

## **ATRINSIC WEBSITE TERMS OF SERVICE**

*Last Updated August 19, 2009*

Welcome to the Atrinsic website located at [www.attrinsic.com](http://www.attrinsic.com) (referred to herein as the “**Site**”) (we refer to the Site and the services provided through the Site, collectively, as the “**Atrinsic Features**”). These Website Terms of Service (“**Terms of Service**”) set forth an agreement between you and Atrinsic, Inc., a Delaware corporation (“**Atrinsic**”) governing your use of the Atrinsic Features

By using any of the Atrinsic Features or submitting information to Atrinsic through the Site, you signify your irrevocable acceptance of these Terms of Service. You may only use the Atrinsic Features and/or submit information to the Site if your acceptance of these Terms of Service is not prohibited by applicable law. No one under the age of 18 years old is allowed to submit information to Atrinsic through the Site or use any of the Atrinsic Features.

Atrinsic has the right to modify or update these Terms of Service at any time without providing notice. Any additional or different terms in these Terms of Service shall be effective upon being posted on the Site. Your continued use of any of the Atrinsic Features following the posting of any additional or different terms in these Terms of Service constitutes your irrevocable acceptance of those additional or different terms.

Atrinsic reserves the right to add, change, modify, suspend or discontinue all or any of the Atrinsic Features, in its sole discretion, at any time. Unless expressly stated otherwise herein, the use of any new Atrinsic Features shall be subject to these Terms of Service. In addition, Atrinsic may also impose limits on any of the Atrinsic Features or restrict your access to portions of or the entire Site in its sole discretion without notice or liability.

### ***Proprietary Rights***

You acknowledge and agree that Atrinsic, and its licensors, retain all right, title and interest in and to all data and information (excluding data and information that you provide), content and materials provided on the Site (including, without limitation, text, images, graphics, page headers, Atrinsic’s trademark and logo, the selection and arrangement of elements displayed on the Site, the compilation of all content and materials on the Site and the business processes, procedures, methods and techniques used in the Atrinsic Features) and all associated patent rights, copyright rights, trademark rights, trade secret rights and other intellectual property and proprietary rights recognized anywhere in the world (“**Intellectual Property**”).

### ***Limited License***

Atrinsic grants you a limited license to access and use the Atrinsic Features for your personal use, subject to all of the terms and conditions of these Terms of Service. You may not (i) remove any trademarks, copyright notices or any other notice contained in any content, materials or individual element provided on the Site, (ii) reproduce, download (other than page caching), modify, publish, distribute, transmit, disseminate, broadcast, transfer, license, sell, rent, lease, adapt, create derivative works of, link to, publicly display or perform, or in any way exploit any content, materials or individual element provided on the Site without Atrinsic’s prior written consent, (iii) frame or utilize framing techniques to enclose any content, materials or individual element provided on the Site or

create a link to the Site accessing such content, materials or element without Atrinsic's prior written consent, (iv) use any circumvention tools or any metatags or other hidden text utilizing Atrinsic's name, trademark, URL or the name of any of the Atrinsic Features without Atrinsic's prior written consent, or (v) disassemble, decompile or reverse engineer any of the materials or underlying software made available on or through the Site or used to provide any of the Atrinsic Features.

### ***Privacy***

All information about you and any information stored or transmitted in any way on the Site or through the use of the Atrinsic Features is subject to Atrinsic's Privacy Policy

### ***Use of the Atrinsic Features***

You shall comply with all applicable laws, statutes, ordinances and regulations in your use of the Atrinsic Features. You agree not to:

- use any of the Atrinsic Features to (i) harm minors in any way, (ii) impersonate any person or entity, or otherwise misrepresent your affiliation with a person or entity, (iii) for any commercial purpose or the benefit of any third party or any manner not permitted by these Terms of Service, (iv) intentionally or unintentionally violate any applicable local, state, national or international law including, but not limited to, regulations promulgated by the U.S. Securities and Exchange Commission, any rules of any national or other securities exchange including, without limitation, the New York Stock Exchange, the American Stock Exchange or the NASDAQ, and any regulations having the force of law, (v) provide material support or resources (or conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the Immigration and Nationality Act, or (vi) stalk or otherwise harass another;
- remove any proprietary notices from the Site;
- attempt to hack the Site, or to defeat or overcome any encryption technology or security measures implemented by Atrinsic with respect any of the Atrinsic Features and/or data transmitted, processed or stored by Atrinsic;
- attempt to harvest or collect any information about or regarding other users of any of the Atrinsic Features including, but not limited , any personal data or information; and/or
- interfere with or disrupt any of the Atrinsic Features or servers or networks connected to or operated with any of the Atrinsic Features, or disobey any requirements, procedures, policies or regulations of networks connected to or operated with any of the Atrinsic Features.

You acknowledge, consent and agree that Atrinsic may access, preserve and disclose information that you provide Atrinsic through the Site if Atrinsic is required to do so by law or if it believes in good faith that such access, preservation or disclosure is reasonably necessary to (A) comply with legal process, (B) enforce these Terms of Service, (C) respond to claims that any registration information that you may provide through the Site violates the rights of any third parties, (D) respond to your requests for customer service, or (E) protect the rights, property or personal safety of Atrinsic, its employees, partners, agents or members of the public.

### ***Links to Other Websites***

The Site may contain links to other Internet websites and resources operated by parties unaffiliated with Atrinsic. Atrinsic may provide links and, if it does so, they are merely as a convenience and the inclusion of any link does not constitute or imply any affiliation, endorsement or sponsorship by Atrinsic of such websites or any content contained therein. You acknowledge and agree that Atrinsic is not responsible or liable in any way for any content, advertising, services or goods on or made available from such websites or resources either via links provided by Atrinsic or by any user or third party.

### ***Warranty Disclaimers***

THE SITE AND THE ATRINSIC FEATURES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS WITHOUT ANY WARRANTY OR CONDITION, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ATRINSIC SPECIFICALLY DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Atrinsic makes no representation or warranty that (i) the Site or the Atrinsic Features will meet your expectations or requirements, (ii) the Site or the Atrinsic Features will be available, uninterrupted, timely, secure, accurate, complete or error-free, (iii) any results or information that may be obtained from the use of the Site or the Atrinsic Features will be accurate, timely, complete or reliable, (iv) any errors or defects in the Site or the Atrinsic Features will be corrected, or (v) the Site and the Atrinsic Features and/or the server that makes the Site and the Atrinsic Features available are free of viruses, clocks, timers, counters, worms, software locks, Trojan horses, trap doors, time bombs or any other harmful codes, instructions, programs or components. Operation of the Site and the Atrinsic Features may be interfered with by numerous factors outside of Atrinsic’s control including, but not limited to, telecommunications network disruptions. Atrinsic is not responsible and will have no liability for any failures of the Internet or any data or telecommunications equipment, system or network used in connection with the Site or the Atrinsic Features.

You acknowledge that the entire risk arising out of your use or the performance of the Site or any of the Atrinsic Features remains with you to the maximum extent permitted by law.

Some jurisdictions do not allow the disclaimer of implied warranties, so the foregoing disclaimers may not apply to you.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE REMEDY FOR ANY PROBLEMS OR DISSATISFACTION WITH THE SITE OR ANY OF THE ATRINSIC FEATURES IS TO DISCONTINUE USE OF THE SITE AND THE ATRINSIC FEATURES.

### ***Limitation of Liability***

IN NO EVENT SHALL ATRINSIC, ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, CONSULTANTS, PARENTS, AFFILIATES, SUCCESSORS, ASSIGNS OR CONTENT OR SERVICE PROVIDERS (THE “ATRINSIC PARTIES”) BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING FROM, OR

DIRECTLY OR INDIRECTLY RELATED TO, THE USE OF, THE INABILITY TO USE, OR RELIANCE ON THE SITE INCLUDING, BUT NOT LIMITED TO THE ATRINSIC FEATURES, OR THE CONTENT, MATERIALS AND FUNCTIONS RELATED THERETO, INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE, ANTICIPATED PROFITS, BUSINESS, PROGRAMS OR INFORMATION, EVEN IF ATRINSIC OR SUCH PERSON OR ENTITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE FORM OF ACTION. IN NO EVENT SHALL THE ATRINSIC PARTIES BE LIABLE FOR OR IN CONNECTION WITH ANY INFORMATION POSTED, TRANSMITTED, EXCHANGED OR RECEIVED BY OR ON BEHALF OF ANY VISITOR OR OTHER PERSON ON OR THROUGH THE ATRINSIC FEATURES. IN NO EVENT SHALL THE TOTAL LIABILITY OF THE ATRINSIC PARTIES TO YOU OR ANY THIRD PARTY FOR ALL DAMAGES, LOSSES, AND CAUSES OF ACTION (WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR OTHERWISE) EXCEED ONE HUNDRED DOLLARS (\$100). Some jurisdictions do not allow the exclusion of incidental or consequential damages or limitation of liability, so the above exclusions and limitations may not apply to you.

### ***Termination***

You agree that Atrinsic, in its sole discretion and without notice or liability to you, may terminate your use of, or access to, the Site or any of the Atrinsic Features at any time, for any reason or for no reason at all.

### ***Indemnity***

You agree to defend, indemnify and hold Atrinsic and its licensors, licensees, affiliated companies, and marketing partners, together with their respective employees, agents, directors, officers and members, harmless from and against any and all claims, actions, proceedings and suits and all related liabilities, losses, damages, judgments, settlements, penalties, fines, costs and expenses (including, without limitation, reasonable attorneys' fees and costs) arising out of (i) your use or misuse of the Site or any of the Atrinsic Features, (ii) your breach or alleged breach of these Terms of Service, or (iii) your violation of any law, rule, regulation or rights of others in connection with your use of the Site or any of the Atrinsic Features.

### ***Copyright Infringement***

Atrinsic respects the intellectual property rights of others. If you believe that content displayed by a third party on the Site is infringing your copyright, please notify Atrinsic in accordance with the following procedure:

All notifications of copyright infringement must be in writing and directed to Atrinsic's designated agent at the following address, fax number or email address:

Copyright Agent

469 7th Avenue, 10th Floor

New York, New York 10018

termsofservice@atrinsic.com

Each notification must include the following information: (i) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed, (ii) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single website are covered by a single notification, a representative list of such works at that website, (iii) identification of the material that is claimed to be infringing or to be the subject of

infringing activity and that is to be removed, or access to which is to be disabled, and information reasonably sufficient to permit Atrinsic to locate the material, (iv) information reasonably sufficient to permit Atrinsic to contact the complaining party, such as an address, telephone number, and, if available, an email address at which the complaining party may be contacted; (v) a statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law, and (vi) a statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

### ***Miscellaneous***

These Terms of Service, and any other agreement regarding the Atrinsic Features between you and Atrinsic, constitute the entire agreement between you and Atrinsic with respect to your access and use of the Site and the Atrinsic Features and supersede all prior and contemporaneous agreements between you and Atrinsic. If any of the provisions of these Terms of Service is found by a court of competent jurisdiction to be invalid or unenforceable, then that provision will be construed in a manner consistent with applicable laws to reflect, as nearly as possible, the original intentions of the parties, and the remaining provisions shall remain in full force and effect. Atrinsic's failure to exercise or enforce any right or provision of these Terms of Service shall not constitute a waiver of such right or provision. The laws applicable to the interpretation of these Terms of Service shall be the laws of the State of New York, and applicable federal law, without regard to any conflicts of laws provisions. You agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within New York, New York. You also agree that, in the event any dispute or claim arises out of or relating to your use of the Site or the Atrinsic Features, that you and Atrinsic will attempt in good faith to negotiate a written resolution of the matter directly between the parties. You agree that if the matter remains unresolved for forty-five (45) days after notification (via certified mail or personal delivery) that a dispute exists, all parties shall join in mediation services in New York, New York with a mutually agreed mediator in any attempt to resolve the dispute. Should you file any arbitration claims, or any administrative or legal actions without first having attempted to resolve the matter by mediation, then you agree that you will not be entitled to recover attorneys' fees, even if you would otherwise be entitled to them.

If you have any questions about these Terms of Service or your rights or Atrinsic's obligations relating to any of the Atrinsic Features, please email us at [termsofservice@attrinsic.com](mailto:termsofservice@attrinsic.com) or you may contact us by mail at:

Atrinsic 469 7<sup>th</sup> Avenue, 10<sup>th</sup> Floor  
New York, New York 10018  
Attention: Terms of Service

### ***California Residents***

If you are unable to resolve a complaint you may have regarding the services provided through the Site, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 1625 North Market Blvd., Suite North 112, 6 Sacramento, California 95834, or by telephone at (800) 952-5210.