

Terms of Service (November 2022)

Introduction

Welcome! These Terms of Service (sometimes referred to as “**TOS**”) contain the terms and conditions under which Sharktech, Inc., and/or its authorized subsidiaries and affiliates, agree to provide Services (defined below) to Users (defined below). User accepts these TOS once User commences use of the Services. The TOS then becomes a binding contract between Sharktech, Inc. and User. These TOS are incorporated into all contracts between User and Sharktech regarding the purchase of, or subscription to, any Services.

The TOS also incorporates by reference the following, which are available at www.sharktech.net (collectively “**TOS**”):

- Acceptable Use Policy (“**AUP**”)
- Privacy Policy
- Responsible Disclosure Policy (“**RDP**”)
- Service Level Agreement (“**SLA**”)

Sharktech reserves the right to modify the TOS from time to time, in Sharktech’s discretion. If User wishes to receive notice of such modifications, User should email Sharktech with its notice request to legal@sharktech.net or User can visit Sharktech’s website at www.sharktech.net/legal where the most up-to-date TOS can be found.

User must immediately cease all access to and use of the Services if User does not wish to be bound by these TOS.

Definitions

The terms “**we,**” “**us,**” “**our,**” or “**Sharktech,**” are used interchangeably in the TOS to refer to Sharktech, Inc., as well as its affiliates, employees, contractors, and subsidiaries.

The terms “**you,**” “**your,**” “**User,**” and “**Users,**” are used interchangeably in the TOS, to refer to any natural person, organization, company, association, or other entity, which uses, purchases, and/or subscribes to any of Sharktech’s Services, through contract or subscription, directly, or through another User as a third party (“**Third Party User**”). Any User from an organization, company, association, or other entity, represents that he or she has authority to bind such entity, and agrees to comply with the TOS, on such entity’s behalf.

Users who provide Services to Third Party Users agree to be responsible for the Third-Party’s use of the Services and Third-Party User’s compliance with the TOS. Third-Party Users are also bound by the terms of the TOS.

The term “**Services**” refers to all products and services offered or provided by Sharktech, including, without limitation, its dedicated servers, cloud hosting, cloud virtual servers, colocation services,

DDoS protection services, IP transit services, and use of any of its data centers, whether directly or indirectly.

Terms & Conditions

1. **User Eligibility for Services.** Users, and Third Party Users, must comply with all applicable laws, rules and regulations in order to use our Services. The right to access and use Sharktech's Services shall be revoked for any use that violates, or conflicts with, any applicable law, rule or regulation, in Sharktech's reasonable determination.

2. **Registration/Account Information.** To access or use the Services, User may be required to register for an account, which may require User to provide Sharktech with some information, such as your name, email address, and a valid form of payment, and other information ("**Account Information**"). This Account Information may also include IP numbers, account history, and account use. It is User's responsibility to provide Sharktech with updates to this information, including payment information, as they occur through the User portal at portal.sharktech.net. Sharktech may, as is reasonably necessary, review, preserve, and disclose any and all Account Information to: (i) respond to any valid request or subpoena from law enforcement or other legal process or governmental request; (ii) investigate potential violations of the TOS and enforce the terms of the same; (iii) investigate, prevent or address any security or technical issues; or (iv) to protect the rights of Sharktech.

3. **Service Rates.** Our rates and charges for any Services appear on our website or in our contracts and remain in place for the period of each order (month or annual) or contract term. Thereafter, our rates and charges may be changed by Sharktech at any time.

4. **Payment.** User may subscribe to Services for either a month-to-month or twelve month term ("Service Term"). Payment is due for all Services in advance of the Service Term. Sharktech will send User an invoice electronically at least five days before the end of User's Service Term unless User has provided a notice of cancellation pursuant to Section 8. Payment will be due for the next Service Term within five days of the invoice date ("Due Date"), but no later than the first date of the new Service Term. User may authorize Sharktech to automatically charge its credit or debit card on file for the amount due, within two (2) days of the Due Date. If User does not choose this form of automatic payment, User is responsible for ensuring that payment is received by Sharktech on or before the Due Date. User is responsible for national, state or local sales taxes, value-added taxes, use taxes, goods and services taxes or other applicable taxes relating to User's purchase or use of the Services.

5. **Late Fees/Additional Fees and Charges.** Sharktech reserves the right to assess a late fee of one and one-half percent (1.5 %) compounded monthly, or the maximum rate allowable by law, whichever is less on all invoices not paid by the Due Date.

6. **Failure to Pay.** Sharktech may terminate, deactivate or suspend Services to User for failure to make timely payment, upon forty eight (48) hours' notice to User at the email address provided by User. Thereafter, if payment is not received from User within forty-eight (48) hours of this notice, Sharktech will cease providing its Services to User. This shall not relieve User's

obligation to pay all amounts owed at the time of the termination, deactivation or suspension. Sharktech may, in its discretion, reinstate Services following deactivation due to User's failure to pay, at User's request and upon full payment of amounts due to Sharktech. However, in that event, Sharktech does not assume any liabilities or forego any claims as a result of such reinstatement.

7. **Refunds and Disputes.** ALL PAYMENTS TO SHARKTECH ARE NONREFUNDABLE, except as otherwise provided by this paragraph. This includes the one-time setup fee and all subsequent charges, regardless of the extent of User's usage of any Services. User must submit all billing disputes to Sharktech within thirty (30) days of the date of the invoice on which the disputed charge appears. If Sharktech resolves the billing dispute in User's favor, Sharktech will issue a credit to User in the amount of the substantiated portion of the dispute. If Sharktech resolves the billing dispute in Sharktech's favor, User must pay the disputed amount within ten (10) days of notice by email from Sharktech.

8. **Termination.** At the end of each Service Term Sharktech shall renew User's service for the same period of time as the current Service Term, unless User cancels the Services at least five (5) days prior to the end of the Service Term or Sharktech cancels User's Services due to User's failure to pay as addressed in Section 6. User may cancel Services by giving notice, which shall include all account information, to Sharktech at sales@sharktech.net In addition, Sharktech may terminate Services to User upon User's material breach of the TOS or other agreement with Sharktech upon ten (10) days' notice, if left uncured. Sharktech may terminate Services to User immediately if Sharktech finds that User's use of the Services has harmed the functionality of Sharktech's system or violated any applicable law, rule or regulation. Cancellation does not relieve User of the obligation to pay any charges User incurred prior to cancellation.

9. **Datacenters Access.** Access to Sharktech's datacenters is allowed only to existing and potential Users. All visits must be scheduled at least 24 hours prior to the visit. Guided tours are allowed only during regular business hours Monday to Friday. Local Users who need emergency access to their server must contact Sharktech's tech support and announce their arrival at least 15 minutes prior to the visit. Existing Users who wish to access the datacenters agree to pay any related charges including but not limited to charges for a security pass or property pass or to reimburse Sharktech for assistance of our employees. Visitors must submit photo ID for our records prior to any visit to our datacenters.

10. **Sharktech's Intellectual Property Rights/User's License.**

A. License. Subject to User's ongoing compliance with the TOS, Sharktech grants User a limited, non-exclusive, non-sublicensable, non-transferable, and revocable license to use and access the Services. All rights not expressly granted to Users by the TOS are reserved by Sharktech.

B. Proprietary Materials. The Services and all proprietary rights and intellectual property associated therewith (collectively, the "**Proprietary Materials**"), are owned by Sharktech. Proprietary Materials may include, but are not limited to all logos, trademarks, trade dress, names, arrangements, visual interfaces, design, information,

graphics, data, computer code (including source code or object code), software, products, services, and all other aspects or elements of the Services, whether or not registerable, registered, or protected under applicable law (including, without limitation, all patent rights, inventions, concepts, ideas, algorithms, formulae, processes, methods, technique, copyrights, copyrightable works, trade secrets, trademarks, service marks, know-how, and all related goodwill). User may not reproduce or distribute any Proprietary Material without Sharktech's permission or User will face fines and any other penalties allowed by the civil and criminal laws of the relevant jurisdiction. User may not: (i) reverse-engineer any Proprietary Material, unless allowed by law; (ii) adapt or modify the Proprietary Material or create derivative works (iii) publish, copy, sell, lend, rent, sublicense, assign or in any other way transfer any Proprietary Material to anyone else; (iv) exploit the Proprietary Material for any commercial purposes; and/or (v) attempt to circumvent technical protection measures in the Services.

11. User Content

- A. License.** If User uploads or provides its own content or materials, including, but not limited to, media, messages, images, folders, text, reviews, and other data or works (“**User Content**”) for use or display through Sharktech’s servers, User expressly grants Sharktech a non-exclusive, royalty-free, worldwide, and sublicensable, fully paid right and license to store, display, host, reproduce, disseminate, modify for the purpose of formatting, display, and promotional purposes, and distribute the User Content, in any format and by any means, in whole or in part.
- B. Infringement.** User represents and warrants to Sharktech that it has the legal right to all User Content. Sharktech expressly prohibits all Users, including Third-Party Users, from engaging in any infringement of copyrighted materials. User acknowledges that Sharktech may have no access to the content of User’s transmissions over Sharktech’s facilities, and expressly accepts all liability for User Content.
- C. DMCA:** If Sharktech is notified that User may be engaging in copyright infringement Sharktech will follow the protocol of the Digital Millennium Copyright Act of 1998 (“DMCA”). Notices for alleged DMCA violations may be sent to Sharktech at DMCAnotice@sharktech.net. However, Sharktech’s willingness to undertake these actions does not in any way limit User’s complete liability for alleged copyright infringements by Users and Third-Party Users.
- D. User Content Indemnification/Right to Take Down User Content.** All User Content is the sole responsibility of the User, as the originator of such content. User agrees to indemnify pursuant to Section 16 for any claims arising from or relating to User Content. Sharktech does not monitor or control the User Content posted via the Services and Sharktech takes no responsibility for such User Content. Sharktech reserves the right to remove User Content that violates the TOS, including for example, copyright or trademark violations or other intellectual property misappropriation, impersonation, unlawful conduct, or harassment.

12. **Linked Services.** Websites and other materials hosted or otherwise made available through the Services may contain links to third party websites, services, or other resources on the internet (“**Linked Services**”), over which Sharktech has no control. Sharktech has no responsibility for Linked Services. User or Third Party Users accept(s) responsibility for any damages or injuries arising from use of, or access to, Linked Services.

13. **Waivers.** A waiver by Sharktech of any breach by User of any provision of this Agreement shall not operate as or be constructed as a continuing or subsequent waiver thereof, or as a waiver of any breach by User of any other provision thereof.

14. **No Express or Implied Warranty.** To the fullest extent permitted by law, Sharktech disclaims all warranties of any kind, whether express or implied, relating to the Services, including, without limitation: (a) any warranty relating to a course of dealing, trade or usage; (b) any implied warranty of merchantability, fitness for a particular purpose, title, or non-infringement; and (c) any warranty or guaranty relating to accuracy, availability, error rate, system integrity or maintaining access without disturbance or interruption. All Services provided by Sharktech is being provided to User in an “as is” and “as available” condition. Sharktech does not warrant or guarantee that the Services will be available or secure at any given time or location, that any defects will be corrected, that the Services will meet User’s requirements for any purpose, or that any content provided by or through the Services will be free of viruses or other harmful components. User agrees to access and use the Services at its own risk.

15. **Limitation of Liability.** User acknowledges the risks involved with accessing and using the Services, including, but not limited to, loss of data, interruption of access, viruses and other security risks. User expressly releases Sharktech and its respective officers, owners, directors, employees and agents (collectively “Sharktech”) from any and all liability relating to such risks. To the fullest extent permitted by law, Sharktech shall not be liable to any User for any direct, indirect, incidental, special, consequential or punitive damages whatsoever, whether by contract, tort, or any other legal theory (including, without limitation, negligence), arising from or in any way relating to the use of the Services, including, but not limited to: (a) claims for lost profits or revenues, (b) loss or interruption of use; (c) lost or damaged data or documentation; (d) impact of service interruption on User’s provision of services; or (e) exposure to any virus or other breach of security, except in the event of willful misconduct on the part of Sharktech. Sharktech’s liability shall be capped at twelve (12) times the charges for the Service Term, or in the event that liability is related to equipment, shall be capped at the original price of the equipment.

16. **Indemnification.** To the fullest extent permitted by law, User and Third-Party Users are responsible for their use of the Services, and agree to, and shall, defend, indemnify, and hold harmless Sharktech from and against all liabilities, claims, demands, loss, costs, and expenses, including, but not limited to, attorneys’ fees and costs, which arise from or relate in any way to their use of the Services, including, without limitation, claims regarding breach of the TOS or applicable law, infringement of any third party’s rights or intellectual property, and any claims relating to a breach of confidential information. If Sharktech is required to defend against any such claims, demands, loss, costs, and/or expenses, in any legal proceeding Sharktech reserves the right to assume and maintain the exclusive defense and control of any matter subject to indemnification by User, without limiting User’s obligation to indemnify Sharktech. User agrees to use best efforts to

assist and cooperate with such defense at User's expense, and to advance any fees incurred by Sharktech, including, but not limited to, attorneys' fees and costs, in connection with such defense.

17. ASSIGNMENT. User shall not transfer or assign this Agreement without the prior written consent of Sharktech. Sharktech may assign this Agreement at any time without consent from or notice to User.

18. DISPUTE RESOLUTION

- A. **Informal resolution.** As a first step, User agrees to bring any claim, question, or disagreement between User and Sharktech relating to these TOS or other agreement with Sharktech ("Dispute") to the Sharktech customer service department for informal resolution. If this dispute is not resolved within thirty (30) days, then User may commence litigation pursuant to Section 18(C).
- B. **ADA claims.** User agrees to not file any claim in any forum for any Sharktech violation of the Americans with Disability Act ("ADA") for Sharktech's website without providing Sharktech thirty (30) days' notice and the opportunity to cure the claimed violation in its website.
- C. **Litigation.** If a Dispute between User and Sharktech relating to these TOS or other agreement with Sharktech cannot be resolved informally, litigation may be commenced either in the district court of Clark County, Nevada, for state court cases, or in the United States District Court of the District of Nevada for federal court cases. Each Party agrees to submit to the exclusive jurisdiction of such courts with respect to any Disputes and agrees not to bring any Disputes in any other court or adjudicative body. Each Party hereby consents to venue and personal jurisdiction in such courts with respect to such Disputes and irrevocably waives any right that it may have to assert that such forum is not convenient or that any such court lacks jurisdiction.
- D. **Jury Waiver. USER AGREES TO WAIVE THE RIGHT TO A TRIAL BY JURY, TO PARTICIPATE IN A CLASS ACTION, OR TO SEEK REMEDIES BEYOND THE EXTENT NECESSARY TO PROVIDE INDIVIDUALIZED RELIEF TO EITHER PARTY. USER AGREES NOT TO ACT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED OR DE FACTO CLASS OR REPRESENTATIVE PROCEEDING, OR AS A PRIVATE ATTORNEY GENERAL OR ON BEHALF OF THE GENERAL PUBLIC.**
- E. **Time Limitation.** Any Dispute must be filed within two (2) years after the cause of action arose and the Parties waive any statute of limitations to the contrary. These TOS or other agreement with Sharktech will be governed by the laws of Nevada without giving effect to applicable conflict of law provisions. The substantially prevailing party in any Dispute litigation shall be entitled to recover reasonable attorney's fees and costs.

18. Notices. Any notices required or permitted to be given hereunder shall be given in writing and shall be delivered by email transmission and deemed received upon proof of transmission, User

agrees to receive electronically any notice required or permitted to be given under the TOS, via the e-mail address provided to Sharktech at the time any Services are purchased. User agrees to keep current all information it provides to Sharktech in connection with originating and receiving Services, via the customer portal at portal.sharktech.net. Any notice required or permitted to be given under the TOS to any Third-Party User shall be deemed to have been delivered at the time such notice is given to the User who provides access to the Services to such Third-Party User.

19. Force Majeure. Neither Party will be liable to the other Party or any other person or entity for loss or damage, or be deemed to be in breach of these TOS for failure of performance, wholly or in part, under this Agreement (other than a failure to timely pay Sharktech amounts owed) if such non-performance is due to causes beyond that Party's reasonable control, including without limitation: acts of God, fire, explosion, vandalism, storm, or other natural occurrences; any law, pandemic, order, regulation, direction, action or request of the United States government, or of any government (including without limitation, national, state or local governments having jurisdiction over any of the Parties) or of any department, agency, commission, court, bureau, corporation, or other instrumentality of any one or more of such governments, or of any civil or military authority; national emergencies; insurrections; riots; wars; strikes, lockouts, work stoppages or other such labor difficulties; or any act or omission of any other person or entity.

Contact Us for Help:

+1 (844) 706-7383

Sales: sales@sharktech.net

Notice of alleged copyright infringement: DMCAnotice@sharktech.net

Request to receive monthly invoice: billing@sharktech.net

Updates to User Information: use portal.sharktech.net

Requests for notice of change to TOS: use portal.sharktech.net