

Cunningham Brothers, , LLC
Website and Web-Enabled
Software End User License
Agreement

Cunningham Brothers, LLC ("Cunningham Brothers") website and web-enabled software that you are accessing is licensed only on the condition that you agree to the terms and conditions set forth below. PLEASE READ THE TERMS OF THIS END USER LICENSE AGREEMENT (the "Agreement") CAREFULLY. IF YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT, PLEASE CLICK ON THE BOX ON THIS PAGE LABELED "I ACCEPT."

This is a contract. This Agreement accompanies the website, website content, web-enabled software, information, stand-alone software, data, documents, and/or reports (the "Services") that you are accessing. By accessing and continuing to access the Services, you agree to all the terms and conditions of this Agreement. Cunningham Brothers grants you ("User" or "you") a limited, non-exclusive, non-transferable license to use the Services, provided you accept the following terms and conditions:

I. Property. The Services and all intellectual property rights therein are owned by Cunningham Brothers. No ownership rights are granted by this Agreement and, except for the limited license provided herein, Cunningham Brothers reserves all rights in and to the Services, including but not limited to, any and all intellectual property rights in and to the Services and the right to grant licenses to those intellectual property rights. All content making up the Services is protected by United States and international copyright, trademark, patent and other intellectual property laws. User acknowledges that the Services are the property of Cunningham Brothers and are a valuable commercial product, the development of which involved an expenditure of substantial time and money by Cunningham Brothers.

II. License and Permitted Use. Cunningham Brothers grants to User a limited, revocable license to access the Services, for User's own business purposes to analyze and otherwise generate data and reports related to User's business or business dealings.

III. Restrictions on License and Permitted Use. Both during and after the term of this Agreement, User agrees as follows:

a. User shall not (a) modify, reverse engineer, decompile, disassemble, or attempt to derive the source code of the Services; (b) rent, lease, loan, sell, sublicense, distribute, transmit, or otherwise transfer any part of the Services access to any third party; (c) make any copy of or otherwise reproduce the Services (or any of the browser screens comprising the Services user interface) except for those copies necessarily made by the personal computer and Internet browser that are running the Services; or (d) accessor attempt to access the Services or enable others to access the services outside of a license relationship with Cunningham Brothers.

b. User shall not: (i) reproduce or publish any portion of the Services in any manner other than as expressly permitted in this Agreement, (ii) permit any other person or entity, including any other person or entity involved in a joint marketing arrangement with User, to use the Services or any portion thereof, (iii) resell, relicense or redistribute the Services in whole or in part (iv) use the Services to create any derivative products, (v) use the Services to create, enhance or structure any database in any form for resale or distribution, (vi) grant access to the Services, or any portion thereof, to individuals incarcerated in prisons or correctional institutions, or (vii) use the Services outside the United States.

c. User shall (i) comply with all applicable industry guidelines, and all federal, state, and local laws, regulations, ordinances and court orders from competent jurisdictions regarding the use, storage and dissemination of data such as the Services, (ii) abide by all prevailing federal, state, and local laws, regulations, ordinances and court orders from competent jurisdictions, including but not limited to those governing fair information practices and consumer's rights to privacy, and any applicable non-solicitation laws and regulations; (iii) abide by Cunningham Brothers's privacy policies; and (iv) use the Services in a manner that gives due consideration to matters concerning privacy.

d. User shall be solely responsible for maintaining the confidentiality of any usernames and passwords chosen or used by User, and User shall not permit usernames or passwords to be shared. User shall be responsible for all use and fees associated with accessing the Services with the password, whether or not authorized by User. Cunningham Brothers may prohibit concurrent sessions with the same username and password.

e. User shall not use the Services for any purpose that (i) infringes any third

party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy, or (ii) is defamatory, obscene, trade libelous, unlawfully threatening or unlawfully harassing.

f. User shall not remove, alter or obscure any notices in the Services and will reproduce all such notices on all copies or portions of the Services.

g. User shall not use the Services in a manner that causes a disruption to other users, to the Services or to Cunningham Brothers operations.

IV. Consent to Data Use. Through the use of the Services, the User may input or generate data pertaining to the User that will be stored on Cunningham Brothers servers or databases ("User Data"). This User Data may include, for example, name, address, telephone numbers, email addresses, and other, similar data. Cunningham Brothers makes every effort to limit the User Data necessary to access and use the Services. User acknowledges that all User Data is input at the User's sole discretion. However, by entering such User Data the User explicitly agrees that any such User Data may be used by Cunningham Brothers for purposes consistent with the operations and functions provided by Cunningham Brothers and the Services. Such purposes include, but are not limited to:

a. Providing the Services, including compilation and analysis of confidential or potentially-confidential business information;

b. Marketing of Cunningham Brothers services to the User, subject to any preferences or marketing opt-in or opt-out by the User;

c. Evaluating the effectiveness of or otherwise testing the Services;

d. Updating the Services to provide enhanced functionality for the User and other users of the Services;

e. Prevent illegal activity or violations of this Agreement;
and

f. For other purposes disclosed to you at the time Cunningham Brothers collects the User Data with the User's consent.

V. Continuing Use of User Data. By providing the User Data, the User grants Cunningham Brothers the continuing right to utilize the User Data for the

above-identified purposes. The purposes of use of User Data may change from time to time. Cunningham Brothers will use reasonable efforts to ensure that the User is aware of such changes.

VI. User Data Opt Out. User may, at any time, request removal of the User Data from the database using the Services or otherwise “opt-out” of Cunningham Brothers’s use of previously- input User Data. In addition to web-based and Software-based opt-out mechanisms, Cunningham Brothers may, at its sole discretion, provide an email and/or physical address that may be used to accept requests to opt out of the use of User Data. Upon receipt of such a “opt out” request, Cunningham Brothers will take all reasonable steps to remove the User Data from any Cunningham Brothers servers or databases, which contain the User Data.

VII. Collection and Use of Business Data. As a part of providing the Services, Cunningham Brothers will collect and may store confidential or potentially confidential business information, including but not limited to, financial statement data, payroll data, billing data, invoice data, business positions and titles, organizational structure, corporate governance and business structure, industry information, and, other, similar data (“Business Data”). User acknowledges that this Business Data is uploaded to Cunningham Brothers at the User’s sole discretion. Furthermore, User represents and warrants the User has the unrestricted right to access, use, and upload any Business Data provided to Cunningham Brothers for use in connection with the Services. User grants Cunningham Brothers a license to the Business Data for purposes of providing the Services, including for those purposes identified in Section IV above. Upon deletion of a User account and associated User Data, associated Business Data will also be deleted.

Cunningham Brothers will take all reasonable precautions to ensure and maintain the confidentiality of Business Data, including encrypting the data on our servers, limiting access of other users of the Services to a particular User’s Business Data, and requiring passwords in order to access the Business Data. Cunningham Brothers will only use the Business Data in connection with providing the Services. Cunningham Brothers will never share the Business Data in raw form. Cunningham Brothers may use Business Data in order to further develop the Services. In so doing, Cunningham Brothers may share Business Data with contracted software developers, subject to binding non-disclosure agreements. Cunningham Brothers cannot guarantee the security of all and therefore expressly disclaims any warranty that the Business Data will remain confidential. By uploading Business Data to Cunningham Brothers servers, you expressly acknowledge this risk.

User expressly acknowledges that all Business Data is provided by User and not input, altered or otherwise confirmed by Cunningham Brothers. Cunningham Brothers will rely upon the accuracy of User input Business Data to derive statistics, analytics, reports, and related business advice and other information (“Advice”). Because the Services and Advice rely upon receipt of accurate Business Data from the User, Cunningham Brothers makes no warranty or representation about the accuracy of the Services or Advice. Cunningham Brothers, therefore, cannot be liable for any decision made by User based upon the Advice. User expressly acknowledges that Cunningham Brothers makes no such warranty and that decisions made based upon Cunningham Brothers Advice are made at User’s or the employer of User’s sole discretion. Nonetheless, Cunningham Brothers will make every reasonable effort to ensure that the generation and calculation of the Advice based upon the Business Data is careful and accurate.

VIII. User Content. As a part of your use of the Services, you may be permitted to input comments, images, hyperlinks, questions, ideas, and other, similar content (“User Content”). User agrees that this content will abide by the Restrictions on Use set forth above. Furthermore, User grants Cunningham Brothers and its affiliates a nonexclusive, royalty free, perpetual, irrevocable, universal, and fully sublicensable right to use, modify, adapt, publish, translate, create derivative works from, distribute, and display any such content in any media. You further grant Cunningham Brothers the right to use the name and/or username that has submitted the content in connection with the use of that content.

You represent and warrant that you own or otherwise control all of the rights to the content that you post; that the content is accurate; that use of the content you supply does not violate this Agreement and will not cause injury to any person or entity; and that you will indemnify Cunningham Brothers or its affiliates for all claims resulting from content you supply. Cunningham Brothers has the right but not the obligation to monitor and edit or remove any activity or content. Cunningham Brothers takes no responsibility and assumes no liability for any content posted by you or any third party.

Cunningham Brothers respects the intellectual property rights of others. If you believe that your work has been copied in any way that constitutes copyright infringement, please contact Cunningham Brothers at crcounts@countsbusinessconsulting.com in accordance with the requirements of the DMCA takedown notice under 15 U.S.C. § 512(c)(3).

IX. Privacy Policy. Cunningham Brothers takes the privacy of the users of its

Services very seriously. Cunningham Brothers will not use any of the User Data, Business Data, User Content, or any other data input in any way other than those specifically identified in this Agreement. While this Agreement and this Privacy Policy may be modified from time-to-time, Cunningham Brothers will make reasonable efforts to alert all users of any such updates. Upon request, Cunningham Brothers will cancel user accounts and remove all data that is reasonably and technically feasible to be removed from the Cunningham Brothers servers associated with the Services. Other than as described elsewhere herein, Cunningham Brothers will not sell, individually or in aggregate, the User Data or any other data input by any user to any third party.

The Services may use cookies to track how and when users and potential users access the Services. Cookies are pieces of information that a web site transfers to an individual's hard drive for record keeping purposes. Cookies make accessing the Services easier by saving your passwords and other preferences for you. The use of cookies is an industry standard, and you will find most major web sites use them. Cookies also enable Cunningham Brothersto see which aspects of the Servicesare most heavily used and how users interact with the Service. Cunningham Brothersmay use the information obtained through the use of cookies to improve the Services based on this information.

The Services may include links to other sites or may obtain data from other sites or services; Cunningham Brothers is not responsible for the privacy practices or the content of such sites and services.

X. Delivery of Data and Format. User acknowledges that the availability of data elements in the Services may vary substantially from area-to-area and circumstances may exist or arise which prevent Cunningham Brothers from providing such data or achieving complete representation of all data elements in the Services. Notwithstanding anything to the contrary, Cunningham Brothers may limit or discontinue the provision of the Services for geographic locations where: (a) Cunningham Brothers is restricted by rules, regulations, laws or governmental entities; (b) Cunningham Brothers has discontinued the Services; or (c) Cunningham Brothers is otherwise prohibited. Cunningham Brothers may discontinue production, support, and maintenance of any Services if Cunningham Brothers develops an upgraded version or otherwise can no longer provide such Services.

XI. Compliance Audits. Cunningham Brothers reserves the right, during normal business hours, on reasonable notice, and at Cunningham Brothers's expense, to audit the User to ensure User's compliance with this Agreement. In particular, Cunningham

Brothers may perform audits to determine whether user accounts or other data is being shared in a way that may undermine our security efforts or provision of the Services. Cunningham Brothers shall select an auditor in its sole discretion. If such auditor determines there has been a breach in User's compliance with the terms of this Agreement, Cunningham Brothers may immediately terminate this Agreement and pursue any other available legal remedies. Should User not cooperate with Cunningham Brothers's audit request within five (5) days, User shall be deemed to have conclusively admitted to a material breach in User's compliance for which Cunningham Brothers may immediately terminate this Agreement and pursue any available legal remedies.

XII. Term and Termination. Cunningham Brothers may terminate this Agreement at any time, without cause, upon written notice to you. Upon termination of this Agreement, you agree that Cunningham Brothers may immediately cease all provision of access to the Services.

XIII. No Guarantee of Access. Cunningham Brothers provides the Services at its sole discretion. Cunningham Brothers will make reasonable efforts to ensure that the Services are available at all times. However, Cunningham Brothers cannot and does not guarantee that any User will be able to access any or all Services at any time. Furthermore, Cunningham Brothers may determine to discontinue, at will, some or all of the Services provided. User explicitly acknowledges that continued access to the any of the Services is provided at Cunningham Brothers's sole discretion.

XIV. Disclaimer. THE SERVICES ARE INFORMATIONAL ONLY AND ARE NOT INTENDED TO PROVIDE SPECIFIC COMMERCIAL, FINANCIAL OR INVESTMENT ADVICE. THE SERVICES ARE BASED UPON CERTAIN DATA RECEIVED FROM USER AND/OR THIRD PARTIES, AND SUBJECT TO FREQUENT CHANGE. Cunningham Brothers MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE METHODOLOGIES USED OR THE ACCURACY, TIMELINESS, RELIABILITY OR COMPLETENESS OF ANY OF THE SERVICES. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTIES OF ANY KIND WHATSOEVER, INCLUDING ANY IMPLIED OR EXPRESS WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. ANY RELIANCE ON OR USE BY USER OF THE SERVICES SHALL BE ENTIRELY AT USER'S OWN RISK. Cunningham Brothers MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE LEGALITY OR PROPRIETY OF THE USE OF THE SERVICES IN ANY JURISDICTION, STATE OR REGION. USER SHALL BE SOLELY RESPONSIBLE FOR OBTAINING ANY AND ALL NECESSARY LICENSES, CERTIFICATES, PERMITS, APPROVALS OR OTHER AUTHORIZATIONS

REQUIRED BY FEDERAL, STATE OR LOCAL STATUTE, LAW OR REGULATION APPLICABLE TO USER'S USE OF THE SERVICES.

XV. Limitation of Liability. Cunningham Brothers'S TOTAL LIABILITY AND USER'S EXCLUSIVE REMEDY UNDER OR RELATED TO THIS AGREEMENT, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, SHALL BE LIMITED TO DIRECT MONEY DAMAGES NOT EXCEEDING \$10,000. THIS LIMIT IS CUMULATIVE AND ANY PAYMENTS UNDER THIS AGREEMENT WILL BE AGGREGATED TO CALCULATE SATISFACTION OF THE LIMIT. THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT ENLARGE THE LIMIT. Cunningham Brothers SHALL HAVE NO LIABILITY UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT FOR ANY LOSS OF PROFIT OR REVENUE OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES, EVEN IF Cunningham Brothers IS AWARE OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY. USER AGREES THAT THE LIMITATIONS SET FORTH ABOVE ARE FUNDAMENTAL ELEMENTS OF THIS AGREEMENT, AND THAT THE SERVICES WOULD NOT BE PROVIDED TO USER ABSENT SUCH LIMITATIONS.

XVI. Indemnification. USER AGREES TO INDEMNIFY AND HOLD Cunningham Brothers HARMLESS FROM AND AGAINST ALL CLAIMS OF THIRD PARTIES ARISING OUT OF OR RELATED TO THE USE OF THE SERVICES BY THE USER, OR ATTRIBUTABLE TO USER'S BREACH OF THIS AGREEMENT; PROVIDED THAT Cunningham Brothers GIVES USER PROMPT WRITTEN NOTICE OF ANY SUCH CLAIM. Cunningham Brothers SHALL CONTROL THE DEFENSE AND ANY SETTLEMENT OF SUCH CLAIM, AND USER SHALL COOPERATE WITH Cunningham Brothers IN DEFENDING AGAINST SUCH CLAIM.

XVII. California Residents. User understands that he or she is waiving rights with respect to claims that are at this time unknown or unsuspected, and in accordance with such waiver, User acknowledges that he or she has read and understand, and User hereby expressly waive, the benefits of section 1542 of the civil code of California, and any similar law of any state, country or territory, which provides as follows: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

XVIII. General Terms.

a. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the Services and supersedes any prior understanding or agreement, oral or written, relating to the Services.

b. Choice of Law. The interpretation and construction of this Agreement, and all matters relating hereto, shall be governed by the laws of the State of Texas applicable to agreements executed and to be performed solely within Texas. The parties hereby submit to the jurisdiction of, and waive any venue objections against, the United States District Court for the Western District of Texas, Austin Division and the Superior and Municipal Courts of the State of Texas, Travis County in any litigation arising out of or relating to this Agreement or its subject matter.

c. Attorney's Fees. The prevailing party shall be awarded its reasonable attorney's fees and costs in any lawsuit arising out of or related to this Agreement.

d. No Modification. No modification, amendment, supplement to or waiver of any provision of this Agreement shall be effective unless in writing and duly signed by an authorized representative of both parties hereto.

e. Survival. Any provision of this Agreement that contemplates performance subsequent to the expiration or earlier termination of this Agreement shall survive such expiration or termination and shall continue in full force and effect until fully satisfied.

f. Waiver of Liability. Cunningham Brothers shall not be liable for any delay or failure in its performance of any of the acts required by this Agreement when such delay or failure arises for reasons beyond Cunningham Brothers's reasonable control.

g. Assignment. Cunningham Brothers may assign this Agreement to any third party in connection with a sale of substantially all of the assets, merger, buyout or other corporate event such that the surviving entity continues offering the Cunningham Brothers Services. Such assignment is subject to the surviving entity being bound by this Agreement in place of Cunningham Brothers. User may not assign this Agreement or any rights or obligations hereunder.

h. Intellectual Property Use. Neither Cunningham Brothers nor Users shall use, or

permit their respective employees, agents and subcontractors to use the trademarks, service marks, copyrighted material, logos, names, or any other proprietary designations of any

other party, whether registered or unregistered, without such Cunningham Brothers's prior written consent.

i. Notice. Any notice or other communication required or permitted under this Agreement shall be deemed effective if sent via email to the email address associated with a User's account.