

Advisors Assistant Web Hosting Terms of Service

READ THIS AGREEMENT CAREFULLY BEFORE USING ANY CLIENT MARKETING SYSTEMS, INC. HOSTING SERVICE. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN CLIENT MARKETING SYSTEMS, INC. AND YOU, INCLUDING ANY CLIENT MARKETING SYSTEMS, INC. CUSTOMER, USER, OR WEBSITE VISITOR, (collectively referred to herein as "Customer").

These Terms of Service form part of an agreement (this/the "Agreement") between Client Marketing Systems, Inc., a California corporation, ("Client Marketing Systems, Inc.") and Customer. This Agreement governs provision of Client Marketing Systems, Inc.'s services (the "Service") and is effective as of the moment Customer first accesses the service on the Client Marketing Systems, Inc. website, or as of the moment Customer uses any Client Marketing Systems, Inc. website or element of the Service (whichever comes first).

In addition to these Terms of Service, this Agreement consists of the following, each of which is incorporated into this Agreement by this reference: The Advisors Assistant License Agreement shown during the installation of Advisors Assistant on the Customer's computer(s).

1. The Service.

- a. Client Marketing Systems, Inc.'s service will provide access to Customer's Advisors Assistant database hosted on a computer at a web site provided by Client Marketing Systems, Inc.
- b. Client Marketing Systems, Inc. will provide third party active monitoring of services and apply published security patches within a reasonable time of said patch's release.
- c. Client Marketing Systems, Inc. will provide commercial level Firewall protection with Gateway Antivirus through its third party data center.
- d. Client Marketing Systems, Inc. will provide a nightly backup of Customer's database through its data center daily backup and will retain backups for up to 14 days.
- e. Client Marketing Systems, Inc. will provide the Service pursuant to this Agreement.
- f. You may not use Client Marketing Systems, Inc. network or services to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including:
 - i. Use of an internet account or computer without the owner's authorization;
 - ii. Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
 - iii. Use of the service to distribute software that covertly gathers information about a user or covertly transmits information about the user;
 - iv. Any conduct that is likely to result in retaliation against the Client Marketing Systems, Inc. network or website, or Client Marketing Systems, Inc.'s employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS).
 - v. Interference with service to any user of the Rackspace or other network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- g. Customer hereby affirms:
 - i. If agreed between the parties, the Service may include professional services, including services provided with the support or assistance of a Client Marketing Systems, Inc. contractor ("In-House Consulting" or "Data Center"). Client Marketing Systems, Inc. may also refer Customer to a third party professional services provider ("Third Party Consulting").
 - ii. In-House Consulting is subject to the same terms and conditions as other elements of the Service, including without limitation the disclaimers and limitations of liability in Section 9 below. In-House Consulting is also subject to the terms and conditions of any statement of work executed by authorized representatives of both parties. Fees for In-House Consulting are in addition to Service fees required pursuant to Subsection 2(a) below.
 - iii. Customer will pay for In-House Consulting at Client Marketing Systems, Inc.'s then-standard rates, unless the relevant statement of work specifically provides for a different payment structure.
 - iv. Third Party Consulting is not part of the Service, and Client Marketing Systems, Inc. will have no responsibility or liability for Third Party Consulting, even if Client Marketing Systems, Inc. recommends the Third Party Consulting provider and/or the Third Party Consulting is related to the Service or to Customer's ability to receive or exploit the Service. In the event that Client Marketing Systems, Inc. is held responsible or liable for Third Party Consulting, despite the provisions of this Subsection 1(c)(ii), such responsibility or liability will be subject to the disclaimers and limitations of liability in Section 8 below.

2. Fee Terms

- a. Customer will pay Client Marketing Systems, Inc.'s standard fees for the Service, as they may be revised from time to time.
- b. One time setup charge of \$50.00
- c. Periodic fee, payable based on the Payment Authorization, or Annual payment made in advance.
- d. Large Database Storage Fee: There is no fee for the first 10 GB of database file size as defined by the SQL Server SIZE property. The size of the nightly backup file is not included in determining storage requirements. A \$2 per GB per month fee will apply to storage requirements in excess of 10 GB. Excess storage is billed in blocks of 5 GB (\$10 per month increments).

- e. Database Restoration Fee of \$50.00. Details listed in 7.f.

3. Payment Terms

- a. Periodic Payments will be made on the day and frequency based on the signed Payment Authorization form.
- b. Changes in the Payment Amount, which are based on changes in service levels requested by Customer, or general price level increase, may be made with notice as provided herein.
- c. Customer will update account information as necessary. If any charge attempt is denied, Client Marketing Systems, Inc. may interrupt Service without advanced notice but will make reasonable efforts to provide such notice.
- d. A Returned check will constitute a material breach of this Agreement, and Customer will incur a \$25.00 returned check charge, as liquidated damages. Such liquidated damages compensate Client Marketing Systems, Inc. for administrative expenses related to returned checks. If Client Marketing Systems, Inc. concludes, in its sole discretion, that Customer's account reflects a pattern of repeated late, bounced, or incomplete payment, Client Marketing Systems, Inc. may require advance annual payment through direct deposit.
- e. Any payment not received when due will, at Client Marketing Systems, Inc.'s option, bear interest at a rate of 1.5% per month from the date due until paid, to compensate Client Marketing Systems, Inc. for the fine-value of the unpaid fees.
- f. When a payment is late 10 days, Client Marketing Systems, Inc., may terminate services WITHOUT NOTICE. Client Marketing Systems will make every attempt to contact Customer before service is terminated.
 - i. Once any outstanding charges have been paid, database access can be reinstated for \$40.
 - ii. If your account remains unpaid for 3 months, your database will be deleted.
- g. All amounts are in U.S. Dollars.

4. Price Changes

- a. Initial price levels are guaranteed for 1 year from the beginning of the Service.
- b. A minimum of 30 days' notice will be given on any increase in price levels.
- c. Email notice or notice through other electronic means, including notice through an alert through the Advisors Assistant application, shall be considered notice of the change in the Payment Amount.
- d. The new payment Amount shall go into effect on the payment date stated in the notice.

5. Termination

- a. This agreement will continue until terminated by either party.
- b. Customer may cancel the Service on **5 business day's written notice prior to the Periodic Payment Date**.
 - i. In the event of termination of Service by Customer, Client Marketing Systems, Inc. will make a backup of Customer's database within 5 business days of Customer's account being paid current, and upon receipt by Client Marketing Systems, Inc. of a payment of \$150 for said backup.
 - ii. Customer may also purchase Advisors Assistant to move their database into their office or server of their choice.
 - iii. In the event of any material breach of this Agreement, including without limitation any breach of the provisions of the payment obligations set forth in Section 3, Client Marketing Systems, Inc. may terminate the Service, any portion thereof, or this Agreement, without advanced notice. Client Marketing Systems, Inc. is not required to refund any fees paid or prepaid after such termination.
- c. Client Marketing Systems, Inc. may terminate Service for any reason on 90 days written notice.
 - i. In the event of said termination of Service by Client Marketing Systems, Inc., Customer will be provided the option to purchase a version of Advisors Assistant which will run on Customer's local computer and a backup of Customer's data which may be restored to the Customer's local computer.
 - ii. Customer will be given the option of purchasing ongoing updates and technical support for Advisors Assistant at the then normal rates.
- d. In the event Customer has paid annually, Customer will receive a prorated refund beginning with the 1st day of the month next following the 5th day after notice of termination is received.
- e. Client Marketing Systems, Inc. is not required to issue refunds or credits except as specified in this Agreement

6. Acceptable Use.

- a. Customer will not allow the Service or Client Marketing Systems, Inc.'s equipment to be used for activities prohibited by Federal or State Law.
- b. Notwithstanding any provision to the contrary in this Agreement, and without limiting any of Client Marketing Systems, Inc.'s rights or remedies, Client Marketing Systems, Inc. may suspend Service in whole or in part in the event that Client Marketing Systems, Inc. reasonably suspects a violation of Law. Reasonable suspicion, pursuant to the preceding sentence, includes, without limitation, a third party notice or claim that Customer's use of the Service infringes on third party rights. Client Marketing Systems, Inc. will make reasonable efforts to notify Customer before any such suspension, unless the violation calls for immediate action to prevent injury or liability, in Client Marketing Systems, Inc.'s opinion and at its sole discretion. Suspension pursuant to this Section may continue so long as Client Marketing Systems, Inc. reasonably suspects a violation. Client Marketing Systems, Inc. is not liable for any Service suspension authorized by this Section or for any related loss, even if the suspected violation did not occur.
- c. Client Marketing Systems, Inc. has no obligation to monitor the Service for illegal or improper conduct but may do so and may disclose information regarding use of the Service for any reason, including: to satisfy laws, regulations, or governmental, legal, or law- enforcement requests; to operate the Service properly; and to protect itself and its customers. Client Marketing

Systems, Inc. may grant law enforcement agencies access to its equipment, including equipment used to provide the Service to Customer.

7. Service Levels & Remedies

- a. Client Marketing Systems, Inc. will not be liable for Service interruptions or any other Service failures. In the event that Customer is dissatisfied with the Service, Customer's sole remedy is the refund of fees paid since the occurrence of such failure, or termination of this Agreement if authorized pursuant to Section 5 above.

8. Maintenance & Security.

- a. Client Marketing Systems, Inc. may interrupt Service to perform maintenance on Client Marketing Systems, Inc.'s equipment or to address and/or mitigate the effects of security breaches, virus attacks, denial of service attacks, and other intentional interferences by third parties.
- b. Client Marketing Systems, Inc. will exercise reasonable efforts to inform Customer before interrupting Service, other than planned interruptions between 9 pm and 3 am Pacific time, and to repair the Service promptly.
- c. Customer will promptly report any Service failure to Client Marketing Systems, Inc. via email to support@climark.com or by calling 800-799-4267.
- d. Customer is responsible for maintaining strong passwords for access to their Advisors Assistant database.
- e. Client Marketing Systems, Inc. agrees to maintain daily backups for up to 14 days of Customer's Advisors Assistant database. Backups will begin at 11pm Pacific Time.
- f. Should Customer require restoration of a backup, Client Marketing Systems, Inc. will make every reasonable effort to restore the backup promptly. If said restoration is through no failure in Service, a fee may be charged as outlined in Section 2.
- g. Client Marketing Systems, Inc. is not responsible for providing physical access to or copies of software, data, or content stored on Client Marketing Systems, Inc.'s equipment under any circumstance, and is not required to provide network access upon:
 - i. Any termination or suspension of Customer's Service or
 - ii. In the event of hardware failure
 - iii. Abuse by hackers or other third parties, or
 - iv. Improper administration or use by Customer, or
 - v. Other interruption of network access.
- h. Client Marketing Systems, Inc. is not required to reimburse any expenses Customer incurs for technology diagnosis or repair, including without limitation expenses for outside consultants.

9. Private and Confidential Information.

- a. All data is considered the property of the Customer and will not be transferred or made available to any third party without the written authorization of the Customer. Client Marketing Systems, Inc. will take all steps reasonable to safeguard and protect Customer's data from unauthorized access, use or disclosure by or to others, including, but not limited to maintaining appropriate security measures and providing access on an as-needed basis only. Client Marketing Systems, Inc. will treat Customer's data using the same degree of care used to protect its own confidential or proprietary information of like importance, but in any case, using no less than a reasonable degree of care. Customer's data will not be used for any purpose other than with respect to providing services contracted.
- b. Client Marketing Systems, Inc. is not responsible for use or misuse of data by Customer or any third party, including without limitation, the operator of any website linked to Client Marketing Systems, Inc.'s website, or any Client Marketing Systems, Inc. customer, even if Client Marketing Systems, Inc. hosts other customer's websites or databases. Client Marketing Systems, Inc. may notify Customer of leaks or exposure of private data, but except to the extent required by law, Client Marketing Systems, Inc. is not required to provide such notification.
- c. Client Marketing Systems, Inc. has made reasonable efforts to encrypt Social Security Numbers, Passport Numbers, Driver's License Numbers, and Resident Alien Identification Numbers.

10. WARRANTIES, DISCLAIMERS, LIMITATION OF LIABILITY

- a. CLIENT MARKETING SYSTEMS, INC. MAKES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- b. Client Marketing Systems, Inc. does not warrant that the Service will be uninterrupted, error-free, or free from viruses or other harmful components. The Service is provided with no warranties regarding security, reliability, protection from attacks, or data integrity. No communication between Customer and Client Marketing Systems, Inc. will create a warranty or in any way alter or restrict any disclaimer of warranty or limitation of liability set forth in this Section or elsewhere in this Agreement. As used in the previous sentence, "communications" include, without limitation, marketing materials and representations of sales people, advice provided by Client Marketing Systems, Inc. or any of its representatives, quotes, Customers Signup, and any work order or other ordering document
- c. CLIENT MARKETING SYSTEMS, INC. WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR MULTIPLE DAMAGES, EVEN IF ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES. CLIENT MARKETING SYSTEMS, INC.'S MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER DURING THE 12 MONTHS PRECEDING THE INJURY GIVING RISE TO THE CLAIM.
- d. Except to the extent specifically provided in Section 9.c above, and except to the extent that applicable law specifically forbids such limitation of liability, CLIENT MARKETING SYSTEMS, INC. WILL HAVE NO LIABILITY WHATSOEVER FOR

ANY CLAIMS, LOSSES, ACTIONS, DAMAGES, SUITS, OR PROCEEDINGS RESULTING FROM ANY OF THE FOLLOWING OR FROM ANY CLIENT MARKETING SYSTEMS, INC. EFFORTS TO ADDRESS OR MITIGATE ANY OF THE FOLLOWING:

- i. SECURITY BREACHES, INCLUDING WITHOUT LIMITATION EAVESDROPPING, THIRD PARTY ACCESS TO CUSTOMER DATA OR TO ASSIGNED COMPUTERS,
 - ii. THIRD PARTY ACCESS TO OR MISUSE OF PASSWORDS PROVIDED TO OR BY CLIENT MARKETING SYSTEMS, INC., AND
 - iii. INTERCEPTION OF TRAFFIC SENT OR RECEIVED USING THE SERVICE;
 - iv. RELEASE OR EXPOSURE, FOR ANY OTHER REASON, OF PERSONALLY IDENTIFIABLE INFORMATION OR OTHER PRIVATE DATA, INCLUDING DATA BELONGING TO CUSTOMER'S OWN CUSTOMERS AND OTHER USERS;
 - v. DENIAL OF SERVICE ATTACKS, VIRUSES, WORMS, AND OTHER INTENTIONAL INTERFERENCE BY THIRD PARTIES, INCLUDING WITHOUT LIMITATION BY OTHER CLIENT MARKETING SYSTEMS, INC. CUSTOMERS;
 - vi. LOSS OF DATA OR LOSS OF ACCESS TO DATA
 - vii. ACTIONS OF THIRD PARTIES, INCLUDING WITHOUT LIMITATION OTHER CLIENT MARKETING SYSTEMS, INC. CUSTOMERS AND THIRD PARTY CONSULTING PROVIDERS;
 - viii. ACTIONS OF CLIENT MARKETING SYSTEMS, INC. EMPLOYEES, AGENTS, OR CONTRACTORS ACTING OUTSIDE THE SCOPE OF THEIR DUTIES;
 - ix. MISTAKES, OMISSIONS, INTERRUPTIONS, DELETIONS OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR OTHER FAILURES OF PERFORMANCE OF THE SERVICE, INCLUDING WITHOUT LIMITATION ACCIDENTAL DISCONNECTION AND TERMINATION OF SERVICE; AND
 - x. THE ACCURACY, COMPLETENESS, AND USEFULNESS OF THE SERVICE. THE PROVISIONS OF THIS SUBSECTION APPLY, WITHOUT LIMITATION, EVEN IF CUSTOMER PURCHASES SERVICE FEATURES ADDRESSING SECURITY, DATA INTEGRITY, DATA BACKUP, ATTACK PROTECTION, VIRUSES, SPAM, MONITORING, OR SYSTEM INTEGRITY.
 - xi. Client Marketing Systems, Inc. does not control and has not thoroughly reviewed all the databases run by Client Marketing Systems, Inc.'s customers or linked to Client Marketing Systems, Inc.'s website. With the exception of its own website, Client Marketing Systems, Inc. is not responsible or liable for the content or practices of any website, including without limitation websites linked to Client Marketing Systems, Inc.'s website and websites hosted by Client Marketing Systems, Inc. but run by its customers.
- e. THE LIABILITIES LIMITED BY THIS SECTION 9 INCLUDE, WITHOUT LIMITATION, LIABILITY FOR NEGLIGENCE. Client Marketing Systems, Inc.'s limitations and exclusions of liability and disclaimers of warranty, set forth in this Section 9 and elsewhere in this Agreement (collectively, the "Limitations") apply equally to Client Marketing Systems, Inc.'s officers, employees, agents, contactors, representatives, suppliers, subsidiaries, parents, and affiliated companies. Customer acknowledges and agrees that Client Marketing Systems, Inc. has set its prices and entered into this Agreement in reliance upon the Limitations, and that the Limitations form an essential basis of the bargain between Client Marketing Systems, Inc. and Customer. The Limitations survive and apply even if Customer's remedies provided in this Agreement are found to have failed of their essential purpose.

11. Indemnity.

- a. Customer will defend and indemnify Client Marketing Systems, Inc. (including its officers, employees, agents, contactors, representatives, suppliers, subsidiaries, parents, and affiliated companies) from a claim by any of Customer's customers or users, or any other third party, arising out of or related to Customer's use of, misuse of, or failure to use the Service, including without limitation: Security breaches or other alleged faults in the Service, including without limitation fault leading to the release or exposure of personally identifiable information or other private data (whether such data belongs to Customer, to one of Customer's customers, or to other third parties.)

12. Miscellaneous.

- a. Internet web addresses provided by Client Marketing Systems, Inc. are licensed to Customer temporarily and remain Client Marketing Systems, Inc.'s sole and exclusive property. This Agreement does not grant Customer a license to any software used to provide the Service or associated with the Service (collectively, "Software"), or to any other software, by implication, by estoppel, or otherwise. Without limiting the generality of the foregoing, Customer will not reproduce, reverse engineer, decompile, or disassemble the Software. The logos, service marks, and trademarks (collectively, "Trademarks") displayed on Client Marketing Systems, Inc.'s website and through the Service, whether or not registered, belong to Client Marketing Systems, Inc. and its licensors and suppliers. Neither this Agreement nor any Client Marketing Systems, Inc. website grant a license to any Trademark, by implication, by estoppel, or otherwise. Nothing in this Agreement transfers to Client Marketing Systems, Inc. any copyright in, trademark on, or other ownership interest in any data or content of Customer.
- b. Customer is responsible for maintaining the confidentiality of its user names and passwords, and Customer will not transfer or sell to any third party such user names or passwords, or Customer's access to the Service.
- c. Client Marketing Systems, Inc. is not obligated to sell Customer any Service feature not listed in Customers Signup, or to provide more Service than required by such Signup.
- d. During the term of this Agreement and for 180 days thereafter, Customer will not encourage or solicit any Client Marketing Systems, Inc. employee or independent contractor to leave Client Marketing Systems, Inc.'s employ, or otherwise interfere with Client Marketing Systems, Inc.'s employment relationships.
- e. The parties agree that the fees listed in Subsections 3(d), 3(e), and elsewhere in this Agreement do not constitute penalties and are reasonable in light of the harm that will be caused by breach, the difficulties of proof of loss, and the inconvenience and

infeasibility of otherwise obtaining an adequate remedy. No remedy of Client Marketing Systems, Inc. provided in this Agreement for late payment, defined credit card charges, or other breaches will limit any other right or remedy of Client Marketing Systems, Inc. at law or in equity.

- f. All written communications to Customer will be deemed delivered if sent to the contact points provided to Client Marketing Systems, Inc. at the time of order, or to such other contact points as Customer provides in writing. Customer will include a valid e-mail address with such contact points.
- g. All written communications to Client Marketing Systems, Inc. will be mailed to 880 Price St., Pismo Beach, CA 93449, unless Client Marketing Systems, Inc. notifies Customer in writing of alternate contact information, except to the extent that this Agreement provides that such communication will be made through email.
- h. Client Marketing Systems, Inc. may revise this Agreement and the Payment Authorization from time to time by posting a new version of this Agreement on the Client Marketing Systems, Inc. Website. Revised terms will become effective at the start of Customer's next Periodic Payment Date or next payment due date (whichever comes first), or in the absence of either, 30 days after posting thereof; provided that if Customer orders or accepts revised, renewed, or new Service before such date, revised terms will become effective upon such order or acceptance. (The date of the revised terms' effectiveness pursuant to the preceding sentence is referred to herein as Customer's 'Renewal Date.') Customer waives any right to notice of revised terms other than through the Client Marketing Systems, Inc. Website, and such waiver will remain in force even if Client Marketing Systems, Inc. does provide notice by e-mail or another medium. (Customers continued use of the Service after any Renewal Date confirms acceptance of revised terms.)
- i. This Agreement may not be revised or amended in any other way, except through a written contract executed by authorized representatives of both parties.
- j. Client Marketing Systems, Inc. may provide notices via e-mail or other electronic means, but no notice exchange will amend this Agreement, even if such messages purport to do so.
- k. This Agreement is to be construed in accordance with and governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any other jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. The parties hereby consent to the personal and exclusive jurisdiction and venue of the federal and state courts of San Luis Obispo County, California.
- l. Client Marketing Systems, Inc. hereby provides Customer with the following notice, pursuant to California Civil Code Section 1789.3:
 - i. To resolve any complaint regarding the Service or receive any further information regarding the Service, Customer should contact Client Marketing Systems, Inc. at the contact points provided on Client Marketing Systems, Inc.'s website under 'Contact Us'; and
 - ii. California consumers may be entitled to pursue complaints regarding the Service by contacting the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs at 1625 North Market Blvd., Suite N-112, Sacramento, CA 96834, or by phone at 800-952-5210.
 - iii. Customer will not use the Service in any way that violates applicable laws or regulations, including without limitation U.S Export Administration Regulations. Customer represents and warrants that it is not on the United States Treasury Departments list of Specially Designated National and Blocked Persons and is not otherwise a person or entity subject to a legal rule that would prohibit Client Marketing Systems, Inc. from providing the Service.
- m. No delay, failure, or waiver of either party's exercise or partial exercise of any right or remedy under this Agreement will operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. To the extent caused by force majeure, no delay, failure, or default will constitute a breach of this Agreement'
- n. In the event of any conflict between these Terms of Service and any other element of this Agreement, or any ordering document or statement of work, these Terms of Service will govern.
- o. Customer may not assign this Agreement or any of its rights or obligations hereunder without Client Marketing Systems, Inc.'s express written consent. Except to the extent forbidden in the previous sentence, this Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties.
- p. If any provision of this Agreement is held invalid, legal, or unenforceable, including without limitation as a result of unconscionability or inconsistency with public policy, such provision will be construed so as to come as close as possible to its intended meaning, and the validity, legality, or enforceability of the remaining provisions will in no way be impaired.
- q. This Agreement, including those documents incorporated by reference, embodies the final, full, and exclusive statement of the agreement between the parties, and supersedes all prior agreements, negotiations, representations, and proposals, written or oral, relating to its subject-matter.

Firm Name (Printed)

Representative Name (Printed)

Effective Date

Signature