

NATIONAL BENEFITS SURVEY END USER LICENSE AGREEMENT

This agreement ("Agreement") is made effective as of the date You, an entity, ("Licensee") obtain access ("Access") to the National Benefits Survey as defined below. This Agreement is between the National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Arlington, VA 22203 ("Licensor") and Licensee. Licensees are limited to rural electric cooperatives that are members of Licensors, and their designated Authorized Users as defined herein.

By accessing the National Benefits Survey, Licensee acknowledges that it is a member cooperative of Licensor. Licensee further acknowledges that Licensee has read this Agreement and agrees to be bound by all of its terms and conditions. Licensee further understands that this Agreement may be modified at any time, by Licensor. Licensee's continued Access to the National Benefits Survey and use of the Licensed Material, as further defined herein, shall constitute your acceptance of any modified terms.

If you do not agree to and accept this Agreement, You may not Access the National Benefits Survey 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 Benefits Survey as defined by this Agreement by Licensee's Authorized Users pursuant to the terms and conditions of this Agreement.

"Authorized User" means the Chief Executive Officer, General Manager, or other cooperative employee as specifically designated by Licensee order forms and approved by Licensor. The term Authorized User shall not include any third-parties, including subcontractors or agents of the rural electric cooperatives.

"Documentation" means any supporting documentation and any derivative works generated as a result of Access to the National Benefits Survey in physical or electronic form.

"Licensed Material" means the data contained on the National Benefits Survey and any related Documentation extracted or created pursuant to this Agreement.

"License Fee" means the applicable fee, if any, for which Licensee obtains Access to Licensed Material.

"Licensor website" means cooperative.com.

"National Benefits Survey" means Licensor's proprietary benefit package survey data used solely for the purpose of determining cooperative employee benefit package benchmarks.

2. License.

- a. Unless terminated pursuant to Section 5 or limited by Section 3, Licensor hereby grants to Licensee the right to Access the National Benefits Survey through Licensor website by such Authorized Users.
- b. Unless terminated pursuant to Section 5, Licensor hereby grants to Licensee a perpetual, non-exclusive, non-transferable, non-sub licensable license to use the Licensed Materials. Unless limited by Section 3, Licensee shall be granted the following limited rights of use: i) to print portions of Licensed Materials solely for purposes of distributing Licensed Material internally within your cooperative; and ii) to create derivative works of Licensed Material to distribute internally within your cooperative.
- c. During the Agreement, except as otherwise set forth herein, Licensor shall grant Licensee with Access to the Licensed Content upon acceptance of the terms and conditions contained herein. Licensor is not liable for delays or failures of delivery beyond its reasonable control. Licensor's sole responsibility for any such delay or failure is to deliver or re-deliver the relevant Likened Material as soon as reasonably possible.

3. **Restrictions**

Licensor reserves all rights not expressly granted to the Licensee in this Agreement. Licensee shall not, nor permit any person (including any Authorized User) to: (i) rent, lease, lend, sell, redistribute, market, commercialize, sublicense, or otherwise transfer rights to the National Benefits Survey 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 Benefits Survey or Licensed Material in any way; (iii) share (except as may be required by law) Licensed Material or any component thereof with any third parties, including consultants engaged in conducting benefit compensation services for Licensee; (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; or (v) to provide Access to individuals other than Authorized Users to the National Benefits Survey and any Licensed Material contained therein. 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 hereunder. 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. **Ownership.**

Neither this Agreement nor the licenses granted hereunder convey any ownership right in any of the National Benefits Survey nor 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 Benefits Survey and Licensed Material are and will remain with Licensor.

5. **Term and Termination.**

The Agreement is effective until terminated by either party; however, Licensee's rights will terminate automatically without notice from Licensor if Licensee fails to comply with any term of this Agreement. In order to obtain Access to future benefit survey data not yet compiled, a new license agreement must be entered into between the parties. Upon termination of this Agreement, Licensee shall cease all Access to the National Benefits Survey, discontinue immediately all use of the Licensed Material, destroy all copies, full or partial, of the Licensed Material, and provide 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 event of termination.

6. **No Warranty.**

THE NATIONAL BENEFITS SURVEY AND LICENSED MATERIAL ARE PROVIDED ON AN "AS IS" BASIS WITHOUT WARRANTY 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.

7. **Fees and Payment.**

- a. Licensee shall be responsible for payment of such License Fee as specified on Licensor website. 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, at its sole election, Licensor may:
 - i. Eliminate Licensee's Access to the Licensed Material until all past due fees have been paid; and
 - ii. If any fees are more than ninety (90) days past due, Licensor may assess interest on past due amount 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.

8. **Confidentiality.**

Licensor and Licensee agree to maintain the confidentiality of any confidential and proprietary information of one party ((the "disclosing party") received by the other party (the "receiving party") as a result of this Agreement that the receiving party should know is considered confidential or proprietary by the disclosing party based upon the circumstances surrounding the disclosure, including, without limitation, non-public technical and business information ("Confidential Information"). The National Benefits Survey and Licensed Material are copyrighted and shall be deemed Confidential Information. The parties agree 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 employees who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than use contemplated under this Agreement. Each party agrees to advise its respective employees of their obligations of confidentiality hereunder and require the same to keep such information confidential.

Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party 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 each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

Each party acknowledges that the breach of its obligation of confidentiality may give rise to irreparable injury to the other party, which damage may be inadequately compensable in the form of monetary damages. Accordingly, each party 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 receiving party, 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.

9. **Limitation of Liability.**

IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, LIQUIDATED, SPECIAL, EXEMPLARY 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.

10. **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.

11. **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:

National Consulting Group, NRECA
ATTN: National Benefits Survey
4301 Wilson Blvd
Arlington, VA 22203

Natlconsultinggroup@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 NRECA 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.