



Terms of Service

A) General:

1. Aptuitiv, Inc provides each of its services (“Services”) to you under the terms set forth in certain agreements with you, each of which incorporates this Terms of Service Agreement (referred to in this document as “TOS”) by reference. Any reference to “this TOS” shall be interpreted to mean this TOS and any agreement in which it is incorporated.
2. If we provide or resell certain software or services to you, you understand and agree that you may be bound by additional terms and conditions imposed by applicable third-party resellers or licensors, which are also incorporated herein by reference.
3. Your use of the Services constitutes your agreement to abide by the laws of the United States and of the state and country in which you reside, including, but not limited to, all intellectual property laws, tariff regulations, export controls, treaties, and international laws.
4. If you do not agree to abide by this TOS, you are prohibited from using the Services. This TOS is not a complete representation of all of our policies or the implementation of our policies.
5. We may periodically change, modify, or update this TOS without notice to you. Your continued use of the Services after we post a changed, modified, or updated TOS serves as your acceptance of those updated policies. Please refer to this TOS regularly to remain updated about our current policies.
6. This TOS was updated on or about July 8, 2010
7. This TOS applies to all services for which you are billed for even if the domain, email, or website assets are not owned by you or if you bill your client for our services.

B) Restrictions: You agree that you will not use the Services to:

1. Violate any applicable state or federal law and regulation, including, but not limited to, any copyright, trademark, patent, anti-piracy, or other intellectual property law or regulation, or encourage or enable others to violate any such law or regulation.
2. Transmit, distribute, post, store, or otherwise traffic in information, software, or materials that is offensive, abusive, inappropriate, malicious, or detrimental, including, but not limited to, those that:
 - (a) Are pornographic, obscene, fraudulent, or discriminatory, including any containing nudity, erotica, profanity, obscenities or are intended to be sexually provocative. Exceptions are for some educational, documentary, scientific or artistic content, but only if that is the sole purpose of the content and it is not gratuitously graphic. Aptuitiv, Inc has the sole discretion of what is allowed.
 - (b) Encourage, glorify, or promote illegal activity, violence, cruelty, discrimination, network marketing, or Ponzi-type schemes.
 - (c) Exploit children, facilitate phishing, hacking, or identity theft, or defame, threaten, harass any person or group, or attempt to impersonate the identity of a third party.
 - (d) Infringe upon a third party business, contractual, privacy, or fiduciary right.
 - (e) Contain malicious code of any type.
 - (f) Make or facilitate any form of computer, server, or network attack or disruption.
 - (g) Compromise, disrupt, or degrade the normal and proper operation of any computer or internet system, including Aptuitiv, Inc’s systems.
3. Send or post any offensive, abusive, inappropriate, malicious, or detrimental e-mails, forum postings, or instant messages, including, but not limited to, any types of spam or mail-bombs.

C) Use:

1. You represent and warrant that the account information that you provided to Aptuitiv, Inc to open your Aptuitiv, Inc account, including your name, business name, address, e-mail address, and credit card information, is complete and accurate. In addition, you agree to update your account information no

more than fifteen (15) days after any of your account information changes.

2. By providing us with your e-mail address, you agree that we may send you service related or other notices by e-mail rather than by postal mail.
3. You agree to maintain the confidentiality of your account, and to not share your account password or any other confidential information about your account with others.
4. If you provide us with a business name for your account, we will consider that business to be the owner of the account and may require certain change authorizations from an officer (if a corporation), authorized member (if a limited liability company), partner (if a partnership), or owner (if a sole proprietorship) of the business. If you do not provide us with a business name for your account, we will consider you to be the owner of the account and we may require certain change authorizations from you.
5. You understand and agree that (a) Aptuitiv, Inc or any applicable licensor retains all rights, title, and interest in and to any computer programming, formatting code, operating instructions, or other software used in providing the Services to you ("Programming") and (b) that you will not reverse engineer, disassemble, decompile, or otherwise attempt to derive any source code of the Programming.

D) Fees and Billing:

1. You agree to pay for the Services that you select. The fees may include setup fees, monthly fees, quarterly fees, annual fees, usage fees, web traffic fees, late fees, and other fees.
2. Applicable setup fees and the fees due for your first service term (first month, first quarter, or first year, etc.) are both due on your initial Services start date. Aptuitiv, Inc may change the pricing for new Services at any time and for existing services at the beginning of any new billing period.
3. Payments must be received on or before the due date to ensure uninterrupted services. Aptuitiv, Inc may charge your account late fees for overdue payments. In addition, your domains, web content, or other assets may be retained by Aptuitiv, Inc as collateral for unpaid charges and penalties until such charges and penalties are paid in full.
4. You are liable for all unpaid amounts due on your account, even if your Services are terminated or cancelled partway through a billing cycle. Aptuitiv, Inc may charge you interest on unpaid balances at the rate of 1.5% per month or the maximum rate allowed by law. Aptuitiv, Inc may use a third-party service to collect unpaid amounts and may charge you attorneys, collection, or other reasonable fees incurred to collect unpaid balances.
5. Aptuitiv, Inc will not return to you any fees you pay for Services, except that if you are not satisfied with the shared hosting Services, Aptuitiv, Inc will refund all fees you paid for these Services for the first thirty (30) days after your initial start date for these Services.
6. If you dispute a charge, you must pay the whole amount to avoid service interruption and notify billing@Aptuitiv.com about the disputed amount. If Aptuitiv, Inc validates your claim, your account will be credited with the validated amount.
7. You specifically understand and agree that for each "chargeback" you initiate to your credit card for fees paid to Aptuitiv, Inc that you will be liable to Aptuitiv, Inc (and Aptuitiv, Inc may collect from you) a "chargeback fee" in the amount of thirty five dollars (\$35.00).
8. You will be liable for all unfunded term commitments on your account. For example, if you signed up for one (1) year of service and cancel your account (or your account is terminated) after five (5) months, the unpaid fees for the remainder of your term commitment will automatically accelerate and you will immediately become liable for all unpaid charges on your account.
9. You understand and agree that you are responsible for any network bandwidth, memory over usage, or other overage charges you incur for using the Services, even if such overages arise due to your failure to protect your password or account privacy.
10. Aptuitiv, Inc will not review or accept any billing error claims submitted more than ninety (90) days after disputed charges were incurred.
11. Aptuitiv, Inc accepts payment by credit card, or check, or wire transfer.

E) Term and Termination:

1. This TOS will and the agreement governing the specific Aptuitiv, Inc Service you establish will become effective when:
 - (a) For Aptuitiv, Inc "click-through" agreements, when you "Accept" online the agreement into which this TOS is incorporated.

- (b) For Aptuitiv, Inc agreements you physically sign, when you affix your signature and return the executed agreement to Aptuitiv, Inc or by the effective date on the agreement.
- (c) For Aptuitiv, Inc agreements you sign electronically, when the electronic signature process is complete or by the effective date on the agreement.
- 2. This TOS will remain in effect until its termination by either party under its terms. Termination of this TOS will automatically terminate each agreement into which it is incorporated.
- 3. Unless your account is terminated under the terms of this TOS, if you pay for your account by credit card your account will be automatically renewed on the anniversary date (monthly, quarterly, annually, or otherwise, whichever is applicable) ("Anniversary Date") of the start or last renewal date of your account and your credit card will be charged at that time for Services to be provided through your next Anniversary Date.
- 4. You may terminate this TOS at any time upon thirty (30) days written notice to Aptuitiv, Inc. Instructions for such notification may be obtained by contacting the Aptuitiv, Inc Billing Department at 207-860-4040. You understand and agree that except as otherwise set forth in this TOS or any written agreement in which it is incorporated, that no refunds or reimbursements, either in full or pro-rata, will be paid to you at any time.
- 5. Aptuitiv, Inc may terminate this TOS at anytime for any reason without compensation to you upon fourteen (14) days written notice to the address or e-mail address currently on file with Aptuitiv, Inc. Also, Aptuitiv, Inc may refuse to open a new account for any person or entity.
- 6. Aptuitiv, Inc may terminate this TOS immediately and without notice or obligation to you if
 - (a) payment for Services is not received by the Anniversary Date of the start or last renewal date of your account or
 - (b) we determine, in our sole discretion, that you have violated this TOS.
- 7. You understand and agree that upon termination of this TOS that Aptuitiv, Inc has the right to immediately bar your access to or delete any and all content related to your website or account.

F) Limitations:

- 1. IN NO EVENT WILL APTUITIV INC'S LIABILITY TO YOU IN THE AGGREGATE FOR ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED BE EQUAL TO AN AMOUNT GREATER THAN THE FEES PAID BY YOU TO Aptuitiv, Inc DURING THE ONE (1) CALENDAR MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM OF LIABILITY.
- 2. IN NO EVENT WILL Aptuitiv, Inc, ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, CONTRACTORS OR EMPLOYEES BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES FOR ANY THIRD PARTY, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, MULTIPLE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OF DATA, LOSS OF USE, OR INTERRUPTION OF BUSINESS) ARISING OUT OF, OR IN CONNECTION WITH, THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF Aptuitiv, Inc HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. YOU ACKNOWLEDGE THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS TOS AND WITHOUT SUCH LIMITATIONS Aptuitiv, Inc WOULD NOT ENTER INTO THIS TOS.
- 3. You agree to indemnify, defend by counsel reasonably accepted to Aptuitiv, Inc, and protect and hold Aptuitiv, Inc harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, judgments, etc. directly or indirectly arising out of or related to the Services.
- 4. Nothing in this TOS shall be construed as creating a joint venture, partnership, agency, employment, franchise, or other relationship between you and Aptuitiv, Inc. Also, neither party to this TOS shall have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other.
- 5. WE DO NOT WARRANT THAT THE SERVICES WILL BE FREE OF ERRORS, BE UNINTERRUPTED, OR WILL MEET YOUR REQUIREMENTS. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS

AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, CONDITIONS, AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR ANY OTHER WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING. YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY TEMPORARY DELAY, OUTAGE, OR INTERRUPTION OF THE SERVICES, AND YOU HAVE NOT ENTERED INTO THIS TOS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN. ALL SERVICES PROVIDED UNDER THIS TOS WILL BE DEEMED ACCEPTED WHEN DELIVERED.

G) Miscellaneous:

1. This TOS may not be assigned by you without our express written consent. Aptuitiv, Inc may assign any or all of its rights and obligations to others at any time.
2. This TOS is the final expression of the agreement between you and Aptuitiv, Inc regarding the Services. This TOS may not be modified or amended, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by you and Aptuitiv, Inc.
3. Aptuitiv, Inc's waiver of your breach of any portion of this TOS shall not operate or be construed as its waiver of any subsequent breach of the same provision or any other portion of this TOS and no remedy available to Aptuitiv, Inc hereunder is exclusive of any other remedy available to Aptuitiv, Inc hereunder or otherwise available at law or in equity.
4. If any provision of this TOS or its application is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this TOS shall remain in full force and effect enforced to fullest extent consistent with applicable law.
5. You agree that you will not solicit Aptuitiv, Inc employees as your employees or contractors. You represent and warrant that you have full power to enter into this TOS and any agreement into which this TOS is incorporated by reference.
6. The section headings contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this TOS.
7. Aptuitiv, Inc shall not be deemed to be in default of or to have breached any provision of this TOS as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond our reasonable control.
8. This TOS shall be binding on you and Aptuitiv, Inc and your or its successors and assigns, and shall be governed by the laws of the state of Maine without giving effect to such laws' provisions regarding conflict of laws. Any action arising out of or related to this TOS shall be brought in the Maine state courts located in Augusta, Maine, USA and each party consents to the jurisdiction and venue of these courts. Each party expressly disclaims application of the United Nations Convention on Contracts for the International Sale of Goods to this TOS.

Date: _____

Company: _____

Print Name: _____

Signature: _____