

UltuCup Terms of Use

Last Updated June 21, 2018

Welcome to Ultumum Sales Marketing Innovations Group Inc. (“**Ultumum**”, “**WE**”, “**US**” OR “**OUR**” AS CONTEXT DICTATES). We are happy that you’re here. In order for you to use our platform or obtain any assistance from us (the “Services”) or interact with us, you must be willing to abide by these terms below (these “**TERMS OF USE**”) AS WELL AS OUR PRIVACY POLICY WHICH IS INCORPORATED BY REFERENCE (THESE TERMS OF USE ALONG WITH THE PRIVACY POLICY AND OTHER POLICIES WE MAY ADD FROM TIME TO TIME SHALL BE REFERRED TO AS THE “**TERMS**”), which GOVERN ALL the SERVICES we provide AND ALL CONTENT and PRODUCTS AVAILABLE in respect of the Services (all websites, systems, apps and technology provided in regards to our services collectively called “**Website**”).

These Terms of Use are Binding

Whether you are a client or someone who is simply using the Website, please read the terms carefully, as they contain important information about use rights, liability, your obligations and matters related to disputes, including the exclusive use of arbitration to resolve disputes. If you do not wish to abide by either the privacy policy or these Terms of Use, then you have no right to obtain Services from us or access or use any part of the Website or information contained on the Website. Your use of the Website signifies that you agree to the Terms. If you do not or are unable to agree to the Terms, do not use our Website.

1. Understanding the Role of Each Party

- (a) Ultumum is only responsible for providing the Website and for providing certain types of assistance (see Section 4). We provide services in our own personal or corporate capacities, and not as employees, agents, or representatives of a User.
- (b) Ultumum has no role and assumes no liability with respect to any User act or omission.
- (c) If you are using the Website on behalf of an organization, you agree to the Terms on behalf of that organization, and represent you have authority to bind that organization to the terms contained herein.

2. Your Account

- (a) **Registration and Account Set-up.** In order to utilize Services offered on the Website, you must register and create an account.
- (b) **Credentials Management and Incidents.** You will: (1) keep your Credentials strictly confidential and secure; (2) only share your Credentials with those who are authorized to represent you and execute a Transaction on your behalf, but please ensure such person abides by the Terms; and (3) inform us immediately if the confidentiality of any part of your Credentials has been compromised (e.g. you or someone you authorized has shared your Credentials with a third party or you believe there’s a credible chance of the security of your account being compromise).
- (c) **Suspicious Activity.** If we suspect any unauthorized access to your Account or that there is suspicious activity in relation to your Account, we retain the right, but do not have the obligation, to suspend your Account and take any other related action as we deem reasonable, and you agree to assist in executing such actions, which may involve your resetting of passwords or taking other measures as may be required.
- (d) **Cancellation by User.** As a User, you may decide at any time to cancel your account.
- (e) **Cancellation by Ultumum.** We reserve the right to suspend, and if deemed appropriate, cancel your Subscription.

3. Insurance

USERS AGREE THAT THEY DO NOT EXPECT ULTUMUM OR ANY OF ITS AFFILIATES OR ANY SUCH ENTITY’S

AGENTS, OFFICERS AND DIRECTORS TO PROVIDE INSURANCE IN REGARDS TO THE WEBSITE AND EACH PARTY ACKNOWLEDGES THAT IT DOES NOT RELY ON THE INSURANCE OF ANY OTHER PARTY.

4. Handling of Your Information

- (a) You agree that all information or data on the Website or processed through the Website may be, without further required consent by you, handled by a third-party for either: (1) the third party's own legitimate business purposes; (2) purposes which serve our business purposes, including transaction processing and data monitoring or storage; or (3) for regulatory or other reasons which are imposed on us, in Canada, United States of America, or in any other jurisdiction we provide services.
- (b) Your information may be subject to third party data management and privacy policies in the event such third parties are utilized by us or by you (e.g. for purposes of payment of fees).

5. Representations, Warranties and Covenants

- (a) You acknowledge and agree that as a User: (1) you are 18 years old or older; (2) you have the authority to bind yourself, or such other party which you may be representing, to the Terms; (3) your use of the Website will be solely for purposes that are permitted by the Terms; (4) your use of the Website will not infringe or misappropriate the intellectual property rights of any third party; and (5) your use of the Website, as applicable, will comply with all Laws and with all applicable Ultimum policies.
- (b) If you are using the Website on behalf of an organization, you agree to the Terms on behalf of that organization, and represent you have authority to bind that organization to the terms contained herein.
- (c) **User Conduct Restrictions.** You covenant that you will not:
 - (i) as a Client:
 - (A) register for more than one Account or register for an Account on someone else's behalf; or
 - (B) misrepresent your identity (e.g. represent to anyone on the Website that you are someone else or you are affiliated with someone that you are not);
 - (ii) as a User:
 - (A) share your Account log-in details with any person other than those expressly authorized by you;
 - (B) contact any User for a purpose other than what this Website is meant for;
 - (C) with respect to a Transaction, make use of the Website or the tools and services on the Website to do anything other than to carry out activities which are normally related to activities conducted on the Website;
 - (D) reverse engineer, de-compile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms in the Website;
 - (E) damage, disable, overburden or impair our servers or network, or interfere with any other party's use and enjoyment of the Website;
 - (F) copy, or make derivative work from, any part of the Website in any medium, including use of a frame or border environment around the Website, or other framing technique to enclose any portion or aspect of the website, using any device including using spiders, data mining, robots, or similar data gathering means;
 - (G) access the Website in order to build a commercially available product or service which competes with the Website;

- (H) copy any features, functions, integrations, interfaces or graphics which are part of the Website;
- (I) violate any Laws;
- (J) make statements on any part of the Website on any topic, particularly regarding other Users, Content and the Website, which could reasonably be considered false or misleading;
- (K) wilfully tamper with the security of the Website, including attempting to probe, scan or test the vulnerability of the Website or to breach the security or authentication measures;
- (L) share any sensitive data with us which, in the normal course of events, would demand special Handling and introduce a security burden on Ultumum that is not agreed upon by us in writing in advance of receipt of such data;
- (M) transmit any information, through the Website or to Users in any other manner, which may: (1) be unlawful, threatening, abusive, libelous, defamatory;; (2) refute or is contrary to what is set out anywhere in the Website; 3) is considered "spam" (including machine or randomly-generated, constitutes unauthorized or unsolicited advertising, chain letters, any other form of unauthorized solicitation or any form of lottery or gambling); (4) contains or installs any viruses, worms, malware, Trojan horses or other content that is designed or intended to disrupt, damage or limit the function of any software, hardware or telecommunications equipment or to damage or obtain unauthorized access to any data or other information of any third party; and (5) violates the privacy of any third party; and
- (N) attempt to gain unauthorized access to the Website or our computer systems or networks through hacking, password mining or any other means.

(d) We reserve the right to investigate and prosecute, to the fullest extent of the law, any violation of the above. Our actions against you, upon suspicion or confirmation of a violation of the above, may also include suspension or termination of your Account, removal or suspension of your Content; and issuance of a warning to Users about any relevant information about you to the extent permissible under applicable law.

6. How to Deal with Misconduct

If you notice anyone who is behaving inappropriately, including dangerously or in violation of Law, you should not hesitate to report the person to the appropriate authorities (e.g. the police) and then us; provided however that any such contact with us will not: (1) make us liable to you in any way; or (2) oblige us to take any action beyond what is our legal obligation.

7. Disclaimer Regarding Our Actions

In some circumstances, we may become aware of potentially illegal or fraudulent activity in relation to a User. Any actions we take with respect of this knowledge, including any messages (e.g. warning) we might provide on the Website or through any communication directly to Users, is strictly on an "as is" basis. We do not make: (1) any representations or warranties regarding the reliability or accuracy of any such messages; (2) any assurance that we can be relied upon to ensure that such messages will reach all those Users who would benefit from receiving the messages and that even if such messages are received, the Users will be able to avoid the harm or other adverse impact that we may have been warning about in the message.

8. License Regarding Comments

In certain circumstances, Users may opt to provide Comments on the Website. Comments can include any details or remarks about Content on the Website. In addition to the presence of the Comment on the Website, Users making such Comments grant us a worldwide, royalty-free, perpetual, irrevocable and exclusive right to publish any such Comment, in any manner and at any time, solely at our discretion. Regardless of any modification, Users will indemnify Ultumum with respect to any losses, claims or action which arise in connection with such Comments.

9. Aggregated Information.

Ultimum owns all Aggregated Information which is anonymized. Nothing herein will be construed as prohibiting us from using the Aggregated Information for any purpose seen fit by us including publication of, and creation of derivative works from the Aggregated Information, provided that such usage will not reveal to a third party the identity of a User.

10. Monitoring of User Activity and Privacy

We may, solely at our discretion or at the request of a governmental authority, monitor, record or otherwise process all interactions with the Website. Further information is available in our Privacy Policy.

11. Right to Terminate Accounts

We reserve the right, but not the obligation to, determine, solely at our discretion, whether any User violates the Terms and at our choosing, suspend, terminate or deny access to a User Account, with or without prior notice.

12. Intellectual Property Rights

- (a) We retain ownership of all intellectual property rights of any kind related to the Website, including applicable copyrights, patents, trademarks and other proprietary rights. The Terms do not transfer any intellectual property between parties. We reserve all rights that are not expressly granted under the Terms.
- (b) All content and information on the Website are protected by copyright as a collective work and/or compilation under applicable Laws. These marks may not be copied, downloaded, reproduced, used, modified or distributed in any way without our prior written permission by the applicable party.

13. Permission for Communication

We use email and other electronic means to stay in touch with Users. You agree that when you provide us your e-mail address or personally identifying information (e.g. name, address) during or prior to access of the Website or use of any other service or tool provided through or on the Website, you: (1) consent to receive communications from us, our Affiliates, and applicable Users in electronic formats, including via the email address you have submitted, SMS messages to your telephone, or other agreed upon contact methods; (2) can opt-out from receiving communication from any such party at any time by completing the formalities on the Website, but we do not take on any liability for any communication of another party to you, particularly if you have provided your contact information to them independently rather than using the communication functions of the Website; and (3) agree that the Terms, agreements, notices, disclosures and other communications that we provide you electronically satisfy any legal requirement that such communications would satisfy if they were in writing and physically presented to you.

14. Term and Termination

- (e) The Terms, and any payment obligations, will deemed to be applicable to you upon your use of the Website and will terminate only upon an actual deletion or deactivation of your Account through the means provided on the Website. Abandonment or non-use of the Account will not lead to an automatic termination of your Account.
- (f) With respect to all Users, Ultimum may terminate your access to all or any part of the Website at any time, with our without cause and with or without notice, effective immediately and for any reason deemed appropriate in our sole discretion.
- (g) Except for the provisions set out in Section 32 (Surviving Provisions) the Terms will no longer be applicable to you if your Account is cancelled or terminated.
- (h) Upon termination of your Account, (1) all rights, licenses, consents and authorizations granted pursuant to the Terms will immediately terminate; (2) we may disable all User access to services on the Website; and (3) we will permanently erase all User Data, provided that, for clarity, such obligation does not apply to any Aggregate Data.

- (i) Notwithstanding anything to the contrary in the Terms, with respect to information and materials then in our possession or control:
 - (i) we may retain User Data in our backups, archives and disaster recovery systems until such User Data is deleted in the ordinary course; and
 - (ii) all information and materials described in subsection f(i) will remain subject to all confidentiality, security and other applicable requirements of the Terms.

15. Disclaimer of Warranties.

IN ADDITION TO ANY OTHER DISCLAIMERS SET OUT IN THE TERMS, THE SERVICES PROVIDED, INCLUDING ALL CONTENT ON, FUNCTION OF, AND TRANSACTIONS CONDUCTED OVER, THE APPLICATION ARE "AS IS" WITHOUT ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND MADE BY US. TO THE FULLEST EXTENT OF THE LAW, WE DO NOT REPRESENT THAT ANY INFORMATION EXCHANGED BETWEEN A PARTY UNDER THE TERMS IS SECURE, EVEN IF WE BECOME AWARE OF ANY, OR ARE TOLD ABOUT, A POTENTIAL BREACH. FURTHER, WE EXPRESSLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, RELIABILITY OR ACCURACY. WE DO NOT WARRANT THAT THE WEBSITE OR THE FUNCTIONS THEREIN WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT THE WEBSITE OR ANY ITEM CONNECTED WITH THE SERVER IS FREE OF VIRUSES OR ANY HARMFUL COMPONENTS. ANY TRANSMISSION TO AND FROM THIS WEBSITE, COMMUNICATION BETWEEN THE PARTIES OR ANY COMMENTS MADE BY YOU, ARE NOT CONFIDENTIAL. YOU AGREE THAT YOUR USE OF THIS WEBSITE CREATES NO OBLIGATION UPON US AND THERE IS NO RELATIONSHIP (WHETHER CONTRACTUAL, FIDUCIARY OR OTHERWISE) CREATED BETWEEN YOU AND US OTHER THAN PURSUANT TO THE TERMS.

16. Limitation of Liability

We will not be liable for any damages or losses arising from your use of the Website or arising under the Terms. To the maximum extent permitted by applicable law, in no event will Ultumum be liable to you for any loss of profits, interruption to business, harm to reputation, misuse of data, or for any incidental, direct, indirect, special, consequential or exemplary damages, however arising and whether or not Ultumum has been informed of the possibility of such damage, even if a remedy set forth in the Terms is found to have failed of its essential purpose.

We will also have no liability for any failure or delay, including the failure of any integrated or ancillary third-party service used in conjunction with the Website or for any failure of a third party to keep safe any transactional information or other personal information of a User.

17. Release and Indemnification

- (a) Users agree to indemnify and hold harmless Ultumum, its officers, directors, employees, agents, successors and permitted assigns from and against any and all claims and expenses, including legal fees and disbursements, arising out of any use of the Website (including content posted by you or use of a social media website or app in connection with Content on the Website) by you, including a User's violations of any of the provisions in the Terms or any other terms as agreed upon between Users; improper Handling of User Data; allegation of facts that, if true, would constitute User's breach of any of its representations, warranties, covenants or obligations under the Terms; or negligence or willful misconduct by User or any third party on behalf of User in connection with the Terms.
- (b) In the event of any dispute between you and any other User in connection with the Website, you agree to grant Ultumum and its officers, employees, directors, and agents and related entities a release from all claims, causes of action, demands and damages (actual and consequential) of every kind and nature whatsoever, known and unknown, arising out of or in any way connected with such dispute now or at any time in the future.
- (c) In the event you are a California resident, you waive California Civil Code Section 1542, which says: "a general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which, if known by him must have materially affected his settlement with the debtor."

- (d) We may, at our sole discretion and expense, choose to assume the exclusive defense and control of any matter otherwise subject to indemnification by you and you shall not in any event settle any matter without our written consent.

18. Modification of Terms

- (a) Ultimum reserves the right, at our sole discretion, to amend the Terms at any time and will update the Terms in the event of any such amendments.
- (b) If the Terms are modified in a way we consider significant, we will post the amended Terms on the Website. Although we will take reasonable steps to notify you of such significant changes made, you are expected to check the Terms periodically for any amendments. Your continued use of the Website following such notification shall constitute your affirmative acknowledgement of the Terms, the modification and agreement to abide and be bound by the Terms, as amended. If at any time you choose not to accept the Terms, including following receipt of notification of any modifications made hereto, then please do not use the Website and as applicable, terminate your Account.

19. Governing Law

The Terms and any access to or use of the Website shall be governed by, and construed in accordance with the internal laws of the Province of Ontario and the federal laws of Canada, without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the province of Ontario.

20. Arbitration

If any claim, dispute or controversy occurring amongst Users or between a User and us, in relation to the Terms or services provided pursuant to the Terms, cannot be resolved within a commercially reasonable timeframe, the dispute may be referred to arbitration pursuant to the International Commercial Arbitration Act (R.S.O. 1990, c. I-9) (Ontario). There shall be one arbitrator selected in accordance with the Rules. The parties to the dispute shall equally share the fees of the arbitrator and the facility fees and such parties shall each bear their own legal costs and expenses of the arbitration; provided, that the arbitrator shall have the authority to award such fees, costs and expenses in the decision of the arbitrator. The arbitration shall be conducted in English. Notwithstanding the foregoing, each disputing party shall have the right to seek injunctive or other equitable relief that may be related to the breach of confidentiality obligations or violation of the intellectual property rights set forth in the Terms.

21. Waiver of Class Proceedings

Users hereby waive any right they may have to commence or participate in any class action lawsuit against Ultimum related to any claim, dispute or controversy and, where applicable, Users hereby agree to opt out of any class proceeding against Ultimum otherwise commenced.

22. Severability

If any portion or provision of the Terms shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of the Terms, or the application of such portion of provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of the Terms shall be valid and enforceable to the fullest extent permitted by law.

23. No Assignment

- (a) We may assign or delegate the Terms, including the Terms of Use and/or our Privacy Policy, in whole or in part, to any person or entity at any time with or without your consent and without prior notice to you.
- (b) Users may not assign or delegate any rights or obligations under the Terms without our prior written consent and any unauthorized assignment and delegation by you is void.

24. Headings and Summaries

The headings, captions and summaries in the Terms are for convenience only and in no way define or describe the scope or content of any provision of the Terms.

25. Notices

Except as otherwise stated in the Terms or as expressly required by law, any notice to us shall be given in writing by certified postal mail to 55 Shoemaker Street, Unit 1A, Kitchener, Ontario, Canada N2E 3B4 or by email to info@ultumum.com or info@ultucup.com. Any notice to you shall be given to the most current email address in your Account.

26. Other Rules of Interpretation

Any reference to gender includes all genders; words importing the singular number only shall include the plural and vice versa; the word "or" is not exclusive; and the words "including", "includes" and "include" mean "including without limitation".

27. No Waiver of Covenants

Failure by any party to insist upon the strict performance of any of the covenants, agreements, terms, provisions or conditions contained in the Terms or to exercise any election shall not be construed as a waiver or relinquishment of such covenant, agreement, term, provision or condition but the same shall continue and remain in full force. No waiver shall be deemed to have been made unless expressed in writing.

28. Severance

If any provision of this Agreement is found to be invalid by a court of competent jurisdiction, the other provisions of the Terms will remain in full force and effect.

29. Violations

Please report any violations of the Terms by a User or a third party by sending an email to to info@ultumum.com or info@ultucup.com.

30. Surviving Provisions

Only the following provisions of these Terms of Use will survive following any termination or expiration: Sections 7 (Representations, Warranties and Covenants), 14 (Intellectual Property), 15 (Permission for Communication), 18 (Limitation of Liability), 19 (Release and Indemnification), 21 (Governing Law), 22 (Arbitration), 23 (Waiver of Class Proceedings), 27 (Notices), 34 (Definitions), and this Section 32.

31. Entire Agreement

The Terms, in combination with all policies and guidelines of the Website (including the Privacy Policy), incorporated by reference, constitute the entire agreement between you and Ultumum and supersede all prior communications, agreements and understandings, written or oral, with respect to the subject matter of the Terms.

32. Definitions.

"Aggregated Information" or **"Aggregate Data"** means all information derived from User's engagement with the Website, including, usage information, data and other content and which is sufficiently different from User Data such that User Data cannot be reverse engineered or otherwise identified from the inspection, analysis or further Handling of such derived information, data or content.

"Certified" means being officially recognized as possessing certain qualifications, criteria or meeting certain standards.

"Client" means the party which signs up on the Website to receive specific Content and agrees, by such act of signing-up, to be subject to applicable and terms and conditions in these Terms of Use and any agreed upon fees.

"Client Information" means personal information of the Client, including information which is capable of identifying the Client.

"Comments" means written statements, submitted by Users on the Website, which sets out facts or opinions.

"Content" means any content featured or displayed throughout the Website, including but not limited to text, documents, information, data, articles, opinions, images, photographs, graphics, software, applications, video recordings, audio recordings, sounds, designs, features, comments or ratings and other materials that are available on the Website.

"Handle" means to process, record, transfer, access, receive, use, disclose, retain, dispose of, destroy, manage, collect, store, or otherwise handle and any variation of "Handle", such as "Handling", has the same meaning depending on the context.

"Law" means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order or other requirement or rule of law of any governmental authority.

"Subscription" means a non-exclusive, non-sublicensable, limited, and revocable right to access the Website.

"Transaction" means any trade, sale, or an exchange or interaction between persons on the Website, including the exchange of monies in respect of Content or goods and or services as available on the Website.

"Use" means to utilize the Website subject to the Terms.

"User" means a Client, and any persons which utilize the Website using Client Account credentials, as the case may be.

"User Data" means any data, information (including any information about an identifiable individual or an individual whose identity may be inferred or determined from the information) or other materials of any nature recorded in any form whatsoever disclosed or provided to Ultumum by the User at any time which is confidential in nature.

"You" and **"Your"** means either a User or a Client or both such persons as the context so requires, including a company or other legal entity on behalf of which a person may be acting as a User or Client.