

Cloud Terms of Use - Legal Notices

Last updated at Sep 27, 2022

1. AGREEMENT TO TERMS

These Terms of Use constitute a legally binding agreement made between you, either as an individual or on behalf of an organization (“you”, “your” in this agreement) and Ultipa, Inc., doing business as Ultipa (“**Ultipa**”, “**we**”, “**us**”, or “**our**” in this agreement), concerning our provision of services of, your access to, and use of the www.cloud.ultipa.com website as well as any other media form, media channel, mobile website or mobile application related, linked, or otherwise connected thereto (collectively, the “Site” or “Services”).

You agree that by accessing or using our Site and Services, you have read and have a full understanding and agreement to be bound by all of our Terms of Use. In any cases that you might disagree with all our terms of use, you must cease your accessing and using our Site and Services IMMEDIATELY. We might post supplemental terms and legal notices on our Site in any time and we reserve the right, in our sole discretion, to make changes, modifications, or revisions, to these Terms of Use in any time. By our updating the “Last updated” date of these Terms of Use, you will be deemed as alerted of these changes or modifications, and you waive any right to receive any other specific notice of each such change in any other form. Please make sure that you make a frequent check on these Terms as long as you access or use our Site and Services. You will be subject to, and will be deemed to have understood and have accepted any revisions to our Site and Services as long as you continue your access and use to our Site and Services after the “Last updated” date.

It is not our intention that our provision of information on our Site should be for any distribution to or any use by any individual or organization in any jurisdiction or country where such distribution or use would not be compliant with any law, regulation, rule, code, etc. nor in case where we would be subjected to any registration requirement within such jurisdiction or country. Those individuals who choose to access and use our Site and Services from other locations are on their own initiative and are solely responsible for compliance with local law, regulation, rule, code, etc., if applicable.

Our Site and Services are not designed on a basis to comply with industry-specific rules, regulations, or codes (Federal Information Security Management Act (FISMA), Health Insurance Portability and Accountability Act (HIPAA), etc.), so if your access and use of our Site and Services would be subjected to such laws, you may not access or use our Site and Services. You may not use our Site and Services in a way that would violate the Gramm-Leach-Bliley Act (GLBA).

It is not our intention for users who are at least 13 years old to access or use Our Site and Services. Individuals under the age of 13 are expressly not permitted to use or register for our Site and Services.

All communications and exchanges between you and us related to this agreement must be in English.

2. SERVICES

Our Services can be accessed and used in accordance with this Agreement and they can include features and services that are applicable to certain separate laws, rules, code, or regulations. By using and continuing your use of our Cloud services, you agree to comply with all laws, rules, codes,

and regulations that apply to the use of our services and all other features and services you use. You understand that any part of our provision of services can be changed, suspended, discontinued, and in any other way altered. We will notify you any material change of our provision of the Services via our platforms, websites, or email.

Our Cloud services may include features or parts that are going through developing or testing stage, namely, “Beta” phase. We will not be liable for any consequences resulting from your use of our Beta features or services, and we do not guarantee the release any formal version of our features and services in Beta Stage.

Our Support services are only provided for payment subscription plans. You can have the access to support by contacting our support team at support@ultipa.com or raising tickets in customer platform.

3. INTELLECTUAL PROPERTY RIGHTS

Our Site and Services is Ultipa, Inc.’s proprietary property and we have the ownership of, controls over, licenses for all source code, databases, functionality, software, website designs, audio, video, text, photographs, and graphics on our Site and Services (collectively, the “Contents”) and the trademarks, service marks, and logos contained in our Site and Services (the “Marks”), unless otherwise indicated. The Contents and the Marks are under the protection of copyright and trademark laws, unfair competition laws of the United States, international copyright laws, international conventions, and all other intellectual property rights, etc. On the basis of “AS IS”, the provision of the Content and the Marks on our Site and Services is exclusive for your information and personal use. Except as expressly clarified in these Terms of Use, it is expressly not permitted at any time that any part of our Site, our Services, Contents or Marks should be used to serve any commercial purpose whatsoever, unless you have our formal written consent in advance to do so. Forbidden actions that may incur infringement and exploitation of our intellectual property include without limitation for copy, reproduction in any forms (aggregate, republish, upload, post, encode, translate, transmit, distribute, selling, license, display in tangible or non-tangible public area, etc.).

A limited license is granted to you, user to our Site and Services, to properly access and use our Site and Services and to download or print a copy of any portion of the Content to which you have properly gained access and use, to the extent that we authorize, permit, and intend for. All rights not expressly granted to you in and to our Site and Services, the Contents and the Marks shall be reserved with us.

4. USER REPRESENTATIONS

By accessing and using our Site and Services, you represent and warrant that: (1) you have the legal capacity to agree to comply with these Terms of Use of ours; (2) you are not a minority in the jurisdiction area or country in which you reside; (3) all registration information you submit is and will be up to date, accurate, true, and complete, and you will take actions to keep the accuracy, validity, timeliness, and completeness of these information promptly; (4) you will not access or use our Site and Services with any non-human or automated approaches, bots, scripts, etc.; (5) you will not access or use our Site and Services with purposes that may violate any applicable law, regulation, or code, or with purposes that we do not authorize; and (6) your use of our Site and Services will not violate or be contrary to any applicable law, regulation, or code.

If any information you provide is not true, current, accurate, or complete as required, we reserve the right to put your account to suspension or termination status and refuse provision of any use of our Site and Services from yours (or any portion thereof), whether current or in the future.

5. USER DATA

To access and use our Site and Services, you may be required to register a user account with our Site and Services. In accordance with that, you agree to keep your password confidential and will be liable for all use of your account and password. We reserve the right to remove, reclaim, or change a username you decide to use if we believe, in our sole discretion, that such username should be inappropriate in any senses (obscene, offending, etc.).

We reserve the right, but not obligation, to maintain portions of data that you transmit to or is related to access to and use of our Site and Services for provision of our Site and Services. Our backup operations of data are not our obligation or constitute our liability, and you are solely responsible for all and any portion of data that you transmit or that relates to your accessing and using our Site and Services. You agree that we shall have no liability to you for any loss or corruption of any such data, and you hereby waive any right of action against us arising from any such loss or corruption of such data.

6. PROHIBITED ACTIVITIES

It is expressly prohibited that you access or use our Site and Services with any other intentions which we provide them for or that may be contrary to applicable laws and regulations. Our Site and Services. You are not permitted to access or use our Site and Services for any commercial purposes without a written approval or permission from us.

You agree not to conduct activities that are prohibited by us and that are without our consent in written form, including but not limited to:

- Conduct systematical retrieval of Contents from our Site and Services for reproduction of your own that may incur intellectual property infringement of any kind, in our sole discretion, such as compilation, collection, aggregation, code adaptation, decipher, etc.
- Make use of or take advantage of our security measures of features provided in any forms, in our sole discretion, especially with an attempt to intrude our Site and Services with potential security-related risks and propriety-related hazards or damages.
- Conduct fraudulent behaviors to us or other users of our Site and Services, with or without an intention to get critical or sensitive information of any forms from us or from other users.
- Access or use our Site and Services abusively, of any portion in any form for evil means in any senses to any other individual or entity, such as harassment, harms, impersonation of others, etc.
- Make unauthorized use of any portion of our Site and Services in any form with any devices, that may result in improvisation or damages of our Site and Services, including but not limited to virus transmission, false report submission, framing-related misconduct, automated misuses in any form (scripts, robots, etc.), data collection (whether using passive or active mechanisms), creating functionality problems on our Site and Services in any form, creating restrictions to access and uses of our Site and Services, etc.
- Treat any of our employees or affiliates involved in the provision of the Site and Services for you improperly or irrespectively, such as harassment, intimidation, threaten, and any other mistreatment in any forms.
- Making unauthorized deals on our Site and of our Services, such as using an intermittent dealer, selling any portion of our Site and Services as your own or for any of your own commercial purposes.

7. PAYMENT

In the first few days of each calendar month, we charge your payment method for fees and expenses generated from your chosen subscription plans and usages of Cloud services as specified in billing and instance order pages. Some of our Services provided may have a specific purchase or payment

requirement so that you can access and use them. You agree to provide us complete, up-to-date, effective, and accurate purchase and account information for all orders placed and purchases made via our Site and Services to be properly proceeded, otherwise there may be risks of mischarging or failed payment that may lead to overdue and failed payments. Accordingly, you agree to promptly keep your account and payment information valid and up to date: email address, payment method, and payment card expiration date, etc. as required by us. You will be billed through your billing account for purchases made via our Site and Services.

We process all payments via payment gateway vendor Stripe. If your purchases and orders are on a recurring basis, then you agree that we will charge you with your history payment method on a recurring basis without requesting or requiring your approval in advance for each recurring charge, until we receive your notification of your cancellation of our services. We may bill you more frequently than monthly for fees and charges generated by the services you use if we suspect or reasonably believe or that we are facing the risk of non-payment or that your account is acting fraudulent.

Our service fees and charges are calculated and billed as specified in the Cloud Service plan you are using. All amounts paid are non-refundable or cancellable. All payment prices are subject to changes by us at any time. You agree to pay all charges or fees generated by your access and use of our Site and Services at the prices then in effect for your purchases, and you authorize us to charge your chosen payment provider with given payment method for any such amounts upon making your purchase. We reserve the right to correct any errors or mistakes in pricing and prices for your purchases, even when we have already requested or received payment. We also reserve the right to decline any order placed or purchase to make through our Site and Services.

According to Sales and Use Taxes: Exemptions and Exclusions California Revenue and Taxation Code Part 1, Division 2, Taxes and duties, such as VAT and applicable sales tax, are not included in your payable fees and charges. You are obliged to provide us any information that we reasonably ask for to determine and process if we are obligated to collect VAT and others from you, including your VAT Identification number. However, in cases applicable, sales tax can be added to your payment prices as deemed required by us.

We may charge you interest on overdue at the rate of 0.1% per day after the first day when the overdue occurs or the highest rate permitted by law on any late payment. We may change, add fees and charges for the Services, in accordance of which your payable fees and charges will change upon the date where we make such modifications on price of applicable sites of us.

8. PRIVACY POLICY

Your data privacy and security is highly valued by us. We advise you to review our Privacy Policy: <http://www.ultipa.com/privacy-policy>. By accessing and using our Site and Services, you are deemed to have legal capacity to agree with our Privacy Policy and you agree to be bound by our Privacy Policy, which is consistent with these Terms of Use. Our Site is hosted in the United States. If your access to and your use of our Site and Services comes from areas outside the United States, with different laws or other requirements governing personal data collection, use, or disclosure, you are and you agree to transferring to and processing your data in the United States via your continuation of accessing and using our Site and Services.

9. TERM AND TERMINATION

You can cancel your subscription at any time by logging into your account or contacting us using the contact information provided below. Your cancellation will take effect at the end of the current paid term.

If you are unsatisfied with our services, please send us your complaints at policy@ultipa.com.

Terms therein shall remain in full force and effect as long as you access or use our site and services and we do not limit the access and reading these terms of use. We reserve the right to, in our sole discretion and without notice or liability, deny any individual, organization, or entity's access to and use of the site (Including blocking certain IP addresses) at any time, in any form, for any reason or for no reason, including but not limited to: any actions that cause or may cause breach of any representation, warranty, or covenant contained in these terms of use or of any law, regulation, or code, where applicable.

We reserve the right to immediately terminate or delete, this agreement, our Site and Services, your participation of our Site and Services, if any, your account, or your access to your account and services, in our sole discretion, with or without warning in advance, in circumstances including what is listed below but not limited to: (i) we conduct changes to the way of our provision or discontinuation of any of our Services; (ii) your payment is overdue, your payment method is not valid, etc. or otherwise in breach of this Agreement; (iii) we reasonably suspect or determine that your use of our Services poses a risk to the availability, functionality or security of our Services in any cases, in our sole discretion.; (iv) we reasonably suspect or determine that your use of our Services may be unlawful or not permitted by the law, in our sole discretion.; or (v) you have ceased your operations in the ordinary course, made an assignment for the benefit of creditors or similar disposition of your assets, or become the subject of any commercial crimes, bankruptcy, reorganization, liquidation, dissolution or similar proceeding. If we pause your right to access or use any portion or all of our Services, you remain responsible for all fees and charges you have incurred during the pause, and you will not be entitled to any credit or refund of our Services. We will take prompt actions with commercially reasonable efforts to restore your access to our Services following resolution of the cause of your suspension/termination. We may suspend or terminate your access to or use of any Beta Offering at any time and for any reason.

If we terminate or put your account to suspension status for any reason or for no reason, your registration and creation of a new account under your name, an alias of yours or of any kind, or a name of any third party, will not be permitted, even if you may be acting on behalf of that third party. We also reserve the right to take legal actions where appropriate, including but not limited to: pursuing civil, criminal, and injunctive redress, etc.

10. GOVERNING LAW

By accessing and using our Site and Services, you agree that the laws of the State of California, without regard to principles of conflict laws, will govern these terms and conditions, or any dispute of any sort that might come between us and you, or its business partners and associates.

11. LIMITATIONS OF LIABILITY

Notwithstanding any other provision thereof, by reason of that we might advise or remind you of possibilities of certain risks or losses, we are not liable for any indirect, incidental, special, consequential or exemplary damages that may occur to you, whether as a result of your misuse of our website of any kind or of any other causes, including but not limited to loss in profits, revenue, data, and all other types of consequences arising from your use of our Site and Services. We will not be responsible for any compensation, reimbursement for these damages.

Our liability to you for any cause at any time in any forms will be limited to the lesser amount for payment, if applicable and if any, during the 180 days or \$100.00 USD prior to any cause of action.

12. INDEMNIFICATION

You will defend, indemnify, and hold us harmless, including our subsidiaries, affiliates, and all of our respective officers, agents, partners, and employees, from and against any loss, damage, liability, claim, costs, expenses, or demand, including reasonable legal fees, related to third parties or arising out of: (1) your individual and organizational access and use of our Site and Services, or that of any other entities that you represent; (2) your Contributions; (3) breach of this agreement; (4) or any breach of your representations and warranties set forth in this agreement; (5) your infringement or violation of the rights of a third party, including but not limited to intellectual property rights; or (6) any harmful act toward any other user of our Site and Services with whom you hold connections via our Site and Services (7) any breach of applicable laws. We hereby reserve the right to be reimbursed by you in terms of fees and costs generated from any obligations and compulsory legal process that require our involvement, materials, and time spent etc., to respond the claims related to your access and use of our Site and Services, and you agree to fully cooperate, at your expense, with our defense of such claims. We will notify you of any such claim, action, or proceeding which is subject to this indemnification with reasonable efforts. Both you and us reserve the right to select our own legal counsel.

13. DISPUTE RESOLUTION

To proceed the resolution of disputes and the control of expenses generated by any dispute, controversy, or claim related to the agreement brought by either you or us. You agree that both parties, you and us, will first attempt to have informal and friendly negotiations over any disputes (excluding the disputes clarified in following sections) for at least 30 days prior to an arbitration, if any. Such informal negotiations shall be initiated upon written notice from either party.

If informal negotiations do not resolve the dispute, the dispute (excluding those clarified below) will be resolved by binding arbitration finally and exclusively. You understand and agree that with this provision of binding arbitration, you waive the right to sue in court and to have a jury trial accordingly therein. Both parties shall commence and conduct the arbitration with manners consistent with applicable laws and Commercial Arbitration Rules of the American Arbitration Association and, where appropriate, the Supplementary Procedures for Consumer Related Disputes of American Arbitration Association. The arbitration may be conducted in forms of individual's participation, documents, by call, or via internet. The arbitrator will make a decision for the arbitration in written form, without the necessity to provide rationale for decisions unless requested by either Party.

Except where otherwise required by the applicable law, the arbitration will take place in California. If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted in the state and federal courts located in California, and the Parties hereby consent to, and waive all defenses of lack of personal jurisdiction, as well as forum non convenience with respect to venue and jurisdiction in such state and federal courts. This agreement excludes the Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act (UCITA).

It is prohibited that any dispute resolution should be initiated more than 360 days after the causes of the disputes arise. If this term is found to illegal or unenforceable, both parties waive the right to initiate arbitration related to the disputes and they shall be decided by a court of competent jurisdiction located in California. The parties agree to submit to the personal jurisdiction of that court in the events including but not limited to any Dispute related to, or arising from unauthorized use, and prohibited use, and use that violates applicable laws; any Disputes around the infringement, protection and the validity of intellectual property rights of a Party; and any claim for injunctive relief.

14. SITE MANAGEMENT

We reserve the right, but not the obligation, to correct any errors, inaccuracies, or omissions and any other modification of information in any form, on our Site and Services at any time or for any reason at our sole discretion, without prior notice to you. We also reserve the right to modify or discontinue any portion of our Site and Services without notice at any time. We will not be liable to you or any third party for any modification, material change, suspension, discontinuance, and termination of our Site and Services of any part at any time.

We reserve the right, but not the obligation, to: (1) monitor our Site and Services for any violation of any kind of this agreement; (2) take legal action where applicable against anyone who, in our sole discretion, violates the law or this agreement, including but not limited to, sending reports of such users to law enforcement authorities, etc.; (3) deny, restrict access to, limit the availability of, or disable any portion of our Site and Services or your Contributions thereof, in our sole discretion and without limitation; (4) remove from our Site and Services or otherwise disable all Contents or your contributions that are excessive in size or are in any way burdensome to our systems, in our sole discretion and without limitation, notice, or liability; (5) manage our Site and Services for security of our rights and property and maintain the proper functioning of our Site and Services.

Be advised that it cannot be guaranteed that our Site and Services will be available at all times. As reasons of that we may experience technical issues or utility failures of any kind or need to maintain the proper provision of our Site and Services, resulting in service interruptions, delays, or errors of any kind, we reserve the right, but not the obligation, to conduct any kind of modification, discontinuation, or suspension of our Site and Services for any reason, at any time or without notice. You agree that we have no liability whatsoever for any loss, damage, or inconvenience caused by your failure to access or use our Site and Services in the event of any downtime or troubleshooting period of our Site and Services. We reserve the right, but not the obligation, nor liability of any maintenance and support work derived from our Site and Services or of any amendments, updates, or releases in connection therewith.

15. ELECTRONIC COMMUNICATIONS

By accessing or using our Site and Services, sending us emails, and completing online forms, you agree to engage in electronic communications with us, and you agree that all agreements, notices, disclosures, and other communications we provide to you electronically, via email and on our Site and Services, satisfy any legal requirement that such communication be in writing. Accordingly, you agree to use any materials and contents (signatures, contracts, orders, etc. that are electronically delivered or recorded) that are sent from us. You agree to waive your rights and requirement in the event where an original signature or any other non-electronic files, processes, records, or payment should be required in applicable law.

16. MISCELLANEOUS

These Terms of Use constitute a legally binding agreement and understanding made between you and us and the agreement does not constitute any more relationships between you and us than that of our terms of use and our Site and Services, including but not limited to agency, employment etc. This agreement operates to the fullest extent permissible by law. In no event shall our failure to exercise or enforce any of our right or provision performs a waiver of our rights or provision. We may or may not assign any or all of our rights and obligations to others at any time. We shall not be responsible or liable for any loss, damage, delay, or failure to act caused by any cause in case of force majeure or out of our efforts. If any provision or part of a provision of this agreement is determined to be not consistent with the law, validity or unenforceable, that portion of provision will not affect legal effects of any remaining provisions. You agree that this agreement is not construed against our interests by virtue of having drafted them. You hereby agree to give up your rights of any and all defenses you may have based on the electronic Terms of Use as well as an absence of signing by both you and us hereto to execute these Terms of Use.

17. CONTACT US

For inquiries and complaint resolutions regarding our Site and Services or this agreement, please contact us at:

Ultipa, Inc.

policy@ultipa.com