

## PortCheck CTF Account Registration Terms and Conditions

May 20, 2022

Thanks for using the PortCheck services (including its website, and web-based portal and applications, and any other tools, products, or services provided by PortCheck that link to or reference these terms) (collectively, the “Services”). This web site is provided by PortCheck, LLC (“PortCheck”, “we”, “us”, or “our”). Below are the terms and conditions (the “Site Terms”) applicable to your access or use of any portion of the Services. You further agree to be bound by the terms and conditions of the Marine Terminal Operator Schedule, available at <https://www.wcmtoa.org/wp-content/uploads/2022/03/WCMTOA-Schedule-No.-2-Effective-2022-04-01-Revised-2022-03-29.pdf> (the “Schedule”), and all provisions and terms of the Schedule are hereby incorporated herein by reference. In the event of any conflict or inconsistency between the Site Terms and the Schedule, the Schedule shall control.

Use of the Services, constitutes agreement to be bound by all of the Site Terms, including any amendments or modifications to any of the Site Terms in effect at the time of your access or use. Please read them carefully. Our Services are very diverse, so sometimes additional terms or product requirements (including age requirements) may apply. If additional terms or conditions are available with or applicable to the relevant Services, then those additional terms become part of your agreement with us if you use those Services. You understand that your right to use or access the Services is derived solely from, and is expressly limited by, the Site Terms. PortCheck reserves the right to amend or modify any of the Site Terms from time to time. You should review all of the Site Terms upon each access or use of the Services because any changes will be binding on you. You may wish to print or save a local copy of the Site Terms for your records.

YOU ACKNOWLEDGE AND AGREE THAT THESE SITE TERMS OF SERVICE LIMIT OUR LIABILITY AND THAT YOU ARE RELEASING US FROM VARIOUS CLAIMS IN SECTION 8 AND 9 BELOW. THESE SITE TERMS ALSO CONTAIN A BINDING ARBITRATION PROVISION IN SECTION 15 THAT AFFECT YOUR RIGHTS UNDER THESE SITE TERMS WITH RESPECT TO THE SERVICES.

IF YOU DO NOT AGREE WITH ALL OF THE SITE TERMS,

DO NOT ACCESS OR USE ANY OF THE SERVICES AND EXIT THE APPLICATION IMMEDIATELY.

### **1. USING OUR SERVICES**

You must follow any policies made available to you within the Services, including our Privacy Policy at <https://www.wcmtoa.org/about>.

Don't misuse our Services. For example, don't interfere with our Services, try to access them using a method other than the interface and the instructions that we provide, or extensively or automatically copy any content from the Services (in other words, no scraping). You may use our Services only for your personal non-commercial use, and as permitted by law, including applicable export and re-export control laws and regulations. We may suspend or stop providing our Services to you if you do not comply with our terms or policies, if we are investigating suspected misconduct, or for any other reason.

## **2. SERVICES CONTENT AND INTELLECTUAL PROPERTY RIGHTS**

The Services contain information, communications, software, photos, text, video, graphics, music, sounds, images, and other material and services (the “Content”) which are or may contain proprietary information owned, controlled or licensed by or to PortCheck. The Services and its Contents are furnished to you by PortCheck and are intended for your personal and lawful use in conformity with the Site Terms. You may not use Content, except as permitted in these Site Terms, by its owner, or as otherwise permitted by law. All rights, title and interests are exclusively reserved to PortCheck. These Site Terms do not grant you the right to use any branding or logos used in our Services, including the PortCheck name and logo. Don’t remove, obscure, or alter any legal notices displayed in or along with our Services.

You acknowledge and agree that the Contents are protected by copyright, trademark and other intellectual property laws, that these rights are valid and protected in all media now existing or later developed, and that your access or use of any Content shall be governed and constrained by applicable copyright, trademark and other intellectual property laws. Further, you shall abide by all additional copyright or other notices, information or restrictions appearing in conjunction with any Content accessed on or through the Services.

Our Services may display some Content that is not our own. For example, Content belonging to our advertisers, other third parties, you, or other users (collectively, “Third Party Content”). We are not responsible for, and you waive all of our liability with respect to, Third Party Content. Third Party Content is the sole responsibility of the individual or entity that makes it available to you via the Services. We may review Third Party Content to determine whether it is illegal or violates our policies, and we may remove or refuse to display Third Party Content that we believe violates our policies or the law. But we do not generally review content beforehand, and we are not obligated to do so.

The Services and its Content are protected by copyright as a collective work and/or compilation pursuant to United States copyright laws, international conventions and other copyright laws. Except as expressly set forth in the Site Terms, you may not modify, adapt, translate, exhibit, publish, transmit, participate in the transfer or sale of, reproduce, create derivative works from, distribute, perform, display, reverse engineer, decompile or disassemble, or in any way exploit, any of the Content, software, materials or Services in whole or in part. You may download one copy of the Content (to which you have access) for your personal, noncommercial use only, but not for the purpose of or in connection with reproducing or posting the Content anywhere on the Internet or elsewhere, provided that you maintain all copyright and other notices contained in such Content. Except as permitted under the Site Terms, copying or storing of any Content for other than personal, noncommercial use is expressly prohibited without the prior written permission from PortCheck (or the copyright holder identified in the Content’s copyright or other proprietary notices). No download, copying or storing of any Content confers, conveys or otherwise transfers to you any ownership right, title or interest in or to any Content.

In connection with your use of the Services, we may send you service announcements, administrative messages, and other information. You may opt out of our marketing emails by clicking on the “unsubscribe” link in marketing e-mails. Please be aware that there may be a brief period before we are able to process your opt-out.

Some of our Services are available on mobile devices or may utilize SMS/iMessage, which may cause you to incur SMS or data charges with your wireless provider. Please be aware that we have no control over these charges, and if you do not wish to be charged, you should stop using the mobile or SMS/iMessage features (as applicable).

### **3. YOUR PORTCHECK ACCOUNT**

You may need an account in order to use the Services. If you create your own account, you agree that all registration information you give us will be accurate and current. If your account has been assigned to you by an administrator, such as your employer, different or additional terms may apply and your administrator may be able to access or disable your account. You will timely notify us of any changes to any of the foregoing information. You are responsible for controlling access to any PCs, mobile devices, or other end points that you allow to store your Services password, or on which you enable a "Remember Me" or similar functionality ("Activated Device"). Accordingly, you agree that you will be solely responsible for all activities that occur under your Services accounts, including the activities of any individual with whom you share your Services account or an Activated Device.

To protect your account, keep your password confidential. You are responsible for the activity that happens on or through your account. If you learn of any unauthorized use of your password, please contact us at [questions@portcheck.org](mailto:questions@portcheck.org).

You understand and agree that, in the course of providing you with customer support related to the Services and the maintenance of your account, PortCheck and its service providers may access your account in order to address customer support requests and related issues. By using the Services and accepting these Terms, you consent to such access to your account.

### **4. PAYMENT**

You agree to pay all amounts owed to us for the Services under any terms, policies or other written or electronic agreements we may have in place (the "Fee"). You can pay the Fee by logging into the Services with your account information. You understand and agree that your ability to avail yourself of PortCheck's Services, as well as your ability to authorize vehicles to enter the Ports of Los Angeles and Long Beach, is contingent on your full and timely payment of all Fees due, and, in the event all Fees due are not timely paid, PortCheck expressly reserves the right to suspend or terminate the provision of the Services to you, as well as your ability to authorize vehicle entries on your behalf.

Certain users may, in PortCheck's sole discretion, be eligible for a credit account ("Credit Account"). In a Credit Account, we will provide you with a monthly invoice for the Fees and you shall pay the fees within the time period specified on such invoice, but in no event in more than thirty (30) days of the invoice date. To be eligible for a Credit Account, you are required to pass a credit check. If you choose to have a Credit Account, you consent to the performance of a credit check by our service providers. You acknowledge and agree that your ability to have a Credit Account is contingent upon your passing of a credit check. PortCheck may suspend or terminate your Credit Account for any or no reason, in PortCheck's sole discretion. In the event your Credit Account is terminated, you will be required to pay Fees in advance.

We may require you to maintain valid credit card or other payment account information with us in order to receive the Services, and if so, you hereby authorize us to charge your credit card or other payment account for the Services. Your right to purchase products through the Services and to enter through the Ports is conditioned upon our receipt of payment in accordance with these Site Terms. If a payment cannot be charged to your credit card or if a charge is canceled for any reason, or if you fail to maintain valid, up-to-date payment information or to keep your payments current, we reserve the right to immediately either suspend or terminate your access and account immediately without notice, thereby terminating these Site Terms. Any failure to maintain valid, up-to-date payment information with us or to keep your payments current will constitute a material breach of these terms, for which we may suspend or terminate your access to the Services immediately without notice. Interest will be charged on all unpaid delinquent amounts at the rate of 1.5% per month or the highest rate permitted by applicable law, whichever is lesser. You agree to reimburse us for all collection agency fees, attorneys' fees and other costs we may incur to collect delinquent amounts you owe to us.

## **5. APPROPRIATE ACCESS OR USE**

You shall not access or use any of the Services or Content for any purpose other than a lawful and legitimate purpose as intended by PortCheck. Examples of prohibited access or use of the Services or Content include, but are not limited to, access or use that may directly or indirectly: (i) manipulate or alter any transaction; (ii) unauthorized alteration of any materials, data or information provided by or to another user of the Services; (iii) solicit other people's login information, credit card numbers, or other sensitive information; (iv) violate, plagiarize or infringe upon the rights of any third party, including, without limitation, copyright, trademark, privacy or publicity, contract or other personal or proprietary rights; (v) introduce to the Services any unlawful, libelous, threatening, defamatory, untrue, malicious, fraudulent, harassing, pornographic or offensive material, or material irrelevant to the legitimate access or use of the Services, or content that is hate speech or incites violence or contains nudity, graphic or gratuitous violence; (vi) submit excessive or unsolicited commercial messages or spam any users; (vii) constitute false or misleading indications of origin or statements of fact; (viii) harass, bully, slander, libel or defame any person, entity or other users; (ix) cause injury of any kind to any person or entity; (x) result in the sale or purchase of stolen property, counterfeit items, contraband, controlled substances or any other material which may be unlawful; (xi) introduce to the Services any viruses, worms or other programming routines which may disrupt or interfere with the operation of the Services; (xii) insert links to other Internet sites; (xiii) promote any unlawful activity or purpose, including, without limitation, any activity that may result in criminal or civil liability; and/or (xiv) violate any applicable laws, rules, regulations or other governmental regulations, or a third party's rights. You will take reasonable steps to ensure against the introduction of any virus, worms or other programming routines which may disrupt or interfere with the operation of the Services. You will be responsible for the accuracy and completeness of all materials, data and information you transmit through or place on the Services.

## **6. ABOUT SOFTWARE IN OUR SERVICES**

You may be required to download software (such as a mobile or desktop app) to use the Services or certain features of the Services, and the Services may enable you to access software running on our (or our vendors') servers (collectively, "Software"). You agree that we retain the ownership of all rights, title,

and interest in and to the Software. Certain Software may update automatically on your device once a new version or feature is available, and you consent to such automatic updating.

PortCheck gives you a personal, non-commercial, worldwide, royalty-free, non-assignable, and non-exclusive license to use the Software to access the Services. This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided by us, in the manner permitted by these Site Terms. You may not copy, modify, distribute, sell, or lease any part of our Services or Software, nor may you reverse engineer or attempt to extract the source code of the Services or Software, unless laws prohibit those restrictions or you have our written permission.

There may be software programs contained within certain Software that have been licensed to us by third parties. The term "Software" as used herein shall refer to this third-party software except where the term "Software" is used in the context of our ownership. The same terms and conditions, including all limitations and restrictions, set forth in these Site Terms apply to each third-party software program contained in the Software. You acknowledge and agree that any third-party components are owned by their applicable licensors. We do not make any representations or warranties about the operation or availability of such third-party software. Neither we, nor our licensors, shall be liable for any unavailability or removal of such third-party software. We are not responsible for any communications to or from such licensors, or for the collection or use of information by such licensors. You consent to the communications enabled and/or performed by such third-party software, including automatic updating of the third-party software without further notice. You agree that such third-party software licensors are intended third-party beneficiaries under these Site Terms.

## **7. MODIFYING AND TERMINATING OUR SERVICES**

We are constantly changing and improving our Services. We may add or remove functionalities or features, and we may suspend or stop a Service altogether, at any time, without any notice or liability.

You can stop using our Services at any time, although we'll be sorry to see you go. We may also stop providing Services to you, or add or create new limits to our Services, at any time.

## **8. DISCLAIMERS AND WAIVERS**

Access or use of any of the Services or its Content is voluntary and at your own risk. Reliance on the Services and its Contents should only be undertaken after independent review of its accuracy, completeness, efficacy and timeliness. Reference to any specific commercial product, content provider, process, or service by trade name, trademark, service mark, manufacturer, or otherwise does not constitute or imply endorsement, recommendation or favoring by PortCheck.

PortCheck neither represents nor endorses the accuracy or reliability of any Content, material, advice, opinion, statement, data or other information displayed, uploaded or distributed on or through the Services by any person or entity. PortCheck assumes no responsibility for consequences resulting from the access or use of the information or Services, or in any respect for the content of such information, including, without limitation, errors or omissions, the accuracy or reasonableness of assumptions or conclusions, the defamatory nature of statements, ownership of copyright or other intellectual property rights, and the violation of property, privacy or personal rights of others.

Difficulties with hardware, software and equipment and services supplied by others may result in service interruption or downtime. Further, it is possible that some or all of the Services or Content may be corrupted and unusable due to the presence of “bugs” in software, viruses or other causes beyond the reasonable control of PortCheck. In no event will PortCheck be liable to you or other persons for any claim, suit, demand, controversy, dispute, liability, loss, expense, costs and/or damage (collectively, “Claim”) that may result from any period of service interruption or downtime suffered by the Services.

In connection with each transaction and proposed transaction through access or use of any of the Services or any Services-related services, you acknowledge and agree that: (i) PortCheck has provided the Services to serve only as a medium to facilitate the initiation of a commercial transaction between or among parties other than PortCheck; (ii) each transaction and proposed transaction shall be directly between or among parties other than PortCheck; (iii) PortCheck is not and shall not be a party to any transaction; (iv) PortCheck does not purport to owe any fiduciary duty to any party or to have any special relationship with any party; (v) PortCheck may or may not be a manufacturer, distributor or seller of any goods or services in any transaction, therefore registered users do so with knowledge accordingly (vi) the parties (other than PortCheck) are responsible for determining and ensuring that all transactions comply with applicable law, including, without limitation, payment of applicable taxes; and (vii) PortCheck may or may not have control over any transaction, therefore, registered users agree that they will proceed under the assumption that PortCheck does not.

THE SERVICES AND ALL CONTENT PROVIDED BY PORTCHECK OR THIRD PARTIES ON OR THROUGH THE SERVICES ARE PROVIDED “AS-IS”. OTHER THAN AS EXPRESSLY SET OUT IN THESE SITE TERMS, NEITHER PORTCHECK NOR ITS LICENSORS, SUPPLIERS, ADVERTISERS, OR DISTRIBUTORS MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE MERCHANTABILITY, FITNESS FOR A PARTICULAR USE OR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY, CONDITION, GUARANTY OR REPRESENTATION, WHETHER ORAL, WRITTEN OR IN ELECTRONIC FORM, INCLUDING, WITHOUT LIMITATION, THE ACCURACY OR USEFULNESS OF ANY OF THE SERVICES OR CONTENT, OR ANY SPECIFIC PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DON’T MAKE ANY COMMITMENTS ABOUT THE CONTENT WITHIN THE SERVICES, THE SPECIFIC FUNCTIONS OF THE SERVICES, OR THE RELIABILITY OR AVAILABILITY OF THE SERVICES, OR THE ABILITY OF THE SERVICES TO MEET YOUR NEEDS. WE ALSO DO NOT MAKE ANY WARRANTIES OR COMMITMENT RELATING TO NON-INFRINGEMENT, FREEDOM FROM VIRUSES OR OTHER HARMFUL CODE, OR ERROR-FREE OR UNINTERRUPTED OPERATIONS IN CONNECTION WITH THE SERVICES.

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE DISCLAIM ALL WARRANTIES.

PORTCHECK WILL USE THE SERVICES TO SEND PROMOTIONAL MESSAGES, USER INFORMATION, PRESS RELEASES, SERVICE UPDATES, TECHNICAL INFORMATION, OR ANY OTHER INFORMATION PORTCHECK DETERMINES FOR PORTCHECK OR THOSE PORTCHECK HAS DETERMINED SUCH MESSAGES CAN AND MAY BE SENT TO ANY AND ALL WHO HAVE AGREED TO THESE SITE TERMS. RECIPIENTS OF THE MESSAGES ARE NOT LIMITED TO THE ACCOUNT ADMINISTRATOR BUT TO ANY AND ALL ADMINISTRATOR ASSIGNED SUBUSERS.

IN NO EVENT SHALL PORTCHECK OR ANY OF ITS AFFILIATES OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, ATTORNEYS, CONSULTANTS, AGENTS, REPRESENTATIVES, INFORMATION PROVIDERS, LICENSORS, LICENSEES OR INVESTORS, OR ANY OF THEIR AFFILIATES, BE LIABLE OR OTHERWISE RESPONSIBLE, INDEPENDENTLY, JOINTLY OR SEVERALLY, TO YOU OR ANY PERSON FOR ANY CLAIM, REGARDLESS OF THE NATURE OF THE CLAIM AND EVEN IF PORTCHECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, (I) FOR DIRECT OR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE AND/OR EXEMPLARY DAMAGE, (II) INCURRED IN CONNECTION WITH ACCESS OR USE OF ANY OF THE SERVICES OR CONTENT, OR (III) CAUSED BY, DUE TO OR RELATED TO ANY INTERRUPTION, DELETION OF FILES, ERROR, OMISSION, DEFECT AND/OR DELAY IN PERFORMANCE.

YOU AND YOUR HEIRS, SUCCESSORS, AND ASSIGNS HEREBY FOREVER WAIVE, IRREVOCABLY RELEASE, DISCHARGE, AND HOLD HARMLESS US, OUR AFFILIATES, AND OUR AND THEIR SUCCESSORS AND ASSIGNS, AND OUR AND THEIR OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS (COLLECTIVELY, "RELEASED PARTIES") FROM, AND AGREE NOT TO SUE ANY RELEASED PARTY FOR, ANY AND ALL CLAIMS, AND RIGHTS THAT YOU MAY HAVE AGAINST ANY RELEASED PARTY WHETHER EXISTING NOW OR IN THE FUTURE, WHETHER KNOWN OR UNKNOWN, ARISING OUT OF OR IN CONNECTION WITH YOUR OR A THIRD PARTY'S CONDUCT RELATED TO USE OR ACCESS OF ANY OF THE SERVICES OR CONTENT. YOU UNDERSTAND AND ACKNOWLEDGE THAT THE FOREGOING SENTENCE RELEASES AND DISCHARGES ALL LIABILITIES, WHETHER OR NOT THEY ARE CURRENTLY KNOWN TO YOU, AND YOU WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE SECTION 1542. YOU UNDERSTAND THE MEANING OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH READS AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR." BY AGREEING TO THESE SITE TERMS AND THIS WAIVER, YOU ASSUME ALL RISK ARISING FROM YET UNKNOWN CLAIMS.

**9. LIABILITY FOR OUR SERVICES**

TO THE EXTENT NOT PROHIBITED BY LAW, IN NO EVENT SHALL PORTCHECK OR ANY OF ITS AFFILIATES OR ANY OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, OWNERS, MEMBERS, ATTORNEYS, CONSULTANTS, AGENTS, REPRESENTATIVES, INFORMATION PROVIDERS, LICENSORS, LICENSEES OR INVESTORS, OR ANY OF THEIR AFFILIATES, BE LIABLE OR OTHERWISE RESPONSIBLE, INDEPENDENTLY, JOINTLY OR SEVERALLY, TO YOU OR ANY PERSON FOR ANY CLAIM, REGARDLESS OF THE NATURE OF THE CLAIM AND EVEN IF PORTCHECK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, (I) FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES, OR DIRECT OR INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE AND/OR EXEMPLARY DAMAGE, (II) INCURRED IN CONNECTION WITH ACCESS OR USE OF ANY OF THE SERVICES OR CONTENT, OR (III) CAUSED BY, DUE TO OR RELATED TO ANY INTERRUPTION, DELETION OF FILES, ERROR, OMISSION, DEFECT AND/OR DELAY IN PERFORMANCE.

TO THE EXTENT NOT PROHIBITED BY LAW, THE TOTAL LIABILITY OF PORTCHECK (AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) AND OUR LICENSORS, SUPPLIERS, ADVERTISERS, AND DISTRIBUTORS, FOR ANY AND ALL CLAIMS UNDER THESE SITE TERMS OR RELATING TO YOUR USE OF THE SERVICES, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES (OR, IF WE CHOOSE, TO SUPPLY YOU THE SERVICES AGAIN).

IN ALL CASES RELATING TO PROVIDING YOU THE SERVICES, PORTCHECK (AND ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS) AND ITS LICENSORS, SUPPLIERS, ADVERTISERS, AND DISTRIBUTORS, WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE THAT IS NOT REASONABLY FORESEEABLE OR THAT IS DUE TO EVENTS OUTSIDE OF OUR REASONABLE CONTROL, SUCH AS WARS, CRIMINAL ACTIVITIES, STORMS, NATURAL DISASTERS, ACTS OF GOVERNMENT, SUPPLY INTERRUPTIONS, OR TELECOMMUNICATION OR INTERNET FAILURES.

#### **10. INDEMNIFICATION**

You hereby shall indemnify, defend and hold harmless PortCheck and its affiliates, and its and their predecessors, successors, and assigns, and its and their respective directors, officers, employees, owners, members, attorneys, consultants, agents, representatives, information providers, licensors, licensees and investors, and their affiliates (collectively, the "Indemnified Parties"), from and against any and all Claims (including, without limitation, reasonable attorneys' fees and costs) resulting from or arising out of any actual or alleged breach by you of any of the Site Terms, any Content you provide through the Services, or your access, use or misuse of the Services. However, you will not be responsible for Claims which are found by a court of competent jurisdiction to have arisen solely from our violation of applicable law. You shall cooperate as fully as reasonably required in the defense of any Claim. PortCheck reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

#### **11. BUSINESS/EMPLOYER USES OF OUR SERVICES**

If you are using our Services on behalf of a business or employer, you are accepting these Site Terms on their behalf, and that business or employer agrees to be bound by these Site Terms.

#### **12. LINKS AND OTHER SITES**

The Services may contain links to other World Wide Web Internet sites, services or resources (the "Links"). PortCheck is not responsible for the availability, accurateness or completeness of any Link. PortCheck does not endorse and is not responsible or liable for any Content, product, service, resource, advertising or other materials on or available from or through any Link. PortCheck shall not be responsible or liable, directly or indirectly, for any Claim caused or alleged to be caused by or in connection with your access to, use of or reliance on any such Link. You should direct any concern regarding any Link to such Link's administrator or Webmaster.

#### **13. PRIVACY AND FEEDBACK**

Our Privacy Policy at <https://www.wcmtoa.org/about/explains> how we treat your personal information and protect your privacy when you use our Services. By using our Services, you agree that we can collect, use, and share data from you as described in our privacy policy. We are not responsible for any information or Content that you share with others via your use of the Services. You assume all privacy, security, and other risks associated with providing any information, including personally identifiable information, to other users of the Service. Further, PortCheck reserves the right to monitor your access and use of the Services and Content.



If you submit feedback or suggestions about our Services, you agree that we may use your feedback or suggestions without obligation to you.

#### **14. OTHER PROVISIONS**

**No Waiver.** PortCheck's failure to exercise or enforce any of its rights shall not constitute a waiver of such right, unless such waiver is in writing and specifying the right being waived.

**Severability.** If one or more provisions of the Site Terms are held to be unenforceable under applicable law, such provision shall be excluded from the Site Terms and the balance of the Site Terms shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

**Third Party Rights.** These Site Terms control the relationship between PortCheck and you. They do not create any third-party beneficiary rights. If you do not comply with these Site Terms, and we don't take action right away, this doesn't mean that we are giving up any rights that we may have (such as taking action in the future). If it turns out that a particular term is not enforceable, this will not affect any other terms.

**Governing Law.** The Site Terms have been made in and shall be construed and enforced in accordance with California law without giving effect to principles on conflicts of law. Any action in connection with the Site Terms, the Services or any Content involving PortCheck shall be brought in federal or state courts located in Los Angeles County, California, USA.

**Assignment.** You may not assign or delegate your rights or obligations relating to these terms or your account for the Services without our prior written consent. We may assign these terms or assign or delegate any of our rights or obligations at any time.

**Entire Agreement.** The Site Terms constitute the entire agreement between you and PortCheck. No modification of the Site Terms shall be enforceable against PortCheck unless such modification is in accordance with the Site Terms. If there is a conflict between these Site Terms and the Schedule, the Schedule will control.

**Notice.** Notice or correspondence to you shall be via e-mail to the e-mail address contained in your most current registration form. Notice or correspondence to PortCheck must be sent via postal mail to its principal place of business located at:

13001 Seal Beach Blvd.

Suite 250

Seal Beach, CA 90740

**Modification.** Any and all portions of the Site Terms may be modified, amended, changed, added, or removed at any time and from time to time at the sole discretion of PortCheck for any reason, for example, to reflect changes to the law or changes to our Services. We'll use reasonable efforts to give you notice of these modifications, such as posting notice of modifications to these Site Terms on this web page, or elsewhere in the Services. You should visit these Site Terms regularly and the "Last Updated"

date at the beginning of these Site Terms to review the then-current Site Terms because the Site Terms (including any modifications to the Site Terms) are binding on you. By accessing and using the Services, you agree to become and remain knowledgeable with the Site Terms as they may exist from time to time. Certain provisions of the Site Terms may be superseded by expressly designated legal notices or terms located on particular pages at the Site. You shall have no right to modify or amend any of the Site Terms. By continuing to use the Services after we make these modifications, you agree that you will be subject to the modified Site Terms. If you do not agree with all of the Site Terms, as may be amended from time to time, your sole recourse is to cease access and use of the Services.

**Restriction, Suspension and Termination.** If PortCheck determines, in its sole discretion, that you are using or have used any portion of the Services or Content in a manner inconsistent with any of the Site Terms, PortCheck shall have the right to take appropriate action without prior notice to you, including, without limitation, the following: (i) removal of material; (ii) limit, restrict, suspend and/or terminate your access to and use of the Services or any portion of the Services; and (iii) seek any remedies available at law or in equity. You may terminate your registration, access or use of the Services and the Content at any time by providing written notice to PortCheck, which shall be deemed effectively given upon PortCheck's receipt.

For information about how to contact PortCheck, please visit: [questions@portcheck.org](mailto:questions@portcheck.org).

## **15. BINDING ARBITRATION**

Without limiting your waiver and release in Section 8, you agree to the following:

**a. Purpose.** Any and all Disputes (as defined below) involving you and PortCheck will be resolved through individual arbitration. In arbitration, there is no judge or jury and there is less discovery and appellate review than in court. This Section 15 (the "Arbitration Provision") shall be broadly interpreted. Notwithstanding anything to the contrary in these Site Terms, this Arbitration Provision does not apply to an action by either party to enjoin the infringement or misuse of its intellectual property rights, including copyright, trademark, patent or trade secret rights.

**b. Definitions.** The term "Dispute" means any Claim or controversy related to the Services or the Software, including but not limited to any and all: (1) claims for relief and theories of liability, whether based in contract, tort, fraud, negligence, statute, regulation, ordinance, or otherwise; (2) claims that arose before these Site Terms or any prior agreement; (3) claims that arise after the expiration or termination of these Site Terms; and (4) claims that are currently the subject of purported class action litigation in which you are not a member of a certified class. As used in this Arbitration Provision, "PortCheck" means PortCheck and any of its predecessors, successors, assigns, parents, subsidiaries and affiliated companies and each of their respective officers, directors, employees and agents, and "you" means you and any users or beneficiaries of your access to the Services or the Software.

**c. Initiation of Arbitration Proceeding/Selection of Arbitrator.** The party initiating the arbitration proceeding may open a case with JAMS, formerly Judicial Arbitration and Mediation Services, Inc., ("JAMS") by visiting its website ([www.jamsadr.com](http://www.jamsadr.com)) or calling its toll-free number (1-800-352-5267). You may deliver any required or desired notice to PortCheck by mail to 13001 Seal Beach Blvd., Suite 250, Seal Beach, CA 90740.

**d. Right to Sue in Small Claims Court.** Notwithstanding anything in this Arbitration Provision to the contrary, either you or PortCheck may bring an individual action in a small claims court in the area where you access the Services if the claim is not aggregated with the claim of any other person and if the amount in controversy is properly within the jurisdiction of the small claims court.

**e. Arbitration Procedures.** This Arbitration Provision shall be governed by the Federal Arbitration Act. Arbitrations shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the "JAMS Rules") as modified by the version of this Arbitration Provision that is in effect when you notify PortCheck about your Dispute. You can obtain the JAMS Rules from the JAMS by visiting its website ([www.jamsadr.com](http://www.jamsadr.com)) or calling its toll-free number (1-800-352-5267). If there is a conflict between this Arbitration Provision and the rest of these Site Terms, this Arbitration Provision shall govern. If there is a conflict between this Arbitration Provision and the JAMS rules, this Arbitration Provision shall govern. If JAMS will not administer a proceeding under this Arbitration Provision as written, the parties shall agree on a substitute arbitration organization. If the parties cannot agree, the parties shall mutually petition a court of appropriate jurisdiction to appoint an arbitration organization that will administer a proceeding under this Arbitration Provision as written applying the JAMS Rules. A single arbitrator will resolve the Dispute. Unless you and PortCheck agree otherwise, any arbitration hearing will take place in Los Angeles County, California. The arbitrator will honor claims of privilege recognized by law and will take reasonable steps to protect customer account information and other confidential or proprietary information. The arbitrator shall issue a reasoned written decision that explains the arbitrator's essential findings and conclusions. The arbitrator's award may be entered in any court having jurisdiction over the parties only if necessary for purposes of enforcing the arbitrator's award. An arbitrator's award that has been fully satisfied shall not be entered in any court.

**f. Waiver of Class Actions and Collective Relief.** THERE SHALL BE NO RIGHT OR AUTHORITY FOR ANY CLAIMS TO BE ARBITRATED OR LITIGATED ON A CLASS ACTION, JOINT OR CONSOLIDATED BASIS OR ON BASES INVOLVING CLAIMS BROUGHT IN A PURPORTED REPRESENTATIVE CAPACITY ON BEHALF OF THE GENERAL PUBLIC (SUCH AS A PRIVATE ATTORNEY GENERAL), OTHER SUBSCRIBERS OR USERS, OR OTHER PERSONS. THE ARBITRATOR MAY AWARD RELIEF ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF WARRANTED BY THAT INDIVIDUAL PARTY'S CLAIM. 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. Arbitration Fees and Costs.** If your claim seeks more than \$75,000 in the aggregate, the payment of the JAMS fees and costs will be governed by the JAMS Rules. If your claims seek less than \$75,000 in the aggregate, the payment of the JAMS fees and costs will be PortCheck's responsibility. However, if the arbitrator finds that your Dispute was frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), the payment of the JAMS's fees and costs shall be governed by the JAMS Rules and you shall reimburse PortCheck for all fees and costs that were your obligation to pay under the JAMS Rules. You may hire an attorney to represent you in arbitration. You are responsible for your attorneys' fees and additional costs and may only recover your attorneys' fees and costs in the arbitration to the extent that you could in court if the arbitration is decided in your favor. Notwithstanding anything in this Arbitration Provision to the contrary, PortCheck will pay all fees and costs that it is required by law to pay.

**h. Severability and Waiver of Jury Trial.** If any part of subsection (f) of this Arbitration Provision is found to be illegal or unenforceable, the entire Arbitration provision will be unenforceable and the Dispute will be decided by a court. WHETHER IN COURT OR IN ARBITRATION, YOU AND PortCheck AGREE TO WAIVE THE RIGHT TO A TRIAL BY JURY TO THE FULLEST EXTENT ALLOWED BY LAW. If any other clause in this Arbitration Provision is found to be illegal or unenforceable, that clause will be severed from this Arbitration Provision and the remainder of this Arbitration Provision will be given full force and effect.

**i. Continuation.** This Arbitration Provision will survive the termination or expiration of these Site Terms.