may include, but are not limited to, the imposition of new or additional terms or conditions. Any modification of or amendment to these Conditions shall enter into force and be legally binding upon the Customer upon the expiration of one month following notification provided to the Customer. The amendment notification shall include information concerning the material contents of any amendment as well as a reference that any amendment shall become legally binding after the expiration of one month after the Customer's receipt of the amendment notification, unless in case of continuous obligations between the Parties (e.g. monthly maintenance activities) the Customer objected to the amendment in writing within such one month period and terminates the contract in respect of the Services.

Software Support Services

ShapeDiver offers licensees of the ShapeDiver Technology the following Services:

- **Setting up and configuring instances of the ShapeDiver Technology** on dedicated server infrastructure according to Customer's needs and requirements, and potentially implementing custom extensions or modifications for such instances, whereupon the Customer does not acquire any right to the source code of the ShapeDiver Technology or obtain any title thereto.



- **Customizing and integrating the ShapeDiver Technology** according to the Customer's needs and requirements (the "Customization"), whereupon the Customer does not acquire any right to the source code of the ShapeDiver Technology or obtain any title thereto. The Customer may perform any Customization only if such Customization is within the scope of documentation made available to the Customer by ShapeDiver through ShapeDiver's websites or other documentation materials. Any use of the ShapeDiver Viewer API as documented at www.shapediver.com/api by the Customer is admissible under this provision.
- **Development of custom software** applications ("Individual Software") such as
 - parametric 3D visualizations for use with the ShapeDiver Technology,
 - browser based applications based on the ShapeDiver Viewer API, or
 - other types of software based on or intended for use in conjunction with the ShapeDiver Technology.
- **Technical support** in the event that there are any questions concerning, or difficulties using, the ShapeDiver Technology.
- **Consulting services**, especially in relation to the use of the ShapeDiver Technology or the Individual Software.

The Services shall be performed by ShapeDiver on the basis of information and documents provided by the Customer. Where necessary, the Customer shall make available test data at the Customer's own expense and afford ShapeDiver the opportunity to carry out tests.

In respect of any Customization and/or Individual Software, the Customer shall make available relevant specifications at the Customer's own expense. The Customer is responsible for the correctness and completeness of such specifications. ShapeDiver will review the documents and information provided by the Customer and, where reasonably necessary, ShapeDiver shall make changes in its sole discretion to ensure that the Services can be implemented by ShapeDiver accordingly. In respect of the agreed specification, ShapeDiver will provide the Customer with an offer concerning the price and estimated timing for the delivery of the Customization and/or Individual Software (the "Offer") and, following the Customer's confirmation of the Offer (the "Confirmed Specification"), ShapeDiver shall perform the Services on the basis of the Confirmed Specification. Any request by the Customer for any modification of or change to the Confirmed Specification following acceptance of the Offer, if feasible and subject to ShapeDiver's acceptance, may result in changes to the Offer, including changes to the estimated deadlines and pricing arrangements. ShapeDiver is not required to accommodate any request for any modification of or change to the Confirmed Specification until the Customer has confirmed the relevant changes (e.g. to price and deadlines) to the Offer. All time estimations and deadlines are only reasonable guesses as to when work should be completed and by no means are firm or legally enforceable dates. Customer understands and agrees that in software development accurate estimation is nearly impossible and therefore agrees to accept delivery as soon as ShapeDiver in good faith can provide it.

In regards to the Customization and/or Individual Software, payment of the invoice following complete delivery shall be deemed acceptance by the Customer that the Customization and/or Individual Software conforms with the Confirmed Specification and that the Services were provided by ShapeDiver as agreed.

Should it prove that ShapeDiver is not able to complete the Services in accordance with the Confirmed Specification out of factual or legal reasons, ShapeDiver shall inform the Customer thereof. If the Customer does not adapt the performance specifications accordingly, ShapeDiver may reject performance of the Services. The Customer shall reimburse ShapeDiver for any costs already accrued.



Terms of Payment

Any Service will be charged at the prices agreed to between the Parties in the respective service order and/or other signed written agreement. If the estimated amount of time is exceeded due to the Customer's fault, Services shall be charged according to actual time spent based on applicable hourly rates conveyed.

Unless agreed otherwise between the Parties, all prices shall be "ex works", in Euros, plus applicable taxes, duties, levies and custom duties as well as reimbursement for all reasonable costs and expenses (e.g. packaging costs, costs of program carriers, costs of transportation and travel expenses, including travel times).

Invoices submitted by ShapeDiver to the Customer shall be due and payable without deduction within 21 days of invoicing. The Customer may not withhold or set off any payment for any reason whatsoever.

The Customer's failure to comply with the agreed payment deadlines shall entitle ShapeDiver to discontinue its work and to withdraw from the contract. If the Customer is behind on payments, the Customer shall pay the statutory default interest. If the Parties agreed on payment by installments and the Customer fails to pay an installment when due, ShapeDiver may accelerate payment of all outstanding installments.

Place of Delivery

The place of delivery of ShapeDiver's Services shall be the seat of ShapeDiver in Vienna, Austria.

The risk of transporting data and programs in digital form, including the risk of any manipulation of such data and programs, shall be borne by the Customer once ShapeDiver has made available a download or provided data to the Customer.

Delivery Dates

Unless expressly otherwise agreed between the Parties, any date or deadline for the delivery or completion of Services shall be deemed non-binding and illustrative. Agreed deadlines for the delivery or completion of Services shall commence on the date of acceptance of the Offer or in the event of any change of the Offer pursuant to section 2.3, Customer's acceptance of such changed Offer.

ShapeDiver will endeavor to comply with the targeted deadlines for the delivery or completion of Services to the extent reasonably practicable. However, the delivery or completion dates can only be complied with if the Customer (i) makes available to ShapeDiver all necessary information and documents and provides necessary preliminary work in due time, and (ii) cooperates with ShapeDiver to the extent required.

ShapeDiver is not liable for any delay in delivery and increase in costs resulting from incorrect, incomplete or subsequently changed data and information or other acts or omissions by the Customer. ShapeDiver will not be held to be in default of its obligations hereunder in the event of such delays in delivery. Any increased costs shall be borne solely by the Customer.

If the provision of Services by ShapeDiver includes several parts or units (e.g. programs and/or support sessions, completion in stages), ShapeDiver may make partial deliveries to the Customer and issue partial invoices after delivery of every Service unit or part thereof to the Customer.

License and Intellectual Property Rights

All rights, including, without limitation, all intellectual property rights - including source codes, database rights, know-how and trade secrets, in each case whether registered or unregistered (the "Intellectual Property Rights") developed or created by ShapeDiver and/or any of its employees and/or subcontractors in connection



with the performance of Services shall accrue exclusively to ShapeDiver, unless expressly agreed otherwise by the Parties on a case-by-case basis.

ShapeDiver shall grant the Customer a personal, revocable, non-exclusive, non-assignable, non-transferable and non-licensable right to use the Customization and/or Individual Software against payment of the remuneration agreed to between the Parties, unless expressly otherwise agreed by the Parties on a case-by-case basis.

The Customer shall not remove, efface or obscure any copyright notices or other proprietary notices of ShapeDiver from any software or materials, including, but not limited to, the Customization provided hereunder.

The Customer may not modify, edit, adapt, reverse-engineer, copy, disassemble, decompile or duplicate in any way the Customization and/or Individual Software or apply any other technical or logical procedure thereto in order to influence or gain information about its structure, processes, functioning or other protectable attributes.

If ShapeDiver provides to the Customer open source software, any use thereof shall be subject to the respective licensor's terms. A list of the open source software used in the respective version of the ShapeDiver Technology and the relevant license terms will be made available to the Customer when downloading the respective version.

Confidential Information

In the context of their business relationship, the Parties shall grant each other access to certain information and materials, including, but not limited to, the business, source codes, trade and business secrets, know-how, data and products of the other Party, that are confidential and of substantial value to such Party (the "Confidential Information"); such value would be impaired if such Confidential Information is disclosed to third parties. The Parties shall maintain and protect the confidentiality of Confidential Information in the same manner in which they protect their own Confidential Information of a similar nature. The Parties will take necessary precautions to protect and maintain the confidentiality and non-disclosure of Confidential Information.

Notwithstanding any other provision hereof, Confidential Information shall not include any information that: (i) is or subsequently becomes public domain through no fault of the disclosing Party; (ii) is already known to the disclosing Party at the time of its disclosure; (iii) is rightfully received by the disclosing Party from a third party without restriction on disclosure; (iv) has demonstrably been developed independently by the disclosing Party.

The Parties' confidentiality obligation shall survive the end of the Parties' business relationship and continue for an additional 5 years.

Warranty

ShapeDiver warrants that the Services are performed according to best industry standards and that the Customization and/or Individual Software will fulfill the functions described in the Confirmed Specification.

SHAPEDIVER ONLY ISSUES THE WARRANTIES EXPRESSLY REFERRED TO HEREIN. SHAPEDIVER DISCLAIMS ALL OTHER WARRANTIES, CONFIRMATIONS, GUARANTEES AND REPRESENTATIONS IN RESPECT OF THE CUSTOMIZATION AND/OR INDIVIDUAL SOFTWARE TO THE EXTENT PERMITTED BY LAW. ANY RECOMMENDATION ISSUED OR INFORMATION PROVIDED BY THE LICENSOR SHALL CONSTITUTE A WARRANTY TOWARD THE LICENSEE ONLY IF EXPRESSLY AGREED AS SUCH.



For the purpose of asserting a warranty, the Customer shall (i) immediately provide to ShapeDiver at support@shapediver.com a detailed description of the defect; and (ii) make available to ShapeDiver all documents and information necessary to remedy the defect. If there actually is a defect, ShapeDiver will use reasonable efforts to remedy such defect within a reasonable period of time.

The warranty period shall expire 3 months after performance of the Services and/or delivery of the Customization and/or Individual Software. Any assumption of deficiency under Section 924 of the Austrian Civil Code [ABGB] is expressly excluded.

Limitation of Liability

SHAPEDIVER IS ONLY LIABLE FOR ANY DAMAGE CAUSED BY INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE. ANY LIABILITY FOR DAMAGE CAUSED BY SLIGHT NEGLIGENCE IS EXPRESSLY EXCLUDED. SHAPEDIVER DISCLAIMS ANY LIABILITY FOR ANY INDIRECT DAMAGE, LOST PROFIT, CONSEQUENTIAL DAMAGE AND NON-MATERIAL DAMAGE OF ANY KIND. THIS LIMITATION OF SHAPEDIVER'S LIABILITY SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW. ANY CLAIM AGAINST SHAPEDIVER SHALL BE ASSERTED (I) WITHIN 3 MONTHS OF THE CUSTOMER BECOMING AWARE OF DAMAGE, OTHERWISE THE CLAIM SHALL BE FORFEITED; AND (II) ONLY AGAINST SHAPEDIVER, EXCLUDING ANY PERSONAL LIABILITY OF ALL REPRESENTATIVES, EMPLOYEES AND SUB-CONTRACTORS OF SHAPEDIVER.

IRRESPECTIVE OF THE LEGAL GROUND OF ANY CLAIM, ANY LIABILITY OF SHAPEDIVER TO THE CUSTOMER IN CONNECTION WITH THE SERVICES PROVIDED HEREUNDER SHALL NOT EXCEED THE SUM TOTAL OF PAYMENTS SHAPEDIVER RECEIVED IN AGGREGATE FOR PROVIDING THE RESPECTIVE SERVICE.

Data Privacy

The Parties agree to observe any applicable data privacy provisions in connection with the provision of Services hereunder and shall ensure compliance with such provisions by their representatives, employees and any third party attributable to them.

ShapeDiver's privacy policy (available at <https://shapediver.com/privacy/>), as amended from time to time, is hereby incorporated by this reference and made an integral part of these Conditions.

Miscellaneous

Any individual written agreement between the Parties deviating from these Conditions shall override these Conditions.

If any term hereof is or becomes invalid or if these Conditions have a loophole, this shall not affect the validity of the remaining terms hereof. The invalid term shall be deemed replaced by a valid term which closest reflects the Parties' original economic intent. This shall also apply to any loophole.

These Conditions shall be governed by and construed in accordance with Austrian law, without giving effect to its conflict of law rules and the UN Sales Convention. All disputes arising from or in connection with these Conditions shall be referred to the court in Vienna having subject-matter jurisdiction.