

**SortSite: v5.0 or later**

## **End-User Licence Agreement**

*EULA version 1.04 (issued October 2012)*

THIS SOFTWARE END-USER LICENCE AGREEMENT IS A LEGAL AGREEMENT BETWEEN YOU AND US. PLEASE READ IT CAREFULLY BEFORE USING THIS SOFTWARE. IT PROVIDES A LICENCE TO USE THE SOFTWARE AND LIMITS OUR LIABILITY TO YOU.

BY CHOOSING TO INSTALL THE SOFTWARE AND BY USING THE SOFTWARE, YOU ARE CONFIRMING YOUR ACCEPTANCE OF THE SOFTWARE AND AGREEING TO BECOME BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, THEN YOU MUST UNINSTALL THE SOFTWARE FROM YOUR COMPUTER AND CEASE ALL USE OF IT.

If you have any questions regarding this Licence, please email: [support@powermapper.com](mailto:support@powermapper.com).

### **1) IMPORTANT INFORMATION**

---

#### ***Acceptance of these terms***

1.1 You indicate your acceptance of the terms and conditions of this Licence by clicking on the "I accept the terms of this End-User Licence Agreement" button when prompted during installation of this Software and thereafter by running or otherwise using this Software.

1.2 If you do not agree to the terms of this Licence, then you may not use this Software and you must delete the Software from all of your computers, servers, devices and any other storage places.

1.3 This Licence may be offered to you in connection with a 30-day free evaluation of a version of the Software having restricted functionality. If you wish to use this version of the Software for evaluation, then you must indicate your acceptance of the terms and conditions of this Licence in the manner referred to above. If you subsequently wish to acquire the right to use the full functionality of the Software, and agree to pay the applicable licence fee, a licence key will be supplied to you in order to enable such full functionality, or (at our option) we will supply you with a new full functionality version of the Software.

#### ***Software updates***

1.4 We and/or our commercial partners may provide you with updates and new releases of this Software which may require manual installation by you or which may be delivered over the Internet in such a manner as shall cause the same to install automatically.

1.5 You should install any such new release or updated version of the Software promptly on the same being made available to you and you must then cease use of any previous

version of the Software. Unless otherwise stated by us, such new releases or updated versions shall be subject to the terms and conditions of this Licence.

### ***Support and maintenance: scope, and exclusions***

1.6 We and/or our commercial partners will provide you with the following support and maintenance services if at the relevant time you have paid the applicable support and maintenance fee:

- e-mail and phone access to UK-based support personnel during normal business hours Monday-Friday (9am-5pm UK time);
- software patches allowing error-correction of the Software if critical issues (being those which restrict or disable the core functionality of the Software, and are the direct cause of system crashes) are experienced;
- major and minor version upgrades, as released by us from time to time; and
- quarterly maintenance updates, as released by us, usually towards the end of a calendar quarter.

1.7 The following exclusions will apply, so that no support and maintenance services are available from us if:

- a fault experienced by you when using the Software is not reproducible by us;
- a fault experienced by you when using the Software results i) from any unauthorised combination of the Software with third party software or hardware, or ii) from changes by third party software developers to their code which causes un-anticipated incompatibility with the Software;
- if patches, upgrades/new releases or maintenance updates previously supplied by us have not been promptly installed by you; or
- you are in material breach of the terms of this Licence.

1.8 **Please note:** The Software support and maintenance scope and exceptions set out above may be amended or extended at any time by a Software Support and Maintenance Policy (“Support Policy”) which we will make available via our website at [www.powermapper.com](http://www.powermapper.com). We will use reasonable endeavours to inform you of the location of the Support Policy and any changes to it. If you request on-site support, we will propose separate charges for this, including travel and accommodation expenses.

## **2) USE OF THIS SOFTWARE: RIGHTS & RESTRICTIONS**

---

### ***Permitted use***

2.1 Provided that you at all times comply with the terms of this Licence, we grant you a limited, non-exclusive, non-transferable licence and right to load, install and use this Software at your business premises as a website audit tool and in accordance with such

additional instructions for use as we may issue from time to time.

2.2 You may install and use copies of this Software on any computer system (including via your local area network) provided that the Software is used only by you as an internal audit tool for your own website or websites, whether or not such websites are business-oriented. Unless with our express prior written consent, you agree not to integrate the Software with any other system or product developed, maintained or licensed to or by you.

2.3 You agree that we may have access to your computer systems (whether remotely or on-site) to audit your use of the Software for compliance with the terms of this Licence at any time, upon reasonable notice.

### ***Use of this software by other people***

2.4 Subject to the terms of this Licence and payment of the applicable multi-user licence fees, the Software may be used by your employees and/or sub-contractors if expressly authorised by you in writing, provided that you ensure that such employees and/or sub-contractors use the Software only as is permitted under this Licence. You agree that the licence keys provided by us in respect of your use of the Software will not be released to any persons other than your duly authorised employees and/or sub-contractors.

2.5 You may not:-

- provide any unauthorised third party with access to the Software or the licence keys relating to the Software;
- make or distribute copies of the Software;
- electronically transmit or transfer the Software from one device to another or over a network;
- sell, rent, lease, or sublicense the Software without express permission from us; nor
- grant a security interest in the Software or in your rights under this Licence

save as expressly permitted in this Licence or by law.

2.6 You must notify us immediately if you become aware of any unauthorised use of the whole or any part of this Software by any third party.

### ***Modifications***

2.7 This Software is licensed to you for use in object-code form and as a single product only. You may not:

- alter, merge, enhance, modify, adapt, convert or translate the Software;
- obscure, delete, amend or otherwise alter any copyright or other ownership notices or legend displayed, contained in or attached to the Software;
- create derivative works based upon the Software; nor
- decompile, reverse engineer, disassemble, or otherwise attempt to derive source code from the Software

save as expressly permitted in this Licence (or in the GNU Lesser General Public Licence to the extent that this covers certain components of the Software) or by law.

## ***Ownership***

2.8 You acknowledge that any and all of the copyright, database rights, trade marks, trade names, patents and other intellectual property rights subsisting in or used or in connection with the Software (including all related documentation and manuals) are either owned by or licensed to us (some components of the Software being licensed to us under the GNU Lesser General Public License) and nothing in this Licence is intended to transfer, or shall be construed as transferring, any ownership rights to you.

2.9 You are prohibited during or at any time after the expiry or termination of this Licence in any way to question or dispute the ownership of the intellectual property rights in this Software.

## **3) LIABILITY**

---

### **WARNING**

3.1 This section contains provisions which restrict the extent to which we are liable to you for any loss you may suffer in connection with your use of this Software.

3.2 By using this Software you also agree that you will be liable for any loss we (or certain people connected with us) suffer as a result of breach of this licence by you or by certain people connected with you.

3.3 Please read the following section carefully: if you do not agree to these conditions then you may not use this Software and you must delete the Software from all of your computers, servers, devices and any other storage places.

### ***Limitation of our liability***

3.4 We do not restrict liability (if any) to you for personal injury or death resulting from our negligence, for fraud or for any matter which it would be illegal to limit or to attempt to restrict.

3.5 To the fullest extent permitted by applicable law we exclude all other liability and responsibility (whether in contract, delict or arising for any other reason) for any amount or kind of loss or damage, including but not limited to:

- economic losses (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings);
- any loss of goodwill or reputation; and
- indirect, incidental, consequential, special, exemplary, or punitive damages

suffered or incurred or arising out of or in connection with this Software or this Licence (even if we or our representatives have been advised of the possibility of such losses.)

3.6 You must accept responsibility for the selection of the Software to achieve its intended results.

3.7 This Software is provided “as is” but any warranties which cannot be excluded under the applicable law are, where permitted by the applicable law, limited in duration to ninety (90) days from the date of delivery or download of this Software by or from us (or our commercial partner).

3.8 Subject to the foregoing, our total liability to you under this Licence and in relation to the Software (whether the liability arises because of breach of contract, delict or for any other reason) shall be limited to the greater of One Hundred and Fifty pounds sterling (£150) or the amount paid by you to us for use of this Software.

***Expressly excluded loss and damage***

3.9 For the avoidance of doubt, the above exclusion of our liability extends to (but is not limited to) loss or damage due to:

- *Errors or omissions* from information, materials or functions in or of this Software;
- *Business interruption* resulting from the use or inaccessibility of this Software;
- *Collaboration with any third party* as a result of using this Software (we will not in any way be construed as a party to such collaboration, nor shall we be liable in any way for the dealings you may have with that third party);
- *Viruses, worms, trojans or other hostile computer programs* that may infect your computer equipment, Software, data or other property on account of your use of this Software;
- *Computer failure* resulting for any reason from the use of this Software; or
- *Breach of any conditions implied by law* (including without limitation any conditions of accuracy, security, completeness, satisfactory quality, fitness for purpose, non-infringement of proprietary rights outside the United Kingdom and the use of reasonable care and skill) which but for this Licence might have effect in relation to this Software.

***Your liability to us***

3.10 You agree that you shall be liable for any foreseeable and reasonable costs incurred by us in respect of any and all demands, liabilities, losses, costs and claims (including reasonable legal fees incurred in defending any action or otherwise) sustained or incurred by us, our agents, suppliers, customers, officers, or employees, and arising as a direct result of breach by you of this Licence.

## **4) TERMINATION OF LICENCE**

---

### ***Term***

4.1 This Licence shall commence on your acceptance of the terms of the Licence. Thereafter, unless terminated as provided for below, it shall continue for so long as you comply with the terms of this Licence.

### ***Termination by us***

4.2 We may terminate this Licence at any time on written notice to you if you:

- fail to comply with this Licence; or
- are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986); or become insolvent; or are subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction); or have an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of your assets; or enter into or propose any composition or arrangement with your creditors generally; or are subject to any analogous event or proceeding in any applicable jurisdiction outwith the United Kingdom.

### ***Termination by you***

4.3 If you wish to terminate this Licence, you should:

- notify us in writing; and
- immediately cease using the Software and follow the uninstall instructions as provided for in the user documentation accompanying the Software.

### ***Consequences of termination***

4.4 On termination of this Licence (howsoever occasioned), you must:

- delete the Software from all of your computers, servers, devices and any other storage places and destroy all copies of the Software, documentation, modifications, enhancements and corrections thereto then in your possession;
- if asked to do so following termination, certify in writing to us that the Software and related materials have been so destroyed; and
- pay any outstanding sums due to us or to our commercial partner.

## 5) GENERAL

---

### ***Headings***

5.1 The headings are for convenience only and shall not affect the construction or interpretation of this Licence.

### ***Definitions***

5.2 In this Licence, unless the context otherwise requires, the following words and expressions shall have the following meanings:

- **“Licence”** means this end-user licence agreement;
- **“Software”** means the software package(s) named at the start of this Licence and any updated or otherwise amended version of it or them;
- **“we” / “our” / “us”** means PowerMapper Software Limited, a company incorporated under the Companies Acts in Scotland (company number SC362274) and having its registered office at Quatermile Two, 2 Lister Square, Edinburgh EH3 9GL;
- **“you” / “your”** means you, the user of this Software, as an individual and your business.

### ***Interpretation***

5.3 In this Licence, unless the context otherwise requires:-

- the singular shall include the plural and vice versa;
- references to persons shall include bodies corporate, unincorporated associations and partnerships; and
- words importing the whole shall be treated as including a reference to any part thereof.

### ***Entire agreement***

5.4 This Licence contains the whole agreement between you and us relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between you and us relating to that subject matter. You acknowledge and agree that this Licence, when accepted by you in accordance with clause 1.1, shall take precedence over (and not be replaced or amended by) any of your own standard form documents which may form part of or otherwise be incorporated into your process for procurement of the right to use the Software.

### ***Modifications to this agreement***

5.5 We reserve the right, at any time and from time to time, to update, revise, supplement, and otherwise modify this Licence and thereby apply new terms or conditions on your use of the Software. Such additional terms will be effective immediately upon notice of the same being given to you. Your continued use of the Software will be deemed to constitute your acceptance of any and all such new terms.

All such additional terms are hereby incorporated into this Licence by this reference.

5.6 This Licence may not be altered, amended or varied by you save with our written agreement.

***Waiver***

5.7 Any waiver by either you or us of a breach of any provision of this Licence shall not be considered as a waiver of any subsequent breach of the same or any other provision of this Licence.

***Our relationship with you***

5.8 You and we are, with respect to one another, independent parties. Nothing in this Licence is intended to nor shall create any partnership, joint venture or agency.

***Transfer of rights / obligations***

5.9 We shall be entitled to transfer, sub-licence and/or assign any of our rights and obligations under this Licence. This will not affect your rights under this Licence.

5.10 You may not transfer, sub-licence or assign any of your rights or obligations under this Licence without our written consent.

***Severability***

5.11 Every provision of this Licence shall be construed separately, applying and surviving even if for any reason any of these provisions is held inapplicable or unenforceable in any circumstances.

***Law & jurisdiction***

5.12 This Licence shall be governed by and construed in accordance with Scots law and you agree to submit to the exclusive jurisdiction of the Scottish courts. You are responsible for compliance with any applicable laws of the country from which you use or otherwise access this Software.



## **6) CONTACT US**

---

### ***Bug reporting, comments and suggestions***

6.1 We would encourage you to report bugs in this Software or suggest desirable upgrades (please note however that we do not undertake to correct any such bug reported to us or implement any such upgrade, nor do we warrant that the use of the Software will be uninterrupted or error-free.)

6.2 If you have comments on this Software or ideas on how to improve it, please contact us at [support@powermapper.com](mailto:support@powermapper.com). Please note that by doing so, you also grant to us and third parties an unrestricted permission to use and incorporate your ideas or comments into our Software (or third party software) without further compensation.