

ShapeLog® Liability Waiver

Updated: September 1, 2020

ShapeLog Terms of Use

These Terms of Use (“Terms”) are a legal contract between you and ShapeLog (“us” or “our” or “we”) (collectively, “everyone”) and govern your use of all the text, data, information, software, graphics, photographs, equipment, devices, facilities, and more (all of which we refer to as “Materials”) that we and our affiliates may make available to you, as well as any products and services we may provide through any of our owned, operated, or affiliated websites (“Website(s)”), application programming interfaces (“API(s)”), software development kits (“SDK(s)”), mobile applications (“App(s)”), or physical locations (“Physical Location(s)”), including office space, product testing facilities and product deployment sites (all of which we refer to collectively as “Services”).

READ THESE TERMS CAREFULLY BEFORE USING THESE MATERIAL AND SERVICES. BY CLICKING “I ACCEPT” YOU INDICATE THAT YOU HAVE BOTH READ AND ACCEPT THESE TERMS. YOU CANNOT USE SHAPELOG SERVICES IF YOU DO NOT ACCEPT THESE TERMS.

CHANGES.

We may alter the Services we offer you and/or choose to modify, suspend or discontinue these Services at any time and without notifying you. We may also change, update, add or remove provisions (collectively, “modifications”) of these Terms from time to time.

If you object to any such modifications, your sole recourse shall be to cease using these Services. Continued use of these Services following notice of any such modifications indicates you acknowledge and agree to be bound by the modifications. Also, please know that these Terms may be superseded by expressly-designated legal notices or terms located on or in our Websites, Apps, APIs, SDKs, or Physical Locations. These expressly-designated legal notices or terms are incorporated into these Terms and supersede the provision(s) of these Terms that are designated as being superseded.

GENERAL USE.

By using these Services, you promise that you are at least 14 years of age. If you are not yet 18 years old, you must have the permission of an adult to use these Services and agree to their Terms, and that adult must be a parent or legal guardian who is willing to be responsible for your use of these Services.

We invite you to use these Services for individual, consumer purposes (“Permitted Purposes”).

In these Terms we are granting you a limited, personal, non-exclusive and non-transferable license to use the Services; your right to use the Services is conditioned on your compliance with these Terms. You have no other rights in these Services and you may not modify, edit, copy, reproduce, create derivative works of, reverse engineer, alter, enhance or in any way exploit any of these Services in any manner. If you make copies of any of these Services while engaging in Permitted Purposes then we ask that you be sure to keep on the copies all of our copyright and other proprietary notices as they appear on these Services.

Notwithstanding the foregoing, you may use and reproduce the API and SDK documentation we provide on the Website or otherwise solely as necessary for you to develop products and services that integrate with our products and services, solely as described in such API or SDK documentation.

If you breach any of these Terms the above license will terminate automatically and you must immediately destroy any

ShapeLog® Liability Waiver

downloaded or printed Materials or elements of the Services (and any copies thereof).

MOBILE APPLICATIONS.

To use the Mobile Applications you must have a mobile device that is compatible with the mobile service. We do not warrant that our Mobile Applications will be compatible with your mobile device. We hereby grant to you a non-exclusive, non-transferable, revocable license to use an object code copy of our Mobile Applications for one registered account on one mobile device owned or leased solely by you, for your personal use. You may not: (i) modify, disassemble, decompile or reverse engineer our Mobile Applications, except to the extent that such restriction is expressly prohibited by law; (ii) rent, lease, loan, resell, sublicense, distribute or otherwise transfer the Mobile Applications to any third-party or use the Mobile Applications to provide time sharing or similar services for any third-party; (iii) make any copies of the Mobile Applications; (iv) remove, circumvent, disable, damage or otherwise interfere with security-related features of the Mobile Applications, features that prevent or restrict use or copying of any content accessible through the Mobile Applications, or features that enforce limitations on use of the Mobile Applications; or (v) delete the copyright and other proprietary rights notices on the Mobile Applications. You acknowledge that we may from time to time issue upgraded versions of the Mobile Application, and may automatically electronically upgrade the version of the Mobile Application that you are using on your mobile device. You consent to such automatic upgrading on your mobile device, and agree that these Terms will apply to all such upgrades. The foregoing license grant is not a sale of the Mobile Applications or any copy thereof, and we and our third-party licensors or suppliers retain all right, title, and interest in and to the Mobile Applications (and any copy of the Mobile Applications). Standard carrier data charges may apply to Your use of the Mobile Applications.

The following additional terms and conditions apply with respect to any Mobile Application that we provide to you designed for use on an Apple iOS-powered mobile device (an “iOS App”):

You acknowledge that these Terms are between you and us only, and not with Apple, Inc. (“Apple”) or Google .

Your use of our iOS App must comply with Apple’s then-current App Store Terms of Service.

We, and not Apple, are solely responsible for our iOS App and the Services and Content available thereon. You acknowledge that Apple has no obligation to provide maintenance and support services with respect to our iOS App. To the maximum extent permitted by applicable law, Apple will have no warranty obligation whatsoever with respect to our iOS App.

You agree that we, and not Apple, are responsible for addressing any claims by you or any third-party relating to our iOS App or your possession and/or use of our iOS App, including, but not limited to: (i) product liability claims; (ii) any claim that the iOS App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation, and all such claims are governed solely by these Terms and any law applicable to us as provider of the iOS App.

You agree that we, and not Apple, shall be responsible, to the extent required by these Terms, for the investigation, defense, settlement and discharge of any third-party intellectual property infringement claim related to our iOS App or your possession and use of Our iOS App.

You represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

You agree to comply with all applicable third-party terms of agreement when using our iOS App (e.g., You must not be in violation of your wireless data service terms of agreement when using the iOS App).

The parties agree that Apple and Apple’s subsidiaries are third-party beneficiaries to these Terms as they relate to your license of Our iOS App. Upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as they relate to your license of the iOS App as a third-party beneficiary thereof.

ShapeLog® Liability Waiver

APIS and SDKS

Subject to compliance to the Terms, we grant you a non-exclusive, worldwide, non-transferable, limited license to access our APIs, SDKs, and documentation only as necessary to develop, test and support an integration of your application with the Services. You may not sell, rent, lease, sublicense, redistribute, or syndicate access to any of our APIs or SDKs.

By using our APIs or SDKs, you are also subject to the terms set forth to the applicable Developer Agreement(s) and/or any other terms designated by ShapeLog.

USING OUR SERVICES.

You may view the certain elements of our Services without registering with us. However, in order to access certain password-restricted areas (such as using our Mobile Applications) and to use certain Services, you must successfully register an account with us.

PASSWORD RESTRICTED AREAS.

If you want an account with us, you must submit the following information through our account registration pages:

A working email address;

First and last name;

Preferred password;

Other information about you, including but not limited to, age/birthyear, height, weight, fitness goals, and fitness level.

You may also provide additional, optional information so that we can provide you a more customized experience when using our Services. Once you submit the required registration information, we alone will determine whether or not to approve your proposed account. If approved, you may be sent an email detailing how to complete your registration. For so long as you use the account, you agree to provide true, accurate, current, and complete information which can be accomplished by logging into your account and making relevant changes directly or contacting us using the below contact information and we can make the changes for you. And, if you forget your password, you can request a password update to your provided email address.

You are responsible for complying with these Terms when you access these Services, whether directly or through any account that you may setup. Because it is Your account, it is your job to obtain and maintain all equipment and services needed for access to and use of these Services as well as paying related charges. It is also your responsibility to maintain the confidentiality of your password(s), including any password of a third-party site that we may allow you to use to access these Services. Should you believe your password or security has been breached in any way, you must immediately notify us.

PAYMENTS.

You agree to pay all applicable fees related to your use of our Services. We may suspend or terminate your account and/or access to our Services if your payment is late and/or your offered payment method (e.g., credit card or PayPal account) cannot be processed, as applicable. By providing a payment method, you expressly authorize us to charge the applicable fees on said payment method as well as taxes and other charges incurred thereto at regular intervals, all of which depend

ShapeLog® Liability Waiver

on your particular membership and utilized services.

We understand that you might cancel your account, but please know that we will not provide any refund(s) and you will be responsible for paying any balance due on the account. To make things less complicated, you agree that we may charge any unpaid fees to your provided payment method and/or send you a bill for such unpaid fees.

DEVICES.

Through our Website, you may be able to purchase certain devices that work with our services (the “Devices”). THESE DEVICES AND THE SERVICES ASSOCIATED THEREWITH ARE PROVIDED “AS-IS” AND “WITH ALL FAULTS”, WITHOUT WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, WE EXPLICITLY DISCLAIM ALL EXPRESS OR IMPLIED WARRANTIES ARISING OUT OF OR RELATED TO THESE TERMS OR THE DEVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, NON-INFRINGEMENT, ACCURACY, TIMELINESS, TRUTHFULNESS, COMPLETENESS, OR RELIABILITY.

Our Services and Devices are not intended to diagnose, treat, cure, or prevent any disease. If you have a medical or heart condition, consult your doctor before using the Services and Devices, engaging in an exercise program, or changing your diet. If you experience a medical emergency, stop using the Services and consult with a medical professional. We are not responsible for any health problems that may result from training programs, consultations, products, or events you learn about through the Services. If you engage in any exercise program you receive or learn about through the Services, you agree that you do so at your own risk and are voluntarily participating in these activities. We do not guarantee any results that may come from your use of the Services or Devices.

PRIVACY POLICY.

We respect the information that you provide to us, and want to be sure You fully understand exactly how We use that information. So, please review Our Privacy Policy (“Privacy Policy”) [[hyperlink to be added](#)] which explains everything.

LINKS TO THIRD-PARTY SITES.

We sometimes provide links on his Website to third-party websites. If You use these links, You will leave this Website. We are not obligated to review any third-party websites that You link to from this Website, We do not control any of the third-party websites, and We are not responsible for any of the third-party websites (or the products, services, or content available through any of them). Thus, We do not endorse or make any representations about such third-party websites, any information, software, products, services, or materials found there or any results that may be obtained from using them. If You decide to access any of the third-party websites linked to from this Website, You do this entirely at Your own risk and You must follow the privacy policies and terms and conditions for those third-party websites. Certain areas of this Website may allow You to interact and/or conduct transactions with one or more third-party websites, and, if applicable, allow you to configure your privacy settings in that third-party website account to permit Your activities on this Website to be shared with Your contacts in your third-party site account.

SUBMISSIONS.

Certain areas of the Services (e.g., blogs, chat rooms, workout ratings, weight or repetitions or intensity feedback, or customer ratings and review areas) may permit you to submit feedback, information, data, text, software, messages, or other materials (each, a “User Submission”). You agree that you are solely responsible for all of your User Submissions and that any such User Submission is considered both non-confidential and non-proprietary. Further, we do not guarantee

ShapeLog® Liability Waiver

that you will be able to edit or delete any User Submission you have submitted.

By submitting any User Submission, you are promising us that:

You own all rights in your User Submissions (including, without limitation, all rights to the reproduction and display of your User Submissions) or, alternatively, you have acquired all necessary rights in your User Submissions to enable you to grant to us the rights in your User Submissions as described in these Terms;

You have paid and will pay in full all license fees, clearance fees, and other financial obligations, of any kind, arising from any use or commercial exploitation of your User Submissions;

Your User Submissions do not infringe the copyright, trademark, patent, trade secret, or other intellectual property rights, privacy rights, or any other legal or moral rights of any third party;

You voluntarily agree to waive all "moral rights" that you may have in your User Submission;

Any information contained in your User Submission is not known by you to be false, inaccurate, or misleading;

Your User Submission does not violate any law (including, but not limited to, those governing export control, consumer protection, unfair competition, anti-discrimination, or false advertising);

Your User Submission is not, and may not reasonably be considered to be, defamatory, libelous, hateful, racially, ethnically, religiously, or otherwise biased or offensive, unlawfully threatening, or unlawfully harassing to any individual, partnership, or corporation, vulgar, pornographic, obscene, or invasive of another's privacy;

You were not and will not be compensated or granted any consideration by any third party for submitting your User Submission;

Your User Submission does not incorporate materials from a third-party website, or addresses, email addresses, contact information, or phone numbers (other than your own);

Your User Submission does not contain any viruses, worms, spyware, adware, or other potentially damaging programs or files;

Your User Submission does not contain any information that you consider confidential, proprietary, or personal; and

Your User Submission does not contain or constitute any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of solicitation.

By submitting a User Submission, you grant to us an irrevocable, perpetual, transferable, non-exclusive, fully-paid, worldwide, royalty-free license (sublicensable through multiple tiers) to:

Use, distribute, reproduce, modify, adapt, publish, translate, publicly perform, and publicly display your User Submissions (or any modification thereto), in whole or in part, in any format or medium now known or later developed;

Use (and permit others to use) your User Submission in any manner and for any purpose (including, without limitation, commercial purposes) that we deem appropriate in Our sole discretion (including, without limitation, to incorporate your User Submission or any modification thereto, in whole or in part, into any technology, product, or service);

Display advertisements in connection with your User Submissions and to use your User Submissions for advertising and promotional purposes.

We may, but are not obligated to, pre-screen User Submissions or monitor any area of this Website through which User Submissions may be submitted. We are not required to host, display, or distribute any User Submissions on or through these Services and may remove at any time or refuse any User Submissions for any reason. We are not responsible for any loss, theft, or damage of any kind to any User Submissions. Further, you agree that we may freely disclose your User Submission to any third party absent any obligation of confidence on the part of the recipient.

UNAUTHORIZED ACTIVITIES.

To be clear, we authorize your use of these Services only for Permitted Purposes. Any other use of these Services beyond

ShapeLog® Liability Waiver

the Permitted Purposes is prohibited and, therefore, constitutes unauthorized use of these Services. This is because as between you and us, all rights in these Services remain our property.

Unauthorized use of these Services may result in violation of various United States and international copyright laws. Below, we've provided some examples of things to avoid. So, unless you have written permission from us stating otherwise, you are not authorized to use these Services in any of the following ways (these are examples only and the list below is not a complete list of everything that you are not permitted to do):

For any public or commercial purpose which includes use of these Services on another site or through a networked computer environment;

In a manner that modifies, publicly displays, publicly performs, reproduces or distributes any of these Services;

In a manner that violates any local, state, national, foreign, or international statute, regulation, rule, order, treaty, or other law;

To stalk, harass, or harm another individual;

To impersonate any person or entity or otherwise misrepresent your affiliation with a person or entity;

To interfere with or disrupt these Services or servers or networks connected to these Services;

To use any data mining, robots, or similar data gathering or extraction methods in connection with these Services; or

Attempt to gain unauthorized access to any portion of these Services or any other accounts, computer systems, or networks connected to these Services, whether through hacking, password mining, or any other means.

You agree to hire attorneys to defend us if you violate these Terms and that violation results in a problem for us. You also agree to pay any damages that we may end up having to pay as a result of your violation. You alone are responsible for any violation of these Terms by you. We reserve the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with our defense of such claim.

PROPRIETARY RIGHTS.

"Shapelog" is a trademark that belongs to us. Other trademarks, names and logos featured on these Services are the property of their respective owners.

Unless otherwise specified in these Terms, all Materials and Services, including the arrangement of them are our sole property, Copyright © 2020. All rights not expressly granted herein are reserved. Except as otherwise required or limited by applicable law, any reproduction, distribution, modification, retransmission, or publication of any copyrighted material is strictly prohibited without the express written consent of the copyright owner or license.

INTELLECTUAL PROPERTY INFRINGEMENT.

We respect the intellectual property rights of others and encourage you to do the same. Accordingly, We have a policy of removing User Submissions that violate intellectual property rights of others, suspending access to these Services (or any portion thereof) to any user who uses these Services in violation of someone's intellectual property rights, and/or terminating in appropriate circumstances the account of any user who uses the these Services in violation of someone's intellectual property rights.

Pursuant to Title 17 of the United States Code, Section 512, we have implemented procedures for receiving written notification of claimed copyright infringement and for processing such claims in accordance with such law. If you believe your copyright or other intellectual property right is being infringed by a user of these Services, please provide written notice to our Agent for notice of claims of infringement:

ShapeLog® Liability Waiver

Attn: DMCA Agent
ShapeLog, Inc.
210 E Huron St
Ann Arbor, MI 48104
Email: contact@shapelog.com

To be sure the matter is handled immediately, Your written notice must:

Contain your physical or electronic signature;

Identify the copyrighted work or other intellectual property alleged to have been infringed;

Identify the allegedly infringing material in a sufficiently precise manner to allow us to locate that material;

Contain adequate information by which we can contact you (including postal address, telephone number, and e-mail address);

Contain a statement that you have a good faith belief that use of the copyrighted material or other intellectual property is not authorized by the owner, the owner's agent or the law;

Contain a statement that the information in the written notice is accurate; and

Contain statement, under penalty of perjury, that you are authorized to act on behalf of the copyright or other intellectual property right owner.

Unless the notice pertains to copyright or other intellectual property infringement, the Agent will be unable to address the listed concern.

Submitting a DMCA Counter-Notification

We will notify you that we have removed or disabled access to copyright-protected material that you provided, if such removal is pursuant to a validly received DMCA take-down notice. In response, you may provide our Agent with a written counter-notification that includes the following information:

Your physical or electronic signature;

Identification of the material that has been removed or to which access has been disabled, and the location at which the material appeared before it was removed or access to it was disabled;

A statement from you under the penalty of perjury, that you have a good faith belief that the material was removed or disabled as a result of a mistake or misidentification of the material to be removed or disabled; and

Your name, physical address and telephone number, and a statement that you consent to the jurisdiction of a court for the judicial district in which Your physical address is located, or if your physical address is outside of the United States, for any judicial district in which we may be located, and that you will accept service of process from the person who provided notification of allegedly infringing material or an agent of such person.

Termination of Repeat Infringers

We reserve the right, in our sole discretion, to terminate the account or access of any user of these Services who is the subject of repeated DMCA or other infringement notifications.

DISCLAIMER OF WARRANTIES.

THESE SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS" AND THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THESE SERVICES IS WITH YOU.

ShapeLog® Liability Waiver

WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND (EXPRESS, IMPLIED OR STATUTORY) WITH RESPECT TO THESE SERVICES, WHICH INCLUDES BUT IS NOT LIMITED TO, ANY IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, AND NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

THIS MEANS THAT WE DO NOT PROMISE YOU THAT THESE SERVICES ARE FREE OF PROBLEMS. Without limiting the generality of the foregoing, we make no warranty that these Services will meet your requirements or that these Services will be uninterrupted, timely, secure, or error free or that defects in these Services will be corrected. We make no warranty as to the results that may be obtained from the use of these Services or as to the accuracy or reliability of any information obtained through these Services. No advice or information, whether oral or written, obtained by you through these Services or from us or our subsidiaries/other affiliated companies shall create any warranty. We disclaim all equitable indemnities.

LIMITATION OF LIABILITY.

WE SHALL NOT BE LIABLE TO YOU FOR ANY DAMAGES RESULTING FROM YOUR DISPLAYING, COPYING, OR DOWNLOADING ANY MATERIALS TO OR FROM THESE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE TO YOU FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) HOWEVER ARISING, EVEN IF WE KNOW THERE IS A POSSIBILITY OF SUCH DAMAGE.

LOCAL LAWS; EXPORT CONTROL.

We control and operate these Services from our headquarters in the United States of America and the entirety of these Services may not be appropriate or available for use in other locations. If you use these Services outside the United States of America, you are solely responsible for following applicable local laws.

FEEDBACK.

Any submissions by you to us (e.g., comments, questions, suggestions, materials, inputs, corrections – collectively, “Feedback”) through any communication whatsoever (e.g., online submission, call, fax, email) will be treated as both non-confidential and non-proprietary. Except as prohibited by applicable law, you hereby assign all right, title, and interest in, and we are free to use, without any attribution or compensation to you, any ideas, know-how, concepts, techniques, or other intellectual property and proprietary rights contained in the Feedback, whether or not patentable, for any purpose whatsoever, including but not limited to, developing, manufacturing, having manufactured, licensing, marketing, and selling, directly or indirectly, products and services using such Feedback. Where the foregoing assignment is prohibited by law, you hereby grant us an exclusive, transferable, worldwide, royalty-free, fully paid up license (including the right to sublicense) to use and exploit all Feedback as we may determine in our sole discretion. Notwithstanding the foregoing, you understand and agree that we are not obligated to use, display, reproduce, or distribute any such ideas, know-how, concepts, or techniques contained in the Feedback, and you have no right to compel such use, display, reproduction, or distribution.

LANGUAGE.

The Parties hereto have expressly required that these Terms and all documents and notices relating thereto be drafted in the English language.

GENERAL.

ShapeLog® Liability Waiver

If we feel that you are not complying with these Terms, we will tell you to the extent feasible.

However, certain violations of these Terms, as determined by us, may require immediate termination of your access to these Services without prior notice to you. The Federal Arbitration Act, Michigan state law and applicable U.S. federal law, without regard to the choice or conflicts of law provisions, will govern these Terms. Foreign laws do not apply. Except for disputes subject to arbitration as described above, any disputes relating to these Terms or these Services will be heard in the courts located in Washtenaw County, Michigan. If any of these Terms are deemed inconsistent with applicable law, then such term(s) shall be interpreted to reflect the intentions of the parties, and no other terms will be modified. By choosing not to enforce any of these Terms, We are not waiving our rights. These Terms are the entire agreement between you and us and, therefore, supersede all prior or contemporaneous negotiations, discussions or agreements between Everyone about these Services. The proprietary rights, disclaimer of warranties, representations made by you, indemnities, limitations of liability and general provisions shall survive any termination of these Terms.

CALIFORNIA CONSUMER NOTICE.

Under California Civil Code Section 1789.3, California users are entitled to the following consumer rights notice: these Services are provided by ShapeLog, Inc. 210 E Huron St Ann Arbor, MI 48104. If You have a question or complaint regarding these Services, please contact Customer Service at support@shapelog.com. You may also contact us by writing to us at ShapeLog, Inc. 210 E Huron St Ann Arbor, MI 48104. California residents may reach the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by post at 1625 North Market Blvd., Sacramento, CA 95834 or by telephone at (916) 445-1254 or (800) 952-5210 or Hearing Impaired at TDD (800) 326-2297 or TDD (916) 322-1700.