

Upright Labs - Lister

Terms of Service

These Terms of Service ("Terms") constitute a legal agreement between the person or entity agreeing to these Terms ("Customer" or "you") and Upright Labs, a business unit of Cordance Operations LLC (the "Company," "us" or "we") for the Company's software-as-a-service product(s) (the "Services"). By signing an order or registering an account that references these Terms (the "Order"), or using the Services, you represent that you have the authority to bind the Customer to the Order, these Terms, and any applicable schedules, exhibits, or appendices incorporated or referenced herein (collectively the "Agreement"). Pre-printed terms of either party's purchase orders, acknowledgements, or click-through terms do not apply or modify this Agreement, and such other or additional terms or conditions are void and of no effect.

1. DEFINITIONS

- 1.1. "Administrator" means Customer's primary contact person who coordinates and works with the Company to set up, support, and train the Customer's system Users on their use of the Services.
- 1.2. "Customer Content" means any content, data, and information, including text, graphics, videos, photos, or other material, submitted, uploaded, collected, generated, imported, or otherwise provided to or through the Services by Customer or by a third-party on behalf of or for the benefit of Customer.
- 1.3. "Documentation" means Company's then-current generally available documentation, specifications, and user manuals for the Services which are available upon login to the Services as well as any related documentation Company provides to its customers regarding the Services.
- 1.4. "Gross Merchandise Value" or "GMV" means the total sale amount paid to you for all orders you have facilitated through a Service where applicable to the Service.
- 1.5. "Order" means a written description of Services, and the applicable pricing as mutually agreed to by the parties in an order form, quote, proposal, or similar document.
- 1.6. "User" means an individual employee of Customer who has been authorized by Customer to use the Services on behalf of Customer.

2. ACCESS AND USE OF THE SERVICES.

- 2.1. Our Provision of the Services. You acknowledge that your use of the Services requires you to have third-party hardware, software, internet and/or telecommunications access (which involve extra charges from such third parties at your sole expense). Your choices and the performance of these third-party products with the Services may affect your ability to access and use the Services.
- 2.2. Initial Set-Up. Upon commencement of this Agreement, we will provide the following: (i) set-up services and Administrator training in the use of the Services; and (ii) testing of the Services after your implementation to confirm that the Services are performing to our current generally available, applicable documentation, specifications, and user manuals.
- 2.3. Changes to the Services. Company reserves the right to enhance, upgrade, improve, modify or discontinue features of the Services, in its discretion. Company will not materially reduce the core functionality or discontinue the Services unless it provides Customer with prior written notice.
- 2.4. Registration for the Services. Your Users may be required to provide information about themselves to register for and/or use certain Services. You agree that any such information will be accurate. Your Users may also be asked to choose a username and password. You are entirely responsible for maintaining the security of those usernames and passwords and agree not to disclose such to any third party.
- 2.5. Your Use of the Service. Company grants Customer a limited, nonexclusive, non-sublicensable, nontransferable (except as specifically permitted in this Agreement) right to access and use the Service during the Term solely for Customer's internal business purposes. You agree to use the Services solely in accordance with the use levels by which we

measure, price and offer the Services, as set forth in your registration or Order and subject to your payment of all fees due under the Agreement. We will use commercially reasonable efforts to cause the Services to be available to you 24/7 excluding planned maintenance.

- 2.6. Limitations on Your Use. By using the Services, Customer agrees not to (i) modify, prepare derivative works of, or reverse engineer the Services; (ii) access or use the Services or Documentation for any competitive purpose; (iii) use the Services with any equipment other than equipment or computer authorized by Company; (iv) transmit through the Services any harassing, indecent, obscene, or unlawful material; (v) market, or resell to, or permit the use of the Services by any third party; (vi) use the Services in violation of applicable laws, or regulations; (vii) transmit through the Services any material that may infringe the intellectual property, privacy, or other rights of third parties; or (viii) use the Services to commit fraud.
- 2.7. Responsibility for Users. Customer is responsible for the activities of all Users who access or use the Services through its account and will ensure that any such Users comply with the terms of the Agreement. If Customer becomes aware of any violation of these Terms in connection with use of the Services by any person, Customer will promptly notify Company.
- 2.8. Feedback. You hereby grant Company a fully paid-up, royalty-free, worldwide, transferable, sub-licensable, assignable, irrevocable, and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback we receive from you or your Users ("Feedback"). We reserve the right to seek intellectual property protection for any features, functionality or components that may be based on or that were initiated by your Feedback.

3. ORDERS, FEES, PAYMENT, TAXES.

- 3.1. Orders. Your order for Services is detailed in an executed Order. You may order SaaS Services using our then-current ordering processes. All Orders are effective on the earlier of (i) the date you submit your Order, or (ii) the date on the signature block of the Order ("Effective Date"). Acceptance of your Order may be subject to our verification and credit approval process. Each Order will be treated as a separate and independent Order.
- 3.2. Fees and Payment. Fees for the Services which you have agreed to pay pursuant to Order are invoiced monthly in arrears and are due net on receipt of invoice. The Service is measured and priced based on GMV. Each monthly invoice will be determined by Customer's previous month's GMV and the applicable percentage or amount of the monthly minimum, as shown in the Order. We may collect interest at the lesser of 1.5% per month or the highest amount permitted by law on any amounts not paid when due. Payment may be made by ACH or credit card. You are responsible for providing accurate and current billing, contact and payment information to us. You agree that we may charge your payment card or bill you for all amounts due for your use of the Services. You agree that your credit card information and related personal information may be provided to third parties for payment processing and fraud prevention purposes. We may suspend or terminate the Services if, at any time, we determine that your payment information is inaccurate. You are responsible for fees and overdraft charges that we may incur when we charge your card for payment. We reserve the right to update the fees for Services from annually. We will give you notice of any price update by publishing on our website, or emailing, at least 30 days in advance of such increase taking effect.
- 3.3. Taxes and Withholdings. You are responsible for all applicable sales, services, value-added, goods and services, withholding, tariffs, or any other similar taxes or fees (collectively, "Taxes and Fees") imposed by any government entity or collecting agency based on the Services, except those taxes and fees based on our net income, or Taxes and Fees for which you have provided an exemption certificate. In all cases, you will pay the amounts due under this Agreement to us in full without any right of set-off or deduction.

4. TERM AND TERMINATION.

- 4.1 Term. The initial term commitment for your purchase of Services will be as specified in the Order ("Initial Term") and begins on the Effective Date. If the Order is silent, the Initial Term will be 12 months beginning on the sooner of the date Company makes the Services accessible by Customer or 30 days after the date Customer signs the Order. After the

Initial Term, the Services will automatically renew for additional 12-month periods (“Renewal Terms”), unless either party provides notice of non-renewal at least 30 days before the current term expires. Terminating a specific Service does not affect the term of any other Services still in effect.

4.2 Termination for Cause. Either party may terminate the Agreement (i) if the other party breaches its material obligations and fails to cure within 30 days of receipt of written notice of such breach by the other party, or (ii) where permitted by applicable law, if the other party becomes insolvent or bankrupt, liquidated or is dissolved, or ceases substantially all of its business.

4.3 Effect of Termination. If the Agreement or any Services are terminated, you will immediately discontinue all use of the terminated Services, except that we will provide you with limited access to the Services for a period of at least 30 days solely to enable you to retrieve your Customer Content from the Services. Upon your request made before the end of such 30-day period, we will securely destroy your Customer Content. We have no obligation to maintain your Customer Content after such 30-day period. If we discontinue Services or materially reduce the core functionality in accordance with Section 2.3 above, and you elect to terminate the affected Services or this Agreement, we will provide you with a pro rata refund of any prepaid, unused fees. Termination of the Agreement will not affect any claim arising prior to the termination date.

4.4 Survival. The terms of this Agreement will survive the termination or expiration of this Agreement to the extent reasonably necessary to carry out the intent of the parties as indicated therein.

5. PROPRIETARY RIGHTS

5.1 Customer Content. You retain all rights to Customer Content and are solely responsible for the Customer Content sent or transmitted by you or displayed or uploaded by you or your Users in using the Services and for compliance with all laws pertaining to Customer Content, including, but not limited to, laws requiring you to obtain the consent of a third party to use the Customer Content and to provide appropriate notices of third-party rights. You hereby grant us a worldwide, royalty-free, non-exclusive license to use, modify, reproduce, and distribute your Customer Content in order to provide and operate the Services. You warrant that you have the right to upload or otherwise share Customer Content with us, and your uploading or processing of Customer Content in the context of our Services does not infringe on any rights of any third party. We will not view, access or process any of Customer Content except: (a) as authorized or instructed by you in this Agreement or in any other agreement between the parties, or (b) as required to comply with our policies, applicable law, or governmental request.

5.2 Our Proprietary Rights and Marks. You acknowledge that we or our licensors retain all proprietary right, title and interest in the Services, Documentation, and our name, logo, or other marks (together, the “Marks”), and any related intellectual property rights, including, without limitation, all modifications, enhancements, derivative works, and upgrades thereto. Except for the express limited rights set forth in this Agreement, no right, title or interest in the Services, Documentation, or Marks is granted to you. You agree that you will not use or register any trademark, service mark, business name, domain name or social media account name or handle which incorporates in whole or in part our Marks or is similar to any of these.

5.3 Publicity. Customer agrees that Company may use Customer’s name and logo and refer to Customer in its promotional or marketing materials and its website, lists and business presentations.

6. DATA PRIVACY

6.1 Security Safeguards. Each party will maintain appropriate administrative, physical and technical safeguards for protection of the security, confidentiality and integrity of your Customer Content and any associated personal data that is collected and/or processed through the Services. On our part, those safeguards will include measures designed to prevent unauthorized access, use, modification, deletion and disclosure of Customer Content. Customer (not us) bears sole responsibility for adequate security, protection and backup of Customer Content when in Customer’s or its representatives’ or agents’ possession or control.

6.2 Sub-processors. You acknowledge and agree that we may use sub-processors to help provide the Service who may access your Customer Content and any associated personal data, to provide, secure and improve the Services. Before sharing Customer Content with any of our sub-processors, we will ensure that the sub-processor maintains, at a minimum, commercially reasonable data practices for maintaining the confidentiality and security of your Customer Content and preventing unauthorized access. We will be responsible for the acts and omissions of such sub-processors to the same extent that we would be responsible if we were performing the SaaS Services.

6.3 Data Protection Laws. To the extent that our provision of the SaaS Services involves the processing of Personal Data under applicable data protection law, the parties agree that you will be deemed to be the Data Controller, and we will be deemed to be the Data Processor, as those terms are understood under the applicable data protection law. For the purposes of this Agreement, the term "Personal Data" means any information relating to an identified or identifiable natural person where an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as name, an identification number, location data, an online identifier or to one or more factors specific to their physical, physiological, mental, economic, cultural or social identity of that natural person.

6.4 Privacy Laws. To the extent that Customer Content contains "personal information" that is subject to the California Consumer Privacy Act of 2018, its implementing regulations, and any amendments thereto (collectively, the "CCPA"), or any other substantially similar privacy laws, Company agrees that it will comply with all such laws and process such personal information as a service provider (as defined under the CCPA) and will not (a) retain, use or disclose personal information for any purpose other than the purposes set out in this Agreement and/or as permitted by the CCPA; or (b) "sell" (as defined and understood within the requirements of the CCPA) personal information.

7. CONFIDENTIALITY.

7.1 "Confidential Information" means all information that is identified as confidential at the time of disclosure by the Disclosing Party or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Customer Content is deemed Confidential Information of Customer without any marking or further designation. Services and Documentation are deemed Confidential Information of Company without any marking or further designation. Confidential Information does not include information that the Receiving Party can demonstrate: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

7.2 Each party (as "Receiving Party") will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the other party (the "Disclosing Party") for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. If Receiving Party is required by law or court order to disclose Confidential Information, then Receiving Party will, to the extent legally permitted, provide Disclosing Party with advance written notification, and cooperate in any effort to obtain confidential treatment of the Confidential Information. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and that on any such disclosure by the Receiving Party, the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

8.0 WARRANTIES.

8.1 We provide the Services using a commercially reasonable level of care and warrant that the Services will materially conform to the Documentation under normal use. Our entire liability and your exclusive remedy for a breach of this warranty will be, at our sole option, to provide conforming Services, or to terminate the non-conforming Services and

receive a pro-rated refund of any prepaid fees for the Service from the date you notify us of the non-conformance through the end of the current Term. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT REPRESENT OR WARRANT THAT (i) THE USE OF OUR SERVICES WILL BE TIMELY, UNINTERRUPTED OR ERROR FREE, OR OPERATE IN COMBINATION WITH ANY SPECIFIC HARDWARE, SOFTWARE, SYSTEM OR DATA, OR (ii) OUR SERVICES WILL MEET YOUR SPECIFIC REQUIREMENTS.

8.2 Use of the Services may be available through a compatible mobile device, internet access, and may require third party software. You agree that you are solely responsible for these requirements, including any applicable changes, updates and fees, as well as the terms of your agreement with your mobile device and telecommunications provider. WE MAKE NO WARRANTIES OR REPRESENTATION OF ANY KIND, EXPRESS, STATUORY OR IMPLIED AS TO (I) THE AVAILABILITY OF INTERNET OR TELECOMMUNICATION SERVICES FROM YOUR PROVIDER AND ACCESS TO THE SERVICES AT ANY TIME OR FROM ANY LOCATION, (II) ANY LOSS, DAMAGE OR OTHER SECURITY INTRUSION OF THE INTERNET OR TELECOMMUNICATION SERVICES, AND (III) ANY DISCLOSURE OF INFORMATION TO THIRD PARTIES OR FAILURE TO TRANSMIT ANY DATA, COMMUNICATIONS OR SETTING CONNECTED WITH THE SERVICES. THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. COMPANY IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS.

I. INDEMNIFICATION.

9.1 Company's Indemnification of Customer. We will indemnify and defend you against any third-party claim alleging that any of the Services infringes upon any patent or copyright, or violates a trade secret of any such third-party (an "IP Claim"), and we agree to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. You will promptly notify us of any IP Claim and cooperate with us in defending the claim. We will have full control and authority over the defense and settlement of any IP Claim, except that any settlement requiring you to admit liability requires prior written consent, not to be unreasonably withheld or delayed.

9.1.1 If Customer provides Company with notice of an actual or potential IP Claim or Company becomes aware of an actual or potential IP Claim, Company may (or in the case of an injunction, will), at Company's sole option: (a) procure for Customer the right to continue to use the Services; or (b) replace or modify the Services with equivalent or better functionality so that Customer's use is no longer infringing; or (c) if (a) or (b) are not commercially reasonable, terminate provision of the Services and refund to Customer any pre- paid Service fees for any periods after the termination of the Service, less any outstanding moneys owed by Customer to Company.

9.1.2 The obligations in this Section 9.1 do not extend to (i) any IP Claim based upon infringement or alleged infringement of any patent, trademark, copyright or other intellectual property right by the combination of the Services with other products, software or services not provided by Company; (ii) any IP Claim related to any Content, or (iii) any IP Claim related to any use in respect to the Service outside the scope of the rights granted in this Agreement.

9.2 Customer's Indemnity of Company. You will indemnify and defend us against any third-party claim resulting from a breach of Section 2.5, or 2.6 or 7.1, or alleging that any of your Customer Content infringes upon any patent or copyright, or violates a trade secret of any party, and you agree to pay reasonable attorney's fees, court costs, damages finally awarded, or reasonable settlement costs with respect to any such claim. We will promptly notify you of any claim and cooperate with you in defending the claim. You will reimburse us for reasonable expenses incurred in providing any cooperation or assistance. You will have full control and authority over the defense and settlement of any claim, except that any settlement requiring you to admit liability requires prior written consent, not to be unreasonably withheld or delayed.

10. LIMITATIONS ON LIABILITY.

10.1 Limitation On Damages. NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY OR TO ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL LOSS, EXEMPLARY DAMAGES, OR DAMAGES ARISING OUT OF OR RELATING TO: (i) LOSS OF DATA, (ii) LOSS OF INCOME, (iii) LOSS OF OPPORTUNITY, OR (iv) CUSTOMER'S LOST PROFITS, HOWEVER CAUSED AND BASED ON ANY THEORY OF LIABILITY, INCLUDING, BUT NOT LIMITED TO, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR VIOLATION OF STATUTE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

10.2 Limitation On Amount Of Liability. EXCEPT FOR BREACH OF SECTIONS 2.5, 2.6, 5.1, 5.2 and 7, A PARTY'S INDEMNIFICATION OBLIGATION UNDER SECTION 9, OR A PARTY'S GROSS NEGLIGENCE, WILLFUL MIDCONDUCT OR FRAUD AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE TOTAL CUMULATIVE LIABILITY OF EITHER PARTY AND THEIR RESPECTIVE AFFILIATES, AND THEIR RESPECTIVE LICENSORS AND SUPPLIERS ARISING OUT OF THIS AGREEMENT IS LIMITED TO THE SUM OF THE AMOUNTS PAID FOR THE APPLICABLE SERVICE DURING THE 12 MONTHS IMMEDIATELY PRECEDING THE INCIDENT GIVING RISE TO THE LIABILITY. THE FOREGOING DOES NOT LIMIT YOUR OBLIGATIONS TO PAY ANY UNDISPUTED FEES AND OTHER AMOUNTS DUE UNDER THIS AGREEMENT.

11. COMPLIANCE WITH LAWS. In connection with the performance, access and use of the Services under the Agreement, each party agrees to comply with all applicable laws, rules and regulations including, but not limited to export, privacy, data protection and anti-bribery laws and regulations. Each party represents that it is not named on any U.S. government denied-party list. Further, Customer will not permit its users to access or use any Service or Content Product in a U.S. embargoed country or in violation of any U.S. export law or regulation. If necessary and in accordance with applicable law, we will cooperate with local, state, federal and international government authorities with respect to the Services. If access to the Services or the Documentation are acquired by or on behalf of a unit or agency of the United States government, the government agrees that such Services or Documentation is "commercial computer software" or "commercial computer software documentation" and that, absent a written agreement to the contrary, the government's rights with respect to such Services or Documentation are limited by the terms of this Agreement, pursuant to FAR § 12.212(a) and/or DFARS § 227.7202-1(a), as applicable. Notwithstanding any other provision in these Terms, we may immediately terminate the Agreement for noncompliance with applicable laws.

12. SUSPENSION OF SERVICES. We reserve the right to suspend the Services or restrict functionalities if (a) we reasonably believe that you or your Users have materially violated this Agreement, or (b) we reasonably determine that the security of our Services or infrastructure may be compromised due to hacking attempts, denial of service attacks, or other malicious activities. Where commercially reasonable, and unless legally prohibited, we will use commercially reasonable efforts to notify you when taking any of these actions. We will not be liable for any such suspension of Services or reduced functionality.

13. ADDITIONAL TERMS

13.1 Dispute Resolution. Each party agrees that before it seeks any form of legal relief (except for a provisional remedy as explicitly set forth herein) it will provide written notice to the other party of the specific issue(s) in dispute and reference the relevant provisions of the Agreement which are allegedly being breached. Within 30 days after such notice, knowledgeable executives of the parties will hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith, to resolve the dispute. The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation, or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. The dispute resolution procedures in this Section will not apply to claims subject to indemnification under Section 9 (Indemnification) or prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

- 13.2 Limitation on Bringing Claims/No Jury. By entering into this Agreement, each party is waiving the right to a jury. Any claim arising out of this Agreement must be brought, if at all, within two years of the claim arising. You may only resolve disputes with us on an individual basis and you agree not to bring or participate in any class, consolidated, or representative action against us or any of our employees or affiliates.
- 13.3 Governing Law and Jurisdiction. This Agreement will be governed by the laws of the State of Delaware. Each party agrees to the personal and exclusive jurisdiction of and venue in the federal and state courts located in Delaware.
- 13.4 Assignment. Neither party may assign its rights or delegate its duties under the Agreement either in whole or in part without the other party's prior written consent, which will not be unreasonably withheld, except that either party may assign the Agreement to an affiliated entity, or as part of a corporate reorganization, consolidation, merger, acquisition, or sale of all or substantially all of its business or assets to which this Agreement relates without prior written consent. Any attempted assignment without consent will be void. The Agreement will bind and inure to the benefit of each party's successors or assigns.
- 13.5 Notices. Notices must be sent by personal delivery, overnight courier, or registered or certified mail. We may also provide notice to the email last designated on your account, electronically via postings on our website, in-product notices, or via our self-service portal or administrative center. Unless specified elsewhere in this Agreement, notices should be sent to us at 16 W. Martin Street, Raleigh, NC 27601, Attn: contract Admin; e-mail: support@Uprightlabs.com, with a copy to the attention of the Revenue Department at the same address; e-mail: revenue@cordance.co, and to legal@cordance.co. We will send notices to the address last designated on your account. Notice is given (a) upon personal delivery; (b) for overnight courier, on the second business day after notice is sent, (c) for registered or certified mail, on the fifth business day after notice is sent, (d) for email, when the email is sent, or (e) if posted electronically, upon posting.
- 13.6 Force Majeure. No party will be responsible for any delay or failure to perform under the Agreement due to force majeure events (e.g., natural disasters; epidemics, pandemics, terrorist activities, activities of third-party service providers, labor disputes; and acts of government) and acts beyond a party's reasonable control, but only for so long as those conditions persist.