

MOCA SYSTEMS INC. TERMS OF SERVICE

1. ACCEPTANCE OF TERMS.

MOCA Systems Inc. (**MOCA**) owns and operates the website: <http://www.touchplan.io> (**Site**). The Site, the services available at the Site, any mobile applications that are made available by MOCA (if any) (**Mobile Apps**), and all updates, modifications, enhancements and improvements to any of the foregoing are collectively referred to as the **Service**. The Service is offered subject to acceptance without modification of all of the terms and conditions contained herein (**Terms of Service**). The Terms of Service shall be deemed to include MOCA's then-current privacy policy (**Privacy Policy**), which is available at: <https://my.touchplan.io/legal/Privacy-Policy.pdf> and MOCA's copyright policy, which is available at: <https://my.touchplan.io/legal/Copyright-Policy.pdf> (**Copyright Policy**).

IF YOU DO NOT AGREE TO ALL OF THE TERMS OF SERVICE, OR IF YOU ARE NOT ELIGIBLE OR AUTHORIZED TO ENTER INTO THIS AGREEMENT, THEN DO NOT DOWNLOAD ANY MOBILE APP OR OTHERWISE ACCESS OR USE ANY OTHER PART OF THE SERVICE. COMPLETING THE REGISTRATION PROCESS, DOWNLOADING ANY MOBILE APP OR OTHERWISE ACCESSING OR USING ALL OR ANY PART OF THE SITE OR ANY OTHER PART OF THE SERVICE WILL CONSTITUTE ACCEPTANCE AND CREATE A LEGALLY ENFORCEABLE CONTRACT UNDER WHICH YOU AGREE TO BE BOUND BY ALL OF THE TERMS OF SERVICE, WITHOUT MODIFICATION.

2. ELIGIBILITY.

You must be at least 18 years of age to use the Service. If you do not so qualify, you are prohibited from accessing, using and registering for the Service.

All access to and use of the Service is subject to your payment of any applicable fees in accordance with the prices and payment policies set forth on the Site. Each person who registers as an owner of a MOCA account (**Account Holder**) may only use the Service during the service term specified in an applicable MOCA order form for that account (**Service Term**). Each person who is designated by the Account Holder an authorized user of such MOCA account (Authorized User) may only use the Service in connection with the Account Holder's account during such Service Term. If no Service Term is specified in any applicable order form, the Service Term shall run from month to month, and either MOCA or the Account Holder may terminate the Service Term upon 10 days' written notice.

3. REGISTRATION.

The term **Users** includes all registered and unregistered users that access or use the Site, any Mobile App or any other aspect of the Service.

To ensure the integrity of the Service, each User who completes the account registration process must provide MOCA with current, complete and accurate information, as more specifically required by the then current registration procedures. Users may be required to provide their name, company name, username, password, and legitimate electronic mail address. If you are using any part of the Service for which MOCA charges fees, you will also be required to provide your credit card number and billing information. If you are registering as the owner of a MOCA account (**Account Holder**), you may also be required to provide the names and email addresses of individuals to whom you would like MOCA to provide access to your account (**Authorized Users**). The Account Holder and Authorized Users shall maintain and update their registration data from time to time, to ensure that it is always current, complete and accurate. MOCA may refuse to accept any potential Account Holder and/or Authorized User application to register in its sole discretion.

Each Account Holder and Authorized User is solely responsible for maintaining the confidentiality of its user name and password and will be solely liable for any and all activities under its account. Such Users shall be responsible for keeping all of their account information up-to-date and shall notify MOCA immediately of any unauthorized use of their account or any other breach of security.

4. PRIVACY.

MOCA's current **Privacy Policy** shall apply to any use of the Site, any Mobile App or other aspect of the Service. MOCA will not disclose the contents of any User Content (as defined below) unless (a) reasonably necessary to perform the Service, (b) authorized by the User, (c) otherwise permitted under these Terms of Service or the Privacy Policy or (d) MOCA reasonably believes that such action is necessary to (i) conform or comply with any legal, regulatory, law enforcement or similar requirement or investigation, (ii) protect or defend the rights or property of MOCA or any User or (iii) enforce the Terms of Service.

5. CHANGES.

MOCA reserves the right, at its sole discretion, to modify or replace the Terms of Service at any time. MOCA will use reasonable efforts to notify Users of any material change at least 30 days in advance of the effective date of any change by sending email to the email address associated with the User's account or posting a notice of such change to the Site. Continued use of the Service following notice of any change to the Terms of Service constitutes User's acceptance of those changes. The Terms of Service may not otherwise be amended, except by a written agreement executed by User and MOCA. MOCA may terminate the Service (including without limitation, the Site or any Mobile App), in whole or in part, or this Agreement, in whole or in part, at any time, upon at least 30 days advance written notice by email to the email address associated with the User's account or posting a notice of such change to the Site. In such event, unless this Agreement is terminated for the applicable User's breach, MOCA will refund to Users any amounts actually pre-paid by Users to MOCA for the terminated portion of the Service to the extent such amounts have not been incurred prior to the date of termination of the applicable portion of the Service.

6. USER RULES AND CONDUCT.

The Site, Mobile Apps and all other aspects of the Service are provided to Users only for their internal business purposes or other personal, noncommercial use. Any unauthorized use of the Service is expressly prohibited. Each User is solely responsible for all acts or omissions that occur under its account, username or password.

Each User agrees not to (a) upload, post, submit or otherwise distribute or facilitate distribution of any User-supplied content (including text, communications, software, photographs, videos, sound recordings, data or other information) (**User Content**) that:

- is unlawful, deceptive, misleading, fraudulent, threatening, abusive, harassing, libelous, invasive of another's privacy, tortious, obscene, pornographic, profane or which otherwise violates the Terms of Service;
- infringes any patent, trademark, trade secret, copyright, right of publicity, privacy right or other right of any party;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming"), chain letters or any form of lottery or gambling;
- imposes an unreasonable or disproportionately large load on MOCA's computing, storage or communications infrastructure, or attempts to gain unauthorized access to the Site, any Mobile App or other aspects of the Service, other accounts, computer systems or networks connected to the Service, through password mining or otherwise;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware or network system or to damage or obtain unauthorized access to any system, data or other information of MOCA or any third party;
- creates User accounts by any automated means or under false or misleading pretenses;
- harvests, scrapes or collects any information from the Site;
- seeks to solicit information from or about minors;
- disguises the source of any User Content; or
- impersonates any person or entity.

MOCA may, at its sole discretion, immediately suspend or terminate any User's access to the Service should its conduct fail (or appear to fail) to strictly conform to any provision of this section.

7. SUPPORT.

MOCA shall provide Users with reasonably requested customer support in accordance with its then-current support policy as described in this Section. Support shall be limited to reasonable assistance in using the Service in accordance with any documentation provided by MOCA and shall be provided via email during MOCA's regular business hours (Weekdays 9am to 5pm Eastern Standard Time). To initiate a request for support, Users must email support@touchplan.io. MOCA will use reasonable efforts to respond to requests for support within 1 business day.

8. CONTENT.

MOCA has no obligation to monitor the Service or any User's use thereof. However, MOCA reserves the right at any time and without notice to monitor, review, retain or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request or investigation (including law enforcement).

MOCA does not undertake to pre-screen, authenticate, validate, monitor, moderate or edit any User Content.

However, MOCA and its agents have the right, at their sole discretion, to remove in whole or in part, at any time, any User Content that, in MOCA's judgment, does not comply with the Terms of Service, or as reasonably necessary to comply with its obligations under the Copyright Policy. MOCA is not responsible for any failure or delay in removing any such User Content.

MOCA will use reasonable efforts to safeguard User Content from unauthorized use or disclosure while it is under MOCA's control. However, MOCA cannot guarantee the security of any User Content and cannot ensure that the Service and any telecommunication or computer systems used by or in connection with the Service will be completely secure.

9. PROPRIETARY RIGHTS.

User acknowledges and agrees that the Site, Mobile Apps, and other parts of the Service and all content and materials created by or for MOCA and made available on the Site, through the Mobile Apps or otherwise via the Service are protected by copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights and laws, and MOCA (and its licensors) shall own and retain all rights, title and interests (including all intellectual property and proprietary rights) therein and thereto. User may only use the Service for its own internal business purposes and in accordance with, and as contemplated by, any documentation provided in connection therewith. User shall not (a) use any part of the Service to specify, design or develop any similar hardware, software, data or documentation, (b) permit any part of the Service to be inspected or used by any of its employees who are or will be engaged in Evaluator's own efforts to specify, design or develop any similar hardware, software, data or documentation, (c) decompile, disassemble or otherwise reverse engineer any part of the Service, or use any similar means to discover the design, source code or trade secrets therein, or otherwise circumvent any technological measure that controls access thereto, (d) encumber, sell, sublicense, rent, modify, distribute, transfer, disclose, copy, reproduce, transmit, publicly display, publicly perform, publish, adapt, edit or create derivative works of the Site, any Mobile App, or any other part of the Service or such content and materials, unless and only to the extent expressly authorized by MOCA in writing, (e) use any part of the Service in any commercial product or service, or (f) permit any third party to do any of the foregoing. User shall not obscure, alter or remove any proprietary or legal notice displayed by or contained on or in any part of the Service, or take any other action inconsistent with MOCA's ownership thereof. In addition, User agrees that it will not (and that it will not permit any third party to) use any information or other knowledge gained through use of the Service to provoke an interference with any patent application that MOCA has filed with respect to any part of the Service, or to amend any claim in any pending patent application to expand such claim to read on, cover or dominate any invention (whether or not patentable) related to the Service.

10. LICENSE OF USER CONTENT TO MOCA.

By uploading, posting, submitting or otherwise distributing User Content of any kind to the Site or via any Mobile App or other aspect of the Service, each User hereby grants and agrees to grant MOCA and its affiliates and licensees a non-exclusive, transferable, perpetual, irrevocable, royalty-free, worldwide right and license to: use, reproduce, distribute, display, perform and transmit User Content, in any form (and to permit any third party service providers to do all of the foregoing on MOCA's behalf), for the purposes of operating the Service. In addition, MOCA may aggregate such User Content with User Content from other Users in order to analyze such aggregate User Content. MOCA may disclose aggregate measures of the User Content and summaries, analyses and other information based on such aggregated User Content, but not in any manner that will personally identify any User or the source of such User Content.

User represents and warrants that User owns or otherwise controls all rights to such User Content (or has the right to use such User Content in connection with the Service) and that use of the User Content by MOCA will not infringe or violate the rights of any third party. User acknowledges and agrees that the User Content will be made available to, and may be used by, the Account Holder and any Authorized Users designated by the Account Holder. The foregoing license permits MOCA to make such User Content available to such other Users.

The Service may provide each User with the ability to remove some or all of the User Content posted by such User. Following any such removal, MOCA will use commercially reasonable efforts to discontinue any further display, performance and distribution of such User Content by MOCA at the Site or in any Mobile App; provided, however, User acknowledges and agrees that MOCA may continue using such User Content in the same manner and for the same purposes as it did prior to removal of such content (such as, for example, aggregating such content and creating aggregate measures of usage) and that MOCA shall have no responsibility or liability in respect of any content that has been exported by MOCA or shared with other Users via the Service or that has been downloaded or copied by Users to other websites, systems and devices.

11. TERM; TERMINATION.

MOCA may terminate the Service (including without limitation, the Site or any Mobile App), in whole or in part, or this Agreement, in whole or in part, at any time, upon at least 30 days advance written notice by email to the email address associated with the User's account or posting a notice of such change to the Site. In such event, unless this Agreement is terminated for the applicable User's breach, MOCA will refund to Users any amounts actually pre-paid by Users to MOCA for the terminated portion of the Service to the extent such amounts have not been incurred prior to the date of termination of the applicable portion of the Service. If User wishes to terminate its registration and account, User may do so at any time by logging in to User's account settings and completing the account cancellation process.

Upon any termination, all rights and obligations of the parties shall cease and User shall immediately cease using the Service, except that (a) all obligations that accrued prior to the effective date of termination (including without limitation, all payment obligations) and all remedies for breach of the Terms of Service shall survive and (b) the provisions of Sections 8-18 shall survive.

After termination, MOCA has no obligation to maintain any content in User's account and may delete such content at any time. Users should be sure to download any User Content from their MOCA account prior to termination.

12. DISCLAIMER OF ALL WARRANTIES.

THE SITE, MOBILE APPS AND OTHER ASPECTS OF THE SERVICE ARE PROVIDED "AS IS" AND "AS AVAILABLE". THE SITE, MOBILE APPS AND OTHER ASPECTS OF THE SERVICE ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEGRATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE OR USAGE OF TRADE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED. MOCA AND ITS AFFILIATES, LICENSORS AND SUPPLIERS DO NOT WARRANT THAT: (A) ANY INFORMATION WILL BE TIMELY, ACCURATE, RELIABLE OR CORRECT; (B) THE SERVICE WILL BE SECURE OR AVAILABLE AT ANY PARTICULAR TIME OR PLACE; (C) ANY DEFECTS OR ERRORS WILL BE CORRECTED; (D) THE SERVICE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (E) ANY RESULT OR OUTCOME CAN BE ACHIEVED. USER'S USE OF THE SERVICE IS SOLELY AT ITS OWN RISK.

MOCA will use commercially reasonable efforts to protect User Content from unauthorized access or use. However, Users acknowledge and agree that MOCA cannot guarantee the security of the Service.

13. LIMITATION OF LIABILITY.

Except to the extent MOCA fails to use commercially reasonable efforts to protect User Content from unauthorized access or use, User agrees that MOCA shall not be responsible or liable for any unauthorized access to, alteration or use of User's account, transmissions or data, or any material or data that is sent or received (or that is not sent or received) through the Service.

IN NO EVENT SHALL MOCA (OR ITS AFFILIATES, LICENSORS AND SUPPLIERS) BE LIABLE CONCERNING ANY SUBJECT MATTER RELATED TO THE SITE, MOBILE APPS OR OTHER ASPECTS OF THE SERVICE, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION (WHETHER IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), FOR ANY (A) MATTER BEYOND ITS REASONABLE CONTROL, (B) LOSS OR INACCURACY OF DATA, LOSS OR INTERRUPTION OF USE, OR COST OF PROCURING SUBSTITUTE TECHNOLOGY, GOODS OR SERVICES, (C) INDIRECT, PUNITIVE, INCIDENTAL, RELIANCE, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF BUSINESS, REVENUES, PROFITS OR GOODWILL, OR (D) DAMAGES, IN THE AGGREGATE, IN EXCESS OF AMOUNTS PAID TO MOCA BY USER (AND RETAINED BY MOCA HEREUNDER DURING THE PREVIOUS 12-MONTH PERIOD) OR US\$50.00, WHICHEVER IS GREATER, EVEN IF MOCA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

SOME STATES AND OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

14. INDEMNIFICATION.

MOCA agrees to (a) defend User and its employees, contractors, officers, directors and representatives (**User Indemnitees**) against any action or suit by a third party to the extent it claims that any part of the Service (excluding any User Content) infringes or misappropriates the intellectual rights of such third party and (b) indemnify User for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such a claim, except to the extent such claim arises out of or results from any breaches of this Agreement by any User Indemnitees or any negligence, gross negligence or willful misconduct of any User Indemnitees.

User agrees to (a) defend MOCA and its employees, contractors, officers, directors and representatives against any action or suit by a third party that arises out of any transaction or interaction of User with any other User or other third party, User's use or misuse of the Service, or User's breach of any of its representations, warranties or covenants under this Agreement and (b) indemnify MOCA for settlement amounts or damages, liabilities, costs and expenses (including reasonable attorneys' fees) awarded and arising out of such a claim.

Each party shall provide prompt written notice of any claim for which it seeks indemnification and shall cooperate with all reasonable requests for assistance from the other party in defending or settling any such claim.

15. DISPUTES.

A printed version of the Terms of Service and of any notice given in electronic form shall be admissible in any dispute resolution or administrative proceedings based upon or relating to the Terms of Service to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form.

These Terms of Service are governed by and will be construed under the laws of the Commonwealth of Massachusetts, without regard to the conflicts of laws provisions thereof. Any dispute arising from or relating to the subject matter of these Terms shall be finally settled in Massachusetts, in English, in accordance with the Streamlined Arbitration Rules and Procedures of Judicial Arbitration and Mediation Services, Inc. ("JAMS") then in effect, by one commercial arbitrator with substantial experience in resolving intellectual property and commercial contract disputes, who shall be selected from the appropriate list of JAMS arbitrators in accordance with such Rules. Judgment upon the award rendered by such arbitrator may be entered in any court of competent jurisdiction. Notwithstanding the foregoing obligation to arbitrate disputes, each party shall have the right to pursue injunctive or other equitable relief at any time, from any court of competent jurisdiction. For all purposes of this Agreement, the parties consent to exclusive jurisdiction and venue in the state or federal courts located in the Commonwealth of Massachusetts. ANY ARBITRATION UNDER THIS AGREEMENT WILL TAKE PLACE ON AN INDIVIDUAL BASIS: CLASS ARBITRATIONS AND CLASS ACTIONS ARE NOT PERMITTED. YOU UNDERSTAND AND AGREE THAT BY ENTERING INTO THIS AGREEMENT, YOU AND MOCA ARE EACH WAIVING THE RIGHT TO TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

16. GENERAL PROVISIONS.

The Terms of Service (including the Privacy Policy and the Copyright Policy) are the entire agreement between User and MOCA with respect to access, use and operation of the Site, Mobile Apps and other aspects of the Service, and supersede all prior or contemporaneous communications and proposals (whether oral, written or electronic) between User and MOCA with respect to the Service. If any provision of the Terms of Service is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that the Terms of Service will otherwise remain in full force and effect and enforceable.

User's rights and obligations under the Terms of Service are personal to User, and are not assignable, transferable or sublicensable by User except with MOCA's prior written consent. MOCA may assign, transfer or delegate any of its rights and obligations hereunder without consent. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives, and permitted assigns of the parties. All waivers, consents and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment relationship is created as a result of the Service or Terms of Service, and neither party has any authority of any kind to bind the other in any respect. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service.

17. APPLE APP STORE TERMS.

In the event that User obtains any Mobile App through the Apple App Store, offered by Apple, Inc. (**Apple**), the following shall apply:

1. Both User and MOCA acknowledge that the agreements in the Terms of Service are concluded between User and MOCA only, and not with Apple, and that Apple is not responsible for the Mobile App;
2. User will only use the Mobile App in connection with an Apple device that User owns or controls;
3. User acknowledges and agrees that Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile App;

4. In the event of any failure of the Mobile App to conform to any applicable warranty, including those implied by law, User may notify Apple of such failure; upon notification, Apple's sole warranty obligation to User will be to refund to User the purchase price, if any, paid for the Mobile App;
5. User acknowledges and agrees that MOCA, and not Apple, is responsible for addressing any claims User or any third party may have in relation to the Mobile App;
6. User acknowledges and agrees that, in the event of any third party claim that the Mobile App or User's possession and use of the Mobile App infringes that third party's intellectual property rights, MOCA, and not Apple, will be responsible for the investigation, defense, settlement and discharge of any such infringement claim;
7. User represents and warrants that User is not located in a country subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, and that User is not listed on any U.S. Government list of prohibited or restricted parties;
8. Both User and MOCA acknowledge and agree that, in using the Mobile App, User will comply with any applicable third party terms of agreement which may affect or be affected by such use;
9. Both User and MOCA acknowledge and agree that Apple and Apple's subsidiaries are third party beneficiaries of these Terms of Service, and that upon User's acceptance of the Terms of Service, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms of Service against User as the third party beneficiary hereof; and
10. In the event User uses the Mobile App to provide User with real-time route guidance, USER'S USE OF THIS REAL TIME ROUTE GUIDANCE APPLICATION IS AT USER'S SOLE RISK. LOCATION DATA MAY NOT BE ACCURATE.

18. CONTACT.

If you have questions about the Service or these Terms of Use, you may contact MOCA at:

MOCA Systems, Inc., 275 Washington Street, Suite 400, Newton, MA 02458

info@touchplan.io

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