

Portland Marketing Analytics, LLC
533 Congress Street
Portland, Maine 04101
(800) 917-9983

User Agreement

This User Agreement (the "Agreement") describes the terms and conditions pursuant to which Portland Marketing Analytics, LLC ("PortMA") will provide the entity on whose behalf you are accepting this Agreement ("Client") access to the specific content, materials, resources, products and services (collectively, the "Service") available through our website at www.portma.com (the "Website") and for which Client has purchased a license. If Client does not agree to the terms and conditions of this Agreement, then Client is not authorized to access the Service.

This Agreement is a contract between Client and PortMA and applies to Client's and its Users' (defined below) access to and use of the Service, including the ability to view, listen to, search and download the content, materials, resources, products and services included in the Service. PortMA reserves the right to discontinue Client's access to the Service for non-compliance with this Agreement. By accessing or using the Service, Client agrees to be bound by all of the terms and conditions of this Agreement.

1. **Registration and Account Creation.** As part of the registration and account creation process required to obtain access to the Service, Client will complete a User Registration Form, including designation of a Username. Client will provide PortMA with certain registration information, all of which must be accurate and complete. Upon submission of the registration information, an initial password will be auto-generated, which Client may later change to a custom password. In either case, Client will be solely responsible for maintaining the confidentiality of its password and for all usage or activity on Client's PortMA account. Usernames and passwords may not be shared with anyone other than Users, and Client is prohibited from allowing others outside of its organization to gain access to the Service through Client's account. PortMA reserves the right, from time to time, to audit Client's account to confirm that Client is using it in accordance with this Agreement. Except as otherwise provided in Section 3 of this Agreement, Client's use of the Service for the benefit of others outside of Client's organization will result in (a) additional charges to Client, and (b) may also, at PortMA's option, result in immediate termination of Client's access to the Service. The foregoing shall be in addition to, and not in lieu of, all other remedies available to PortMA.

2. **License; Unauthorized Use.** Subject to the terms, conditions and restrictions of this Agreement, PortMA grants to Client and Client hereby accepts from PortMA a limited, non-exclusive and non-transferable license to access and use those portions of the Service specified in Client's User Registration Form and for which Client has paid PortMA the applicable fees. Such license entitles any Client employees authorized by Client ("Users") to access and use the Service during the access period paid for by Client. Client agrees that it is responsible for ensuring that any Users' access to and use of the Service is in accordance with the terms and conditions of this Agreement. The rights granted to Client herein are subject to all of the following agreements and restrictions: (i) Client shall not license, sell, rent, lease, transfer, assign, distribute, display, host, or outsource the Service to or for any third party; (ii) except as otherwise provided in Section 3 of this Agreement, Client shall not disclose or make the Service or any portion thereof available to any third party; (iii) except as otherwise provided in Section 3 of this Agreement, Client shall not modify, alter or creative derivative works of any part of the Service; (iv) Client shall not access the Service in order to build a similar or competitive product or service; (v) except as otherwise provided in Section 3 of this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means, including, but not limited to, electronic, mechanical, photocopying, recording or other means; (vi) Client shall not remove, alter, cover or obfuscate any copyright notice or other proprietary rights notice placed in or on, or displayed by, any portion of the Service; and (vii) Client agrees to make every reasonable effort to prevent unauthorized

employees or third parties from accessing or using the Service. Client agrees to inform PortMA promptly upon Client's knowledge of any actual or potential unauthorized access to, or use of, any portion of the Service. Failure to comply with this Section 2 or use of the Service in any manner that is not expressly permitted in this Agreement will result in an immediate and automatic termination of Client's license rights and will make available to PortMA all other legal and equitable remedies, all of which are hereby expressly reserved by PortMA.

3. **Distribution of Certain Content.** PortMA hereby authorizes Client to provide to or publish for its customers any benchmarking data or other materials included in the Service (as provided by PortMA or as incorporated into separate Client materials), provided that all such uses of benchmarking data or other PortMA materials must contain the following attribution in a footnote: "Powered by PortMA".

4. **Payment.** In exchange for Client's and its Users' access to and use of the Service, Client agrees to pay to PortMA, within ten (10) days of the date of the applicable invoice, the charges specified on PortMA's invoice for those portions of the Service licensed by Client. Client acknowledges that it is responsible for payment for all portions of the Service, including applicable taxes, licensed by Client. The rates applicable to the Service may be adjusted by PortMA from time to time, as posted on the Website.

5. **Modifications.** PortMA reserves the right to modify or discontinue the Service (or any part thereof) with notice to Client. PortMA shall not be liable to Client or any other party for any modification or discontinuance of the Service (or any part thereof). No refunds are available to Client in respect of any discontinued portion of the Service if Users have already accessed such portion of the Service.

6. **Proprietary Rights.** The Service and all intellectual property rights therein are the sole and exclusive property of PortMA and Client has no rights in the foregoing except the limited license rights expressly granted by this Agreement. Client acknowledges and agrees that the Service, and all portions thereof, derives independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use and has been, and continues to be, the subject of efforts that are reasonable under the circumstances to maintain its secrecy. Client further acknowledges and agrees that the Service, and all portions thereof, constitutes a "trade secret" of PortMA as such term is defined in the Maine Uniform Trade Secrets Act at 10 M.R.S.A. § 1541, and hereby agrees that Client shall maintain the Service, and all portions thereof, in the strictest of confidence and protect its confidentiality in the same manner Client would protect its own trade secrets. Without in any way limiting the foregoing, Client agrees that it: (a) will disclose the content of the Service only to Users that have signed a confidentiality agreement with Client that is adequate to fully protect the secrecy of the content of the Service; (b) will store or otherwise maintain the content of the Service (if provided to Client in tangible form) within a secure area that prevents unauthorized access to such content; and (c) will not disclose the content of the Service to any third party without the prior written consent of PortMA in each case. The foregoing obligations are subject to Client's rights under Section 3 of this Agreement. Client will promptly notify PortMA if Client learns, or has reasonable grounds to suspect, that the content of the Service (or any portion thereof) has been misappropriated or disclosed without authorization, or the secrecy of the content of the Service has otherwise been compromised. Client will be liable to PortMA for any non-compliance with this Section 5 by its Users or other personnel.

7. **Disclaimer of Warranty.** CLIENT UNDERSTANDS AND AGREES THAT CLIENT'S USE OF THE SERVICE AND THE WEBSITE BY WHICH IT IS DELIVERED IS AT CLIENT'S SOLE RISK. THE SERVICE AND THE WEBSITE BY WHICH IT IS DELIVERED ARE PROVIDED ON AN "AS IS," "WHERE IS" AND "AS AVAILABLE" BASIS. TO THE FULLEST EXTENT PERMITTED BY LAW, PORTMA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, THE CONTENT CONTAINED THEREIN, THE WEBSITE BY WHICH IT IS DELIVERED, AND ANY OTHER MATTER UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED

WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

8. **Limitation of Liability.** CLIENT EXPRESSLY UNDERSTANDS AND AGREES THAT PORTMA'S (INCLUDING, WITHOUT LIMITATION, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY PARTY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH PORTMA) CUMULATIVE LIABILITY FOR ANY LOSSES, DAMAGES OR OTHER LIABILITY SUFFERED BY CLIENT, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY THEORY, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID TO PORTMA BY CLIENT UNDER THIS AGREEMENT IN THE SIX (6) MONTHS IMMEDIATELY PRECEDING THE EVENT THAT CAUSED SUCH LOSS, DAMAGE OR LIABILITY. IN NO EVENT SHALL PORTMA (INCLUDING, WITHOUT LIMITATION, ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, AGENTS AND REPRESENTATIVES AND ANY PARTY CONTROLLING, CONTROLLED BY OR UNDER COMMON CONTROL WITH PORTMA) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SIMILAR DAMAGES, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING TORT CLAIMS OR LIABILITY FOR DAMAGES TO CLIENT'S COMPUTER HARDWARE OR DATA), ARISING OUT OF OR IN ANY MANNER CONNECTED WITH THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER OR NOT PORTMA HAS BEEN ADVISED OF, OR OTHERWISE MIGHT HAVE ANTICIPATED, THE POSSIBILITY OF SUCH DAMAGES.

9. **Indemnification.** Client agrees to indemnify, defend and hold PortMA, its parent, subsidiaries, affiliates, officers, directors, managers, employees, and agents harmless from and against any and all claims, liabilities, losses, costs and expenses (including reasonable attorney's fees and costs) arising out of, based on, or in connection with Client's or its Users' breach of this Agreement.

10. **Assignment; Binding Effect.** PortMA may assign this Agreement or any of its rights or interests hereunder, or delegate any of its obligations hereunder, to (i) an affiliate or subsidiary of PortMA; or (ii) PortMA's successor pursuant to a merger, reorganization, consolidation or sale. Except as otherwise provided above, neither party may assign this Agreement or any of its rights or interests hereunder, nor delegate any obligation to be performed hereunder, without the prior written consent of the other party. Any attempted assignment or delegation in contravention of this Section shall be null and void and of no force or effect. This Agreement shall be binding upon, and shall inure to benefit of, the legal successors and permitted assigns of the parties.

11. **Entire Agreement.** This Agreement constitutes the complete understanding of the parties with respect to the subject matter set forth herein, and supersedes all prior or contemporaneous agreements, discussions, negotiations, promises, proposals, representations, and understandings (whether written or oral) between the parties, with regard to such subject matter.

12. **Choice of Law and Jurisdiction; Equitable Relief.**

12.1 The substantive laws of the State of Maine, United States of America, shall govern this Agreement as though this Agreement was entered into, and was to be entirely performed within, the State of Maine. All claims or disputes arising out of or in connection with this Agreement shall be heard exclusively by any of the federal or state court(s) of competent jurisdiction located in Cumberland County, Maine. To that end, each party irrevocably consents to the exclusive jurisdiction of, and venue in, such court(s), and waives any, (i) objection such party may have to any proceedings brought in any such court, (ii) claim that the proceedings have been brought in an inconvenient forum, and (iii) right to object (with respect to such proceedings) that such court does not have jurisdiction over such party.

12.2 Client acknowledges and agrees that PortMA has the right to seek injunctive relief (including preliminary and temporary relief) to protect its proprietary rights or to prevent any unauthorized use of the Service, without the need to post a bond or prove actual damages.

13. **Modification.** The terms, conditions, covenants and other provisions of this Agreement may be modified, amended, supplemented or otherwise changed only by a written instrument that specifically purports to do so and is physically executed by a duly authorized representative of each party.

14. **Severability.** If a court of competent jurisdiction declares any provision of this Agreement to be invalid, unlawful or unenforceable as drafted, the parties intend that such provision be amended and construed in a manner designed to effectuate the purposes of the provision to the fullest extent permitted by law. If such provision cannot be so amended and construed, it shall be severed, and the remaining provisions shall remain unimpaired and in full force and effect to the fullest extent permitted by law.

15. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument.

16. **Waiver.** No course of dealing, failure by either party to require the strict performance of any obligation assumed by the other hereunder, or failure by either party to exercise any right or remedy to which it is entitled, shall constitute a waiver or cause a diminution of the obligations or rights provided under this Agreement. No provision of this Agreement shall be deemed to have been waived by any act or knowledge of either party, but only by a written instrument signed by a duly authorized representative of the party to be bound thereby. Waiver by either party of any default shall not constitute a waiver of any other or subsequent default.

17. **Independent Contractors.** It is expressly agreed that PortMA and Client are acting under this Agreement as independent contractors, and the relationship established under this Agreement shall not be construed as a partnership, joint venture or other form of joint enterprise; nor shall one party be considered an agent of the other. Neither party is authorized to make any representations or create any obligation or liability, expressed or implied, on behalf of the other party.

18. **Construction.** The headings of the paragraphs of this Agreement are for convenience only and shall not be a part of or affect the meaning or interpretation of this Agreement.

19. **Force Majeure.** Neither party shall be responsible or considered in breach of this Agreement for any failure or delay in the performance of any obligation of this Agreement to the extent such failure or delay is caused by acts of God, fires, explosions, labor disputes, accidents, civil disturbances, material shortages or other causes beyond its reasonable control, even if such delay or failure is foreseeable.

20. **Survival.** Any provision of this Agreement which by its nature would survive the termination or expiration of this Agreement shall do so, including, without limitation, Sections 6, 7, 8, 9 and 10.

21. **Authority.** Client represents and warrants to PortMA that the individual accepting this Agreement on Client's behalf is fully authorized to do so and, when so accepted, this Agreement will constitute a legal, valid and binding obligation of Client, enforceable against Client in accordance with its terms.