

Portland Marketing Analytics, LLC
400 Congress Street #15044
Portland, Maine 04112-5044
(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 information, concepts, know-how, techniques, methods, processes, business practices, applications, content, data, training videos, materials, resources, products and services (collectively, the “**Service**”) provided by PortMA via email (including attachments to emails), telephone, and/or in-person discussions, and 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 or use 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, download, and use the information, concepts, know-how, techniques, methods, processes, business practices, applications, content, data, videos, materials, resources, products and services included in the Service and for which Client has purchased a license. PortMA reserves the right to discontinue or terminate Client’s access to or use of the Service for non-compliance with this Agreement. By accessing or using any portion or component of 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, or PortMA will register Client manually. In either case, Client will provide PortMA with certain registration information, all of which must be accurate and complete. If Client’s license includes online access to a resource library, datamining application, or other online components of the Service, Client will be solely responsible for maintaining the confidentiality of its online username and password and for all usage or activity on Client’s online 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 any component of the Service (including any online or offline component of the Service) and, except as otherwise provided in Section 6 of this Agreement, Client will not make use of the Service for the benefit of any person or entity outside of Client’s organization. PortMA reserves the right, from time to time, to audit Client’s use of the Service to confirm that Client is using it in accordance with this Agreement. Except as otherwise provided in Section 6 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 (including all online and/or offline components of the Service). The foregoing shall be in addition to, and not in lieu of, all other remedies available to PortMA.

2. **License Purchase Levels.** Purchase of a license and subsequent access to the Service is available in three levels: (i) Single Report License; (ii) License of the Full Report Library available at the time of purchase; and (iii) Enterprise License. The most current license fees applicable to, and the content, data, videos, materials, resources, products and services included in, each license level, can be obtained by emailing PortMA directly at info@portma.com. Client will designate its license level during the registration process.

3. **Fees and Payment.**

3.1 *Fees.* Client shall pay PortMA the fees applicable to the Service license level purchased by Client, as set forth on the applicable invoice and/or online shopping cart made available at the time of purchase.

3.2 *Taxes.* All fees payable by Client under this Agreement are inclusive of taxes and similar assessments. Client is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, provincial, or local governmental or regulatory authority on any amounts payable by Client hereunder, other than any taxes imposed on PortMA's income.

3.3 *Payment.* Client shall pay all fees and applicable taxes in advance and prior to PortMA's delivery of any component of the Service to Client. Client shall make all payments hereunder in U.S. dollars. Client shall make payments to the address or account specified by PortMA in writing from time to time.

3.4 *No Deductions or Set Offs.* All amounts payable to PortMA under this Agreement (i) are non-refundable and non-cancellable and (ii) shall be paid by Client to PortMA in full without any setoff, recoupment, counterclaim, deduction, debit, or withholding for any reason.

3.5 *Client Credit Card.* If requested by PortMA, at any time while an Enterprise License is in effect, Client shall provide PortMA with a valid credit card acceptable to PortMA ("**Client Credit Card**"). In the event Client fails to pay any fees or other amounts when due hereunder and such failure continues for fifteen (15) days following written notice thereof, Client agrees that PortMA is authorized to charge the Client Credit Card for all past due amounts.

3.6 *Pricing Adjustments.* The fees applicable to the various Service license levels may be adjusted by PortMA from time to time, as available from PortMA or posted on the Pricing & Features Page or elsewhere on the Website.

4. **Term and Termination.**

4.1 *Initial Term.* The initial term of each Service license commences as of the date the Service is first accessible to Client and, unless terminated earlier pursuant to any of this Agreement's express provisions, will continue in effect for twelve (12) months from such date.

4.2 *Renewal Term.* All Service licenses will renew for additional successive twelve (12) month terms only upon Client providing written notice of renewal to PortMA and paying to PortMA the fees for the applicable renewal term.

4.3 *Termination.* In addition to any other express termination right set forth elsewhere in this Agreement:

(a) PortMA may terminate any Service license, effective on written notice to Client, if Client: (i) fails to pay any amount when due hereunder; or (ii) breaches any of its obligations under Section 5, Section 6 or Section 8; or

(b) either party may terminate any Service license, effective on written notice to the other party, if the other party breaches any material obligation in this Agreement, and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

4.4 *Effect of Termination.* Upon any expiration or termination of a Service license:

(a) all rights, licenses, and authorizations granted by PortMA to Client hereunder will immediately terminate; and

(b) Client shall immediately cease all use of the Service (including all information, concepts, know-how, techniques, methods, processes, business practices, applications, content, data, training videos, materials, resources, products and services contained in the Service) and (i) promptly destroy all documents and tangible materials containing, reflecting, incorporating, or based on any portion of the Service, (ii) permanently erase all Service content from all systems Client controls, and (iii) if requested by PortMA, certify to PortMA in a signed written instrument that it has complied with the requirements of this Section 4.4(b).

5. **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 included in Client's license purchase level 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 license 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 or any portion thereof to or for any third party; (ii) except as otherwise provided in Section 6 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 6 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 or any portion thereof in order to build a similar or competitive product or service; (v) except as otherwise provided in Section 6 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 any portion of 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 5 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.

6. **Distribution of Certain Content.** Subject to Section 8 below, PortMA hereby authorizes Client to provide to its customers ("**Client Customers**") any benchmarking data or other tangible materials included in the Service (as provided by PortMA or as incorporated into separate Client materials) ("**PortMA Materials**"), provided that all such uses of PortMA Materials must contain the following attribution in a footnote: "Powered by PortMA".

7. **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.

8. **Proprietary Rights.**

8.1 **Ownership of Service.** The Service (including all information, concepts, know-how, techniques, methods, processes, business practices, applications, content, data, videos, materials, resources, products and services included in 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. To the extent Client may gain any rights

in the Service (or any component of the Service) other than the limited license rights expressly granted by this Agreement, Client hereby assigns such rights to PortMA and agrees to execute any further documents or take any action necessary or advisable to preserve and protect PortMA's exclusive ownership interest in the Service and each component thereof. It is an express condition of this Agreement that title to, ownership of, and all intellectual property rights in the Service (including each component thereof) shall remain with PortMA and shall not transfer to Client or any third party. Nothing in this Agreement, any User Registration Form or any other document shall constitute a sale of the Service (or any component thereof) or any copies of materials included in the Service.

8.2 *Trade Secrets.* 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 disclose PortMA Materials only to Client Customers that have signed a confidentiality agreement with Client that is adequate to fully protect the secrecy of the PortMA Materials; (c) 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 (d) except as provided in subsection (b) above, will not disclose any content of the Service to any third party without the prior written consent of PortMA in each case.

8.3 *Notification.* 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 8 by its Users or other personnel.

9. **Disclaimer of Warranty.** CLIENT UNDERSTANDS AND AGREES THAT CLIENT'S USE OF THE SERVICE (INCLUDING ALL CONTENT WITHIN THE SERVICE) AND ANY WEBSITE OR OTHER MEDIUM BY WHICH IT IS DELIVERED IS AT CLIENT'S SOLE RISK. THE SERVICE (INCLUDING ALL CONTENT WITHIN THE SERVICE) AND ANY WEBSITE OR OTHER MEDIUM 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, ANY WEBSITE OR OTHER MEDIUM 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. PORTMA MAKES NO WARRANTY OF ANY KIND THAT THE SERVICE, THE CONTENT CONTAINED THEREIN, ANY WEBSITE OR OTHER MEDIUM BY WHICH IT IS DELIVERED, OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

10. **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.

11. **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, damages, costs and expenses (including reasonable attorney's fees and costs) arising out of, based on, or in connection with Client's or its Users' use of or inability to use the Service, or breach of this Agreement.

12. **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.

13. **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.

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

14.1 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.

14.2 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.

15. **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.

16. **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.

17. **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.

18. **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.

19. **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.

20. **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.

21. **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 8, 9, 10, 11 and 12.

22. **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.