



## TERMS OF SERVICE for Business & DATA PROCESSING AGREEMENT

### About Sharekey

Please read, understand and agree with the materials on this page before you use Sharekey.

Sometimes we update this document. If you do not agree with the changes, please stop using Sharekey. You need an account for Sharekey.

You can stop using the account or delete the app at any time.

Sharekey is used for private communications, storage and collaboration. When using it, you are required to abide by Swiss and EU laws. You cannot use Sharekey for unlawful or illegal, defamatory, harmful, abusive, hateful, racially or ethnically offensive purposes. If you violate these terms, we may disable your access to Sharekey.

We do not approve or endorse any content included in your communications and storage. We respect copyright and the intellectual property rights of others. You are responsible for the content of all of your communications and storage on Sharekey.

This was a brief summary of our Terms of Service. Please read the complete version below; this will form your agreement with us.

If you have any questions about it, please contact us via Sharekey Support: [support@sharekey.com](mailto:support@sharekey.com)

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## 1. Basic Information

- 1.1 By accepting this Sharekey Terms of Service for Business (“ToS”) there is a valid and binding agreement between **SHAREKEY Swiss AG** (the “Company,” “we,” “us,” or “our”) and You (“you,” “your,” or “yourself”) and each Team Member (defined below) who you add and grant access to use your secure communications, storage and collaboration for businesses account. By accepting this ToS, you acknowledge and agree that you are either:
- (i) a company or other organization agreeing to this ToS by the action of one of your employees, agents or contractors,
  - (ii) you are an individual setting up and creating a Team (as defined below) that is not formally affiliated with any company or organization.

This ToS governs your and your Team Members’ use of the Company’s website at [sharekey.com](https://sharekey.com) (the “Site”), mobile software applications (the “Mobile App”), desktop application (the “Desktop

**App**”), and web application (the “**Web App**”) (the Mobile App, Desktop App and Web App are collectively referred to as the “**Apps**”) that enable you to use the secure communications, storage and collaboration for businesses software and services offered by us. Your access and use of the Apps, our Site and of the features, software, products and services provided by the Company through the Apps or the Site (individually and collectively, the “**Service**”) is subject to the terms and conditions in this ToS.

- 1.2 You must agree to this ToS in order to use the Apps, the Site and/or the Service. If you:
- (i) use the Apps, the Site and/or the Service,
  - (ii) purchase a subscription to the secure communications, storage and collaboration for businesses service,
  - (iii) create a group of users that may access your account (a “**Team**”),
  - (iv) invite users or permitted guests to that Team (“**Team Members**”) and/or (v) sign in or agree to this ToS if presented to you in a user interface for the Service, we will understand this as your acceptance of this ToS and the acceptance by you on behalf of your Team Members and your and their respective agreement to all of its terms and conditions.

By accepting this ToS or using the Apps, the Site and/or the Service, you represent and warrant that you have the legal capacity to enter a contract in the jurisdiction where you reside. If you are minor and are 16 years of age or older, you must have parental consent to create an account or access the Service. If you do not accept this ToS, then you may not use the Apps, the Site and/or the Service. If you are using the Apps, the Site and/or the Service on behalf of your employer or another entity (whether as a Team Admin or Team Member or otherwise), you represent and warrant that you have full legal authority to bind your employer or such other entity to this ToS. If you do not have such authority, then you may not use the Apps, the Site and/or the Service on behalf of your employer and you must discontinue all use of the Apps, the Site and/or the Service immediately.

- 1.3 Each Team will have a designated team administrator (“**Team Admin**”) who will be responsible for the management of the Team

and the accounts linked to the Team. Each Team Admin acknowledges and agrees that this ToS governs your use and the use by your Team Members of the Apps, Site and/or the Service. To the extent you are a Team Member and have been invited to create an account by a Team Admin, you acknowledge and agree that your use of the Apps, Site and/or the Service are governed by this ToS and you hereby represent and warrant that you have been authorized by your Team Admin to use the Apps, the Site and/or the Service on the terms set forth herein. Unless the context otherwise requires, any reference to “you”, “your” or “yourself” in this ToS includes each respective organization utilizing the Apps, the Site and/or the Service, each respective Team Admin and each respective Team Member.

## 2. ToS Updates

The Company may update and amend this ToS at any time and the Company will make the updated ToS available through the Apps and post the updated version of this ToS on the Site. You understand and agree that you will be deemed to have accepted the updated ToS if you use the Apps, the Site and/or the Service after the updated ToS is made available to you. If at any point you do not agree to any portion of the ToS then in effect, you should immediately stop using the Apps, the Site and/or the Service.

## 3. Provision of the service

You are solely responsible for all data and mobile carrier charges in connection with the mobile phones on which you have installed the Mobile App. You are responsible for any Internet connection and telecommunications fees and charges that you incur when accessing the Service or using the Desktop App and/or the Web App. You acknowledge and agree that the Company may make changes to the Apps, the Site and/or the Service at any time without notifying you in advance.

## 4. Discontinuation of the service

The Company reserves the right to deny service to any person or entity at the Company’s sole and absolute discretion. You acknowledge and agree that the Company may stop providing the Apps, the Site and/or the Service or restrict your use of the Apps, the Site and/or the Service any time, without notifying you in advance, for any reason or no reason including, without limitation, for any violation of this ToS and/or if the Company suspects that you have used any aspect of the Service to conduct any fraudulent or illegal activity. If the Company disables your access to your account, you

may be prevented from accessing the Service, your account details or any materials contained in your account.

## 5. Accounts & Security

**5.1 Account** To access the Service, you must have an account. You can create an account by completing the registration process, which requires you to enter personal information, such as your email address and your name. You will also have the option of uploading a profile picture and other information.

Please note that we do not request access to your address book. On certain platforms, it might be necessary to grant such permission in order to install the Apps, but this is not the case with Sharekey. Our platform is built to collect as less data as possible.

### 5.2 Fees

- a) You agree to pay all applicable fees and taxes incurred by you, the Team, the Team Members or anyone using the account or the accounts linked to your Team or Team Admin, including, without limitation, fees relating to transactions processed by your account or the accounts of your Team Members. Unless otherwise noted, all currency references are in Euros. All initial fees and charges are payable in accordance with the payment terms agreed to by you when establishing your account and all fees and charges for any subscription renewal will increase by up to 7% above the initial applicable fees in the prior term, unless the Company provides you with notice of different fees and pricing at least 90 days prior to the beginning of the applicable renewal term. Except as expressly provided when establishing your account, renewal of any promotional or one-time priced subscriptions will be priced at the applicable list price in effect at the time of the subscription renewal. We may, from time to time, modify, amend, or supplement our rates, payment terms and billing procedures, and such changes shall be effective immediately upon posting a link to an update of this ToS or posting such changes elsewhere on the Site or the Apps. If there is a dispute regarding your payment of fees, or the Service, we shall have the right to terminate your account without prior notice. We also may apply interest and late fees for any amounts paid following the date when due, and we may terminate or suspend your account for

any failure to timely pay any amounts or maintain up-to-date payment method information within your account.

- b) Charges are billed to the payment method you registered when initiating your account. When you register a credit or debit card for a new account, you authorize us to place a pending charge to the credit or debit card to verify your billing address and the validity of your credit or debit card, which pending charges are temporary and will not be converted into an actual charge. Pending charges, while pending, will, however, reduce the available amount of credit on your credit card or funds available to your debit card. You are solely responsible for any and all fees charged to your credit or debit card by the issuer, bank, or financial institution, including fees for membership, any overdraft or other insufficient funds, or for exceeding any applicable credit limit. Once your account is authenticated, the payment method that you registered with your account will be charged pursuant to the subscription that you initiated. You agree that the issuer of any credit or debit card registered with your account will accept this ToS as your authorization and pay all amounts billed in connection with your use of your account without us submitting a signed receipt, and failure to receive a bill, including a paper bill does not release you from your payment obligations under this ToS.
- c) Unless you cancel your service at least 90 days prior to the end of your subscription period, your subscription will automatically be renewed for an additional 12 months and we will automatically bill you on the anniversary of the date on which you first commenced payment for your subscription. Subscriptions are fully earned upon payment. Although we endeavour to bill you as described in this paragraph, we reserve the right to change the timing of our billing as necessary, from time to time, and at any time. We may authorize your payment method in anticipation of account or service-related charges. As used in this ToS, "billing" shall indicate a charge, debit, or other payment clearance, as applicable, against your registered credit or debit card information.
- d) YOU ACKNOWLEDGE AND AGREE THAT ANY APPLICABLE FEES AND OTHER CHARGES ARE NON-REFUNDABLE BY COMPANY IN WHOLE OR IN PART UNLESS SPECIFIED OTHERWISE. YOU ARE FULLY LIABLE FOR ALL CHARGES TO YOUR ACCOUNT, INCLUDING ANY UNAUTHORIZED CHARGES. THE COMPANY SHALL NOT BE

RESPONSIBLE FOR YOUR FAILURE TO CANCEL YOUR SUBSCRIPTION AT LEAST 90 DAYS PRIOR TO THE END OF YOUR CURRENT SUBSCRIPTION PERIOD.

- e) Notwithstanding the foregoing, in some cases, you may be provided a free trial to use the Service for a limited period of time free of charge, as may be set forth on the Site. In the case of any free trial, you will not be charged during the free trial period. Free trials may be subject to various limitations, including, without limitation, a limited number of Team Members and/or a limited time period for the free trial. When you agree to a free trial for the Service, you may be asked to authorize, and by accepting this ToS, you hereby expressly authorize us to charge the applicable fees for the Service to your designated billing payment method upon the expiration of the free trial, in each case, as set forth on the Site. For clarity, you must notify us of your determination to terminate a free trial on or before the last day of the free trial. Unless otherwise set forth on the Site, upon the expiration of a free trial, you will not be able to utilize the Service without subscribing.

**5.3 Account Sharing or Transfers** Accounts are registered to a Team for a set number of Team Members and may not be sold, traded, gifted or otherwise transferred at any time under any circumstances. Team Admins and Team Members should not share accounts with, or disclose their Secret Phrase to, anyone else. If you are a Team Member, you acknowledge and agree that a Team Admin will have administrative controls over your account, including, without limitation, the ability to manage your access to the account and the Apps as a Team Member.

**5.4 Cancellation** You may cancel your subscription at any time. The Company does not provide refunds or credits for any partial subscription periods. Team Admins may cancel Team Member accounts by following the cancel instructions in the Apps. Once you cancel a Team Member account, the Team Member's personal information will no longer be viewable by other users. However, information previously shared by the cancelled Team Member with other Team Members will remain viewable by those Team Members until they delete such information.

**5.5 Removing Accounts** We reserve the right to remove inactive accounts. Accounts are considered to be inactive when they are no longer paid for.

- 5.6 Account Disabling by the Company** The Company may at any time disable your account if:
- a) The Company determines that you are:
    - (i) in breach of or otherwise acting inconsistently with this ToS, or
    - (ii) engaging in fraudulent or illegal activities or other conduct that may result in liability to the Company;
  - b) The Company determines it is required by law to disable your account; or
  - c) The Company decides to stop providing the Service or critical portions of the Service in the country where you reside, use the Apps, access the Site or use the Service or the Company determines that it is no longer in its business interests to continue providing the Service or critical portions of the Service.

The Company's disabling of your account may result in the deletion of certain content on the Service and you may no longer have access to certain content, such as files and folders; however, some content, such as your chat conversations and shared files/folders with other Team Members and/or users, will remain viewable by those Team Members and/or users.

- 5.7 Effect of Account Disabling or Cancellation** Accounts disabled by the Company, including for any type of abuse (including without limitation a violation of this ToS), may not be able to be reactivated. If you voluntarily cancel your account, by contacting us through Customer Support, once disabled, you cannot reactivate that account. Notwithstanding the disabling or termination of your account, the terms of this ToS will survive and continue to apply to you.

## 6. Apps Use Requirements

- 6.1 Installation** To use the Apps, you will be required to install the Mobile App on one or more mobile devices that you or your organization own or control and/or install the Desktop App on one or more computers that you or your organization own or control and that meet the minimum specifications provided by the Company. The Web App can be used in all supported browsers, no installation is required.



**6.2 Updates** The Company may require that you download and install updates to the Apps from time to time. You acknowledge and agree that the Company may update the Apps with or without notifying you and add or remove features or functions to the Apps at any time in its sole discretion. You acknowledge and agree that the Company has no obligation to make any subsequent versions of the Apps available to you. You acknowledge that features may change during your use of the Apps.

**6.3 Agreements** You acknowledge that you may only use the Apps in connection with the Service provided through the Apps in accordance with this Agreement. The requirements hereunder and this Agreement may change as the Apps and/or Service evolve.

## **7. License, Restrictions & Conditions of Use**

**7.1 License for Team Use** Subject to the terms and conditions of this Agreement, the Company hereby grants you or your organization, as applicable, and to each of your Team Admin and Team Members, a limited, non-exclusive, revocable, non-sublicensable, non-transferable license to:

- (i) install the Mobile App on one or more mobile devices which are owned by you or your organization which is a subscriber of the secure communications, storage and collaboration for businesses service, or under your or your organization's control and which meet the Company's minimum specifications;
- (ii) install the Desktop App on one or more computers which are owned by you or your organization which is a subscriber of the secure communications, storage and collaboration for businesses service, or under your or your organization's control and which meet the Company's minimum specifications; and
- (iii) view, review and utilize the Apps and any related information provided to you by the Company, in all events, for the sole purpose of using the Service within your organization or in connection with your organization's bona fide business activities.

- 7.2 Accessing the Service** You agree not to access, or attempt to access, the Service by any means other than through the Site or the Apps. You specifically agree not to access, or attempt to access, the Service through any automated means (including, without limitation, through the use of scripts, bots, unauthorized third-party apps, spiders or web crawlers).
- 7.3. No Violation of Laws** You agree that you will not, in connection with your use of the Apps, the Site and/or the Service, violate any applicable law, ordinance, rule, regulation or treaty.
- 7.4 Restrictions** You shall not connect to or use the Apps, the Site and/or the Service in any way that is not expressly permitted by this ToS.
- a) You may not:
    - (i) remove any proprietary notices from the Service or any copy of software provided to you by the Company ("**Software**");
    - (ii) cause, permit or authorize the modification, creation of derivative works, translation, reverse engineering, decompiling, disassembling or hacking of the Apps, the Service or any Software;
    - (iii) sell, assign, rent, lease, act as a service bureau, or grant rights in the Apps, the Service or any Software, including, without limitation, through sublicense, to any other person or entity without the prior written consent of the Company; or
    - (iv) make any false, misleading or deceptive statement or representation regarding the Company and/or the Apps, the Site or the Service.
  - b) Without limiting the foregoing, you agree that you will not:
    - (i) institute, assist, or become involved in any type of attack, including without limitation denial of service attacks, upon the Apps, the Site and/or the Service (or any servers, systems or networks connected to the Apps, the Site and/or the Service) or otherwise attempt to obstruct, disrupt or interfere with the operation of the Apps, the Site and/or the Service or any other person's or entity's use of the Apps, the Site and/or the Service (or any servers, systems or networks connected to the Apps, the Site and/or the Service);

- (ii) attempt to gain unauthorized access to the Apps, the Site, the Service, accounts registered to other users, or any servers, systems or networks connected to the Apps, the Site and/or the Service,
  - (iii) charge any person, or receive any compensation for, the use of the Apps, the Site and/or the Service, unless you are specifically authorized to do so in a separate written agreement with the Company;
  - (iv) use the Apps, the Site and/or the Service to:
    - develop, generate, transmit or store information that is unlawful or illegal, defamatory, harmful, abusive, hateful, racially or ethnically offensive that encourages conduct that would be considered a criminal offence; or
    - perform any unsolicited commercial communication not permitted by applicable law; or
  - (v) engage in any activity that:
    - constitutes harassment or a violation of privacy or threatens other people or groups of people;
    - is harmful to children in any manner;
    - constitutes phishing, pharming or impersonates any other person or entity, or steals or assumes any person's identity (whether a real identity or online nickname or alias); or
    - violates any applicable law, ordinance, rule, regulation or treaty.
- c) Without limiting the foregoing, you agree that you will not
- (i) charge any person, or receive any compensation, for the use of the Service, or
  - (ii) use the Service in any manner not permitted by the licenses granted herein; or
  - (iii) use the Service to conduct any unlawful, prohibited, abnormal or unusual activity as the Company may determine, in the Company's sole discretion.
- d) No licenses, express or implied, are granted under this ToS except as expressly set forth herein. The Company reserves all rights in and to the Apps, the Site and/or the Service that are not expressly granted in this ToS.

#### 7.5 No Data Mining You agree that you will not:

- or Harmful Code
- (i) obtain or attempt to obtain any information from the Service, including without limitation email addresses of other account holders or other software data; or
  - (ii) intercept, examine or otherwise observe any communications, conversations or chats between other account holders without the prior consent of those account holders; or
  - (iii) use any type of software that is designed to provide a means of surreptitious or unauthorized access to, or distort, delete, damage or disassemble, the Apps, the Site and/or the Service.

**7.6 No Access to Emergency Services** The Service is not intended to support or carry emergency conversation to any type of hospitals, law enforcement agencies, medical care unit or any other kind of services that connect a user to emergency services personnel or public safety answering points ("**Emergency Services**"). There are important differences between traditional telephone services and the Services. You acknowledge and agree that:

- (i) the Company is not required to offer access to Emergency Services under any applicable local and/or national rules, regulations or law;
- (ii) it is your responsibility to purchase, separately from the Services, traditional wireless (mobile) or fixed line telephone services that offer access to Emergency Services, and
- (iii) the Service is not a replacement for your primary telephone service.

**7.7 Violation of this ToS** You acknowledge and agree that you are solely responsible, and the Company has no responsibility or liability to you or any other person or entity, for any breach by you of this ToS or for the consequences of any such breach. The Company may at its option, terminate its relationship with you or your organization, or may disable your account (or that of your organization) immediately if it determines you are using the Service contrary to the restrictions found in this Section 7 or any other terms of this ToS.

## 8. Links

- 8.1 Links from the Service** The Service may contain links to websites operated by other parties. The Company provides these links to other websites as a convenience and use of these websites is at your own risk. The linked websites are not under the control of the Company, and the Company is not responsible for the content available on the other websites. Such links do not imply the Company's endorsement of information or material on any other website and the Company disclaims all liability with regard to your access to and use of such linked websites.
- 8.2 Links to the Site** Unless otherwise set forth in a written agreement between you and the Company, you must adhere to the Company's linking policy as follows:
- (i) the appearance, position and other aspects of the link may not be such as to damage or dilute the goodwill associated with the Company's names and trademarks,
  - (ii) the appearance, position and other attributes of the link may not create the false appearance that your organization or entity is sponsored by, affiliated with, or associated with the Company, and
  - (iii) when selected by a user, the link must display the Site on full-screen and not within a "frame" on the linking Site. The Company reserves the right to revoke its consent to the link at any time and in its sole discretion.

## 9. Intellectual Property

- 9.1 Trademarks** Sharekey and its associated logos are trademarks used under license by **SHAREKEY Swiss AG**. All rights reserved. Unless permitted in a separate written agreement with the Company, you do not have the right to use any of the Company's trademarks, service marks or logos and your unauthorized use of any of these may be a violation of trademark laws.
- 9.2. Ownership** You acknowledge and agree that the Company owns all rights, title and interest in and to the Apps, the Site and the Service, including all intellectual property, industrial property and proprietary rights recognized anywhere in the world at any time and that the Apps, the Site and the Service are protected by international copyright laws. Further, you acknowledge that the Service may contain information that the Company has designated as confidential and you agree not

to disclose such information without the Company's prior written consent.

### 9.3 Third-Party Software & Services

The Apps and the Service may be incorporated into, and may incorporate, technology, software and services owned and controlled by third-parties. Use of such third-party software or services is subject to the terms and conditions of the applicable third-party license agreements (including, without limitation, terms of use and terms of service agreements posted on third-party websites and privacy policies posted on third-party websites), and you agree to look solely to the applicable third-party and not to the Company to enforce any of your rights in relation thereto.

## 10. Submitted Content

### 10.1. Content of Communications

The Company is not the source of, does not verify or endorse and takes no responsibility for the content of communications and storage made using the Service. By using the Service, you agree that any content that you submit may be transmitted to the recipient of your communications. The content of communications is entirely the responsibility of the person from whom such content originated. The content of communications may be protected by intellectual property rights, which are owned by third-parties. You are responsible for the content you choose to communicate and access using the Service. In particular, you are responsible for ensuring that you do not submit material that is:

- (i) copyrighted, protected by trade secret or otherwise subject to third-party proprietary rights, including privacy and publicity rights, unless you are the owner of such rights or have permission from their rightful owner;
- (ii) a falsehood or misrepresentation;
- (iii) unlawful or illegal, defamatory, harmful, abusive, hateful, racially or ethnically offensive that encourages conduct that would be considered a criminal offence;
- (iv) an advertisement or solicitation of business; or
- (v) impersonating another person. The Company may in its sole discretion terminate this ToS and disable your or your organization's account if you use any content that is in breach of these Terms.

**10.2 Ownership** The Company does not claim ownership of any communications or materials you submit or make available through the Apps, the Site and/or the Service ("**Submitted Content**") via any function on the Site, the Apps and/or Service which allows you to post, upload, edit, and/or share content. With respect to such Submitted Content, you grant the Company a worldwide, royalty-free, fully paid-up and non-exclusive license to use and transmit such Submitted Content or any part of such Submitted Content solely on the Apps, the Site and/or the Service for the sole purpose of making available and operating the Apps, the Site and/or the Service. You hereby represent, warrant and covenant that any Submitted Content you provide does not include anything (including, but not limited to, text, images, music or video) to which you do not have the full right to grant the license specified in this Section 10.2. You acknowledge and agree that:

- (i) by using the Apps, the Site and/or Service, you may be exposed to content that you may find offensive or indecent and you do so at your own risk;
- (ii) you are solely responsible for, and the Company has no responsibility to you or any third-party for any Submitted Content that you create, submit, post or publish on the Apps, the Site, and/or Service; and
- (iii) the Company is not responsible for any Submitted Content that you may have access to through your use of the Apps, the Site and/or Services and all Submitted Content are the responsibility of the person from whom such Submitted Content originated.

We reserve the right to disable your or your organization's account and/or your respective access to the Apps, the Site and/or Services if you violate this ToS. You acknowledge and agree that:

- (i) the Company has no control over and is not responsible for the use of Submitted Content by a user, including any user that has uploaded such Submitted Content to such user's personal device; and
- (ii) the Company may not be able to remove certain Submitted Content that is uploaded onto another user's device. The Company does not endorse any Submitted Content or any opinion, recommendation, or advice expressed therein, and expressly disclaims any and all liability in connection with Submitted Content.

**10.3 Submitted Content** You acknowledge that the Submitted Content is your sole responsibility. You are entirely responsible for the Submitted Content



and agree, under no circumstance, will the Company be liable in any way for Submitted Content, including, but not limited to, for any errors or omissions in any Submitted Content, or any loss or damage of any kind incurred as a result of the use or distribution of any Submitted Content transmitted or otherwise made available via the Service. In addition to and without limiting any portion of this Section 10, if you are a Team Admin, you acknowledge and agree that you and/or your organization are solely responsible for any and all Submitted Content made available by you or any of your Team Members.

## **11. Children & Minor**

If you sign up for, access or use our Services, you agree to this Term of Service. Please do not use the Service if you are under 18 of age or barred from doing so under applicable law.

## **12. Disclaimer of Warranties**

The following section is a disclaimer of our warranties. Please read it carefully.

- 12.1 You understand and agree that your use of the Apps, the Site and/or the Service is at your sole risk and that the Apps, the Site and/or the Service are provided on an "as is" and "as available" basis without warranties or conditions of any kind, either express or implied.
- 12.2 To the maximum extent permitted by applicable law, the Company expressly disclaims all warranties and conditions including, without limitation, warranties and conditions of satisfactory quality, merchantability, fitness for a particular purpose, non-infringement, and those arising from course of dealing or usage of trade.
- 12.3 The Company makes no warranty as to the accuracy, completeness or reliability of any materials, information or data available through, or the performance of, the Apps, the Site and/or the Service.
- 12.4 The Company does not represent or warrant that:
  - (i) you will be able to access or use the Apps, the Site and/or the Service at the times or locations of your choosing;
  - (ii) that operation of the Apps, the Site and/or the Service will be uninterrupted, timely, error-free;
  - (iii) your use of the Apps, the Site and/or the Service will meet your requirements;
  - (iv) defects in the operation of the Apps, the Site and/or the Service will be corrected; or



- (v) the Apps, the Site and/or the Service is free of viruses or other harmful components.

12.5 You acknowledge and agree that any material downloaded or otherwise obtained through the use of the Apps, the Site and/or the Service is at your own risk and that you will be solely responsible for any damage to your computer, mobile phone or other device or any loss of data resulting from downloading or obtaining such material.

**Because some jurisdictions do not allow the disclaimer of implied warranties, the foregoing disclaimers may not apply to you.**

### **13. Limitation of Liability; Sole and Exclusive Remedy**

The following section limits our liability. Please read it carefully.

13.1 To the maximum extent permitted by applicable law, the Company, its affiliates, licensors and business partners (collectively, the “**Related Parties**”) shall not be liable to you, under any contract, tort (including negligence), strict liability or other legal or equitable theory, for:

- (i) Any direct, indirect, incidental, consequential, special or exemplary damages, including loss of profits, use, data or goodwill, arising out of or in any way connected with access to or use of the Apps, the Site and/or the Service, even if the Company and/or the Related Parties have been advised or should have been aware of the possibility of any such losses or damages;
- (ii) The cost of procurement of substitute goods, services or technology; or
- (iii) The deletion of, corruption of, or failure to store any materials, information or data maintained by or through your use of the Apps, the Site and/or the Service.

13.2 Other than in connection with a party's indemnification obligations hereunder, in no event will either your or your organization's on the one hand, or Company's on the other, aggregate liability arising out of or related to this Agreement exceed the total amount paid by you or your organization hereunder in the twelve (12) months preceding the last event giving rise to liability.

Because some jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such jurisdictions, the liability of the Company and its Related Parties shall be limited to the fullest extent permitted by law.

#### 14. Indemnification

You agree to indemnify, defend and hold the Company and the Related Parties harmless from any and all claims, demands, damages or other losses, including without limitation reasonable attorneys' fees, resulting from or arising out of:

- (i) your use of the Apps, the Site and/or the Service,
- (ii) the Submitted Content,
- (iii) your inability to use the Service, including your inability to contact Emergency Services or any interaction with Emergency Services, or
- (iv) your breach of this ToS or any other policies that the Company may issue for the Apps, the Site and/or the Service from time to time.

#### 15. Governing Law & Jurisdiction

The laws applicable to the interpretation of these Terms of Service shall be the laws of Switzerland, without regard to any conflicts of law provisions. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded. Except as provided in *Section 16* below (and claims proceeding in any small claims court), you irrevocably submit to the personal and exclusive jurisdiction of the courts located within the Canton of Zug, Switzerland for all disputes arising out of or related to your use of any of the Service.

#### 16. Dispute Resolution Procedure

You agree that, in the event any dispute or claim arises out of or relates to your use of the Apps, Site or the Service such dispute or claim shall be resolved in accordance with the following escalation procedure:

- (i) you and the Company will attempt in good faith to negotiate a written resolution of the matter directly between the parties;
- (ii) if the parties are unable to resolve the dispute in accordance with *Section (i)* above, then they shall be free to pursue their respective remedies in accordance with applicable law or these ToS.

## 17. General Terms

- 17.1 No Partnership** You agree that no joint venture, partnership, employment, or agency relationship exists between you or your organization and the Company as a result of this ToS or your use of the Apps, the Site and/or the Service.
- 17.2 Assignment** The Company may assign its rights under this ToS to any person or entity without your consent. The rights granted to you under this ToS may not be assigned without the Company's prior written consent, and any attempted unauthorized assignment by you shall be null and void.
- 17.3 Severability** If any part of this ToS is determined to be invalid or unenforceable, then that portion shall be severed, and the remainder of the ToS shall be given full force and effect.
- 17.4 No Waiver** Our failure to enforce any provision of this ToS shall in no way be construed to be a present or future waiver of such provision, nor in any way affect our right to enforce the same provision at a later time. An express waiver by the Company of any provision, condition or requirement of this ToS shall not be understood as a waiver of your obligation to comply with the same provision, condition or requirement at a later time.
- 17.5 Notices** All notices given by you or required under this ToS shall be in writing and addressed to:  
**SHAREKEY Swiss AG**  
ATTN: Legal Department  
Gotthardstrasse 26, 6300 Zug, Switzerland.
- 17.6 Import & Export Administration** You must comply with all import and export laws and regulations of Switzerland and the European Union ("**Import and Export Controls**") and you shall not import, export, direct or transfer any portion of the Apps, Site and/or the Service, or any direct product thereof, to any destination, person or entity restricted or prohibited by the Import and Export Controls.
- 17.9 Entire Agreement** This ToS, including the documents referenced in this ToS, constitutes the entire agreement between you and the Company with respect to the Apps, the Site and/or the Service and supersedes any and all

prior agreements between you and the Company relating to the Apps, the Site and/or the Service.

## 18. Utilizing Your Computer or Other Devices

The Service will utilize the processor, bandwidth and hard drive (or other memory or storage hardware) and/or cache of your computer or other applicable device for the limited purpose of facilitating the communication between, and the transmittal of data, content, services or features to, you and other users, and to facilitate the operation of the network of computers running instances of the Service.

## 19. Privacy Policy & DPA

You must read and agree to this ToS and the supporting [Privacy Policy](#) and the [Data Processing Addendum \("DPA"\)](#) to use the Apps, the Site and/or the Service. By using the Apps, the Site and/or the Service, you represent that you have read and consent to our Privacy Policy and DPA in addition to this ToS and agree with their content. The Company may revise the Privacy Policy and DPA at any time and the new versions will be referenced in the Apps and published on the Site. If at any point you do not agree to any portion of the Privacy Policy or DPA, you must immediately stop using the Apps, the Site and/or the Service. By using the Apps, the Site and/or the Service, you agree to the then-current versions of the ToS, Privacy Policy and DPA which will be posted on the Apps or the Site.

## 20. Questions? Contact Us

If you have any questions about our Terms of Service, please contact us by email at [legal@sharekey.com](mailto:legal@sharekey.com).

# DATA PROCESSING AGREEMENT

This Data Processing Addendum ("DPA") is an addition to the Terms of Service ("ToS"). This DPA is concluded by and between

SHAREKEY Swiss AG, Gotthardstrasse 26, 6300 Zug, Switzerland ("Sharekey" or "Processor")

and you or the entity you represent ("Controller", "you") when you accept the ToS.

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## 1. Basic Information

- |                                                 |                                                                                                                                                                                                                                                                                                       |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.1 Object of the DPA                           | Sharekey shall provide the Controller with the service as described in the ToS (" <b>Service</b> ") and shall process personal data as part of the performance of Services on behalf of the Controller.                                                                                               |
| 1.2. Nature, purpose and duration of processing | The data processing shall serve the purpose of providing a software solution for communications, storage and collaboration services as described in the ToS being an integral part of the Service. The duration of the processing shall be in line with the duration of the provision of the Service. |
| 1.3. Group of data subjects                     | Users of the Service whom the Controller enrolls to the Service as well as persons whose personal data is included in the content of the communication between the users.                                                                                                                             |
| 1.4. Type of personal data processed            | Sharekey processes the following types of personal data on behalf of the Controller: <ul style="list-style-type: none"><li>• full name and email address;</li><li>• temporary traffic data of the Service like log files including user's type of equipment and IP addresses;</li></ul>               |

- end-to-end encrypted communication and storage data, such as messages, files and folders. Sharekey does not hold the decryption keys to those items and therefore cannot access the content;
- Metadata of the Service;
  - This includes information on the creator of a Channel, conversation name and pseudonymised participants list as well as the team assignments of the participants;
  - This also includes information on the creator of Files and Folders (name and participant list as well as team assignments of participants);
  - Sharekey does not hold the decryption keys to those items and therefore cannot access the content;
- data separately provided by the user, e. g. profile picture.

**1.5. Processor** With respect to the processing of personal data as part of this DPA, Sharekey is the Processor in the meaning of Art. 4 (8) GDPR.

**1.6. Place of Processing** Sharekey always performs the contractually agreed processing of personal data on servers in Switzerland.

**1.7. Instructions by the Controller** Sharekey will process personal data as the Processor as specified in the ToS and the DPA. The ToS and the DPA contain all instructions by the Controller on data processing. Accordingly, Sharekey will process the data:

- Insofar as required with respect to the scope and type for the purpose of providing the Service and for meeting the obligations from the ToS and this DPA;
- insofar as Sharekey is obliged to do so pursuant to the law of the European Union or the law of the Member States to which Sharekey is subject (in such a case, Sharekey shall notify the Controller of that legal requirement before processing, unless that law prohibits such notification on important grounds of public interest).

The Controller shall retain the right to issue instructions regarding the data processing according to the provision of the ToS and this DPA. Instructions by the Controller shall be agreed with Sharekey and documented. Any expenses incurred by Sharekey for this purpose shall be reimbursed by the Controller.

## 2. Controller's rights and obligations

- 2.1 Data responsibility** The Controller shall be responsible for the permissibility of the processing of personal data as well as the protection of the rights of the data subjects.
- 2.2. Control rights** Sharekey is obliged to provide the Controller with all information required to demonstrate compliance with Sharekey's obligations pursuant to this DPA, in particular, the technical and organizational measures pursuant to §4 of this DPA, before commencement of the data processing and regularly during the data processing. The Controller shall be entitled to inspect compliance with Sharekey's obligations under this DPA to an appropriate extent, either personally or by a third-party, in particular, by obtaining information on the technical and organizational measures and, in case this information is not sufficient, by on-site inspections ("Inspections"). The Inspections at the Processor shall be carried out without avoidable disruption of the business of the Processor and without violation of the protection of personal data. As a rule, Inspections shall be carried out upon reasonable notice, in urgent cases also without notice, and during the business hours of the Processor, however, as a rule, but no more frequently than every 12 months.

## 3. Processor's rights and obligations

- 3.1. Rights of the data subject** The Processor shall assist the Controller, if possible, by appropriate technical or organizational measures to enable the Controller to comply with any data subject rights laid down in Chapter III of the GDPR. The Processor shall answer data subject requests only if the Controller instructs the Processor to do so or if the Processor is obliged to do so by law. The assistance by the Processor to the Controller in the context of data subjects' rights may be subject to a charge.
- 3.2. Data confidentiality** The Processor shall ensure that all employees who have access to personal data are informed of the confidential nature of the personal data and of any special data protection requirements arising from this commission, in particular, the limitation of data processing to specific purposes as instructed by the Controller and

that all such employees have entered into confidentiality agreements with the Processor.

**3.3. Further assistance of the Controller, inter alia, with regard to technical and organizational measures**

The Processor shall assist the Controller in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to the Processor.

**3.4. Information about concerns**

The Processor shall inform the Controller without undue delay if the Processor is of the opinion that an instruction of the Controller infringes the GDPR or other data protection provisions of the Union or the Member States. The Processor shall be entitled to suspend the execution of the relevant instruction until the Controller confirms or changes it.

**4. Technical and organizational measures**

The Processor will implement all technical and organizational measures which are necessary pursuant to Art. 32 GDPR and other data protection requirements to ensure a level of security appropriate to the risk associated with its processing activities.

**5. Security incidents notification**

In case of security incidents, the Processor is obliged to apply all necessary measures to ensure the integrity and confidentiality of personal data without undue delay. Furthermore, in case of a data breach, the Processor shall notify the Controller without undue delay after becoming aware of such breach. In this case Sharekey will provide the Controller with all required information enabling the Controller to comply with its statutory obligations.

**7. Subcontractors**

**6.1. Authorized subcontractors**

The Processor may contract subcontractors.

A subcontractor involvement requires that the Processor:

- (i) ensures that the subcontractor fulfils Processor's duties according to this DPA and
- (ii) assumes liability towards the data subject for actions of the subcontractor concerned, as if these actions were taken by the Processor itself.



At the time of the conclusion of this DPA, Sharekey engages the following subcontractors:

- **EXOSCALE (AKENES SA)** for the Cloud (provision of the server infrastructure) and located Boulevard de Grancy 19A • 1006 Lausanne, Switzerland • CHE-423.524.322.

Sharekey shall inform the Controller about the involvement of any further or replacement of any subcontractor. The Controller shall have the opportunity to object to the involvement within one month after having been informed. In the event of Controller's objection, Sharekey shall be entitled to an extraordinary termination right.

- 6.2. **Territorial scope** The Processor may not use any subcontractors located outside Switzerland and the Member States of the European Union for processing personal data.

## **7. Deletion / return of personal data**

Upon termination of the DPA or when requested by the Controller, the Processor, at the choice of the Controller, shall return to the Controller all personal data available at the Processor and shall delete copies, if any, provided that no legal obligation to keep the personal data exists pursuant to the law of the Union or the Member States to which Sharekey is subject.