



Aprix Solutions, Inc.

Terms of Service

1 Acceptance of Terms.

- 1.1 Aprix Solutions, Inc. ("Aprix" or "we") provides its Service (as defined below) to you through its web site located at <http://www.aprixsolutions.com> (the "Site"), subject to this Terms of Service agreement ("TOS"). By accepting this TOS or by accessing or using the Service or Site, you acknowledge that you have read, understood, and agree to be bound by this TOS. If you are entering into this TOS on behalf of a company, business or other legal entity, you represent that you have the authority to bind such entity and its affiliates to this TOS, in which case the terms "you" or "your" shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with this TOS, you must not accept this TOS and may not use the Service.
- 1.2 Aprix may change this TOS from time to time by providing thirty (30) days prior notice either by emailing the email address associate with your account or by posting a notice on the Site. You can review the most current version of this TOS at any time by logging into your account. The revised terms and conditions will become effective thirty (30) days after we post or send you notice of such changes, and if you use the Service after that date, your use will constitute acceptance of the revised terms and conditions. If any change to this TOS is not acceptable to you, your only remedy is stop using the Services and send a cancellation email to accounting@aprixsolutions.com.
- 1.3 As part of the registration process, you will identify an administrative user name and password for your account ("Account"). You may use the administrative user name and password to create standard users (each with a user password) up to the maximum number permitted at your subscription level. Each person that is authorized to use the Service must have his or her own unique user name and password, and such credentials may not be used by any other person to access the Services or otherwise.

- 2 **Description of Service.** The "Service" includes (a) the Site, (b) Aprix's Marketing Manager Product and related technologies, and (c) all software (including the Software, as defined below), data, reports, text, images, sounds, video, and content made available through any of the foregoing (collectively referred to as the "Content"). Any new features added to or augmenting the Service are also subject to this TOS.

3 General Conditions/ Access and Use of the Service.

- 3.1 Subject to the terms and conditions of this TOS, you may access and use the Service only for lawful purposes. All rights, title and interest in and to the Service and its components will remain with and belong exclusively to Aprix. You shall not (a) sublicense, resell, rent, lease, transfer, assign, time share or otherwise commercially exploit or make the Service available to any third party; (b) use the Service in any unlawful manner (including without limitation in violation of any data, privacy or export control laws) or in any manner that interferes with or disrupts the integrity or performance of the Service or its components, or (c) modify, adapt or hack the Service to, or otherwise attempt to gain unauthorized access to the Service or its related systems or networks. You shall comply with any codes of conduct, policies or other notices Aprix provides you or publishes in connection with the Service, and you shall promptly notify Aprix if you learn of a security breach related to the Service. You agree not to use the Service if you are a competitor of Aprix or to develop a competing product or service.
- 3.2 You agree not to access the Service by any means other than through the interface that is provided by Aprix for use in accessing the Service. Any rights not expressly granted herein are reserved and no license or right to use any trademark of Aprix or any third party is granted to you in connection with the Service.
- 3.3 You are solely responsible for all data, information, feedback, suggestions, text, content and other materials that you upload, post, deliver, provide or otherwise transmit or store (hereafter "post(ing)") in connection with or relating to the Service ("Your Content"). For every email sent outside of your organization via the Services, you acknowledge and agree that Aprix shall have the right to automatically add an identifying footer in accordance with our standard policies then in effect. You agree to cooperate with and provide reasonable assistance to Aprix in promoting and advertising the Services.
- 3.4 You are responsible for maintaining the confidentiality of your login, password and account and for all activities that occur under your login or account. Aprix reserves the right to access your account in order to respond to your requests for technical support.. Aprix has the right, but not the obligation, to monitor the Service, Content, or Your Content.
- 3.5 You understand that the operation of the Service, including Your Content, may be unencrypted and involve (a) transmissions over various networks; (b) changes to conform and adapt to technical requirements of connecting networks or devices and (c) transmission to Aprix's third party vendors and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to operate and maintain the Service. Accordingly, you acknowledge that you bear sole responsibility for adequate security, protection and

backup of Your Content. Aprix will have no liability to you for any unauthorized access or use of any of Your Content, or any corruption, deletion, destruction or loss of any of Your Content.

- 3.6 You shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, server, software, operating system, networking, web servers, long distance and local telephone service (collectively, "Equipment"). You shall be responsible for ensuring that such Equipment is compatible with the Services (and, to the extent applicable, the Software) and complies with all configurations and specifications set forth in Aprix's published policies then in effect. You shall also be responsible for maintaining the security of the Equipment, your Account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of your Account or the Equipment with or without your knowledge or consent.
- 3.7 The failure of Aprix to exercise or enforce any right or provision of this TOS shall not be a waiver of that right. You acknowledge that this TOS is a contract between you and Aprix, even though it is electronic and is not physically signed by you and Aprix, and it governs your use of the Service.
- 3.8 Aprix reserves the right to use your name and/or company name as a reference for marketing or promotional purposes on Aprix's website and in other communication with existing or potential Aprix customers. To decline Aprix this right you need to email support@aprixsolutions.com stating that you do not wish to be used as a reference.
- 3.9 Subject to the terms hereof, Aprix may (but has no obligation to) provide technical support services, through email in accordance with our standard practice.
- 3.10 **Payment.** To the extent the Service or any portion thereof is made available for any fee, you will be required to select a payment plan and provide Aprix information regarding your credit card or other payment instrument. Until your account is terminated, your Account will automatically renew and your payment will be deducted each month. You represent and warrant to Aprix that such information is true and that you are authorized to use the payment instrument. You will promptly update your account information with any changes (for example, a change in your billing address or credit card expiration date) that may occur. You agree to pay Aprix the amount that is specified in the payment plan in accordance with the terms of such plan and this TOS. You hereby authorize Aprix to bill your payment instrument in advance on a periodic basis in accordance with the terms of the applicable payment plan until you terminate your account, and you further agree to pay any charges so incurred. If you dispute any charges you must let Aprix know within sixty (60) days after the date that Aprix invoices you. We reserve the right to change Aprix's prices. If Aprix does change prices, Aprix will provide notice of the change on the Site or in email to you, at Aprix's option, at least 30 days before the change is to take effect. Your continued use of the Service after the price change becomes effective constitutes your agreement to pay the changed amount. Aprix may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by Aprix thirty (30) days after the mailing date of the invoice, or the Services may be terminated. Unpaid invoices are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection. You shall be responsible for all taxes associated with Services other than U.S. taxes based on Aprix's net income. If you terminate your account in accordance with this TOS before Aprix process your payment for a given payment cycle, then you will not be charged for the next payment. Payments are non-refundable except as expressly set forth herein. Aprix does not offer refunds or credits for partial periods of service, upgrades/downgrades of subscription levels, or unused months.
- 4 Representations and Warranties.** You represent and warrant to Aprix that (i) you have full power and authority to enter into this TOS; (ii) you own all Your Content or have obtained all permissions, releases, rights or licenses required to engage in your posting and other activities (and allow Aprix to perform its obligations) in connection with the Services without obtaining any further releases or consents; (iii) Your Content and other activities in connection with the Service, and Aprix's exercise of all rights and license granted by you herein, do not and will not violate, infringe, or misappropriate any third party's copyright, trademark, right of privacy or publicity, or other personal or proprietary right, nor does Your Content contain any matter that is defamatory, obscene, unlawful, threatening, abusive, tortious, offensive or harassing; and (iv) you are eighteen (18) years of age or older.
- 5 Termination.** You have the right to terminate your account at any time by sending a cancellation request to accounting@aprixsolutions.com. Subject to earlier termination as provided below, Aprix may terminate your Account and this TOS at any time by providing thirty (30) days prior notice to the administrative email address associated with your Account. In addition to any other remedies we may have, Aprix may also terminate this TOS upon thirty (30) days' notice (or ten (10) days in the case of nonpayment), if you breach any of the terms or conditions of this TOS. Aprix reserves the right to modify or discontinue, temporarily or permanently, the Service (or any part thereof). All of Your Content on the Service (if any) may be permanently deleted by Aprix upon any termination of your account in its sole discretion, except that, if you have made all payments owed to Aprix (if any) and Aprix terminates your account without cause, or if you terminate your account for convenience in accordance

with this TOS, then Aprix will, upon your written request, provide a file of Your Data (in .csv format) and any attachments (in their native format) existing on the Service as of the date of such termination of your account, for a period of thirty (30) days following notice of termination. After such thirty (30) day period, Aprix may permanently delete Your Content on the Service. If Aprix terminates your account without cause and you have signed up for a fee-bearing service, Aprix will refund the pro-rated, unearned portion of any amount that you have prepaid to Aprix for such Service. However, all accrued rights to payment and the terms of Section 4-12 shall survive termination of this TOS.

6 DISCLAIMER OF WARRANTIES. The Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Aprix or by third-party providers, or because of other causes beyond our reasonable control. HOWEVER, THE SERVICE, INCLUDING THE SITE AND CONTENT, AND ALL SERVER AND NETWORK COMPONENTS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND APRIX EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. YOU ACKNOWLEDGE THAT APRIX DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR VIRUS-FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES, AND NO INFORMATION, ADVICE OR SERVICES OBTAINED BY YOU FROM APRIX OR THROUGH THE SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TOS.

7 LIMITATION OF LIABILITY.

7.1 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, OR OTHERWISE) SHALL APRIX BE LIABLE TO YOU OR ANY THIRD PARTY FOR (A) ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA OR BUSINESS INTERRUPTION, OR (B) FOR ANY DIRECT DAMAGES, COSTS, LOSSES OR LIABILITIES IN EXCESS OF THE FEES ACTUALLY PAID BY YOU IN THE SIX (6) MONTHS PRECEDING THE EVENT GIVING RISE TO YOUR CLAIM OR, IF NO FEES APPLY, ONE HUNDRED (\$100) U.S. DOLLARS. THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS UNDER THIS TOS BETWEEN THE PARTIES, AND THE PARTIES HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO ENTER INTO THIS TOS.

7.2 Some states do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, which means that some of the above limitations may not apply to you. IN THESE STATES, APRIX'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

8 Indemnification. You shall defend, indemnify, and hold harmless Aprix from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from your breach of this TOS, any of Your Content, or your other access, contribution to, use or misuse of the Service. Aprix shall provide notice to you of any such claim, suit or demand. Aprix reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting Aprix's defense of such matter.

Aprix agrees to defend, indemnify, and hold you harmless from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from Aprix's breach of this TOS. You shall provide notice to Aprix of any such claim, suit or demand. You reserve the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, Aprix agrees to cooperate with any reasonable requests assisting you in defense of such matter.

9 U.S. Government Matters. You may not remove or export from the United States or allow the export or re-export of the Services or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the software and documentation installed by Aprix on your Equipment (if applicable) are “commercial items” and according to DFAR section 252.227 7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this TOS and will be prohibited except to the extent expressly permitted by the terms of this TOS.

10 Assignment. You may not assign this TOS without the prior written consent of Aprix, which shall not be unreasonably withheld; provided that such consent shall not be necessary in the context of an acquisition of you, by asset sale, merger, change of control or operation of law. Aprix may assign or transfer this TOS, in whole or in part, without restriction.

11 Miscellaneous. If any provision of this TOS is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this TOS will otherwise remain in full force and effect and enforceable. Both parties agree that this TOS, together with any Order Form, is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this TOS, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this TOS and you do not have any authority of any kind to bind Aprix in any respect whatsoever. In any action or proceeding to enforce rights under this TOS, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this TOS will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

12 Governing Law. This TOS shall be governed by the laws of the State of Florida without regard to the principles of conflicts of law. Unless otherwise elected by Aprix in a particular instance, you hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the State of Florida for the purpose of resolving any dispute relating to your access to or use of the Service.