

VITALLY TERMS OF SERVICE

Terms of Service

1. Introduction

Welcome to Vitally!

The services offered on our website, vitally.io (the “**Site**”) are owned and operated by Vitally, Inc. (the “**Company**” or “**Vitally**”). Please read these Terms of Service (this “**Agreement**”) and our Privacy Policy carefully, as you are agreeing to be bound by both documents by using our Service.

Any new features or tools which are added to the Services shall also be subject to this Agreement. You can review the most recent version of this Agreement at any time on this page. We reserve the right to update, change, or replace any part of this Agreement by posting updates and/or changes to our Website. It is your responsibility to check this page periodically for changes. Your continued use of or access to the Services following the posting of any changes constitutes acceptance of those changes.

Any rights not expressly granted herein are reserved by Vitally.

2. Definitions

Throughout this Agreement, we may use certain words or phrases, and it is important that you understand the meaning of them. The list is not all-encompassing and no definition should be considered binding to the point that it renders this Agreement nonsensical:

“**Agreement**” means these Terms of Service;

“**Vitally**” refers to our Company, Site, Service, or a combination of all or some of the preceding definitions, depending on the context of the word.

“**Service**” refers to the services that we provide through our Site and any component of the Site;

“**Site**” refers to our website, vitally.io;

“**User**” refers but is not limited to customers, browsers, vendors, and/or merchants of our Site and, without limiting the generality of the foregoing, includes general visitors to our Site;

“**You**” refers to you, the person who is entering into this Agreement with Vitally.

3. Eligibility, Errors, and Inaccuracies

Vitally makes every effort to provide complete, accurate, and up-to-date information on our Site. Unfortunately, it is not possible to ensure that any website is completely free of human or technological errors. Occasionally, our Services may contain typographical mistakes, inaccuracies, or omissions, some of which may relate to pricing and availability, and some information may not be complete or current. We reserve the right to correct any errors, inaccuracies, or omissions—including after an order has been submitted—and to change or update information at any time without prior notice.

We assume no obligation to update, amend, or clarify information in the Service or on any related website, including without limitation, pricing information, except as required by law. No specified update or refresh

date applied in the Service or on any related website, should be taken to indicate that all information in the Service or on any related website has been modified or updated.

4. Modifications to the Service and Prices

Availability and prices for our Service are subject to change. We reserve the right at any time to modify or discontinue the Service (or any part or content thereof) without notice at any time. We shall not be liable to you or to any third-party for any modification, price change, suspension, or discontinuance of the Service, except as provided for in this section.

5. Rules of Use

In order to use our Service, you must meet a number of conditions, including but not limited to:

- You must not be in violation of any embargoes, export controls, or other laws of the United States or other countries having jurisdiction over this Agreement, Vitally, and yourself. For example, if the Office of Foreign Assets Control prohibits conducting financial transactions with nationals, residents, or banks of your country, you must not use our Service.
- You must be the minimum age required to enter into a contract in the area in which you reside, and, in any event, must not be less than 18 years of age.
- You must not sign up or use the Services on behalf of a natural person other than yourself.
- You must provide us with personal information, payment information, and other information that we deem necessary to provide you with our Service.

You may not use our products for any unlawful purpose, nor may you, in the use of the Service, violate any such laws (including but not limited to copyright laws). In addition to other prohibitions as set forth in the Terms of Service, you must not:

- Use the Service for any unlawful purpose.
- Use the Service to solicit others to perform or participate in any unlawful acts.
- Use the Service to violate any international, federal, provincial, or state regulations, rules, laws, or local ordinances.
- Use the Service to infringe upon or violate our intellectual property rights or the intellectual property rights of others.
- Use the Service to harass, abuse, insult, harm, defame, slander, disparage, intimidate, or discriminate based on gender, sexual orientation, religion, ethnicity, race, age, national origin, or disability.
- Use the Service to submit false or misleading information.
- Use the Service to upload or transmit viruses or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Service or of any related website, other websites, or the Internet.

- Use the Service to collect or track the personal information of others.
- Use the Service to spam, phish, pharm, pretext, spider, crawl, or scrape.
- Use the Service for any obscene or immoral purpose.
- Use the Service to interfere with or circumvent the security features of the Service or any related website, other websites, or the Internet.

We reserve the right to terminate your use of the Service or any related website for violating any of the prohibited uses.

6. License Restrictions

You agree that by using our Service, you are receiving a license to use one copy of our web-based software (commonly referred to as “software as a service” or “SaaS”) in compliance with this Agreement, applicable laws, and any additional terms located on our Service which are hereby incorporated into this Agreement by reference. You must not attempt to reverse engineer, redistribute or resell, or otherwise copy or manipulate our Service. You must not download the media created by other Users on our Site, even if it is for your own private use.

Vitaly may revoke its license to you at any time for any reason without notice or explanation, and we shall not, in any event, be liable to you for any losses suffered as a result of any unanticipated cancellation of our Service. We will generally attempt to notify you prior to cancelling your access to our Service unless you have breached this Agreement or any applicable law, though we are not obligated to do so.

7. Server Downtime

Our Service may become unavailable from time to time for security reasons, legal reasons, technical updates, or other reasons. You agree that we are not obligated to inform you of such downtime—even if we are aware that it may occur—or to provide a reason for it, and that you release us from all liability relating to the unavailability of our Service.

8. Our Copyright

Vitaly relies on the uniqueness of its Site and content to distinguish itself from third party competitors. You agree not to copy, distribute, display, disseminate, or otherwise reproduce any of the information on the Site, including content licensed to the Company by third parties, without receiving our prior written permission.

All right, title and interest in and to the materials provided on this Site, including but not limited to information, documents, logos, graphics, sounds, and images (the “**Materials**”) are owned or licensed either by Vitaly or by the respective partners of Vitaly.

9. Your Personal Information

Your submission of personal information through the store is governed by our Privacy Policy.

10. Trademarks

Vitaly and vitally.io are trademarks used by Vitaly to uniquely identify our Site, Service, and business. You agree not to use this phrase anywhere without our prior written consent. Additionally, you agree not to use our trade dress, or copy the look and feel of our Site or its design, without our prior written consent. You agree that this paragraph goes beyond the governing law on intellectual property law, and includes prohibitions on any competition that violates the provisions of this paragraph, including starting your own service, whether or not it competes directly or indirectly with Vitaly.

11. Revocation of Consent

We may revoke our consent for your use of our intellectual property, or any other permission granted to you under this Agreement, at any time. You agree that if we so request, you must take immediate action to remove any usage of our intellectual property that you may have engaged in, even if it would cause a loss to you.

12. Copyright & Trademark Infringement

We take copyright infringement very seriously, and we have registered a Copyright Agent with the United States Copyright Office, which limits our liability under the *Digital Millennium Copyright Act*. If you believe that your copyright has been infringed, please send us a message which contains:

- Your name.
- The name of the party whose copyright has been infringed, if different from your name.
- The name and description of the work that is being infringed.
- The location on our website of the infringing copy.
- A statement that you have a good faith belief that use of the copyrighted work described above is not authorized by the copyright owner (or by a third party who is legally entitled to do so on behalf of the copyright owner) and is not otherwise permitted by law.
- A statement that you swear, under penalty of perjury, that the information contained in this notification is accurate and that you are the copyright owner or have an exclusive right in law to bring infringement proceedings with respect to its use.

You must sign this notification electronically and send it to our Copyright Agent at support@vitally.io.

Letters containing the foregoing may be mailed to:

Vitaly Copyright Agent
Vitaly, Inc.
303 Spring Street
New York, NY 10013

Although U.S. law does not provide for a similar procedure for trademark infringement, we recommend that you send us similar information to that above in regard to any allegation of trademark infringement, and we will address it as soon as practicable.

13. Communications Decency Act

Similar to the DMCA provisions above, United States law—specifically Section 230 of the *Communications Decency Act*—creates a defense for us for the actions of third parties in regard to any defamatory content posted on our Site. Although we are not liable for defamatory words posted on our Site by our Users even if given notice, we do prohibit defamation under this Agreement and we may, if we believe the situation warrants it, take action against the offending User. Please notify us at support@vitality.io if any of our Users have posted anything that you believe is defamatory. Note that administrators and management should, ideally, be the first party you contact in response to any defamation by another User.

14. Representations & Warranties

WE MAKE NO REPRESENTATIONS OR WARRANTIES AS TO THE MERCHANTABILITY OF OUR SERVICE OR PRODUCTS SOLD VIA OUR SERVICE OR FITNESS FOR ANY PARTICULAR PURPOSE. YOU AGREE THAT YOU ARE RELEASING US FROM ANY LIABILITY THAT WE MAY OTHERWISE HAVE TO YOU IN RELATION TO OR ARISING FROM THIS AGREEMENT OR OUR SERVICES, FOR REASONS INCLUDING, BUT NOT LIMITED TO, FAILURE OF OUR SERVICE, NEGLIGENCE, OR ANY OTHER TORT. TO THE EXTENT THAT APPLICABLE LAW RESTRICTS THIS RELEASE OF LIABILITY, YOU AGREE THAT WE ARE ONLY LIABLE TO YOU FOR THE MINIMUM AMOUNT OF DAMAGES THAT THE LAW RESTRICTS OUR LIABILITY TO, IF SUCH A MINIMUM EXISTS.

YOU AGREE THAT WE ARE NOT RESPONSIBLE IN ANY WAY FOR DAMAGES CAUSED BY THIRD PARTIES WHO MAY USE OUR SERVICES, INCLUDING BUT NOT LIMITED TO PEOPLE WHO COMMIT INTELLECTUAL PROPERTY INFRINGEMENT, DEFAMATION, TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS, OR ANY OTHER ACTIONABLE CONDUCT TOWARDS YOU.

WE ARE NOT RESPONSIBLE FOR ANY ACTIONS BY AN ADMINISTRATOR, MANAGER, EMPLOYEE, OR OTHER USER WHICH MAY CAUSE HARM TO YOU, EVEN IF WE BECOME AWARE IN ADVANCE THAT SUCH ACTIONS MAY OR WILL OCCUR AND DO NOT NOTIFY YOU.

WE ARE NOT RESPONSIBLE FOR ANY ERRORS IN EDUCATIONAL INFORMATION PROVIDED THROUGH OUR SERVICE OR ANY OTHER DAMAGE THAT MAY ARISE FROM SUCH CONTENT.

WE ARE NOT LIABLE FOR ANY FAILURE OF THE GOODS OR SERVICES OF OUR COMPANY OR A THIRD PARTY, INCLUDING ANY FAILURES OR DISRUPTIONS, UNTIMELY DELIVERY, SCHEDULED OR UNSCHEDULED, INTENTIONAL OR UNINTENTIONAL, ON OUR SITE WHICH PREVENT ACCESS TO OUR SITE TEMPORARILY OR PERMANENTLY.

THE PROVISION OF OUR SERVICE TO YOU IS CONTINGENT ON YOUR AGREEMENT WITH THIS AND ALL OTHER SECTIONS OF THIS AGREEMENT. NOTHING IN THE PROVISIONS OF THIS “REPRESENTATIONS & WARRANTIES” SECTION SHALL BE CONSTRUED TO LIMIT THE GENERALITY OF THE FIRST PARAGRAPH OF THIS SECTION.

For Jurisdictions that do not allow us to limit our liability: Notwithstanding any provision of these Terms, if your jurisdiction has provisions specific to waiver or liability that conflict with the above then our liability is limited to the smallest extent possible by law. Specifically,

in those jurisdictions not allowed, we do not disclaim liability for: (a) death or personal injury caused by its negligence or that of any of its officers, employees or agents; or (b) fraudulent misrepresentation; or (c) any liability which it is not lawful to exclude either now or in the future.

IF YOU ARE A RESIDENT OF A JURISDICTION THAT REQUIRES A SPECIFIC STATEMENT REGARDING RELEASE THEN THE FOLLOWING APPLIES. FOR EXAMPLE, CALIFORNIA RESIDENTS MUST, AS A CONDITION OF THIS AGREEMENT, WAIVE THE APPLICABILITY OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE THIS SECTION OF THE CALIFORNIA CIVIL CODE. YOU HEREBY WAIVE ANY SIMILAR PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED RELEASE.

15. Indemnity

You agree to indemnify and hold us harmless for any claims by you or any third party which may arise from or relate to this Agreement or the provision of our service to you, including any damages caused by your use of our Service. You also agree that you have a duty to defend us against such claims and we may require you to pay for an attorney(s) of our choice in such cases. You agree that this indemnity extends to requiring you to pay for our reasonable attorneys' fees, court costs, and disbursements. In the event of a claim such as one described in this paragraph, we may elect to settle with the party/parties making the claim, and you shall be liable for the damages as though we had proceeded with a trial.

16. Choice of Law

This Agreement shall be governed by the laws in force in the State of New York. The offer and acceptance of this contract are deemed to have occurred in the State of New York.

17. Forum of Dispute

You agree that any dispute arising from or relating to this Agreement will be heard solely by a court of competent jurisdiction in the State of New York. Specifically, where the subject matter of a dispute is eligible for it, you agree that any disputes shall be heard solely within the Civil Court of the City of New York – Small Claims Part ("**Small Claims Court**").

If a dispute claims multiple claims and one or more of those claims would be eligible to be heard by the Small Claims Court, you agree not to bring the other claims against us and to instead proceed within the Small Claims Court.

If you would be entitled in a dispute to an amount exceeding the monetary jurisdiction of the Small Claims Court, you agree to waive your right to collect any damages in excess of the monetary jurisdiction and instead still bring your claim within the Small Claims Court. At the time of drafting this Agreement, the monetary jurisdiction of the Small Claims Court is \$5,000.

You agree that if a dispute is eligible to be heard in Small Claims Court but you would be entitled to an additional or alternative remedy in a higher court, such as injunctive relief, you will waive your right to that remedy and still bring the dispute within the Small Claims Court.

If you bring a dispute in a manner other than in accordance with this section, you agree that we may move to have it dismissed, and that you will be responsible for our reasonable attorneys' fees, court costs, and disbursements in doing so.

You agree that the unsuccessful party in any dispute arising from or relating to this Agreement will be responsible for the reimbursement of the successful party's reasonable attorneys' fees, court costs, and disbursements.

18. Force Majeure

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labor shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, unavailability of payment processors, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

19. Severability

In the event that a provision of this Agreement is found to be unlawful, conflicting with another provision of the Agreement, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it.

If two or more provisions of this Agreement are deemed to conflict with each other's operation, Vitally shall have the sole right to elect which provision remains in force.

20. Non-Waiver

Vitally reserves all rights afforded to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or any applicable law should not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

21. Termination & Cancellation

We may terminate your access to our Site and Service at our discretion without explanation, though we will strive to provide a timely explanation in most cases. Our liability for refunding you, if you have paid anything to us, will be limited to the amount you paid for goods or services which have not yet been and will not be delivered, except in cases where the termination or cancellation was due to your breach of this Agreement, in which case you agree that we are not required to provide any refund or other compensation whatsoever.

Under no circumstances, including termination or cancellation of our Service to you, will we be liable for any losses related to actions of other Users.

22. Assignment of Rights

You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

23. Amendments

We may amend this Agreement from time to time. When we amend this Agreement, we will post the changes here and it is your responsibility to check these Terms of Service from time to time for any updates or changes. Your continued use of our Service shall constitute your acceptance of such changes.

Last updated July 13, 2017.

24. Corporate Information

Vitaly, Inc. is a corporation formed lawfully in the state of Delaware.