



## Terms and Conditions

Effective: January 22, 2009

### SHARKBAIT, LLC TERMS OF USE:

BY ACCEPTING THIS END USERS LICENSE AGREEMENT, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF SHARKBAIT LLC'S (HEREAFTER REFERRED TO AS Sharkbait) ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST SELECT THE "I DECLINE" BUTTON AND MAY NOT USE THE SERVICE.

### Welcome

As part of the Service, Sharkbait will provide you with use of the Service, including a browser interface, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Sharkbait website incorporated by reference herein, including but not limited to Sharkbait privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

### 1. Privacy & Security; Disclosure

Sharkbait's privacy and security policies may be viewed at <http://www.sharkbaitsales.com>. Sharkbait reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from Sharkbait from time to time. They may opt out of receiving such communications at that time or at any subsequent time by changing their preference under Profile. Note that because the Service is a hosted, online application, Sharkbait occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that Sharkbait can disclose the fact that you are a paying customer and the edition of the Service that you are using.

### 2. License Grant & Restrictions

Sharkbait hereby grants you a non-exclusive, non-transferable, North American right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Sharkbait and its licensors.

You may not access the Service if you are a direct competitor of Sharkbait, except with Sharkbait's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

### **3. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Sharkbait immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Sharkbait immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Sharkbait user or provide false identity information to gain access to or use the Service.

Sharkbait does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not Sharkbait, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Sharkbait shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), Sharkbait will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Sharkbait reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Sharkbait shall have no obligation to maintain or forward any Customer Data.

### **4. Intellectual Property Ownership**

Sharkbait alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Sharkbait Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Sharkbait Technology or the Intellectual Property Rights owned by Sharkbait. The Sharkbait name, the Sharkbait logo, and the product names associated with the Service are trademarks of Sharkbait or third parties, and no right or license is granted to use them.

## **5. Third Party Interactions**

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Sharkbait and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Sharkbait does not endorse any sites on the Internet that are linked through the Service. Sharkbait provides these links to you only as a matter of convenience, and in no event shall Sharkbait or its licensors be responsible for any content, products, or other materials on or available from such sites. Sharkbait provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

## **6. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Form or through the Online Order Center. All payment obligations are non-cancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide Sharkbait with valid credit card or approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form or using the Online Order Center. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. Sharkbait reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

## **7. Excess Data Storage Fees**

The maximum disk storage space provided to you at no additional charge is (i) 10 MB per User license for Sharkbait. If the amount of disk storage required exceeds these limits, you will be charged \$10 per MB per month for storage fees. Sharkbait will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by Sharkbait to so notify you shall not affect your responsibility for such additional storage charges. Sharkbait reserves the right to establish or modify its general practices and limits relating to storage of Customer Data.

## **8. Billing and Renewal**

All subscription plans to the Service consist of an initial 6 month period, for which there is a one-time set up charge, followed by recurring period charges as agreed to by you. By entering into this Agreement, you acknowledge that your subscription has an initial and recurring payment feature and you accept responsibility for all recurring charges prior to cancellation. Sharkbait may submit periodic charges (e.g., monthly or quarterly) without further authorization from you, until you provide prior notice (confirmed in writing upon request by Sharkbait) that you have terminated this authorization or wish to change your payment method. Such notice will not affect charges submitted before Sharkbait reasonably could act. To terminate your Sharkbait membership and prevent any future charges on your billing account with our company please call 1-877-861-9704 or send a notice of cancellation to: Sharkbait, 24 N. Bryn Mawr Ave. Suite 276, Bryn Mawr, PA 19010.

You agree to provide Sharkbait with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Sharkbait reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless Sharkbait in its discretion determines otherwise: (i) entities with headquarters and a majority of users resident in the United States and Canada will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes ("U.S. Customers").

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **9. Non-Payment and Suspension**

In addition to any other rights granted to Sharkbait herein, Sharkbait reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or Sharkbait initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Sharkbait may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Sharkbait reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Sharkbait has no obligation to retain Customer Data and that such Customer Data may be irretrievably

deleted if your account is 30 days or more delinquent.

#### **10. Termination upon Expiration/Reduction in Number of Licenses**

This Agreement commences on the Effective Date. For Sharkbait licenses, the term is indefinite and may be terminated at any time in Sharkbait's sole discretion. For all editions, the Initial Term will be as you elect during the online subscription process or as otherwise mutually agreed upon in an Order Form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term (or one year, if the Initial Term is greater than one year) at Sharkbait's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least five (5) business days prior to the date of the invoice for the following term. In the event this Agreement is terminated (other than by reason of your breach), Sharkbait will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that Sharkbait has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

#### **11. Termination for Cause**

Any breach of your payment obligations or unauthorized use of the Sharkbait technology or service will be deemed a material breach of this Agreement. Sharkbait, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, Sharkbait may terminate a account at any time in its sole discretion. You agree and acknowledge that Sharkbait has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

#### **12. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Sharkbait represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online Sharkbait help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

#### **13. Mutual Indemnification**

You shall indemnify and hold Sharkbait, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Sharkbait (a) gives written notice of the claim

promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Sharkbait of all liability and such settlement does not affect Sharkbait's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Sharkbait shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Sharkbait of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Sharkbait; provided that you (a) promptly give written notice of the claim to Sharkbait; (b) give Sharkbait sole control of the defense and settlement of the claim (provided that Sharkbait may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Sharkbait all available information and assistance; and (d) have not compromised or settled such claim. Sharkbait shall have no indemnification obligation, and you shall indemnify Sharkbait pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

#### **14. Disclaimer of Warranties**

SHARKBAIT AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. SHARKBAIT AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY SHARKBAIT AND ITS LICENSORS.

#### **15. Internet Delays**

SHARKBAIT'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. SHARKBAIT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **16. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **17. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

## **18. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

Sharkbait and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, Switzerland and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member States) law is prohibited. None of the Content, nor any

information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

## **19. Notice**

Sharkbait may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Sharkbait's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Sharkbait's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Sharkbait (such notice shall be deemed given when received by Sharkbait) at any time by any of the following: letter sent by confirmed facsimile to Sharkbait at the following fax numbers (whichever is appropriate): 24 N. Bryn Mawr Ave Suite 276. Bryn Mawr, PA 19010 914-885-1052 in either case, addressed to the attention of: Chief Executive Officer

## **20. Modification to Terms**

Sharkbait reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

## **21. Assignment; Change in Control**

This Agreement may not be assigned by you without the prior written approval of Sharkbait but may be assigned without your consent by Sharkbait to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Sharkbait directly or indirectly owning or controlling 50% or more of you shall entitle Sharkbait to terminate this Agreement for cause immediately upon written notice.

## **22. General**

With respect to Customers located in North, Central or South America (including the Caribbean), this Agreement shall be governed by Delaware law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Wilmington, DE. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Sharkbait as a result of this agreement or use of the Service. The failure of Sharkbait to

enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Sharkbait in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and Sharkbait and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## 23. Definitions

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these online terms of use, any Order Forms, whether written or submitted online via the Online Order Center, and any materials available on the Sharkbait website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Sharkbait from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the contract term, beginning on the contract start date and ending on the contract end date, specified on the applicable Order Form; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses online using the Online Order Center or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "Online Order Center" means Sharkbait's online application that allows the License Administrator designated by you to, among other things, add additional Users to the Service; "Sharkbait" means collectively Sharkbait, LLC., a Delaware corporation, having its principal place of business at 24 N. Bryn Mawr Ave Suite 276. Bryn Mawr, PA 19010. "Sharkbait Technology" means all of Sharkbait's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Sharkbait in providing the Service; "Service(s)" means the specific edition of Sharkbait's online customer relationship management, billing, data analysis, or other corporate ERP services identified during the ordering process, developed, operated, and maintained by Sharkbait, accessible via <http://www.sharkbaitsales.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by Sharkbait, to which you are being granted access under this Agreement, including the [sharkbaitsales.com](http://www.sharkbaitsales.com) Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by Sharkbait at your request).

## 24. FCC Regulations

The Telephone Consumer Protection Act (TCPA) and Federal Communications Commission (FCC) rules generally prohibit most unsolicited facsimile (fax) advertisements. In addition, the Junk Fax Prevention Act, passed by Congress in 2005, directs the FCC to amend its rules adopted pursuant to the TCPA regarding fax advertising. The FCC's revised rules: (1) codify an established business relationship (EBR) exemption to the prohibition on sending unsolicited fax advertisements; (2) define EBR for unsolicited fax advertisements; (3) require the sender of fax advertisements to provide specified notice and contact information on the fax that allows recipients to "opt-out" of any future faxes from the sender; and (4) specify the circumstances under which a request to "opt-out" complies with the Act.

---

### Definitions

To understand the revised rules, you must first understand the meaning of the terms "unsolicited advertisement" and "established business relationship." As defined in FCC rules, an "unsolicited advertisement" is "any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission, in writing or otherwise."

Also as defined in FCC rules, an "established business relationship" or EBR is "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a business or residential subscriber with or without an exchange of consideration [payment], on the basis of an inquiry, application, purchase or transaction by the business or residential subscriber regarding products or services offered by such person or entity, which relationship has not been previously terminated by either party."

### Amended Fax Rules and Established Business Relationship Exemption

The rules provide that it is unlawful to send unsolicited advertisements to any fax machine, including those at both businesses and residences, without the recipient's prior express invitation or permission. Fax advertisements, however, may be sent to recipients with whom the sender has an EBR, as long as the fax number was provided voluntarily by the recipient. Specifically, a fax advertisement may be sent to an EBR customer if the sender also:

1. obtains the fax number directly from the recipient, through, for example, an application, contact information form, or membership renewal form; or
2. obtains the fax number from the recipient's own directory, advertisement, or site on the Internet, unless the recipient has noted on such materials that it does not accept unsolicited advertisements at the fax number in question; or
3. has taken reasonable steps to verify that the recipient consented to have the number listed, if obtained from a directory or other source of information compiled by a third party.
4. If the sender had an EBR with the recipient and possessed the recipient's fax number before July 9, 2005 (the date the Junk Fax Prevention Act became law), the sender may send the fax advertisements without demonstrating how the number was obtained.
5. It is recognized that Sharkbait will not provide end user with ANY fax numbers. End user has the right to add fax numbers to Sharkbait application at end users discretion.
6. Sharkbait may, at the end users request only, add fax numbers to the end users account, although has not or will not ever provide end user with fax numbers.

## **Opt-out Notice Requirements**

Senders of permissible fax advertisements (those sent under an EBR or with the recipient's prior express permission) must provide notice and contact information on the fax that allows recipients to "opt-out" of future faxes. The notice must:

1. be clear and conspicuous and on the first page of the advertisement;
2. state that the recipient may make a request to the sender not to send any future faxes and that failure to comply with the request within 30 days is unlawful; and
3. include a telephone number, fax number, and cost-free mechanism (including a toll-free telephone number, local number for local recipients, toll-free fax number, Web site address, or e-mail address) to opt-out of faxes. These numbers and cost-free mechanism must permit consumers to make opt-out requests 24 hours a day, seven days a week.

Senders who receive a request not to send further faxes that meets the requirements listed in the next section must honor that request within the shortest reasonable time from the date of the request, not to exceed 30 days. They are also prohibited from sending future fax advertisements to the recipient unless the recipient subsequently provides prior express permission to the sender.

## **Opt-out Requests By Consumers**

To stop unwanted fax advertisements, your "opt-out" request must:

1. identify the fax number or numbers to which it relates; and
2. be sent to the telephone number, fax number, Web site address, or e-mail address identified on the fax advertisement.

If you change your mind about receiving fax advertisements, you can subsequently grant express permission to receive faxes from a particular sender, orally or in writing.

## **Fax Broadcasters**

Often fax advertisements are sent in bulk on behalf of a business or entity by separate professional fax broadcasters. Generally, the person or business on whose behalf a fax is sent or whose property, goods, or services are advertised is liable for a violation of the junk fax rules, even if the person or business did not physically send the fax. A fax broadcaster also may be liable if it has a "high degree of involvement" in the sender's fax message, such as supplying the fax numbers to which the message is sent, providing a source of fax numbers, making representations about the legality of faxing to those numbers, or advising about how to comply with the junk fax rules. Also, if a fax broadcaster is "highly involved" in the sender's fax messages, the fax broadcaster must provide its name on the fax.

## **25. Payment Method**

The terms of your payment will be based on your Payment. If Sharkbait does not receive payment from your Payment Method Provider, you agree to pay all amounts due on your Billing Account upon demand. If Sharkbait does not receive payment from you in a timely manner your account may be terminated without prior notice. Notice shall be deemed given upon account termination.

## **26. Auto-renewal**

Your Sharkbait subscription will be automatically extended for successive renewal periods of the same duration as the subscription term originally selected, at the then-current non-promotional subscription rate. To change or resign your subscription at any time contact Sharkbait at 24 N. Bryn Mawr Ave Suite 276. Bryn Mawr, PA 19010 or call 1-877-861-9704 . If you resign, you may use your subscription until the end of your then-current subscription term; your subscription will not be renewed after your then-current term expires. However, you won't be eligible for a prorated refund of any portion of the subscription fee paid for the then-current subscription period.

## **27. Overages**

Each fax package selected includes an allotted amount of fax pages to be utilized in a given billing cycle. Overage fees are charged for pages sent in excess of the monthly allotment of pages included in the package selected. Overages are charged 12 cents per page on all monthly accounts for overages between the first and last day of the month.

## **28. Acceptance**

By selecting the "automatic credit card/debit" option, I hereby agree to maintain sufficient funds or credit in my account(s) to cover any credit card/debit card charges and to be responsible for, and to timely pay the Company, all amounts due hereunder which accrue from my use of Sharkbait's service, and hereby authorize and request the Sharkbait to effect payment for such amounts as they become due by initiation and transmitting charges and debit entries to my designated accounts(s) at the financial institution named above (hereinafter Bank), and do hereby authorize and request said Bank to accept and post said entries as transmitted by Sharkbait. I further request the Company and the Bank to debit the amounts owed to my account without responsibility for the correctness thereof. I agree to accept the debit entries so transmitted. If not timely paid, I agree that my access to the service may be frozen or my subscription terminated. If my service is frozen or terminated for any reason, I agree to pay a \$20 re-activation fee, in addition to any outstanding fees, in order to make service active again.

## **29. Authorization**

I hereby authorize and request Sharkbait and my bank to establish an automatic credit card/debit card debit arrangement to pay for my subscription to Sharkbait's Service in the amounts I have authorized.