

Terms of Use for Nelson Brothers' Services

Effective Date: December 10, 2018

1. Introduction

The following Terms of Service (“Terms”) set out the relationship between you and Nelson Brothers, Inc. its affiliates, and subsidiaries (collectively “Nelson Brothers”) regarding your use of any of our websites, mobile applications, or related services (“Service” or “Services”).

Your use of our Services is also subject to Nelson Brothers’ Privacy Policy [<https://www.nelsonbrothers.com/privacy/>]. Throughout these Terms, “us”, “our”, and “we” refers to Nelson Brothers; and “you” or “user” refers to you, and anyone who uses, downloads, visits, purchases from, or subscribes to any of Nelson Brothers’ Services.

Your access to our Services is subject to the Terms outlined herein and subject to change, suspension, modification, or discontinuation at any time. Any new features, functions, or tools that are added to a Service shall be also subject to these Terms.

Nelson Brothers is willing to license the Services to you only on the condition that you accept all of the provisions contained in these Terms and within our Privacy Policy. By downloading, installing, or using any of our Services, you acknowledge and agree that you have read and understand our Terms and Privacy Policy and accept them in their entirety.

2. Modification of These Terms

Nelson Brothers reserves the right to modify and/or change these Terms at any time and without prior notice by posting updates and changes to www.nelsonbrothers.com or any related Service. By continuing to use the Services after Nelson Brothers has posted a modification of these Terms, you agree to be bound by the modified Terms. You are advised to review these Terms from time to time for any updates or changes that may impact you. If the modified Terms are not acceptable to you, your only recourse is to uninstall or discontinue using the Services. This Agreement will also govern any software upgrades and/or updates provided by Nelson Brothers for any Service, unless such upgrades and/or updates are accompanied by a separate license, in which case the terms of that separate license will apply.

3. License to Software and Use

Conditioned upon your compliance with these Terms, Nelson Brothers hereby grants to you a limited, reversible, non-exclusive, non-sublicensable, non-transferable, non-assignable license to install and use the executable form of the Services. Nelson Brothers reserves all rights in the Services not expressly granted to you in these Terms. Nelson Brothers reserves the right to revoke the license at any time and without prior notice.

With respect to any Third Party Software that may be incorporated with or into the Services, you acknowledge and agree that your use of such Third Party Software shall also be subject to its respective usage and privacy terms.

If such Service is an application, you may uninstall it by using the standard uninstall procedures offered by your device's operating system.

You may not use the Services in any manner that could: (i) damage, disable, overburden, or impair the Services (or any server or networks connected to them), or (ii) interfere with any third party's use and/or enjoyment of the Services (or any server or networks connected to them).

4. License Restrictions

Except as expressly specified in these Terms, you may not: (a) copy or modify the Services; (b) transfer, sublicense, lease, lend, rent, or otherwise distribute the Services to any third party; or (c) use the Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms. You acknowledge and agree that portions of the Services, including, without limitation, the source code and the specific design and structure of individual modules or programs, constitute or contain trade secrets of Nelson Brothers and its licensors, if any. Accordingly, you agree not to disassemble, decompile, or otherwise reverse engineer any components of the Services provided in object code, or permit or authorize a third party to do so, except to the extent such activities are expressly permitted by law notwithstanding this prohibition.

5. Updates

Nelson Brothers is not obligated to maintain or support the Services. However, the Services may automatically download and install updates provided by Nelson Brothers, from time to time. Such updates are designed to improve, enhance and further develop the experience of the Services and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates (and permit Nelson Brothers to deliver these to you) as part of your use of the Services. If these updates change or modify our collection of your personal information, we will notify you prior to installation.

6. Proprietary Rights

The Services are licensed, not sold to you. You acknowledge and understand that Nelson Brothers owns all right, title and interest in and to the Services, including without limitation all intellectual property rights therein. The Services are protected by copyright, trademark, patent, other statutory and common law, and international treaties. You will not delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Services as delivered to you.

7. Privacy

Our Privacy Policy [<https://www.nelsonbrothers.com/privacy/>] contains information about our data protection practices.

8. Your Obligations

You hereby acknowledge and agree to only use the Services as permitted in these Terms. You agree to comply with all applicable laws, rules and regulations when using the Services. You will

not use the Services to infringe anyone's rights, including, without limitation, any intellectual property rights of any person or entity.

You agree that you are solely responsible for your use of the Services, any breach of your obligations under these Terms, and for the consequences of any such breach.

9. Export Laws

You agree to comply fully with all U.S. export laws and regulations to ensure that neither the Services 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. Furthermore, you agree you will not export nor re-export the Services nor any technical data related thereto nor any direct product thereof to any U.S. embargoed country.

By downloading and using the Services, you further represent and warrant that: (a) 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 (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

10. Disclaimer of Warranties

THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY OF ANY KIND. NELSON BROTHERS DISCLAIMS ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM NELSON BROTHERS OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT. NELSON BROTHERS DOES NOT REPRESENT OR WARRANT THAT: (I) THE SERVICES WILL MEET YOUR REQUIREMENTS OR WILL BE ERROR FREE OR THAT ANY ERRORS WILL BE CORRECTED; (II) THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED; OR (III) THE ACCURACY, TIMELINESS, COMPLETENESS, OR ADEQUACY OF THE SERVICES AND ANY DATA ACCESSED THEREFROM. INFORMATION PROVIDED THROUGH THE SERVICES MAY BE DELAYED, INACCURATE, OR CONTAIN ERRORS OR OMISSIONS, AND NELSON BROTHERS WILL HAVE NO LIABILITY WITH RESPECT THERETO. NELSON BROTHERS MAY CHANGE OR DISCONTINUE ANY ASPECT OR FEATURE OF THE SERVICES OR THE USE OF ALL OR ANY FEATURES OR TECHNOLOGY IN THE SERVICES AT ANY TIME WITHOUT PRIOR NOTICE TO YOU. YOUR ONLY RIGHT OR REMEDY WITH RESPECT TO ANY PROBLEMS OR DISSATISFACTION WITH THE SERVICES IS TO UNINSTALL AND CEASE USE OF THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU.

11. Limitation of Liability

IN NO EVENT WILL NELSON BROTHERS, ITS AFFILIATED ENTITIES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AUTHORIZED AGENTS BE LIABLE TO YOU FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOST DATA, LOST PROFITS, LOSS OF GOODWILL, LOST REVENUE, SERVICE INTERRUPTION, COMPUTER DAMAGE OR SYSTEM FAILURE, OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR THE INSTALLATION OR USE OF OR INABILITY TO USE THE SERVICES UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT OR TORT (INCLUDING PRODUCTS LIABILITY, STRICT LIABILITY AND NEGLIGENCE), AND WHETHER OR NOT NELSON BROTHERS IS OR SHOULD HAVE BEEN AWARE OR ADVISED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY STATED HEREIN. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL NELSON BROTHERS' AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THESE TERMS, TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, EXCEED THE AMOUNT PAID, IF ANY, BY YOU FOR THE SERVICES. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY, SUCH AS FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

IN ADDITION, YOU ACKNOWLEDGE AND AGREE THAT, TO THE EXTENT ANY SERVICES MAY RELATE TO THE ANALYSIS OF CERTAIN BLASTING ACTIVITIES, YOU WILL NOT RELY ON THE SERVICES IN CONNECTION, IN ANY WAY, WITH THE DETONATION OF BLASTING AGENTS, EXPLOSIVES, OR EXPLOSIVES ACCESSORIES. IN NO EVENT WILL NELSON BROTHERS, ITS AFFILIATED ENTITIES OR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR AUTHORIZED AGENTS BE LIABLE TO YOU FOR SUCH USE. THE APPLICATION AND SERVICES DO NOT TAKE INTO ACCOUNT LOCAL CONDITIONS OR SURROUNDINGS. DETONATION OF EXPLOSIVES SHOULD BE CONDUCTED ONLY BY A LICENSED BLASTER AFTER INDEPENDENT ANALYSIS OF ALL LOCAL CONDITIONS AND SURROUNDINGS.

12. Indemnity

To the maximum extent permitted by law, you agree to defend, indemnify and hold Nelson Brothers harmless from and against any and all claims, suits, losses, liability, costs or expenses (including but not limited to reasonable attorneys' fees) arising from or incurred as a result of your use of the Services, including your downloading, installation, or use of the Services, or your violation of these Terms and further including claims alleging negligence, wantonness or other legally culpable conduct against Nelson.

13. Applicable Law

These Terms shall be governed by and interpreted under the laws of the State Alabama, without regard to its conflicts of laws provisions.

14. Any controversy or claim arising out of or relating to the use of the Services, these Terms, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Claims shall be heard by a single arbitrator. The place of arbitration shall be Birmingham, Alabama. The arbitration shall be governed by the laws of the State of Alabama.

15. Term and Termination

Your license to use the Services under these Terms shall continue until it is terminated by either party. You may terminate these Terms at any time, by discontinuing the use of all or any of the Services. These Terms and the license granted to you under these Terms will terminate automatically if you breach any term of these Terms. Upon termination, you must promptly destroy and/or delete all copies of the Services in your possession or control, if applicable. The provisions of the Terms that, by their nature, survive termination or expiration shall survive.

16. Miscellaneous

(a) These Terms and all the policies referenced herein constitute the entire agreement between Nelson Brothers and you concerning the subject matter hereof.

(b) The section titles in these Terms are provided solely for convenience and have no legal or contractual significance.

(c) The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

(d) If for any reason a court of competent jurisdiction finds any provision of these Terms or portion thereof, to be unenforceable, that provision of these Terms shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of these Terms shall continue in full force and effect.

(e) Except as required by law, the controlling language of these Terms is English. In the event of inconsistency or discrepancy between the English version and any other language version, the English language version shall prevail.

(f) Nothing in these Terms will be construed as creating a joint venture, partnership, employment or agency relationship between you and Nelson Brothers, and you do not have any authority to create any obligation or make any representation on Nelson Brothers' behalf.

17. Third Party Beneficiaries

You acknowledge that third party application marketplaces may be third party beneficiaries of these Terms and upon your acceptance of these Terms such stores or marketplaces may have the right to enforce these Terms against you as a third party beneficiary. You further acknowledge and agree that such parties are not parties to these Terms other than as third party beneficiaries and are not responsible for providing maintenance and support services with respect to the Services.

17.1 Apple

In addition to the terms above, when downloading Services from the App Store, you agree to the following:

(a) These Terms constitute an agreement between you and Nelson Brothers only and not with Apple. Apple does not assume any responsibility for the App, but is entitled to raise claims against you to the extent Apple or its subsidiaries are beneficiaries of any Terms you breach.

(b) Any Services available through the App Store may only be used on iOS-devices that are owned or operated by you and in accordance with the App Store EULA.

(c) Apple does not assume any responsibility for the review, defense, settlement or satisfaction of claims resulting from the infringement of third party intellectual property rights.

(d) Apple is not responsible for addressing any of the following claims related to the Services: (i) product liability claims; (ii) claims on the basis of assertion that the App is in breach of legal or regulatory provisions; and (iii) consumer protection claims, privacy claims, or claims based on similar laws and regulations.

(e) If a Service provided through the App Store does not satisfy an applicable warranty, you are entitled to inform Apple, so that Apple may reimburse you the purchase price, if applicable. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to any Service provided through the App Store.

18. Contact Information

If you have any questions about the Services, please contact us using the information provided below:

nb.priv.use@nelbro.com