

# PorterConnect Terms and Conditions

***Last Updated: June 6, 2024***

Download <https://portercap.com/wp-content/uploads/2024/06/termsandconditions.pdf>

Porter Capital Corporation or its subsidiary, Porter Billing Services LLC doing business as Porter Freight Funding or Pay4Freight (collectively referred to herein as “**Porter**,” “**we**,” or “**our**”) is providing you access to our proprietary accounting linking software (“**PorterConnect**”) to assist you in applying for commercial financial products offered by us and if applicable streamline your accessibility to our financial solutions. In particular, PorterConnect can retrieve data (the “**Data**”) from the entity or application that you use to host and compile such Data (the “**Data Host**”) to allow Porter to determine eligibility and if applicable streamline accessibility to our financing solutions. These PorterConnect Terms and Conditions (“**Terms**”) govern our use of PorterConnect, our retrieval or uploading of your Data from the Data Host, certain undertakings that you make, and certain rights that you waive in connection with such access and processing of your Data.

These Terms further provide that disputes arising between you and Porter will be resolved by binding arbitration, although you have a right to opt-out of that requirement. If you do not opt-out of that requirement as provided below, then to the fullest extent permitted under applicable law, BY ACCEPTING THESE TERMS, YOU AND PORTER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION, AND YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract. Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. Please review Section V for more detail regarding your agreement to arbitrate any disputes with Porter arising under these Terms.

## **I. TERMS AND SCOPE**

**A. Acceptance of Terms.** By completing the PorterConnect authorization process and granting PorterConnect access to the Data either directly or via the Data Host’s process, you acknowledge and agree to these Terms. If you do not agree to all of these Terms, do not complete the PorterConnect authorization process and grant PorterConnect access, and we will not be entitled to use PorterConnect to read and retrieve your Data.

**B. Our Relationship to You.** PorterConnect is a service provided by Porter to read, retrieve and upload Data from a Data Host to allow us to determine if we desire to enter into a commercial financial relationship with you and if applicable to facilitate ongoing customer support. PorterConnect simply facilitates the application process and ongoing customer support and is not a standalone service to you directly.

**C. Porter’s Use of Data.** Porter does not sell the Data provided to Porter through PorterConnect and only uses it to facilitate our decision as to whether or not to enter into a commercial financial relationship with you and if applicable to facilitate ongoing customer support. Porter simply utilizes PorterConnect to export a copy of the Data from the Data Host and import same onto Porter’s systems without in any way modifying, deleting, overwriting, or changing your Data maintained with the Data Host. Once imported, Porter shall use the imported Data to determine

whether or not Porter desires to enter into a commercial financial relationship with you and if applicable to provide ongoing customer support. Porter may also use for other commercial purposes as permitted by law, information derived or excerpted from your Data that does not contain your personal information or other information that can reasonably be used to determine your identity.

**D. Service Limitations.** Since PorterConnect is a service solely assisting Porter with your application for commercial financial products and if applicable ongoing customer support, and not to you directly, Porter undertakes no obligation to you regarding the scope, quality, uptime, or functionality of PorterConnect.

**E. Termination.** If we determine not to extend any of our commercial financial products to you or if the relationship between us and you is terminated, these Terms also end. The effects of termination include:

1. We may no longer use PorterConnect in connection with your Data.
2. We may not thereafter access the Data Host to read or retrieve any of your Data.

## **II. ACCOUNT CREDENTIALS AND ACCESSING YOUR DATA**

**A. Authorization to Access Your Data.** By using PorterConnect, you authorize Porter to read and retrieve a copy of your Data from the Data Host and import that Data onto Porter's systems to assist Porter in evaluating whether or not Porter desires to extend to you commercial financial products, and if applicable ongoing customer support.

1. Using Data Host Portals to Access Data. Certain Data Hosts require you to enable Data access for third-party applications through a portal controlled by the Data Host. For those Data Hosts, we will direct you to the Data Host's portal from PorterConnect and you must enable access to all Data you would like Porter to read and retrieve.

2. Using Credentials to Access Data. For other Data Host, Porter will use information submitted by you through PorterConnect such as account usernames, passwords, answers to security questions, and multi-factor authentication codes (collectively, "**Credentials**") to read and retrieve your Data from the Data Host.

3. Appointment as Agent. For either of the foregoing purposes, you hereby grant Porter a limited power of attorney, and you hereby appoint Porter as your true and lawful attorney-in-fact and agent, with full power of substitution and re-substitution, for you and in your name, place and stead, in any and all capacities, to access third party sites (using your Credentials, when applicable), retrieve Data, and use your Data, all as described herein, with the full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection with such activities, as fully to all intents and purposes as you might or could do in person. YOU ACKNOWLEDGE AND AGREE THAT WHEN PORTER IS READING AND RETRIEVING YOUR DATA FROM THE DATA HOST, PORTER IS ACTING AS YOUR AGENT, AND NOT AS A SERVICE PROVIDER OR OTHERWISE ON BEHALF OF THE DATA HOST. You further agree that the Data Host shall be entitled to rely on the foregoing authorization, agency and power of attorney granted by you.

**B. Your Authority.** By using PorterConnect to enable the reading and retrieval of any Data or Credentials to or from any Data Host, you represent, warrant, and agree that: (i) such reading and retrieving are permitted under applicable law; (ii) that you are of legal age and have the authority

to transfer that Data to or from the applicable Data Host and to authorize the use and transmission of that Data in accordance with these Terms; and (iii) that we have made disclosures to you regarding our use of your personal information, and that such disclosures are satisfactory and adequate for you to provide your informed consent regarding the same.

**C. Role of Data Hosts.** PorterConnect is not endorsed or sponsored by any Data Host. You agree that Porter assumes no responsibility and shall incur no liability with respect to the acts, omissions, or determinations of any Data Host. You acknowledge and agree that Porter may maintain your Data and Credentials on separate systems than those of Data Host.

### **III. LIMITATIONS OF LIABILITY**

**A. DAMAGES.** YOU AGREE THAT PORTER, THE CREATORS OF PORTERCONNECT, THE DATA HOSTS, EACH OF THEIR RESPECTIVE AFFILIATES, AND THE OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AND AGENTS OF ALL OF THE FOREGOING (COLLECTIVELY, “**PROTECTED PARTIES**”) WILL NOT BE LIABLE FOR ANY HARMS (WHICH LAWYERS AND COURTS OFTEN CALL DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, OPPORTUNITY, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES) RESULTING FROM: (I) THE USE OR THE INABILITY TO USE PORTERCONNECT; (II) UNAUTHORIZED ACCESS TO, USE, OR ALTERATION OF YOUR DATA OR CREDENTIALS; (III) THE USE, INABILITY TO USE, UNAUTHORIZED USE, PERFORMANCE OR NON-PERFORMANCE OF PORTERCONNECT; (IV) ANY FRAUDULENT ACTIVITY IN CONNECTION WITH YOUR DATA ALLEGEDLY RESULTING DIRECTLY OR INDIRECTLY FROM USE OF PORTERCONNECT OR PORTER’S RECEIPT OR USE OF YOUR CREDENTIALS OR OF YOUR DATA; OR (V) ANY OTHER MATTER RELATING TO PORTERCONNECT. THE FOREGOING LIMITATION OF LIABILITY APPLIES EVEN IF THE PROTECTED PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH HARMS.

**B. LIABILITY CAP.** WITHOUT LIMITING THE ABOVE PARAGRAPH, THE PROTECTED PARTIES’ LIABILITY TO YOU ARISING OUT OF OR RELATED TO PORTERCONNECT OR PORTER’S RECEIPT OR USE OF YOUR CREDENTIALS OR PROCESSING OF YOUR DATA WILL NOT IN ANY EVENT EXCEED \$1,000.00, EXCEPT TO THE EXTENT SET FORTH IN SECTION V BELOW.

**C. EXCLUSIONS.** SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

### **IV. DISCLAIMER**

**A. NO WARRANTIES.** PORTER, PORTERCONNECT’S CREATORS, AND THE DATA HOSTS MAKE NO WARRANTY OF ANY KIND-WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE-TO YOU REGARDING PORTERCONNECT, THE DATA OBTAINED THROUGH PORTERCONNECT, OR THE RESULTS OBTAINED BY YOU.

**B. EXCLUSIONS.** SOME JURISDICTIONS DO NOT ALLOW CERTAIN WARRANTIES TO BE DISCLAIMED. ACCORDINGLY, THE ABOVE DISCLAIMER MAY NOT APPLY TO YOU IN ALL RESPECTS.

## V. DISPUTE RESOLUTION AND ARBITRATION

**A. Generally.** In the interest of resolving disputes between you and Porter in the most expedient and cost effective manner, you and Porter agree that every dispute arising in connection with these Terms will be resolved by binding arbitration, except as otherwise provided in this Section V. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. The arbitrator shall decide all issues regarding the arbitrability of a dispute relating to Agreement, including but not limited to the scope of matters to be arbitrated and the waiver or unconscionability of arbitration. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND PORTER ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

**B. Exceptions.** Despite the provisions of Section V.A, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (b) seek injunctive relief in a court of law; or (c) to file suit in a court of law to address an intellectual property infringement claim.

**C. Arbitrator.** Any arbitration between you and Porter will be settled under the Federal Arbitration Act, and governed by the Commercial Arbitration Rules (collectively, “AAA Rules”) of the American Arbitration Association (“AAA”), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Porter.

**D. Notice; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if such other party has not provided a current physical address, then by electronic mail (the “*Notice*”). Porter’s address for Notice is: Porter Capital Corporation, 2112 1<sup>st</sup> Avenue North, Birmingham, AL, 35203. The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (the “*Demand*”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice is received, you or Porter may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Porter must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the dispute is finally resolved through arbitration in your favor, Porter will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Porter in settlement of the dispute prior to the arbitrator’s award; or (iii) \$1,000.

**E. Fees.** If you commence and prevail in an arbitration in accordance with these Terms, Porter will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in the Northern District of Alabama, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be

conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in Jefferson County, Alabama. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Porter for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**F. No Class Actions.** YOU AND PORTER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Porter agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.

**G. Modifications to this Arbitration Provision.** If Porter makes any future change to this arbitration provision, other than a change to Porter's address for Notice, you may reject the change by sending us written notice within 30 days of the change to Porter's address for Notice. In that case, Porter may immediately terminate these Terms and this arbitration provision, as in effect immediately prior to the changes you rejected, will survive.

**H. Enforceability.** If one or more provisions in this Section V are found to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Section V and this agreement generally will not be impaired thereby.

**I. Opt-out.** You may opt-out of the mutual agreement to arbitrate disputes provided in this Section V if you deliver notice to us within 60 days of initially agreeing to these Terms. To opt-out, send a written request containing your name, address, phone number, and that you are opting out of the PorterConnect arbitration provisions to our address for notices listed in Section V.D. above. If you opt-out, then the entirety of this Section V will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section VI.C. below will govern any action arising out of or related to these Terms.

## **VI. GENERAL TERMS**

**A. Assignment.** You may not assign these Terms to any other party, by operation of law or otherwise. Porter may assign these Terms to any affiliated company or to any entity that succeeds to all or substantially all of its business or assets related to PorterConnect. Porter may also assign or delegate certain of its rights and responsibilities under these Terms to independent contractors or other third parties.

**B. No Waiver.** Porter shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Porter. No delay or omission on the part of Porter in exercising any rights or remedies shall operate as a waiver of such rights or remedies

or any other rights or remedies. A waiver on any one occasion shall not be construed as a bar or waiver of any rights or remedies on future occasions.

**C. Choice of Law and Forum.** The laws of the State of Alabama govern the interpretation and performance of these Terms, without regard to any conflict of laws principles. If a lawsuit or court proceeding is permitted under these Terms, then you and Porter agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Jefferson County, Alabama for the purpose of litigating any dispute.

**D. Changes to Terms.** Porter reserves the right at our discretion to make changes to these Terms. Upon any change, Porter will post the new or different Terms on our website. You agree to accept electronic communications, links to and/or postings of any revised Terms and that such electronic communications and any links and/or postings constitute notice to you of any new or different Terms. Your continued permission of our use of PorterConnect constitutes acceptance of the changes and an agreement to be bound by these Terms, as amended. If you do not agree to the changes, you have the right to terminate our relationship with you under section I.E. hereof. If the changes are material, we may require that you re-assent to the revised Terms as a condition of your continued use.