

# Terms of Service for Captivate Website

Last Updated: **March 7, 2019**

By using the Captivate website: [www.captivate.com](http://www.captivate.com) (the “Site”), you agree to be bound by these Terms of Service and to use the Site in accordance with these Terms of Service, our [Privacy Notice](#) and any additional terms and conditions that are referenced herein or that otherwise may apply to specific sections of the Site, or to products and services that we make available to you through the Site (all of which are deemed part of these Terms of Service). Accessing the Site, in any manner, whether automated or otherwise, constitutes use of the Site and your agreement to be bound by these Terms of Service.

We reserve the right to change these Terms of Service or to impose new conditions on use of the Site, from time to time, in which case we will post the revised Terms of Service on this website and update the “Last Updated” date to reflect the date of the changes. By continuing to use the Site after we post any such changes, you accept the Terms of Service, as modified.

We also reserve the right to deny access to the Site or any features of the Site to anyone who violates these Terms of Service or who, in our sole judgment, interferes with the ability of others to enjoy our website or infringes the rights of others.

## **Rights and Restrictions Relating to Site Content**

**Your Limited Right to Use Site Materials.** This Site and all the materials available on the Site are the property of us and/or our affiliates or licensors, and are protected by copyright, trademark, and other intellectual property laws. The Site is provided solely for your personal noncommercial use. You may not use the Site or the materials available on the Site in a manner that constitutes an infringement of our rights or that has not been authorized by us. More specifically, unless explicitly authorized in these Terms of Service or by the owner of the materials, you may not modify, copy, reproduce, republish, upload, post, transmit, translate, sell, create derivative works, exploit, or distribute in any manner or medium (including by email or other electronic means) any material from the Site. You may, however, from time to time, download and/or print one copy of individual pages of the Site for your personal, non-commercial use, provided that you keep intact all copyright and other proprietary notices. For information about requesting permission to reproduce or distribute materials from the Site, please contact us.

**Our Right to Use Materials You Submit or Post.** When you submit or post any material via the Site, you grant us, and anyone authorized by us, a royalty-free, perpetual, irrevocable, non-exclusive, unrestricted, worldwide license to use, copy, modify, transmit, sell, exploit, create derivative works from, distribute, and/or publicly perform or display such material, in whole or in part, in any

manner or medium (whether now known or hereafter developed), for any purpose that we choose. The foregoing grant includes the right to exploit any proprietary rights in such posting or submission, including, but not limited to, rights under copyright, trademark or patent laws that exist in any relevant jurisdiction. Also, in connection with the exercise of these rights, you grant us, and anyone authorized by us, the right to identify you as the author of any of your postings or submissions by name, email address or screen name, as we deem appropriate. You understand that the technical processing and transmission of the Site, including content submitted by you, may involve transmissions over various networks, and may involve changes to the content to conform and adapt it to technical requirements of connecting networks or devices. You will not receive any compensation of any kind for the use of any materials submitted by you.

**Limitations on Linking and Framing.** You are free to establish a hypertext link to our Site so long as the link does not state or imply any sponsorship of your website or service by us or by our Site. However, you may not, without our prior written permission, frame or inline link any of the content of our Site or incorporate into another website or other service any of our material, content or intellectual property.

### **Registration Process**

To access certain features of our Site, we may ask you to provide certain demographic information including your gender, year of birth, zip code and country. In addition, if you elect to sign-up for a particular feature of the Site, such as discussion forums, blogs, photo- and video-sharing pages or social networking features, you may also be asked to register with us on the form provided and such registration may require you to provide personal information such as your name and email address. You agree to provide true, accurate, current and complete information about yourself as prompted by the Site's registration form. If we have reasonable grounds to suspect that such information is untrue, inaccurate, or incomplete, we have the right to suspend or terminate your account and refuse any and all current or future use of the Site (or any portion thereof). Our use of any personal information you provide to us as part of the registration process is governed by the terms of our [Privacy Policy](#).

### **Responsibility for Your Username and Password**

To use certain features of our Site, you will need a username and password, which you will receive through the Site's registration process. We reserve the right to reject or terminate the use of any username that we deem offensive or inappropriate. In addition, we also reserve the right to terminate the use of any username or account, or to deny access to the Site or any features of the Site, to anyone who violates these Terms of Service or who, in our sole judgment, interferes with the ability of others to enjoy our website or infringes the rights of others. You are responsible for maintaining the confidentiality of the password

and account and are responsible for all activities (whether by you or by others) that occur under your password or account. You agree to notify us immediately of any unauthorized use of your password or account or any other breach of security, and to ensure that you exit from your account at the end of each session. We cannot and will not be liable for any loss or damage arising from your failure to protect your password or account information.

### **“Captivate Create”**

The “Captivate Create” self-service portal (<https://www.captivate.com/captivate-create/>) enables small businesses to purchase advertising in local markets on Captivate buildings. You agree to be financially responsible for all purchases made by you or someone acting on your behalf through the “Captivate Create” self-service portal or elsewhere on the Site. You also agree not to make any purchases for speculative, false or fraudulent purposes or for the purpose of anticipating demand for a particular product or service. You agree to only purchase goods or services for yourself or for another person for whom you are legally permitted to do so. When making a purchase for a third party that requires you to submit the third party's personal information to us or our vendor a supplier, you represent that you have obtained the express consent of such third party to provide such third party's personal information, if any.

### **Responsibility for User-Provided Content**

This Site may include a variety of features, such as discussion forums, blogs, photo- and video-sharing pages, email services and social networking features that allow feedback to us and allow users to interact with each other on the Site and post content and materials for display on the Site. This Site also may include other features, such as personalized home pages and email services, that allow users to communicate with third parties. By accessing and using any such features, you represent and agree that you have read and agree to abide by our Community Rules as follows:

- that you are the owner of any material you post or submit, or are making your posting or submission with the express consent of the owner of the material;
- that you are making your posting or submission with the express consent of anyone pictured in any material you post or submit,
- that you are 18 years of age or older;
- that the materials will not violate the rights of, or cause injury to, any person or entity;
- that the materials do not contain obscene, provocative, sexually explicit or otherwise objectionable or inappropriate content; and
- that you will indemnify and hold harmless us, our affiliates, and each of our and their respective directors, officers, managers, employees, shareholders, agents, representatives and licensors, from and against any liability of any nature arising out of or related to any content or materials displayed on or submitted via the Site by you or by others using your

username and password.

Captivate, in its sole discretion, will determine whether the content satisfies these Community Rules and will disqualify submissions it deems inappropriate in its sole discretion. If your provided content contains any material that is not owned by you, and/or which are subject to the rights of third parties, and/or if any persons other than you appear in the materials, you are solely responsible for obtaining, prior to submission, any and all release, consents or permission necessary to permit the exhibition, use and distribution of the content. You also grant us a license to use the materials you post or submit via such features, as described above under the header “Rights and Restrictions Relating to Site Content.”

Responsibility for what is posted on discussion forums, blogs, photo and video sharing pages, and other areas on the Site through which users can supply information or material or sent via any email services that are made available via the Site, lies with each user – you alone are responsible for the material you post or send. We do not control the messages, information or files that you or others may transmit, post or otherwise provide on or through the Site.

You understand that we have no obligation to monitor any discussion forums, blogs, photo- or video-sharing pages, or other areas of the Site through which users can supply information or material. However, we reserve the right at all times, in our sole discretion, to screen content submitted by users and to edit, move, delete, and/or refuse to accept any content that in our judgment violates these Terms of Service, including the Community Rules, or is otherwise unacceptable or inappropriate, whether for legal or other reasons.

You acknowledge and agree that we may preserve content and materials submitted by you, and may also disclose such content and materials if required to do so by law or if, in our business judgment, such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce these Terms of Service; (c) respond to claims that any content or materials submitted by you violate the rights of third parties; or (d) protect the rights, property, or personal safety of our Site, us, our affiliates, our officers, directors, employees, representatives, our licensors, other users, and/or the public.

### **Contests, Sweepstakes and Surveys**

By submitting an entry for a contest, sweepstakes or surveys, you, as an entrant, grant us and any of our partners or sponsors and their designees an irrevocable, royalty-free, nonexclusive, worldwide perpetual license to use the entry and your name, city and state of residence for credit purposes without further compensation, notification or permission, unless prohibited by applicable law. In addition, if you are a winner, you grants us, our partners and sponsors an irrevocable, royalty-free, nonexclusive, worldwide perpetual license to use and distribute your entry (as submitted or as edited), and his/her name, city and state of residence for credit purposes, in any and all media now or hereafter known, for purposes of promotion of the contest, sweepstakes or survey, except as otherwise stated

herein, and without further compensation, notification or permission, unless prohibited by applicable law. The Community Rules described above for user-provided content also apply to all user submissions associated with a content, sweepstakes or survey we may conduct.

## **Privacy**

We respect the privacy of the users of our Site. Please take a moment to review our [Privacy Policy](#).

## **Modifications to, or Discontinuation of, the Site**

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Site, or any portion thereof, with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension or discontinuance of the Site or any portion thereof.

## **Disclaimers**

We may provide on our Site links and pointers to websites maintained by third parties. Our linking to such third-party sites does not imply an endorsement or sponsorship of such sites, or the information, products or services offered on or through the sites. In addition, neither we nor our parent or subsidiary companies nor any of our respective affiliates operate or control in any respect any information, products or services that third parties may provide on or through the Site or on websites linked to by us on the Site.

THE INFORMATION, PRODUCTS AND SERVICES OFFERED ON OR THROUGH THE SITE AND ANY THIRD-PARTY SITES ARE PROVIDED "AS IS" AND WITHOUT WARRANTIES OF ANY KIND EITHER EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE PURSUANT TO APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT THE SITE OR ANY OF ITS FUNCTIONS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT ANY PART OF THIS SITE, INCLUDING BULLETIN BOARDS, OR THE SERVERS THAT MAKE IT AVAILABLE, ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS.

WE DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SITE OR MATERIALS ON THIS SITE OR ON THIRD-PARTY SITES IN TERMS OF THEIR CORRECTNESS, ACCURACY, TIMELINESS, RELIABILITY OR OTHERWISE.

You must provide and are solely responsible for all hardware and/or software necessary to access the Site. You assume the entire cost of and responsibility for any damage to, and all necessary maintenance, repair or correction of, that hardware and/or software.

The Site is provided for informational purposes only, and is not intended for trading or investing purposes, or for commercial use. Stock and mutual fund quotes, and related financial news stories may be delayed at least 20 minutes, as may be required by the stock exchanges and/or the financial information services. The Site should not be used in any high-risk activities where damage or injury to persons, property, environment, finances or business may result if an error occurs. You expressly assume all risk for such use.

Your interactions with companies, organizations and/or individuals found on or through our Site, including any purchases, transactions, or other dealings, and any terms, conditions, warranties or representations associated with such dealings, are solely between you and such companies, organizations and/or individuals. You agree that we will not be responsible or liable for any loss or damage of any sort incurred as the result of any such dealings. You also agree that, if there is a dispute between users of this Site, or between a user and any third party, we are under no obligation to become involved, and you agree to release us and our affiliates from any claims, demands and damages of every kind or nature, known or unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to such dispute and/or our Site.

### **Limitation of Liability**

UNDER NO CIRCUMSTANCES, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, WILL WE OR OUR SUBSIDIARIES, PARENT COMPANIES OR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF, OR THE INABILITY TO USE, THIS SITE, INCLUDING ITS MATERIALS, PRODUCTS, OR SERVICES, OR THIRD-PARTY MATERIALS, PRODUCTS, OR SERVICES MADE AVAILABLE THROUGH THIS SITE, EVEN IF WE ARE ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. (BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN CATEGORIES OF DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IN SUCH STATES, OUR LIABILITY AND THE LIABILITY OF OUR SUBSIDIARIES, PARENT COMPANIES AND AFFILIATES, IS LIMITED TO THE FULLEST EXTENT PERMITTED BY SUCH STATE LAW.) YOU SPECIFICALLY ACKNOWLEDGE AND AGREE THAT WE ARE NOT LIABLE FOR ANY DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER. IF YOU ARE DISSATISFIED WITH THE SITE, OR ANY MATERIALS, PRODUCTS, OR SERVICES ON THE SITE, OR WITH ANY OF THE SITE'S TERMS AND CONDITIONS, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SITE.

### **Indemnification**

You agree to indemnify and hold harmless us, our affiliates, and each of our and their respective directors, officers, managers, employees, shareholders, agents, representatives and licensors, from and against any and all losses, expenses,

damages and costs, including reasonable attorneys' fees, that arise out of your use of the Site, violation of these Terms of Service by you or any other person using your account, or your violation of any rights of another. We reserve the right to take over the exclusive defense of any claim for which we are entitled to indemnification under this section. In such event, you agree to provide us with such cooperation as is reasonably requested by us.

### **Suspension and Termination of Access**

You agree that, in our sole discretion, we may suspend or terminate your password, account (or any part thereof) or use of the Site, or any part of the Site, and remove and discard any materials that you submit to the Site, at any time, for any reason, without notice. You agree that we will not be liable to you or any third-party for any suspension or termination of your password, account (or any part thereof) or use of the Site, or any removal of any materials that you have submitted to the Site. In the event that we suspend or terminate your access to and/or use of the Site, you will continue to be bound by the Terms of Service that were in effect as of the date of your suspension or termination.

### **Notice of Copyright Infringement**

If you are a copyright owner who believes your copyrighted material has been reproduced, posted or distributed via the Site in a manner that constitutes copyright infringement, please inform our designated copyright agent by sending written notice by U.S. Mail to 900 Chelmsford Street, Suite 3101, Lowell, MA 01851, or by email to [Info@Captivate.com](mailto:Info@Captivate.com) (Subject line; Copyright Infringement). Please include the following information in your written notice: (1) a detailed description of the copyrighted work that is allegedly infringed upon; (2) a description of the location of the allegedly infringing material on the Site; (3) your contact information, including your address, telephone number, and, if available, email address; (4) a statement by you indicating that you have a good-faith belief that the allegedly infringing use is not authorized by the copyright owner, its agent, or the law; (5) a statement by you, made under penalty of perjury, affirming that the information in your notice is accurate and that you are authorized to act on the copyright owner's behalf; and (6) an electronic or physical signature of the copyright owner or someone authorized on the owner's behalf to assert infringement of copyright and to submit the statement. Please note that the contact information provided in this paragraph is for suspected copyright infringement only. Contact information for other matters is provided elsewhere in these Terms of Service or on the Site.

### **Other**

This Terms of Service constitutes the entire agreement between us and you with respect to the subject matter contained in this Terms of Service and supersedes all previous and contemporaneous agreements, proposals and communications, written or oral. You also may be subject to additional terms and conditions that may apply when you use the products or services of a third party that are provided through the Site. In the event of any conflict between any such third-party terms and conditions and these Terms of

Service, these Terms of Service will govern. This Terms of Service will be governed by and construed in accordance with the laws of the State of New York, without giving effect to any principles of conflicts of law.

This agreement is personal to you and you may not assign it to anyone. If any provision of this Terms of Service is found to be unlawful, void, or for any reason unenforceable, then that provision will be deemed severable from this Terms of Service and will not affect the validity and enforceability of any remaining provisions.

These Terms of Service are not intended to benefit any third party, and do not create any third-party beneficiaries. Accordingly, these Terms of Service may only be invoked or enforced by you or us. You agree that regardless of any statute or law to the contrary, any claim or cause of action that you may have arising out of or related to use of the Site or these Terms of Service must be filed by you within one (1) year after such claim or cause of action arose or be forever barred.

## **Contact Us**

If you have any questions or comments regarding this Terms of Service, you may contact us at:

Captivate LLC  
c/o Kara Conti (re: Terms of Service)  
900 Chelmsford Street  
Lowell, MA 01845

Email: [Info@Captivate.com](mailto:Info@Captivate.com) (Subject line; Terms of Service)  
Phone: (978) 845-5000