

END USER LICENSE AGREEMENT (EULA)
ULTRA COMMERCE ESSENTIALS

TERMS OF SERVICE FOR ULTRA COMMERCE FIXED-TERM SERVICE ON AWS
MARKETPLACE

IMPORTANT: PLEASE READ THIS CONTRACT CAREFULLY BEFORE USING THIS FIXED-TERM SERVICE. THESE TERMS OF SERVICE ARE AN AGREEMENT BETWEEN YOU (EITHER AS AN INDIVIDUAL OR A SINGLE ENTITY) AND ULTRA COMMERCE, LLC (ULTRA COMMERCE). IF YOU ARE ACCESSING THE FIXED-TERM SERVICE ON BEHALF OF A COMPANY OR ORGANIZATION, YOU CERTIFY THAT YOU ARE AUTHORIZED TO AGREE TO THIS AGREEMENT ON BEHALF OF SUCH ORGANIZATION, AND 'YOU' AS USED IN THIS AGREEMENT WILL MEAN ALL AUTHORIZED USERS WITHIN YOUR ORGANIZATION. BY PURCHASING THE FIXED-TERM SERVICE ON THE AWS MARKETPLACE, YOU ARE AGREEING TO THESE TERMS OF SERVICE (THIS 'AGREEMENT'). IF YOU DO NOT AGREE TO ALL THE TERMS OF THIS AGREEMENT, DO NOT COMPLETE YOUR PURCHASE ON THE AWS MARKETPLACE AND TERMINATE YOUR ACCESS TO THE FIXED-TERM SERVICE.

Last Modified: May, 2022

1. Definitions

For the purpose of this Agreement, the following terms will have the corresponding definitions:

'Authorized Partner(s)' means Ultra Commerce's distributors, resellers, strategic partners, or other business partners.

'AWS Marketplace' is the Amazon Web Services Marketplace website, where You can purchase Plans in accordance with Amazon's terms of service, located at <http://aws.amazon.com/agreement/>

'Content' means the data and data attributes provided by or obtained through use of the Fixed-Term Service, but does not include Customer Data.

'Customer Data' means all information, software, data and materials that You or anyone acting on Your behalf provides or transfers to Ultra Commerce for any purpose in connection with Your use of the Fixed-Term Service.

'Documentation' means the then-current product description, written user manuals, and online help and guides for the Fixed-Term Service provided on the AWS Marketplace.

'Effective Date' means the date on which Your purchase a Plan.

'Plan' means the option selected by You on the AWS Marketplace which includes access to the Fixed-Term Service.

'Fixed-Term Service' means the fixed-term services offered by Ultra Commerce and made available to You on this AWS Marketplace.

'Term' means the duration of time in the Plan for which You have purchased access to the Fixed-Term Service.

'Ultra Commerce' means Ultra Commerce, LLC, a Delaware limited liability company, with offices at 20 Franklin St., Worcester, Massachusetts 01608, USA.

2. Scope of Use; Grant of Rights

Subject to the payment of the applicable fees for the Plan selected by You and to the terms and conditions of this Agreement, Ultra Commerce hereby grants to You a non-exclusive, non-transferable right to access and use the Fixed-Term Service and Content solely for Your own internal business purposes and subject to any restrictions or usage terms specified in the Plan selected by You. In the event the Fixed-Term Service and Content contains, uses, or makes available any third party software or services, Ultra Commerce will have no responsibility and claims no right with respect to such third party software or service. Your use of such third party software, service, and other copyrighted material is governed by their respective terms. The Fixed-Term Service and Content are owned by or otherwise licensed by Ultra Commerce, and Ultra Commerce reserves all rights to the Fixed-Term Service and Content not expressly granted to You by this Agreement. The Fixed-Term Service includes all upgrades and updates during the Term which Ultra Commerce makes generally available at no additional cost to its customers, but does not include those upgrades containing new or different features or functionality for which Ultra Commerce charges its customers separately.

3. Term; Termination; Suspension

This Agreement is effective on the Effective Date and will remain in effect for the Term set forth in the Plan selected by You. Unless otherwise prohibited by applicable law, this Agreement and the Plan selected by You will renew automatically at the end of the current Term ('Renewal Date') and will continue to renew at the end of each subsequent Term (also a 'Renewal Date'), unless and until (a) either party notifies the other in writing at least thirty (30) days before the end of the current Term of its intention not to renew the Fixed-Term Service or (b) You elect to cancel the renewed Plan and this Agreement within fourteen (14) days after the Renewal Date. The applicable fees in effect as of the Renewal Date will apply to the renewed Plan.

This Agreement will terminate automatically if you fail to comply with any of the limitations or other requirements described herein. Upon any termination of this Agreement or expiration of a Term, You must immediately cease all use of the Fixed-Term Service and destroy all copies of Content in your possession, unless You elect to purchase an additional Plan at the expiration of an existing Term.

Either party may terminate this Agreement upon written notice, if the other party materially breaches this Agreement and does not cure that breach within 30 days after receiving written notice of the breach. If Ultra Commerce initiates termination of this Agreement for Your breach, You remain obligated to pay the balance due on Your account for the remainder of the Term then in effect, computed in accordance with the Plan selected by You, and will be billed for such unpaid fees. If You duly terminate this Agreement for uncured material breach by Ultra Commerce, You shall be entitled to reimbursement on a pro-rated basis of that portion of Your prepayment for the Fixed-Term Service which covers any time period beyond the termination date.

Ultra Commerce reserves the right to end the service life (EOL) of the Fixed-Term Service. If you have prepaid the fee for the EOL Fixed-Term Service, Ultra Commerce will use commercially reasonable efforts to transition You to a substantially similar Fixed-Term Service. If Ultra Commerce does not have a substantially similar Fixed-Term Service, Ultra Commerce may stop making the EOL Fixed-Term Service available to You and may terminate this Agreement upon 90 days' written notice to You.

Notwithstanding the above, you may terminate this Agreement and cancel the Fixed-Term Service for any reason within 14 days of the Effective Date.

Upon termination or expiration of any Term or this Agreement, in the event that Ultra Commerce has any Customer Data, You agree that Ultra Commerce has no obligation to retain the Customer Data.

Notwithstanding the above, Ultra Commerce reserves the right to suspend or limit the use or speed of the Fixed-Term Service ('Suspension') if Ultra Commerce determines that You are in continuing breach of an obligation under this Agreement or are breaching or have breached a law in using the Fixed-Term Service. To the extent practicable in the circumstances, Ultra Commerce will endeavour to provide You with prior notice of any Suspension. If it is not practicable to provide prior notice, Ultra Commerce will notify You of any Suspension without delay after the Suspension commences. If the cause of the Suspension is reasonably able to be remedied, Ultra Commerce will notify You of the actions to be taken for reinstatement of the Fixed-Term Service. Ultra Commerce is not liable to You for any loss or damage due to a Suspension properly made by Ultra Commerce in accordance with this paragraph, and Ultra Commerce's rights to suspend Fixed-Term Services are without prejudice to any other rights and remedies of Ultra Commerce under this Agreement.

The following provisions will survive any expiration or termination of this Agreement: Sections 3, 4, 8, 9, 15, 17, and any other provisions which by their nature ought to survive expiration or termination.

4. Fees and Payment

You will pay the fees associated with the corresponding Plan via the AWS Marketplace. Unless otherwise identified on the AWS Marketplace, all fees are stated in and will be paid in United States currency. Ultra Commerce may change the Plan fees at any time. Any increase in fees will not be effective until the commencement of the subsequent Term for the specific Plan for which the increase applies.

The fees do not include any amount for taxes. You will pay all federal, state and local sales, use, property, excise, privilege, ad valorem, Internet-related, and other taxes imposed on or with respect to this Agreement for the Fixed-Term Service provided hereunder. If any sales, use, excise or other taxes (except for taxes based on Ultra Commerce's net income) are assessed against or required to be collected in connection with this Agreement it will be set forth in the purchase section of the AWS Marketplace.

If You terminate this Agreement and cancel the Fixed-Term Service through the AWS Marketplace within 48 hours of the Effective Date, you may receive a full refund of the fees paid. If You terminate this Agreement and cancel the Fixed-Term Service through the AWS Marketplace within 14 days of the Effective Date, you may receive a pro-rata refund of the fees paid. Fees paid for the Fixed-Term Service are non-refundable more than 14 days after the Effective Date.

If this Agreement and the Plan automatically renew, you may cancel this renewed Agreement and the Fixed-Term Service through the AWS Marketplace within fourteen (14) days of the Renewal Date for a full refund of the fees for the renewed Plan.

5. Ownership Rights

Customer Data: You retain all right, title and interest in and to Your Customer Data. You grant Ultra Commerce a worldwide, royalty-free, sublicensable license to use, modify, reproduce, publicly display, publicly perform, and distribute the Customer Data only as reasonably required to provide the Fixed-Term Service to You. You represent that You have the right to grant the license contained in this section. Ultra Commerce is free to use and incorporate any feedback You provide regarding the Fixed-Term Service without payment of any fees.

Ultra Commerce Materials: Ultra Commerce or its licensors retain their ownership in all intellectual property rights to the Fixed-Term Service and its underlying technology, the Content, the software, and associated documentation (the 'Materials'). This ownership extends to all copies and portions of the Materials, and all improvements, enhancements, modifications, and derivative works. You may use the Materials solely as part of the Fixed-Term Service for Your internal business operations subject to the terms of this Agreement. You agree that this limited right is not a transfer of ownership of or title to the Materials. Your rights to use the Materials are limited to those rights expressly granted by this Agreement.

6. Customer Responsibilities; Restrictions; Usage Rights

- a) You will use the Fixed-Term Service and Content solely for Your internal business purposes and will not use the Fixed-Term Service on behalf of or make the Fixed-Term Service or Content available to any third party in any way, except as provided in this Section. The Fixed-Term Service can only be used as integrated into Amazon Web Services. You are expressly prohibited from downloading the Fixed-Term Service or moving the Fixed-Term Service to a different location within Amazon Web Services absent Ultra Commerce's express written consent.
- b) If You enter into a contract with a third party in which the third party manages Your information technology resources ('Managing Party'), You may transfer all Your rights to use the Fixed-Term Service to such Managing Party, provided that (a) the Managing Party only uses the Fixed-Term Service for Your internal operations and not for the benefit of another third party; (b) the Managing Party agrees to comply with the terms and conditions of this Agreement, and (c) You provide Ultra Commerce with written notice that a Managing Party will be using the Fixed-Term Service on Your behalf.
- c) You are responsible for Your account information, password, or other login credentials. You agree to use reasonable means to protect Your credentials and You will notify Ultra Commerce in writing immediately of any known unauthorized use of Your account. You agree that anyone who inputs a valid user ID and password will be deemed an appropriate user of the Fixed-Term Service unless and until You notify Ultra Commerce to the contrary in writing.

- d) You will not: (a) reverse engineer, decompile or disassemble the Fixed-Term Service; (b) modify, or create derivative works based upon, the Fixed-Term Service in whole or in part; (c) copy the Fixed-Term Service or Documentation except as expressly permitted by this Agreement; (d) obscure, distort, remove, cover or change any attribution, ownership or other proprietary rights statements, policies or notices contained in the Fixed-Term Service, including copyright and trademark notices or terms of use links; (e) use the Fixed-Term Service to contain or display adult content, promote illegal activities, send or store infringing, obscene, threatening or unlawful or tortious material; (f) circumvent or attempt to circumvent the basis on which fees for your Plan are assessed and charged (including by circumventing or negating the persistent storage of transactional orders in the default database storage location for such information); or (g) disrupt other users of the Fixed-Term Service, network services or network equipment, including but not limited to, denial of service attempts, distribution of unsolicited advertising or chain letters, propagation of computer worms and viruses, or use of the Fixed-Term Service to make unauthorized entry to any other device accessible via AWS or other service.

7. Warranties and Disclaimers

Each party warrants that it has the legal power and authority to enter into this Agreement.

Ultra Commerce warrants that the Fixed-Term Service will materially comply with the Documentation under normal use and circumstances. You warrant that (1) You have neither falsely identified Yourself nor any user of the Fixed-Term Service, nor provided any false information to gain access to the Fixed-Term Service, nor does any Customer Data violate the privacy rights of, or defame, any data subject or third party, (ii) You have provided any necessary notices and obtained any necessary consents from applicable data subjects as required by applicable law for Ultra Commerce and You to process Customer Data via the Fixed-Term Service and (iii) the billing information You provided is correct.

Your sole and exclusive remedy for Ultra Commerce's breach of warranty is (at our option) to repair or replace the Fixed-Term Service or refund to the entity that paid Ultra Commerce the fees for the period in which the Fixed-Term Service did not materially comply. In order to receive either of these remedies, You must promptly notify Ultra Commerce of such breach.

Except for the express warranties set forth herein, to the extent allowed by applicable law, THE SERVICE IS PROVIDED 'AS IS' AND ULTRA COMMERCE MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. EXCEPT FOR ANY WARRANTY, CONDITION, REPRESENTATION OR TERM THE EXTENT TO WHICH CANNOT BE EXCLUDED OR LIMITED BY APPLICABLE LAW, ULTRA COMMERCE, ITS SUPPLIERS AND AUTHORIZED PARTNERS MAKE NO WARRANTY, CONDITION, REPRESENTATION, OR TERM (EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER INCLUDING, WITHOUT LIMITATION, NONINFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SERVICE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE USE OF AND RESULTS OBTAINED FROM THE SERVICE. WITHOUT LIMITING THE FOREGOING PROVISIONS, ULTRA COMMERCE MAKES NO WARRANTY OR REPRESENTATION THAT: (1) THE SERVICE WILL BE COMPLETELY SECURE, ERROR-FREE, FREE FROM VIRUSES OR FREE FROM INTERRUPTIONS OR OTHER FAILURES; OR (2) THAT THE SERVICE WILL MEET YOUR BUSINESS REQUIREMENTS OR OPERATE WITH YOUR EXISTING SYSTEMS.

8. Limitation of Liability

UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, SHALL ULTRA COMMERCE OR ITS AUTHORIZED PARTNERS OR SUPPLIERS BE LIABLE TO YOU OR TO ANY OTHER PERSON FOR LOSS OF PROFITS, LOSS OF GOODWILL, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR DAMAGES FOR GROSS NEGLIGENCE OF ANY FORM INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, APPLIANCE FAILURE OR MALFUNCTION, OR FOR ANY OTHER DAMAGE OR LOSS. IN NO EVENT SHALL ULTRA COMMERCE OR ITS AUTHORIZED PARTNERS OR SUPPLIERS BE LIABLE FOR ANY DAMAGE IN EXCESS OF THE PRICE PAID FOR THE SERVICE, IF ANY, EVEN IF ULTRA COMMERCE OR ITS AUTHORIZED PARTNERS OR SUPPLIERS SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Ultra Commerce is acting on behalf of its suppliers and Authorized Partners for the purpose of disclaiming, excluding and/or limiting obligations, warranties and liability as provided in this Agreement, but in no other respects and for no other purpose. The foregoing provisions shall be enforceable to the maximum extent permitted by applicable law. Nothing in this Agreement limits or excludes any liability that cannot be limited or excluded under applicable law.

9. Indemnification

- (a) Your Indemnification Obligation: You will defend Ultra Commerce and its Authorized Partners, and their respective officers, directors, employees, contractors and agents (each, an 'Ultra Commerce Indemnified Party') against third party claims brought against an Ultra Commerce Indemnified Party arising from (a) Your use of the Fixed-Term Service in a manner not expressly authorized by the Agreement or that is in violation of applicable law, (b) Your Customer Data or the combination of Your Customer data with other applications, content or processes, (c) Ultra Commerce's compliance with any designs, specifications, requirements or instructions provided by You or a third party on Your behalf, and (d) a dispute between You and any of Your users. You will indemnify the applicable Ultra Commerce Indemnified Party against all damages finally awarded against the Ultra Commerce Indemnified Party (or the amount of any settlement entered into by You) with respect to such claims.
- (b) Indemnification Procedure: Ultra Commerce will (a) timely notify You writing of the claim brought against Ultra Commerce (provided, that the failure to provide timely notice that prejudices You shall relieve You of Your obligations under this Section 9 to the extent You have been prejudiced and such failure to provide timely notice shall relieve You of any obligation to reimburse Ultra Commerce for its attorney's fees incurred prior to notification), and (b) reasonably cooperate in the defense of the claim and may participate in the defense of the claim at its own expense. You will have the right to fully control the defense and to settle the claim; provided, however, that any settlement of a claim shall not include a financial or specific performance obligation on, or admission of liability by, Ultra Commerce. This Section 9 and Section 8 state the parties' entire obligation and Your exclusive remedies.

10. Support Services

Ultra Commerce provides support for the Fixed-Term Service for the duration of the Term in accordance with the Support Guidelines in Appendix A hereto.

11. Notice to United States Government End Users

The Fixed-Term Service, Content, and accompanying Documentation are deemed to be 'commercial computer service' and 'commercial computer service documentation,' respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212, as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Fixed-Term Service, Content, and accompanying Documentation by the United States Government shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. For purpose of any public disclosure provision under any federal, state or local law, it is agreed that the Fixed-Term Service and Content are a trade secret and a proprietary commercial product and not subject to disclosure.

12. Export Controls

You acknowledge that the Fixed-Term Service may be subject to the export control laws and regulations of the United States of America ('US'), and any amendments thereof. You agree to comply with all laws and regulations of the US and other countries where the Fixed-Term Service is used by You ('Export Laws') to assure that the Fixed-Term Service is not exported, directly or indirectly, in violation of Export Laws. You acknowledge and agree not to use the Fixed-Term Service in or export or re-export the Fixed-Term Service, directly or indirectly, to (i) any countries that are subject to US export restrictions; (ii) any end user known, or having reason to be known, will utilize them in the design, development or production of nuclear, chemical or biological weapons; or (iii) any end user who has been prohibited from participating in the US export transactions by any federal agency of the US government. You further acknowledge that Fixed-Term Service may include technical data subject to export and re-export restrictions imposed by US law.

13. High Risk Activities

The Fixed-Term Service is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Fixed-Term Service could lead directly to death, personal injury, or severe physical or property damage (collectively, 'High Risk Activities'). ULTRA COMMERCE EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

14. Governing Law

This Agreement will be governed by and construed in accordance with the substantive laws in force in the State of New York. This Agreement will not be governed by the conflict of laws rules of any jurisdiction or the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded. The United States federal and state courts located in New York County, New York, shall each have exclusive jurisdiction over all disputes relating to this Agreement.

15. Privacy

By entering into this Agreement, You agree that the Ultra Commerce privacy policy, as it exists at any relevant time, shall be applicable to You. The most current privacy policy can be found at <https://www.ultracommerce.co/privacy-policy>. By entering into this Agreement, You agree to the transfer of Your personal information to Ultra Commerce's offices in the United States and other countries outside of Your own.

16. Audit

Ultra Commerce may, at its expense and upon reasonable notice to You during standard business hours, audit You with respect to Your compliance with the terms of this Agreement. You understand and acknowledge that Ultra Commerce utilizes a number of methods to verify and support Fixed-Term Service Use by its customers. These methods may include technological features of the Ultra Commerce Fixed-Term Service that prevent unauthorized use and provide Fixed-Term Service deployment verification, which will be automatically reported to Ultra Commerce. In the event that Ultra Commerce requests a report for confirmation, You will provide a system generated report verifying Your Fixed-Term Service deployment, such request to occur no more than four (4) times per year. In the event that Ultra Commerce requires a physical audit, such audit shall be preceded by thirty (30) days written notice and shall occur no more than once per year unless otherwise required for compliance with applicable law. Following an audit that shows Ultra Commerce is due additional license fees for Use of the Fixed-Term Service, You agree to pay such fees and reimburse Ultra Commerce for the cost of such audit upon request.

17. Publicity

You shall not use the name of Ultra Commerce in publicity releases or similar activity without the express written consent of Ultra Commerce. Ultra Commerce may use Your name in its client list and Your logo on Ultra Commerce's website.

18. Assignment

You are not permitted to transfer or assign (by operation of law or otherwise) any of Your rights or obligations under this Agreement without the prior written consent of Ultra Commerce, which consent will not be unreasonably withheld, delayed or denied. Any such transfer or assignment without Ultra Commerce's written consent will be void and of no force and effect.

19. Miscellaneous

- (a) Force Majeure. Except for Your payment obligations, neither party is responsible for any delay or failure to perform resulting from causes beyond its reasonable control.
- (b) Ultra Commerce may update the terms of this Agreement from time to time. This Agreement is dated and will be archived when it is superseded by a newer version. Ultra Commerce shall not change any terms of this Agreement retroactively with regard to any Fixed-Term Service You purchased whose Term began prior to the date of the applicable Agreement. If You renew the Fixed-Term Service or purchase additional Fixed-Term Services after the updated Agreement has been released, You agree to the terms of the Agreement in effect at the time of the renewal of the Fixed-Term Service or purchase of additional Fixed-Term Services.
- (c) This Agreement sets forth all rights for the user of the Fixed-Term Service and is the entire Agreement between the parties.
- (d) This Agreement supersedes any other communications, representations or advertising relating to the Fixed-Term Service and Documentation, except for a duly executed written agreement between Ultra Commerce and You for the Fixed-Term Service. This Agreement may not be modified except by a written addendum issued by a duly authorized representative of Ultra Commerce.
- (e) No provision hereof shall be deemed waived unless such waiver shall be in writing and signed by Ultra Commerce.
- (f) If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.

20. Third Parties

Except for a third party vendor whose products or services are used in the Fixed-Term Service, there are no third party beneficiaries. Should You violate these terms and in doing so violate the terms of the aforementioned third party vendor then they also may pursue their rights and remedies at law hereunder.

21. Notices and Customer Contact

Ultra Commerce may provide You with notice via email, regular mail, postings on the AWS Marketplace, postings on the Ultra Commerce.com website or any other website used as part of the Fixed-Term Service. Notices to Ultra Commerce should be sent to: Ultra Commerce, 20 Franklin St., Worcester, Massachusetts 01608, USA.

If you have any questions concerning these terms and conditions, or if you would like to contact Ultra Commerce for any other reason, please write: Ultra Commerce, 20 Franklin St., Worcester, Massachusetts 01608, USA. or contact your local Ultra Commerce entity at the number listed at www.ultracommerce.com.au/contact.