

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THIS SERVICE.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

- AGREE: BY USING THE SERVICE OR CLICKING “I AGREE” CUSTOMER IS AGREEING TO BE BOUND BY THIS AGREEMENT. IF AN INDIVIDUAL IS AGREEING TO THESE TERMS ON BEHALF OF THEIR EMPLOYER, THEN THEY REPRESENT AND WARRANT THAT THEY HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON THEIR EMPLOYER’S BEHALF.

- CANCEL: IF CUSTOMER DOES NOT WANT TO AGREE TO THIS AGREEMENT CLICK “I REJECT,” BUT THEN CUSTOMER CANNOT USE THE SERVICE.

Terms of Service

This agreement is between and Joy-Above Software, LLC, a California limited liability company (**JAS**) and the entity or individual agreeing to these terms (**Customer**).

1. **Software-as-a-service.** This agreement provides Customer access to and usage of an Internet based software service as specified on the online order and as further outlined www.noleadfiner.com (**Service**). This agreement also applies to the App and Documentation (defined below), which may be provided by JAS.

2. **USE OF SERVICE.**
 - a. **Customer Owned Data.** All data uploaded by Customer remains the sole property of Customer, as between JAS and Customer (**Customer Data**). Customer grants JAS the right to use the Customer Data solely for purposes of performing under this agreement. During the term of this agreement, Customer may export its Customer Data from within the Service.

 - b. **Employee and Contractor Access and Usage.** Customer may allow its employees and contractors to access the Services in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its employees and contractors.

 - c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify JAS promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service’s user guide and applicable law.

- d. **JAS Support.** JAS must provide customer support for the Service under the terms of JAS' Customer Support Policy (**Support**) which is located at www.support@noleadfines.com, and is incorporated into this agreement for all purposes.
- e. **Free Version.** If Customer has registered for a no-charge use of the Service, Customer may access the Service until it is cancelled by JAS upon notice [via email], or by the Customer. The Service is provided AS IS, with no warranty during the no-charge period. All Customer information will be deleted after the no-charge period ends, unless Customer converts its account to a paid Service.

3. **SERVICE LEVEL AGREEMENT & WARRANTY.**

- a. **Compliance Service Guarantee.** For information on the Compliance Service Guarantee see this site [link to service Guaranty Documents].
- b. **Warranty.** JAS warrants to Customer that commercially reasonable efforts will be made to maintain the online availability of the Service for a minimum of availability in any given month as provided in the chart below (*excluding* maintenance outages, force majeure, and outages that result from any Customer technology issues).

Availability Warranty	Credit
98%	3% of monthly fee for each full hour of an outage (beyond the warranty)

Maximum amount of the credit is 100% of the fee for such month.

Availability Warranty	Credit
- 99.5 - 95% =	10% of monthly fee.
- 94.99 - 90% =	25% of monthly fee.
- Less than 90% =	50% of monthly fee.

Maximum amount of the credit is 100% of the fee for such month.

- c. **Limited Remedy.** The Service may be interrupted or contain an error. Customer's exclusive remedy and JAS' sole obligation for its failure to meet the warranty in (b) above will be for JAS to provide a credit for the applicable month, as provided in the chart above (if this agreement is not renewed, then a refund), for the month; provided that Customer notifies JAS of such breach within 30 days of the end of that month.
- d. **Disclaimer.** JAS disclaims all other warranties, including, without limitation, the implied warranties of merchantability, title and fitness for a particular purpose. While JAS takes reasonable physical, technical and administrative measures to secure the Service, JAS does not guarantee that the Service cannot be compromised. Customer understands that the Service may not be error free, and use may be interrupted.

- e. **NO LEGAL ADVICE.** JAS has designed the service BASED on INFORMATION that it believes TO BE accurate AND RELIABLE, HOWEVER JAS AND THE SERVICE DOES NOT PROVIDE ANY TYPE OF LEGAL ADVICE. CUSTOMER SHOULD CONTACT AN ATTORNEY TO SEEK LEGAL ADVICE, WHICH SHOULD BE BASED ON THE SPECIFIC FACTS AND THE LAW APPLICABLE TO CUSTOMER'S SITUATION.
4. **Payment.** Customer must pay all fees as specified on the order, but if not specified then within 30 days of receipt of an invoice. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.
5. **MUTUAL CONFIDENTIALITY.**
- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). JAS' Confidential Information includes without limitation the Service, and App and Documentation, (including without limitation the Service user interface design and layout, and pricing information).
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.
6. **JAS PROPERTY.**
- a. **Reservation of Rights.** The software, workflow processes, user interface, designs, know-how, App and Documentation, and other technologies provided by JAS as part of the Service are the proprietary property of JAS and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with JAS. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or App and Documentation. JAS reserves all rights unless expressly granted in this agreement.

- b. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or use it in a service provider capacity; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service or the App and Documentation; or (vi) access the Service or use the App and Documentation to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

- c. **App and Documentation.** The mobile application provided by JAS as part of the Service, and the Service documentation, sample data, marketing materials, training material and other material provided through the Service or by JAS (**App and Documentation**) are licensed to Customer as follows: JAS grants Customer a non-exclusive, non-transferable license during the term of this agreement, to use such App and Documentation, solely in connection with the Service.

7. **TERM and Termination.**

- a. **Term.** This agreement continues until all orders have terminated.

- b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured.

- c. **Return JAS Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay JAS for any unpaid amounts, and destroy or return all property of JAS. Upon JAS's request, Customer will confirm in writing its compliance with this destruction.

- d. **Suspension for Violations of Law.** JAS may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. JAS will attempt to contact Customer in advance.

8. **LIABILITY LIMIT.**

- a. **Exclusion of indirect Damages.** JAS is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, compliance costs, legal penalties, loss of data, records or information, or lost profits).

- b. **total limit on Liability.** JAS' total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 6 month period prior to the event that gave rise to the liability.

9. **Customer Indemnity.** If any third-party brings a claim against JAS related to Customer's acts, omissions, data or information within the Service (other than based on the JAS Service Guarantee), Customer must defend, indemnify and hold JAS harmless from and against all damages, losses, and expenses of any kind (including reasonable legal fees and costs) related to such claim.
10. **GOVERNING Law and dispute RESOLUTION process.**
- a. **California Law.** This agreement is governed by the laws of the State of California (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement.
- b. **General Arbitration Process.** Any dispute or claim that may arise between the parties relating in any way to or arising out of this agreement, Customer's use of or access to the Services (**Claim**), must be resolved exclusively in Los Angeles County, CA, through final and binding arbitration (rather than in court) under the then current commercial or international rules of the American Arbitration Association. Any judgment on the award rendered by the arbitrator is final and may be entered in any court of competent jurisdiction. Nothing in this agreement prevents either party from seeking injunctive or equitable relief in any court of competent jurisdiction. The prevailing party in any arbitration or litigation is entitled to recover its attorneys' fees and costs from the other party.
- c. **Optional Arbitration for Claims Less than \$10,000.** Notwithstanding the foregoing, for any Claim (excluding claims for injunctive or other equitable relief) where the total amount of the award sought is less than \$10,000, the party requesting relief may choose to resolve the dispute in a more cost effective manner through binding non-appearance-based arbitration. If a party elects arbitration, they must initiate such arbitration through an established alternative dispute resolution (**ADR**) provider mutually agreed upon by the parties. The ADR provider and the parties must comply with the following rules: (i) the arbitration will be conducted by telephone, online and be solely based on written submissions, the specific manner will be chosen by the party initiating the arbitration; (ii) the arbitration will not involve any personal appearance by the parties or witnesses unless otherwise mutually agreed by the parties; and (iii) any judgment on the award rendered by the arbitrator is final and may be entered in any court of competent jurisdiction.
- d. **PROHIBITION OF CLASS AND REPRESENTATIVE ACTIONS.** EACH PARTY MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL PARTY BASIS, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE ACTION OR PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, CLASS OR REPRESENTATIVE PROCEEDING.

11. **OTHER TERMS.**

- e. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

- f. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party.

- g. **Independent Contractors.** The parties are independent contractors with respect to each other.

- h. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for force majeure events.

- i. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

- j. **No Additional Terms.** JAS rejects additional or conflicting terms of any Customer form-purchasing document.

- k. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.

- l. **Survival of Terms and no CISG.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

(JAS) last revised 9-10-2016