

# **IMPORTANT NOTE TO ALL USERS**

**Access to the Trendgraphix system is strictly limited to paying customers and their authorized, designated users.**

**Usernames and Passwords should not be shared (for free or for profit) with third parties under any circumstances. To do so is a violation of your Service Agreement.**

**If you are unsure about the legitimacy of your access or if you feel that your username and password could have become compromised, please get in touch with our technical support team immediately at [support@trendgraphix.com](mailto:support@trendgraphix.com).**

**By using a username and password to access the Trendgraphix system you are automatically agreeing to our Terms of Use. Please take a moment to review them, below, now and periodically thereafter.**

## **TRENDGRAPHIX TERMS OF USE**

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BY USING YOUR USERNAME AND PASSWORD TO ACCESS TRENDGRAPHIX'S ONLINE REPORTING SYSTEM, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF TRENDGRAPHIX'S ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE").

### **Welcome**

As part of the Service, Trendgraphix will provide you with use of the Service, including a browser interface and data encryption, transmission, and access. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the Trendgraphix website incorporated by reference herein, including but not limited to Trendgraphix's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

The Service is offered in two modules:

- Facts & Trends™
- Broker Module

In addition, we offer a 7-day free trial of our Services with no further obligation.

### **1. Privacy & Security; Disclosure**

Trendgraphix's privacy and security policies may be viewed at [http://www.trendgraphix.com/privacy/Trendgraphix\\_Privacy\\_Policy.pdf](http://www.trendgraphix.com/privacy/Trendgraphix_Privacy_Policy.pdf). Trendgraphix reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Note that because the Service is a hosted, online application, Trendgraphix occasionally may need to notify all users of the Service of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that Trendgraphix can disclose the fact that you are a paying customer and the edition of the Service that you are using.

### **2. License Grant & Restrictions**

Trendgraphix hereby grants you a non-exclusive, non-transferable right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Trendgraphix and its licensors.

You may not access the Service if you are a direct competitor of Trendgraphix, except with Trendgraphix's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

### **3. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify Trendgraphix immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Trendgraphix immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another Trendgraphix user or provide false identity information to gain access to or use the Service.

### **4. Account Information and Data**

Trendgraphix does not own any data that is provided to Trendgraphix by your MLS Systems(s) to provide the Service (MLS Data). You, not Trendgraphix, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all MLS Data, and Trendgraphix shall not be responsible for any use of the MLS Data that misrepresents the context of that Data in any way.

### **5. Intellectual Property Ownership**

Trendgraphix alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Trendgraphix Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Trendgraphix Technology or the Intellectual Property Rights owned by Trendgraphix. The Trendgraphix name, the Trendgraphix logo, and the product names associated with the Service are trademarks of Trendgraphix, and no right or license is granted to use them.

### **6. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Trendgraphix represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

### **7. Mutual Indemnification**

You shall indemnify and hold Trendgraphix, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim, which if true, would constitute a violation by you of your representations and warranties; or (ii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Trendgraphix (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Trendgraphix of all liability and such settlement does not affect Trendgraphix's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

Trendgraphix shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true,

would constitute a violation by Trendgraphix of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Trendgraphix; provided that you (a) promptly give written notice of the claim to Trendgraphix; (b) give Trendgraphix sole control of the defense and settlement of the claim (provided that Trendgraphix may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Trendgraphix all available information and assistance; and (d) have not compromised or settled such claim. Trendgraphix shall have no indemnification obligation, and you shall indemnify Trendgraphix pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

## **8. Disclaimer of Warranties**

TRENDGRAPHIX AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. TRENDGRAPHIX AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY MLS DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY TRENDGRAPHIX AND ITS LICENSORS.

## **9. Internet Delays**

TRENDGRAPHIX'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. TRENDGRAPHIX IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **10. Modification to Terms**

Trendgraphix reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

## **11. Assignment; Change in Control**

This Agreement may not be assigned by you without the prior written approval of Trendgraphix but may be assigned without your consent by Trendgraphix to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Trendgraphix directly or indirectly owning or controlling 50% or more of you shall entitle Trendgraphix to terminate this Agreement for cause immediately upon written notice.

## **12. General**

This Agreement shall be governed by California law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Sacramento, California. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Trendgraphix as a result of this agreement or use of the Service. The failure of Trendgraphix to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Trendgraphix in writing. This

Agreement, together with any applicable Addendums, comprises the entire agreement between you and Trendgraphix and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

**Any questions or concerns regarding this policy should be sent to [sales@trendgraphix.com](mailto:sales@trendgraphix.com)**