

NATIONAL COMPENSATION SYSTEM CONSULTANT LICENSE AGREEMENT

This agreement (“Agreement”) is made effective as of the date You, a consultant, (hereinafter a “Licensee”) obtains access or uses the National Compensation System or the Licensed Material. This Agreement is between the National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, VA 22203 (“Licensor”) and Licensee. Licensees are limited to consultants engaged in a business relationship with such rural electric cooperatives that are Licensor’s voting members.

By accessing or using the National Compensation System or any Licensed Material, Licensee acknowledges that he/she has read this Agreement in its entirety and agrees to be bound by all of its terms and conditions, including any payment obligation specified herein. Licensee further understands that this Agreement may be modified at any time, by Licensor. Licensee’s continued access to the National Compensation System or use of the Licensed Material, in whole or in part, as further defined herein, shall constitute acceptance of any modified terms.

If Licensee does not agree to this Agreement, Licensee should not access the National Compensation System or use the Licensed Material for any purpose.

In consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.**

“Access” means the right to access the National Compensation System as defined by this Agreement pursuant to the terms and conditions of this Agreement.

“Documentation” means the User Guides, supporting documentation and any derivative works generated as a result of Access to the National Compensation Program in physical or electronic form.

“Generation and Transmission Data” means compensation data derived from a Generation and Transmission voting member of Licensor.

“Generation and Transmission Member” means a generation and transmission member of Licensor.

“Licensed Material” means the data contained on the National Compensation System and any related Documentation exported or created pursuant to this Agreement, including any Generation and Transmission Data that becomes available on the National Compensation System during the Term of this Agreement.

“License Fee” means the applicable fee for which in exchange Licensee obtains Access to the National Compensation System and is granted the limited right to use the Licensed Material.

“Licensor website” means cooperative.com.

“National Compensation System” means Licensor’s proprietary web-based application containing salary data used solely for the purpose of determining Licensor members’ cooperative employee salary benchmarks.

2. **License.**

- a. Unless terminated pursuant to Section 5 or limited by Section 3, Licensor hereby grants to Licensee the right for one individual to Access the National Compensation System through Licensor website for a period of one year from the date of Access.
- b. Unless terminated pursuant to Section 5, Licensor hereby grants to Licensee the right for one individual to use the Licensed Materials pursuant to an annual, non-exclusive, non-transferable license, without the right to sublicense. Unless limited by Section 3, Licensee shall be granted the following limited rights of use: i) to export and print portions of Licensed Materials solely for

purposes of using Licensed Material for the sole benefit of Licensor's voting members; and ii) to creative derivative works of Licensed Material to provide consulting services to Licensor's voting members exclusively.

3. Restrictions

Licensor reserves all rights not expressly granted to the Licensee in this Agreement. Licensee shall not, nor permit any person to: (i) rent, lease, lend, sell, redistribute, market, commercialize, sublicense, or otherwise transfer rights to the National Compensation System or usage of the Licensed Material; (ii) copy (except as expressly permitted by this Agreement), decompile, reverse engineer, disassemble, attempt to derive the source code of or modify the National Compensation System or Licensed Material; (iii) share (except as may be required by law) Licensed Material or any component thereof with third parties, including other consultants engaged in conducting compensation services (iv) remove, modify, or obscure any copyright notices or other proprietary notices or legends appearing on or in the Licensed Material, or any portion thereof; (v) provide Access to individuals other than himself/herself to the National Compensation System and any Licensed Material contained therein; or (vi) use of any Generation and Transmission Data for any client other than a Generation and Transmission Member that participated in the most recent G&T Survey. All uses of the Licensed Material that do not comply with the provisions contained herein shall for all purposes be deemed beyond the scope of the license granted in this Agreement. Any violation of this Section by Licensee shall be a material breach of this Agreement that is incapable of cure, and, in the event of any such violation, Licensor may, in addition to and not in lieu of all other remedies, immediately terminate this Agreement.

4. Use of Generation and Transmission Data.

Licensee represents that prior to using any Generation and Transmission Data for a particular client that it will verify whether each client participated in the G&T Survey for the most recent year. Licensee should verify G&T Survey participants in one of the following ways: 1) check list of G&T Survey participants emailed to Licensee at the time the G&T Survey Data becomes available to Licensee; or 2) email Ginny Beauchemin at Ginny.Beauchemin@nreca.coop at X to verify whether Licensee client participated in the G&T Survey.

5. Ownership.

This Agreement and the licenses granted hereunder do not convey any ownership right in any of the National Compensation System or Licensed Material or other materials provided by or on behalf of Licensor under this Agreement. Except for the express licenses granted in this agreement, all right, title, and interest in and to the National Compensation and Licensed Material are and will remain with Licensor, including any goodwill.

6. Term and Termination.

The Agreement is effective for one year unless terminated by either party; however, Licensee shall have the opportunity to enter into a new agreement to obtain Access to newer versions of the National Compensation System through Licensor's website as well as continue usage of such Licensed Material as Licensor elects to maintain. Licensee's rights will terminate automatically without notice from Licensor if Licensee fails to comply with any term of this Agreement. Upon termination of this Agreement, Licensee shall cease all Access to the National Compensation System, discontinue immediately all use of the Licensed Material, destroy all copies, full or partial, of the Licensed Material, and provide a certification of destruction to Licensor, no later than five (5) business days from termination of this Agreement. Licensee shall not be entitled to a refund in the event of termination.

7. No Warranty.

THE NATIONAL COMPENSATION SYSTEM AND LICENSED MATERIAL ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND. LICENSOR EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Fees and Payment.

- a. In order to gain Access to the National Compensation System or use the Licensed Material, Licensee shall be responsible for payment of such License Fee specified on Licensor website on the effective date of this Agreement. The payment terms and conditions shall be specified on Licensor invoice and incorporated into this Agreement by reference.

- b. If Licensee fails to make any payment when due, Licensor may at its sole election:
 - i. Discontinue Licensee's Access to the Licensed Material until all past due fees have been paid; or
 - ii. If any fees are more than ninety (90) days past due, Licensor may assess interest on past due amounts at the rate of 1.5% per month or, if lower, the highest rate permitted under applicable law. Interest will accrue from the due date of such amounts. Notwithstanding the foregoing, Licensor shall not assess interest on amounts that are the subject of a good faith dispute; provided that Licensee notifies Licensor of the dispute prior to the due date; makes timely payment of all amounts not in dispute; and works diligently with Licensor to resolve the dispute promptly.

9. Confidentiality.

Licensee agrees to maintain the confidentiality of any confidential and proprietary information of Licensor that Licensee may be exposed to or acquire pursuant to this Agreement that the Licensee should know is considered confidential or proprietary by the Licensor based upon the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information and data contained in the National Compensation System ("Confidential Information"). The National Compensation System and Licensed Material are trade secrets of the Licensor and shall be deemed Confidential Information for purposes of this Agreement. Licensee agrees to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than Licensor's members who have contracted with Licensee to provide consulting services as permitted under this Agreement. Licensee further recognizes that its use of the Confidential Information described herein is limited and Licensee agrees that it shall not use such Confidential Information for purposes not contemplated under this Agreement. Licensee agrees to keep such information confidential and maintain the secrecy of Licensor's Confidential Information, especially information that has been identified as a trade secret.

Licensee shall use its best efforts to assist the Licensor in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Licensee shall advise the Licensor immediately in the event Licensee learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Licensee agrees to cooperate with Licensor in seeking injunctive or other equitable relief against any such person.

Licensee acknowledges that the breach of its obligation of confidentiality may give rise to irreparable injury to the Licensor, which damage may be inadequately compensable in the form of monetary damages. Accordingly, Licensor may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies which may be available, to include, at the sole election of the Licensor, the immediate termination, without penalty to the same, of this Agreement, in whole or in part.

The provisions of this Section shall survive the termination of this Agreement.

10. Limitation of Liability.

IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, LIQUIDATED, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT OR TORT.

IN NO EVENT SHALL LICENSOR'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE LICENSE FEE PAID BY LICENSEE TO LICENSOR TO ACCESS LICENSED MATERIAL.

THE FOREGOING LIMITATIONS WILL APPLY EVEN IF THE ABOVE STATED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

11. Indemnification

10.1 **By Licensor.** Licensor shall indemnify, defend and hold harmless Licensee against all losses arising out of or resulting from any claim, suit, action or proceeding (each, an "Action") by an unaffiliated third party related to or arising out of a claim that the Licensed Material, or Licensee's use thereof solely in compliance with this Agreement, infringes a U.S. intellectual property right of any third party or violates any U.S. law. The foregoing obligation shall not apply to losses for which Licensee is required to indemnify Licensor pursuant to Section 10.2.

10.2 **By Licensee.** Licensee shall indemnify, defend and hold harmless Licensor against all losses arising out of or resulting from any Action by a third party related to or arising out of the Licensee's use of the Licensed Material in a manner not permitted by this Agreement.

12. General Terms

Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

Public Announcements. Neither party shall issue or release any announcement, statement, press release or any publicity or marketing materials relating to this Agreement without the prior written consent of the other party, which shall not be unreasonably withheld or delayed.

Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and addressed to Licensor shall be addressed as follows:

NRECA
ATTN: National Compensation System
4301 Wilson Blvd
Arlington, VA 22203

ginny.beauchemin@nreca.coop

Headings. The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

Governing Law and Submission to Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and the federal laws of the United States of America. The parties hereby consent and submit to the jurisdiction and forum of the state and federal courts in the Commonwealth of Virginia in all questions and controversies arising out of this Agreement.

Waiver of Jury. Each party irrevocably and unconditionally waives any right it may have to trial by jury in respect of any legal action arising out of or relating to this Agreement or the transactions contemplated hereby.

Attorneys' Fees. In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the

prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party.

No Waiver. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall in no way affect that party's rights to enforce such provisions, nor shall the waiver by either party of any breach of any provision of this Agreement be taken or held to be a waiver of any further breach of the same provision. An effective waiver under this Agreement must be in writing signed by the party waiving its right.

Cumulative Remedies. All rights and remedies of Licensor herein shall be in addition to all other rights and remedies available at law or in equity, including, without limitation, specific performance for the enforcement of this Agreement, and temporary and permanent injunctive relief.

Severability. In the event that any one or more of the provisions of this Agreement is determined by a court of competent jurisdiction to be invalid, unenforceable, or illegal, such invalidity, unenforceability, or illegality shall not affect any other provisions of this Agreement, and the Agreement shall be construed as if the challenged provision had never been contained herein. The parties further agree that in the event such provision is an essential part of this Agreement, they will immediately begin negotiations for a suitable replacement provision.

No Third-party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

("Licensor")

By: NRECA
Name: Ginny Beauchemin
Title: Managing Director, Business Optimization

Address for Notice:
4301 Wilson Blvd.
Arlington, VA 22203

[SERVICE PROVIDER NAME] ("Licensee")

By:
Name:
Title:
Date:

Address for Notice: