

Terms of Service

updated April 27, 2021

Optivio, Corp. (“Optivio”) provides our website located at www.Optivio.com (the “Site”) and our stress management and performance optimization services accessible via our Site and our mobile device application (“App”). To make these Terms easier to read, the Site, our services and App are collectively called the “Services.” Please read these Terms of Service (the “Terms”) carefully because they govern your use of our Services.

Agreement to Terms

By using our Services, you agree to be bound by these Terms. If you do not agree to be bound by these Terms, do not use the Services.

Privacy Policy

Please refer to [our Privacy Policy](#) for information on how we collect, use, and disclose information from our users. You acknowledge and agree that your use of the Services is subject to our Privacy Policy.

Changes to Terms or Services

We may modify the Terms at any time, in our sole discretion. If we do so, we will let you know either by posting the modified Terms on the Site or through other communications. It is important that you review the Terms whenever we modify them because if you continue to use the Services after we have posted modified Terms on the Site, you are indicating to us that you agree to be bound by the modified Terms. If you do not agree to be bound by the modified Terms, then you may not use the Services anymore. Because our Services are evolving over time we may change or discontinue all or any part of the Services, at any time and without notice, at our sole discretion.

Arbitration Notice

Unless you opt out of arbitration within 30 days of the date you first agree to these terms by following the opt-out procedure specified in the “Arbitration” section below, and except for certain types of disputes described in the “Arbitration” section below, you agree that disputes between you and Optivio will be resolved by binding, individual arbitration and you are waiving your right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.

Use of Services

Eligibility

You may use the Services only if you are 18 years or older and are not barred from using the Services under applicable law. To make a purchase via the Services (described in the Section titled “Purchases” below), you must be 18 years or older and capable of forming a binding contract.

Registration and Your Information

If you want to use certain features of the Services, you will have to create an account (“Account”). You can do this via the App or the Site.

It is important that you provide us with accurate, complete, and up-to-date information for your Account and you agree to update such information, as needed, to keep it accurate, complete, and up to date. If you do not, we might have to suspend or terminate your Account. You agree that you will not disclose your Account password to anyone, and you will notify us immediately of any unauthorized use of your Account. You are responsible for all activities that occur under your Account, whether or not you know about them.

Using the Services

You understand and agree that the Services, Products, and any other information you learn from Optivio are not intended, designed, or implied to diagnose, prevent, or treat any condition or disease, to ascertain the state of your health, or to be a substitute for professional medical care. Not all activities described on the Services or Products are suitable for everyone. Do not use the screen-based Services while driving, operating heavy machinery, or performing other tasks that require attention and concentration. You understand and agree that you are solely responsible for your use of the Services.

Purchases

Fees

Optivio offers its Services which can be purchased as a yearly or multi-year subscription (“Subscription”). A description of features associated with Subscriptions is available via the Services. When you purchase a Subscription, we may ask you to supply information relevant to your Transaction, such as purchase order, company name, company address, contact telephone number, and contact email address (such information, “Payment Information”). You represent and warrant that you have the legal right to use all payment method(s) represented by any such Payment Information. Your order is not binding on Optivio until accepted and confirmed by Optivio. All payments made are non-refundable and non-transferable except as expressly provided in these Terms.

If you have any concerns or objections regarding charges, you agree to raise them with us first

and you agree not to cancel or reject any credit card or third-party payment processing charges unless you have made a reasonable attempt at resolving the matter directly with Optivio.

Optivio reserves the right to not process or to cancel your order in certain circumstances, for example, if we suspect the request or order is fraudulent, or in other circumstances Optivio deems appropriate in its sole discretion. Optivio also reserves the right, in its sole discretion, to take steps to verify your identity in connection with your order. You may need to provide additional information to verify your identity before completing your Transaction (such information is included within the definition of Payment Information). Optivio will either not charge you or refund the charges for orders that we do not process or cancel.

Subscriptions Automatically Renew Until You Cancel & How to Cancel Your Subscription

All amounts are payable and charged: **For yearly subscriptions, at the beginning of the subscription and, because each such subscription renews automatically for an additional period equal in length to the expiring subscription term until you cancel it, at the time of each renewal until you cancel**, using the Payment Information you have provided. You must cancel your yearly Subscription before it renews to avoid the billing of the fees for the next Subscription period. If you purchase your Subscription via the Site, **you can cancel the renewal of your subscription at any time** by contacting us by email at support@Optivio.com. You will not receive a refund for the fees you already paid for your current subscription period and you will continue to receive the Services ordered until the end of your current Subscription period.

Changes to Price Terms for Subscriptions

Optivio reserves the right to change its pricing terms for Subscriptions at any time and Optivio will notify you in advance of such changes becoming effective. Changes to the pricing terms will not apply retroactively and will only apply for Subscription renewals after such changed pricing terms have been communicated to you. If you do not agree with the changes to Optivio's pricing terms, then you may choose not to renew your Subscription in accordance with the section "Subscriptions Automatically Renew Until You Cancel & How to Cancel Your Subscription."

Future Functionality

You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Optivio regarding future functionality or features.

Feedback

We welcome feedback, comments, and suggestions for improvements to the Services or Products ("Feedback"). You can submit Feedback by emailing us at feedback@Optivio.com.

You grant to us a non-exclusive, worldwide, perpetual, irrevocable, fully paid, royalty-free, sublicensable and transferable license under all intellectual property rights that you own or control to use, copy, modify, create derivative works based upon and otherwise exploit the Feedback for any purpose.

Content and Content Rights

For purposes of these Terms, (i) “Content” means text, graphics, images, music, software, audio, video, works of authorship of any kind, and information or other materials that are posted, generated, provided, or otherwise made available through the Services; and (ii) “User Content” means any Content that users (including you) provide to be made available through the Services. Content includes without limitation User Content.

Content Ownership

Optivio does not claim any ownership rights in any User Content and nothing in these Terms will be deemed to restrict any rights that you may have to use and exploit your User Content. Subject to the foregoing, Optivio and its licensors exclusively own all right, title and interest in and to the Services and Content, including all associated intellectual property rights. You acknowledge that the Services and Content are protected by copyright, trademark, and other laws of the United States and foreign countries. You agree not to remove, alter, or obscure any copyright, trademark, service mark or other proprietary rights notices incorporated in or accompanying the Services or Content.

Rights in User Content Granted by You

By making any User Content available through Services you hereby grant to Optivio a non-exclusive, transferable, sublicensable, worldwide, royalty-free license to use, copy, modify, create derivative works based upon, distribute, publicly display, publicly perform, and distribute your User Content in connection with operating and providing the Services and Content to you and to other users.

Rights in Content Granted by Optivio

Subject to your compliance with these Terms, Optivio grants you a limited, non-exclusive, non-transferable, non-sublicensable license to download, view, copy and display the Content solely in connection with your permitted use of the Services and solely for your personal and non-commercial purposes.

Rights and Terms for Apps

Rights in App Granted by Optivio

Subject to your compliance with these Terms, Optivio grants you a limited non-exclusive, non-

transferable, non-sublicensable license to download and install a copy of the App on a mobile device or computer that you own or control and to run such copy of the App solely for your own personal non-commercial purposes. Optivio reserves all rights in and to the App not expressly granted to you under these Terms. You may not copy the App, except for making a reasonable number of copies for backup or archival purposes.

Except as expressly permitted in these Terms, you may not: (i) copy, modify or create derivative works based on the App; (ii) distribute, transfer, sublicense, lease, lend or rent the App to any third party; (iii) reverse engineer, decompile or disassemble the App; or (iv) make the functionality of the App available to multiple users through any means.

Additional Terms for App Store Apps

If you accessed or downloaded the App from the Apple Store, then you agree to use the App only: (i) on an Apple-branded product or device that runs iOS (Apple's proprietary operating system software); and (ii) as permitted by the "Usage Rules" set forth in the Apple Store Terms of Service.

If you accessed or downloaded the App from an App Provider, then you acknowledge and agree that:

These Terms are concluded between you and Optivio, and not with the App Provider, and that, as between Optivio and the App Provider, Optivio, is solely responsible for the App.

App Provider has no obligation to furnish any maintenance and support services with respect to the App.

Any other claims, losses, liabilities, damages, costs, or expenses attributable to any failure of an App to conform to any warranty will be the sole responsibility of Optivio.

The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the App or your possession and use of the App, including, but not limited to: (i) product liability claims; (ii) any claim that the App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.

In the event of any third-party claim that the App or your possession and use of the App infringes that third party's intellectual property rights, Optivio will be solely responsible for the investigation, defense, settlement, and discharge of any such intellectual property infringement claim to the extent required by these Terms.

App Provider and its subsidiaries are third-party beneficiaries of these Terms as related to your license of the App, and that, upon your acceptance of the terms and conditions of these Terms, App Provider will have the right (and will be deemed to have accepted the right) to enforce these Terms as related to your license of the App against you as a third-party beneficiary thereof.

You must also comply with all applicable third-party terms of service when using the App.

You agree to comply with all U.S. and foreign export laws and regulations to ensure that

neither the App nor any technical data related thereto, nor any direct product thereof is exported or re-exported directly or indirectly in violation of, or used for any purposes prohibited by, such laws and regulations. By using the App, you represent and warrant that: (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties.

Prohibitions

You agree not to do any of the following:

- Post, upload, publish, submit or transmit any Content that: (i) infringes, misappropriates or violates a third party’s patent, copyright, trademark, trade secret, moral rights or other intellectual property rights, or rights of publicity or privacy; (ii) violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil liability; (iii) is fraudulent, false, misleading or deceptive; (iv) is defamatory, obscene, pornographic, vulgar or offensive; (v) promotes discrimination, bigotry, racism, hatred, harassment or harm against any individual or group; (vi) is violent or threatening or promotes violence or actions that are threatening to any person or entity; or (vii) promotes illegal or harmful activities or substances;
- Use, display, mirror or frame the Services, or any individual element within the Services, Optivio’s name, any Optivio trademark, logo or other proprietary information, or the layout and design of any page or form contained on a page, without Optivio’s express written consent;
- Access, tamper with, or use non-public areas of the Services, Optivio’s computer systems, or the technical delivery systems of Optivio’s providers;
- Attempt to probe, scan, or test the vulnerability of any Optivio system or network or breach any security or authentication measures;
- Avoid, bypass, remove, deactivate, impair, descramble, or otherwise circumvent any technological measure implemented by Optivio or any of Optivio’s providers or any other third party (including another user) to protect the Services.
- Attempt to access or search the Services or download Collective Content from the Services using any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, data mining tools or the like) other than the software and/or search agents provided by Optivio or other generally available third-party web browsers.
- Send any unsolicited or unauthorized advertising, promotional materials, email, junk mail, spam, chain letters or other form of solicitation.
- Use any meta tags or other hidden text or metadata utilizing a Optivio trademark, logo URL or product name without Optivio’s express written consent.

- Use the Services for any commercial purpose or the benefit of any third party or in any manner not permitted by these Terms.
- Forge any TCP/IP packet header or any part of the header information in any email or newsgroup posting, or in any way use the Services to send altered, deceptive, or false source-identifying information.
- Attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Services.
- Interfere with, or attempt to interfere with, the access of any user, host, or network, including, without limitation, sending a virus, overloading, flooding, spamming, or mail-bombing the Services.
- Collect or store any personally identifiable information from the Services from other users of the Services without their express permission.
- Impersonate or misrepresent your affiliation with any person or entity.
- Violate any applicable law or regulation; or
- Encourage or enable any other individual to do any of the foregoing.

Although we are not obligated to monitor access to or use of the Services or Content or to review or edit any Content, we have the right to do so for the purpose of operating the Services, to ensure compliance with these Terms, and to comply with applicable law or other legal requirements. We reserve the right, but are not obligated, to remove or disable access to any Content, at any time and without notice, including, but not limited to, if we, at our sole discretion, consider any Content to be objectionable or in violation of these Terms. We have the right to investigate violations of these Terms or conduct that affects the Services. We may also consult and cooperate with law enforcement authorities to prosecute users who violate the law.

Links to Third Party Websites or Resources

The Services and App may contain links to third-party websites or resources. We provide these links only as a convenience and are not responsible for the content, products, or services on or available from those websites or resources or links displayed on such websites. You acknowledge sole responsibility for and assume all risk arising from, your use of any third-party websites or resources.

Termination

We may terminate your access to and use of the Services, at our sole discretion, at any time and without notice to you. You may cancel your Account at any time by sending an email to us at support@Optivio.com. Upon any termination, discontinuation or cancellation of Services or

your Account, all provisions of these Terms which by their nature should survive will survive, including, without limitation, ownership provisions, warranty disclaimers, limitations of liability, and dispute resolution provisions.

Warranty Disclaimers

The Services, Products and Content are provided “as is,” without warranty of any kind. Without limiting the foregoing, we explicitly disclaim any warranties of merchantability, fitness for a particular purpose, quiet enjoyment or non- infringement and any warranties arising out of course of dealing or usage of trade.

We make no warranty that the Services or Products will meet your requirements or be available on an uninterrupted, secure, or error-free basis. We make no warranty regarding the quality, accuracy, timeliness, truthfulness, completeness, or reliability of any Content.

Indemnity

You will indemnify and hold harmless Optivio and its officers, directors, employee, and agents, from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees, arising out of or in any way connected with (i) your access to or use of the Services or Content or (ii) your violation of these Terms.

Limitation of Liability

Neither Optivio nor any other party involved in creating, producing, or delivering the Services, Products, or Content will be liable for any incidental, special, exemplary or consequential damages, including, but not limited to, lost profits, loss of data or goodwill, service interruption, computer damage or system failure or the cost of substitute Services or Products arising out of or in connection with these terms or from the use of or inability to use the Services, Products or Content, whether based on warranty, contract, tort (including negligence), product liability or any other legal theory, and whether or not Optivio has been informed of the possibility of such damage, even if a limited remedy set forth herein is found to have failed of its essential purpose. Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, so the above limitation may not apply to you.

In no event will Optivio’s total liability arising out of or in connection with these terms or from the use of or inability to use the Services, Products, or Content exceed the amounts you have paid to Optivio for use of the Services, Products, or Content or fifty dollars (\$50), if you have not had any payment obligations to Optivio, as applicable. The exclusion and limitations of damages set forth above are fundamental elements of the basis of the bargain between Optivio and you.

Dispute Resolution

Governing Law

These Terms and any action related thereto will be governed by the laws of the State of Delaware without regard to its conflict of laws provisions.

Agreement to Arbitrate

You and Optivio agree that any dispute, claim, or controversy arising out of or relating to these Terms or the breach, termination, enforcement, interpretation, or validity thereof or the use of the Services, Products or Content (collectively, "Disputes") will be settled by binding arbitration, except that each party retains the right: (i) to bring an individual action in small claims court and (ii) to seek injunctive or other equitable relief in a court of competent jurisdiction to prevent the actual or threatened infringement, misappropriation or violation of a party's copyrights, trademarks, trade secrets, patents or other intellectual property rights (the action described in the foregoing clause (ii), an "IP Protection Action"). Without limiting the preceding sentence, you will also have the right to litigate any other Dispute if you provide Optivio with written notice of your desire to do so by email at support@Optivio.com within thirty (30) days following the date you first agree to these Terms (such notice, an "Arbitration Opt-out Notice"). If you do not provide Optivio with an Arbitration Opt-out Notice within the thirty (30) day period, you will be deemed to have knowingly and intentionally waived your right to litigate any Dispute except as expressly set forth in clauses (i) and (ii) above. The exclusive jurisdiction and venue of any IP Protection Action or, if you timely provide Optivio with an Arbitration Opt-out Notice, will be the state and federal courts located in Delaware and each of the parties hereto waives any objection to jurisdiction and venue in such courts. Unless you timely provide Optivio with an Arbitration Opt-out Notice, **you acknowledge and agree that you and Optivio are each waiving the right to a trial by jury or to participate as a plaintiff or class member in any purported class action or representative proceeding.** Further, unless both you and Optivio otherwise agree in writing, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of any class or representative proceeding. If this specific paragraph is held unenforceable, then the entirety of this "Dispute Resolution" section will be deemed void. Except as provided in the preceding sentence, this "Dispute Resolution" section will survive any termination of these Terms.

Arbitration Rules

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules and the Supplementary Procedures for Consumer Related Disputes (the "AAA Rules") then in effect, except as modified by this "Dispute Resolution" section. (The AAA Rules are available at www.adr.org/arb_med or by calling the AAA at 1-800-778-7879.) The Federal Arbitration Act will govern the interpretation and enforcement of this Section.

Arbitration Process

A party who desires to initiate arbitration must provide the other party with a written Demand for Arbitration as specified in the AAA Rules. (The AAA provides a general Demand for Arbitration form and a separate form for Demand for Arbitration for California residents.) The arbitrator will be either a retired judge or an attorney licensed to practice law and will be selected by the parties from the AAA's roster of arbitrators. If the parties are unable to agree upon an arbitrator within seven (7) days of delivery of the Demand for Arbitration, then the AAA will appoint the arbitrator in accordance with the AAA Rules.

Arbitration Location and Procedure

Unless you and Optivio otherwise agree, the arbitration will be conducted in the county where you reside. If your claim does not exceed \$10,000, then the arbitration will be conducted solely based on the documents that you and Optivio submit to the arbitrator, unless you request a hearing, or the arbitrator determines that a hearing is necessary. If your claim exceeds \$10,000, your right to a hearing will be determined by the AAA Rules. Subject to the AAA Rules, the arbitrator will have the discretion to direct a reasonable exchange of information by the parties, consistent with the expedited nature of the arbitration.

Arbitrator's Decision

The arbitrator will render an award within the time frame specified in the AAA Rules. The arbitrator's decision will include the essential findings and conclusions upon which the arbitrator based the award. Judgment on the arbitration award may be entered in any court having jurisdiction thereof. The arbitrator's award of damages must be consistent with the terms of the "Limitation of Liability" section above as to the types and amounts of damages for which a party may be held liable. The arbitrator may award declaratory or injunctive relief only in favor of the claimant and only to the extent necessary to provide relief warranted by the claimant's individual claim. If you prevail in arbitration, you will be entitled to an award of attorneys' fees and expenses, to the extent provided under applicable law. Optivio will not seek, and hereby waives all rights it may have under applicable law to recover, attorneys' fees and expenses if it prevails in arbitration.

Fees

Your responsibility to pay any AAA filing, administrative and arbitrator fees will be solely as set forth in the AAA Rules. However, if your claim for damages does not exceed \$75,000, Optivio will pay all such fees unless the arbitrator finds that either the substance of your claim or the relief sought in your Demand for Arbitration was frivolous or was brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)).

Changes

Notwithstanding the provisions of the “Modification” section above, if Optivio changes this “Dispute Resolution” section after the date you first accepted these Terms (or accepted any subsequent changes to these Terms), you may reject any such change by sending us written notice (including by email to feedback@Optivio.com) within 30 days of the date such change became effective, as indicated in the “Last Updated” date above or in the date of Optivio’s email to you notifying you of such change. By rejecting any change, you are agreeing that you will arbitrate any Dispute between you and Optivio in accordance with the provisions of this “Dispute Resolution” section as of the date you first accepted these Terms (or accepted any subsequent changes to these Terms).

General Terms

These Terms constitute the entire and exclusive understanding and agreement between Optivio and you regarding the Services, Products and Content, and these Terms supersede and replace all prior oral or written understandings or agreements between Optivio and you regarding the Services, Products and Content. If any provision of these Terms is held invalid or unenforceable (either by an arbitrator appointed pursuant to the terms of the “Arbitration” section above or by court of competent jurisdiction, but only if you timely opt out of arbitration by sending us an Arbitration Opt-out Notice in accordance with the terms set forth above), that provision will be enforced to the maximum extent permissible and the other provisions of these Terms will remain in full force and effect.

You may not assign or transfer these Terms, by operation of law or otherwise, without Optivio’s prior written consent. Any attempt by you to assign or transfer these Terms, without such consent, will be null and of no effect. Optivio may freely assign or transfer these Terms without restriction. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties, their successors, and permitted assigns.

Any notices or other communications provided by Optivio under these Terms, including those regarding modifications to these Terms, will be given: (i) by Optivio via email; or (ii) by posting to the Services. For notices made by e-mail, the date of receipt will be deemed the date on which such notice is transmitted.

Optivio’s failure to enforce any right or provision of these Terms will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Optivio. Except as expressly set forth in these Terms, the exercise by either party of any of its remedies under these Terms will be without prejudice to its other remedies under these Terms or otherwise.

Contact Information

If you have any questions about these Terms or the Services or Products, please contact Optivio at feedback@Optivio.com.