

## Web Terms Of Use

### 1. Acceptance of Terms

- a. By Using the Site, other than to review these Terms, You affirm that You have read, understand and agree to these Terms.
- b. Owner reserves the right to alter these Terms at any time, without notice to You and without a required period of time prior to the change in Terms being effective. Your Use of the Site is subject to the current version of these Terms, as posted at the time of Use.

### 2. Use Of The Site

- a. Owner grants You a limited right to Use this Site for purposes that: (i) are specific to You, and (ii) which do not compete commercially with the Owner, and (iii) which do not harm the Owner or its products, and (iv) which do not create or infer false or misleading assertions about Owner or its products.
- b. You may only Use the Site if You are legally able and competent to consent to the obligations and conditions of these Terms and are of a legal age and capacity to enter into a binding contract.
- c. You agree to Use the Site only for purposes that are permitted by these Terms.
- d. Your Use of the Site is subject to all notices, policies and terms that are posted on the Site. Owner retains the right to revise all notices, policies or terms at any time.
- e. Some portions of the Site and some Content may be available only to registered customers or partners and may also be subject to a subscription or other agreements, posted guidelines, rules, or terms of service. If there is any conflict between these Terms and any additional terms, those additional terms will take precedence in relation to that specific portion of the Site, that specific Service or that specific Content.
- f. This Site is not engaged in the practice of medicine. The Content or services accessed through the Site are for general informational purposes only and are not specific to any individual person's condition. Use of this Site does not create a care provider-patient relationship or replace an existing relationship. You should consult with a professional for diagnosis and treatment of personal, health-related matters. You should not disregard any advice or treatment from your health professional based on your interpretation of what you may read on this Site.
- g. You are encouraged, but not required, to provide suggestions, ideas, feedback or proposals regarding the site ("User Input"). If You do provide User Input, You hereby grant Owner a nonexclusive, royalty-free, fully paid-up, perpetual, irrevocable, transferable, unlimited license in any User Input. Further, by submitting User Input, You represent and warrant that (i) the User Input does not contain confidential, health-related or proprietary information of You or of a third party; (ii) Owner is not under any obligation of confidentiality, express or implied, with respect to the User Input; (iii) Owner may develop technologies or solutions that contain elements or features that are similar to elements, features or ideas in Your User Input; and (iv) You are not entitled, under any circumstances, to any compensation or reimbursement of any kind from Owner in relation to User Input.
- h. The Site may include hyperlinks to other sites. Such links to other sites are provided as a convenience to users of Owner Sites. The inclusion of a link does not imply Owner's endorsement of a site. Owner has no control over sites that are owned or controlled by other parties, and You agree that Owner is not

responsible for the availability or contents of any Linked Site (including advertising, products, or other materials on or available from such Linked Site), any link contained in a Linked Site, or any changes or updates to a Linked Site.

- i. The Site can be accessed from countries outside the United States and may contain references to Materials or products that are not available in Your country. These references do not imply that Owner intends to make such Materials or products available in Your country.
- j. Owner Sites are operated by Owner from its offices in the United States. Owner makes no representation that the Site is appropriate for Use or available in areas outside the United States, and access to the Site from jurisdictions where the Content is considered illegal is prohibited. Owner reserves the right to block access from certain international Users. If You access the Site from a location outside the United States, You are responsible for compliance with local Laws.

### **3. Content Ownership**

- a. Except as otherwise stated, Owner reserves all Intellectual Property Rights that it owns in the Site.
- b. The trademarks, logos and Service marks (“Marks”) displayed on the Site are the property of Owner or third parties. You are not permitted to Use the Marks without the prior consent of the owner of a Mark.
- c. Owner reserves all Intellectual Property Rights in the design of the site, as well as the look and feel of the site (the combination of colors, fonts and graphics)
- d. Owner reserves all Intellectual Property Rights in the code and other technologies that (i) it has developed for use in this site and (ii) that is not subject to third-party ownership or licensing.

### **4. Your Content**

- a. You are responsible for Your Content and assume all risks associated with Your Content.
- b. You represent and warrant that: (i) You have sufficient Intellectual Property Rights, or have obtained all necessary licenses and permissions, that are required so that You may transmit Your Content to the Site; and (ii) You have received consent from all persons referenced or otherwise depicted in Your Content, to distribute, reproduce and display such information on this site.

### **5. Owner’s Right To Monitor, Investigate and Act**

- a. Owner, in its sole discretion, may monitor the Site at any time and may remove all or part of Your Content.
- b. If Owner becomes aware of a possible violation of these Terms, Owner reserves the right to investigate such violations and may, at its sole discretion and without notice, terminate all or part of Your rights to Use the Site. If Owner believes that illegal activity has or may have occurred, Owner reserves the right to refer the matter to, and to cooperate with law enforcement authorities. Except to the extent prohibited by Law, Owner is entitled to retain and/or disclose Your information or Your Content to a government entity that is conducting an inquiry within the scope of its proper authority. Owner retains the right to (i) comply with applicable Law, legal process or government request; (ii) enforce these Terms; (iii) respond to any claims that Your Content violates these Terms or the rights of third parties; and (iv) protect the rights of third parties, as Owner in its sole discretion believes to be necessary or appropriate.

### **6. Termination**

- a. These Terms will continue to apply until terminated by either You or Owner as set forth below.

- b. To terminate Your rights under these Terms, You may (i) notify Owner at any time and (ii) close any accounts.
- c. Owner may, at any time, terminate Your rights under these Terms if:
  - i. You have breached a provision of these Terms (or have acted in a manner that clearly shows You do not intend to, or are unable to, comply with these Terms);
  - ii. Owner is required to do so by law or governmental mandate;
  - iii. Maintaining the Site or providing You with the ability to Use the Site is, in Owner's opinion, no longer commercially viable;
  - iv. Owner has elected to discontinue the Site; or
  - v. There has been an extended period of inactivity in Your account.
- d. Owner may also terminate or suspend Your right to Use the Site for any reason. Termination may include: (i) removal of access to the Site; and (ii) deletion of Your Content, account Information and related information.
- e. You agree that all terminations will be made in Owner's sole discretion and that Owner will not be liable to You or any third party for any termination of Your rights under these Terms or Your account (and accompanying deletion of Your Account Information), or access to the Site, including access to Your Content.

## **7. DISCLAIMER OF WARRANTIES; LIABILITY**

- a. THIS SITE IS PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. YOUR USE OF THE SITE IS DONE AT YOUR OWN RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM YOUR USE. TO THE MAXIMUM EXTENT ALLOWED BY LAW:
  - i. OWNER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING, THE ACCURACY, RELIABILITY, TIMELINESS, AVAILABILITY, USE, OR SECURITY OF THE SITE;
  - ii. OWNER DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE RESULTS THAT CAN BE EXPECTED OR ACHIEVED FROM YOUR USE OF THE SITE OR A SITE LINKED FROM THE SITE; AND
  - iii. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.
- b. IN NO EVENT WILL OWNER, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS OR SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES. IN NO EVENT WILL OWNER, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS OR SUPPLIERS BE LIABLE TO YOU OR ANY THIRD PARTY FOR DIRECT DAMAGES (INCLUDING ALLEGATIONS OF DAMAGES RESULTING FROM AN ALLEGED LOSS OF USE, DATA OR PROFITS), REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING THEORIES OF LIABILITY BASED ON BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE OR TORT. THIS DISCLAIMER OF LIABILITY WILL REMAIN IN EFFECT, EVEN THOUGH DAMAGES WERE FORESEEABLE AND EVEN IF DEFENDANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- c. OWNER'S AGGREGATE LIABILITY AND THAT OF ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, PARTNERS OR SUPPLIERS UNDER

OR IN CONNECTION WITH A PARTY'S USE OF THE SITE WILL BE LIMITED TO US\$50.00 (FIFTY US DOLLARS) THIS LIMITATION WILL APPLY EVEN IF A DEFENDANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

- d. The limitations and exclusions apply to the maximum extent permitted by applicable law.
- e. Owner may use third-party suppliers for data transport and storage. You acknowledge that storage technologies provided by third-party suppliers may utilize multi-tenancy architecture, where parties not associated with Owner or a third-party supplier may also store or transmit data within the same framework that is used to store or transmit Your data. You also acknowledge that the transmission and storage of Your data may result in Your data crossing through or residing in multiple political jurisdictions. Each of these jurisdictions may have unique provisions relating to the privacy of Your data and information.
- f. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of privacy, privacy data, confidential information, and property.

## **8. LEGAL COMPLIANCE**

- a. You agree that Your Use of the Site will comply with all applicable laws, rules, regulations, and orders of the United States and any other political entity exercising jurisdiction over the Site and Your Use of the Site, including laws relating to the import and export (including "re-export" within the meaning of U.S. laws) of goods, software, technology, or other information subject to U.S. or local jurisdiction. For purposes of these Terms, U.S. laws include, but are not limited to, the Export Administration Act, the Arms Export Control Act, the International Emergency Economic Powers Act, the Trading With the Enemy Act, and the Foreign Corrupt Practices Act, as such acts may be amended from time to time, and the rules, regulations, orders, licenses and other forms of administrative action, and judicial decisions thereunder.
- b. You may not transmit or otherwise export from the United States or allow the transmission of Services or Content in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.
- c. You represent and warrant that You are not a person to whom Owner is legally prohibited to provide the Services or Content and/or are not on any governmental list of restricted person or entities, including (i) the Commerce Department's Entity List, Denied Persons List, and Unverified List; (ii) Treasury Department Specially Designated Nationals & Blocked Persons List; and (iii) State Department Debarred Parties List.
- d. You may not use the Site in any situation where failure or fault of the Services or Content could reasonably be expected to lead to death, personal injury, or property damage.
- e. You may not provide access to the Site to any person or entity that would be prohibited from using the Services under this section.

## **9. Indemnity**

- a. You agree to defend, indemnify and hold harmless Owner, its subsidiaries, officers, directors, employees or agents (each a "Owner Indemnitee") against and in respect of any claims, loss, damages, obligations, penalty, deficiency or liability (including, without limitation, attorneys' fees) imposed upon, incurred by

or asserted against an Owner Indemnitee that result from or are related to these Terms, Your breach of these Terms, Your Use of the Site, or Your violation of the property rights of another.

#### **10. If Disagreements Arise**

- a. Injunctive Relief. You acknowledge that it would be difficult for Owner to measure actual damages resulting from a breach of certain provisions of these Terms, and that money damages alone would not be an adequate remedy for any such breach. Accordingly, You agree that if You breach any provision of these Terms, Owner will be entitled, in addition to any other remedies it may have, to specific performance, injunctions, or other appropriate orders to correct or restrain any such breach by You, without showing or proving any actual damage sustained by Owner or posting bond or other security.
- b. Arbitration. Any controversy, claim or dispute arising out of or relating to these Terms, will be settled by binding arbitration in Austin, Texas. Such arbitration will be conducted in accordance with the commercial arbitration rules of the American Arbitration Association, with the following exceptions if in conflict: (a) there will be a single arbitrator, chosen by the parties; (b) each party to the arbitration will pay its pro rata share of the expenses and fees of the arbitrator, together with other expenses of the arbitration incurred or approved by the arbitrator; and (c) arbitration may proceed in the absence of any party if written notice (pursuant to the Arbitrator's rules and regulations) of the proceeding has been given to such party. The parties agree to abide by all decisions and awards rendered in such proceedings. Such decisions and awards rendered by the arbitrator will be final and conclusive and may be entered in any court having jurisdiction thereof as a basis of judgment and of the issuance of execution for its collection. All such controversies, claims or disputes will be settled in this manner in lieu of any action at law or equity, provided however, that nothing in this subsection will be construed as precluding bringing an action for injunctive relief or other equitable relief. The arbitrator will not have the right to award punitive damages or speculative damages to either party and will not have the power to amend these Terms.
- c. Attorneys' Fees. If You improperly file a claim and Owner has notified You in writing that the claim is improper and You have failed to withdraw the claim, Owner may recover attorneys' fees and costs for the improperly filed claim.
- d. Small Claims. If a dispute arises that would be within the jurisdictional limits of a small claims court in Travis County, Texas, the arbitration provision of this section is waived and resolution may proceed in that venue.
- e. Indemnification. You agree to indemnify, defend and hold Owner, its successors, officers, directors, agents and employees harmless from any and all actions, causes of action, claims, demands, cost, liabilities, expenses and damages (including attorneys' fees) arising out of or in connection with any breach under these Terms by You.
- f. Jury Wavier: Each party waives any right to jury trial in connection with an action or litigation related to these Terms.

#### **11. Definitions**

- a. "Clairvoyant" or "Owner," will mean Clairvoyant Networks, Inc.
- b. "Site," will mean a website or portal that is owned or operated by Clairvoyant.  
The term Site includes:
  - i. "Service" or "Services," which will mean the technology by which a person Uses the Site and the technology by which Content is provided.

- ii. "Content," will mean the digital information transmitted by the Site, including:
  - 1. "Materials," which will mean data, documents, text, images, graphics, audio, videos, web pages, webcasts, products, software code or associated documentation.
  - 2. "Site Design," which includes (i) the design of the Site, page or service; (ii) the html or other software code that determines the look or function of the Site, page, view or Service, and (iii) the inclusion and arrangement of Content with the Site.
- c. "Use" or "Using," will mean interacting with the Site, which may include browsing, viewing, clicking a hyperlink, or requesting Content.
- d. "Terms," will mean this Terms of Use document
- e. "You" or "Your," will mean the person, persons, or entity Using the Site.
- f. "Your Content," will mean any Materials uploaded by You or other Users of the Site acting in cooperation with You or on Your behalf.
- g. "Intellectual Property Rights" will mean ownership or usage rights in created or designed works or technologies and includes copyright, trademark, trade dress, patent, trade secret, unfair competition.

## **12. GENERAL PROVISIONS:**

- a. Complete Agreement: These Terms contain the complete and exclusive agreement between the parties and supersedes all prior or contemporaneous written or oral communications between the parties relating to the subject matter hereof.
- b. Assignment: Neither party may assign its rights or obligations under these Terms without the express written consent of the other, which consent will not be unreasonably withheld. This paragraph will not apply if all, or substantially all, of a party's assets are being sold to a third party and the rights and all obligations of these Terms are being transferred to that third party.
- c. Relationship Of The Parties: Each party is an independent entity and has no power, right or authority to bind the other or to assume or to create any obligation or responsibility, express or implied, on behalf of the other.
- d. Governing Law. These Terms, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to these Terms, or the negotiation, execution or performance of these Terms (including any claim or cause of action based upon, arising out of or related to any representation or warranty), will be governed by, and enforced in accordance with, the laws of the State of Texas, including its statutes of limitation, but without giving effect to any choice of law or conflict of law rules or provisions that would cause the application of the laws of any jurisdiction other than the State of Texas.
- e. Force Majeure: Owner will not be liable for a failure or delay in performing an obligation under these Terms, where such failure or delay is caused by: (i) circumstances beyond its reasonable control (an "Event"); (ii) that could not have reasonably been anticipated; and (iii) that could not have reasonably been avoided or overcome. The term "Event" may include, without limitation: breakdown of communication facilities, damage or unavailability of data stored with a third-party vendor, natural catastrophes, extreme weather conditions, governmental acts or omissions or orders, changes in laws or regulations, accident, riots, war (declared or not), terrorist act, epidemic, pandemic, quarantine, civil commotion, labor disruptions, fire, disruptions in shipping or

transport, lack of availability of raw materials, or extended disruption in utility or Internet services.

- f. The fact that Owner has not acted to enforce or exercise any provision of these Terms, or any related right, will not constitute a waiver of that provision or right.
- g. If a court of competent jurisdiction finds any provision of these Terms, or portion thereof, to be unenforceable, that provision will be enforced to the maximum extent permissible so as to affect the intent of the parties as reflected by that provision, and the remainder of these Terms will continue in full force and effect.
- h. Notices: Any required or permitted notice must be in writing and may be sent: (i) by mail, with proof of delivery; (ii) by commercial delivery, with proof of delivery; or (iii) by email, with a return acknowledgment, sent by recipient.
- i. Materials that are acquired by or on behalf of the United States of America, its agencies, and/or agents ("U.S. Government"), are subject to the provisions of FAR 12.211 - "Technical Data", and FAR 12.212 - "Computer software" or to clauses providing equivalent protections in DFARS or other agency specific regulations.
- j. Effect of Termination: Provisions that by their nature are intended to survive the termination of these Terms will survive termination notwithstanding the cause of termination. Such provisions that are intended to survive include, without limitation, those that relate to indemnification, warranty, liability, and any limits thereon, proprietary rights and trade secrets, confidentiality of information, and payments due.
- k. Export Laws. You must comply with all domestic and international export laws and regulations, which include restrictions on destinations, end users, and end use.
- l. The United Nations Convention on Contracts for the International Sale of goods will not apply.