

JDMA WEBSITE TERMS OF USE

Last updated: 5/31/2019

These Terms of Service ("**Terms**") apply to your access to and use of the websites (collectively, the "**Website**") provided by J.D. Massey Associates, Inc. dba JDMA Inc., a California corporation ("**JDMA**," "**we**," or "**our**"). **By using our Website, you agree to these Terms, including the mandatory arbitration provision and class action waiver in Section 14. If you do not agree to these Terms, do not use our Website.**

We may supply different or additional terms in relation to some of our other products and services, and those different or additional terms become part of your agreement with us if you use those products and services. If there is a conflict between these Terms and the additional terms, the additional terms will control for that conflict.

We may make changes to these Terms from time to time. If we make changes, we will provide you with notice of such changes, such as by sending an email, providing a notice through our Website or updating the date at the top of these Terms. Unless we say otherwise in our notice, the amended Terms will be effective immediately, and your continued use of our Website after we provide such notice will confirm your acceptance of the changes. If you do not agree to the amended Terms, you must stop using our Website.

If you have any questions about these Terms or our Website, please contact us at press@jdmainc.com.

1. Privacy

For information about how we collect, use, share and otherwise process information about you, please see our Privacy Policy.

2. Eligibility

You must be at least 13 years of age to use our Website. If you are under 18 years of age (or the age of legal majority where you live), you may use our Website only under the supervision of a parent or legal guardian who agrees to be bound by these Terms. If you are a parent or legal guardian of a user under the age of 18 (or the age of legal majority), you agree to be fully responsible for the acts or omissions of such user in relation to our Website. If you use our Website on behalf of another person or entity, (a) all references to "you" throughout these Terms will include that person or entity, (b) you represent that you are authorized to accept these Terms on that person's or entity's behalf, and (c) in the event you or the person or entity violates these Terms, the person or entity agrees to be responsible to us.

3. Surveys

Our Website may allow you and other users to access surveys ("**Surveys**") hosted by JDMA. Your ability to access and complete Surveys may be require or be subject to an additional

agreement between you and JDMA. All Surveys are the confidential information of JDMA, and you will not disclose them to any third party. If you are accessing Surveys on behalf of your employer, your employer's ability or right to allow your access is governed by a separate **"Customer Agreement."**

Any and all content you provide when answering Surveys is the property of JDMA. JDMA may share your responses with your employer in an anonymized and aggregated format, consistent with the Customer Agreement or other JDMA policies. JDMA may also use your aggregated and anonymized responses in public and academic studies, benchmark analysis, and other products and services.

4. Prohibited Conduct and Content

You will not violate any applicable law, contract, intellectual property right or other third-party right or commit a tort, and you are solely responsible for your conduct while using our Website. You will not:

- Engage in any harassing, threatening, intimidating, predatory or stalking conduct;
- Use or attempt to use another user's unique survey URL without authorization from that user and JDMA;
- Impersonate or post on behalf of any person or entity or otherwise misrepresent your affiliation with a person or entity;
- Sell, resell or commercially use our Website;
- Copy, reproduce, distribute, publicly perform or publicly display all or portions of our Website, except as expressly permitted by us or our licensors;
- Modify our Website, remove any proprietary rights notices or markings, or otherwise make any derivative works based upon our Website;
- Use our Website other than for their intended purpose and in any manner that could interfere with, disrupt, negatively affect or inhibit other users from fully enjoying our Website or that could damage, disable, overburden or impair the functioning of our Website in any manner;
- Reverse engineer any aspect of our Website or do anything that might discover source code or bypass or circumvent measures employed to prevent or limit access to any part of our Website;
- Use any data mining, robots or similar data gathering or extraction methods designed to scrape or extract data from our Website;
- Develop or use any applications that interact with our Website without our prior written consent;

- Send, distribute or post spam, unsolicited or bulk commercial electronic communications, chain letters, or pyramid schemes;
- Bypass or ignore instructions contained in our robots.txt file; or
- Use our Website for any illegal or unauthorized purpose, or engage in, encourage or promote any activity that violates these Terms.

Enforcement of this Section 4 is solely at JDMA's discretion, and failure to enforce this section in some instances does not constitute a waiver of our right to enforce it in other instances. In addition, this Section 4 does not create any private right of action on the part of any third party or any reasonable expectation that the Website will not contain any content that is prohibited by such rules.

5. Ownership; Limited License

The Website, including the text, graphics, images, photographs, videos, illustrations and other content contained therein, are owned by JDMA or our licensors and are protected under both United States and foreign laws. Except as explicitly stated in these Terms, all rights in and to the Website are reserved by us or our licensors. Subject to your compliance with these Terms, you are hereby granted a limited, nonexclusive, nontransferable, non-sublicensable, revocable license to access and use our Website. Any use of the Website other than as specifically authorized herein, without our prior written permission, is strictly prohibited, will terminate the license granted herein, and violate our intellectual property rights.

6. Trademarks and Company Names

J.D. Massey Associates, Inc. and our logos, our product or service names, our slogans and the look and feel of the Website are the property of JDMA and may not be copied, imitated or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Website are the property of their respective owners. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation by us.

7. Feedback

You may voluntarily post, submit or otherwise communicate to us any questions, comments, suggestions, ideas, original or creative materials or other information about JDMA or our Website (collectively, "**Feedback**"). You understand that we may use such Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you, including, without limitation, to develop, copy, publish, or improve the Feedback in JDMA's sole discretion. You understand that JDMA may treat Feedback as nonconfidential.

8. Third-Party Content

We may provide information about third-party products, services, activities or events, or we may allow third parties to make their content and information available on or through the Website (collectively, "**Third-Party Content**"). We provide Third-Party Content as a service to those interested in such content. Your dealings or correspondence with third parties and your use of or interaction with any Third-Party Content are solely between you and the third party. JDMA does not control or endorse, and makes no representations or warranties regarding, any Third-Party Content, and your access to and use of such Third-Party Content is at your own risk.

9. Indemnification

To the fullest extent permitted by applicable law, you will indemnify, defend and hold harmless JDMA and our officers, directors, agents, partners and employees (individually and collectively, the "**JDMA Parties**") from and against any losses, liabilities, claims, demands, damages, expenses or costs ("**Claims**") arising out of or related to (a) your access to or use of the Website; (b) your Feedback; (c) your violation of these Terms; (d) your violation, misappropriation or infringement of any rights of another (including intellectual property rights or privacy rights); or (e) your conduct in connection with the Website. You agree to promptly notify JDMA Parties of any third-party Claims, cooperate with JDMA Parties in defending such Claims and pay all fees, costs and expenses associated with defending such Claims (including, but not limited to, attorneys' fees). You also agree that the JDMA Parties will have control of the defense or settlement, at JDMA's sole option, of any third-party Claims. This indemnity is in addition to, and not in lieu of, any other indemnities set forth in a written agreement between you and JDMA or the other JDMA Parties.

10. Disclaimers

Your use of our Website is at your sole risk. Except as otherwise provided in a writing by us, our Website and any content therein are provided "as is" and "as available" without warranties of any kind, either express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement. In addition, JDMA does not represent or warrant that our Website are accurate, complete, reliable, current or error-free. While JDMA attempts to make your use of our Website and any content therein safe, we cannot and do not represent or warrant that our Website or servers are free of viruses or other harmful components. You assume the entire risk as to the quality and performance of the Website.

11. Limitation of Liability

To the fullest extent permitted by applicable law, JDMA and the other JDMA Parties will not be liable to you under any theory of liability—whether based in contract, tort, negligence, strict liability, warranty, or otherwise—for any indirect, consequential, exemplary, incidental, punitive or special damages or lost profits, even if JDMA or the other JDMA Parties have been advised of the possibility of such damages.

The total liability of JDMA and the other JDMA Parties for any claim arising out of or relating to these Terms or our Website, regardless of the form of the action, is limited to \$100.

The limitations set forth in this Section 11 will not limit or exclude liability for the gross negligence, fraud or intentional misconduct of JDMA or the other JDMA Parties or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

12. Release

To the fullest extent permitted by applicable law, you release JDMA and the other JDMA Parties from responsibility, liability, claims, demands and/or damages (actual and consequential) of every kind and nature, known and unknown (including, but not limited to, claims of negligence), arising out of or related to disputes between users and the acts or omissions of third parties. If you are a consumer who resides in California, you hereby waive your rights under California Civil Code § 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

13. Transfer and Processing Data

In order for us to provide our Website, you agree that we may process, transfer and store information about you in the United States and other countries, where you may not have the same rights and protections as you do under local law.

14. Dispute Resolution; Binding Arbitration

Please read the following section carefully because it requires you to arbitrate certain disputes and claims with JDMA and limits the manner in which you can seek relief from us, unless you opt out of arbitration by following the instructions set forth below. No class or representative actions or arbitrations are allowed under this arbitration agreement. In addition, arbitration precludes you from suing in court or having a jury trial.

No Representative Actions. You and JDMA agree that any dispute arising out of or related to these Terms or our Website is personal to you and JDMA and that any dispute will be resolved solely through individual action, and will not be brought as a class arbitration, class action or any other type of representative proceeding.

Arbitration of Disputes. Except for small claims disputes in which you or JDMA seeks to bring an individual action in small claims court located in the county of your billing address or disputes in which you or JDMA seeks injunctive or other equitable relief for the alleged unlawful use of intellectual property, **you and JDMA waive your rights to a jury trial and to**

have any dispute arising out of or related to these Terms or our Website resolved in court. Instead, for any dispute or claim that you have against JDMA or relating in any way to the Website, you agree to first contact JDMA and attempt to resolve the claim informally by sending a written notice of your claim ("**Notice**") to JDMA by email at press@jdmainc.com or by certified mail addressed to 45 Rockefeller Plaza, 20th Floor, New York, NY 10111. The Notice must (a) include your name, residence address, email address, and telephone number; (b) describe the nature and basis of the claim; and (c) set forth the specific relief sought. Our notice to you will be similar in form to that described above. If you and JDMA cannot reach an agreement to resolve the claim within 30 days after such Notice is received, then either party may submit the dispute to binding arbitration administered by JAMS or, under the limited circumstances set forth above, in court. All disputes submitted to JAMS will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in New York County, New York, in accordance with the JAMS Streamlined Arbitration Rules and Procedures ("**JAMS Rules**"). The most recent version of the JAMS Rules are available on the [JAMS website](#) and are hereby incorporated by reference. You either acknowledge and agree that you have read and understand the JAMS Rules or waive your opportunity to read the JAMS Rules and waive any claim that the JAMS Rules are unfair or should not apply for any reason.

You and JDMA agree that these Terms affect interstate commerce and that the enforceability of this Section 14 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* (the "**FAA**"), to the maximum extent permitted by applicable law. As limited by the FAA, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

The arbitrator, JDMA, and you will maintain the confidentiality of any arbitration proceedings, judgments and awards, including, but not limited to, all information gathered, prepared and presented for purposes of the arbitration or related to the dispute(s) therein. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply to the extent that disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy or in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

You and JDMA agree that for any arbitration you initiate, you will pay the filing fee and JDMA will pay the remaining JAMS fees and costs. For any arbitration initiated by Company, JDMA will pay all JAMS fees and costs. You and JDMA agree that the state or federal courts of the State of New York and the United States sitting in New York County, New York have exclusive jurisdiction over any appeals and the enforcement of an arbitration award.

Any claim arising out of or related to these Terms or our Website must be filed within one year after such claim arose; otherwise, the claim is permanently barred, which means that you and JDMA will not have the right to assert the claim.

You have the right to opt out of binding arbitration within 30 days of the date you first accepted the terms of this Section 14 by sending an email to press@jdmainc.com. In order to be effective, the opt-out notice must include your full name and address and clearly indicate your intent to opt out of binding arbitration. By opting out of binding arbitration, you are agreeing to resolve disputes in accordance with Section 15.

If any portion of this Section 14 is found to be unenforceable or unlawful for any reason, (a) the unenforceable or unlawful provision shall be severed from these Terms; (b) severance of the unenforceable or unlawful provision shall have no impact whatsoever on the remainder of this Section 14 or the parties' ability to compel arbitration of any remaining claims on an individual basis pursuant to this Section 14; and (c) to the extent that any claims must therefore proceed on a class, collective, consolidated, or representative basis, such claims must be litigated in a civil court of competent jurisdiction and not in arbitration, and the parties agree that litigation of those claims shall be stayed pending the outcome of any individual claims in arbitration. Further, if any part of this Section 14 is found to prohibit an individual claim seeking public injunctive relief, that provision will have no effect to the extent such relief is allowed to be sought out of arbitration, and the remainder of this Section 14 will be enforceable.

15. Governing Law and Venue

Any dispute arising from these Terms and your use of the Website will be governed by and construed and enforced in accordance with the laws of New York, except to the extent preempted by U.S. federal law, without regard to conflict of law rules or principles (whether of New York or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. Any dispute between the parties that is not subject to arbitration or cannot be heard in small claims court will be resolved in the state or federal courts of New York and the United States, respectively, sitting in New York County, New York.

16. Modifying and Terminating our Website

We reserve the right to modify our Website or to suspend or stop providing all or portions of our Website at any time. You also have the right to stop using our Website at any time. We are not responsible for any loss or harm related to your inability to access or use our Website.

17. Severability

If any provision or part of a provision of these Terms is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from these Terms and does not affect the validity and enforceability of any remaining provisions.

18. Miscellaneous

The failure of JDMA to exercise or enforce any right or provision of these Terms will not operate as a waiver of such right or provision. The section titles in these Terms are for convenience only and have no legal or contractual effect. Except as otherwise provided herein, these Terms are intended solely for the benefit of the parties and are not intended to confer third-party beneficiary rights upon any other person or entity. You agree that communications and transactions between us may be conducted electronically. Under California Civil Code Section 1789.3, California consumers are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at 1 (800) 952-5210.