

**Total Employer Cost of Compensation
Software Enabled Benchmarking System
Copyright License and Access Agreement**

This “Agreement” is between the municipality or county paying the license fee for access, hereafter referred to as “Subscriber” and Portland State University, an institution of higher education in the State of Oregon, located in Portland, Oregon, hereafter referred to as “University”. The parties agree as follows:

Background

University desires to have organizations join the TECC network, gain access to total employer cost of compensation data and comparisons, and contribute their own data to the network.

Subscriber is an organization involved in the hiring of public employees and desires access to the TECC network. Subscriber requires access to the software, periodic reports, and may desire limited training and certain technical support from University.

Definitions

“Contact” means the individual authorized by Subscriber to receive access to the Work and notices from University as entered in the online Subscriber sign up form.

“Agreement” means this Access Agreement, with attached Schedules.

“Content” means data and other materials which comply with Standard and which Subscriber uploads into Work.

“Effective Date” shall be the date Subscriber agrees to this Agreement either through online submission or a signed Agreement document. .

“License Fee” shall mean the amount due from Subscriber for the permissions provided by this Agreement, as set forth on Schedule B.

“Standard” means the TECC 3.0 data standards available from University.

“Users” means individuals authorized to access content Subscriber places into Work.

“Work” means the TECC 3.0 software, as described more fully in Schedule A. Work specifically excludes the Content that the Subscriber adds to the Work.

Access

Beginning on the Effective Date, University hereby grants to Subscriber, and Subscriber accepts, a limited, non-transferable, non-exclusive license to display and access Work, provided Subscriber complies with the terms of this Agreement.

Subscriber may add Content to the Work, may grant Users access to the Work.

Conditions

Subscriber acquires no proprietary interest in Work. Subscriber shall not remove or obscure rights management markings, such as copyright and trademark notices, from Work or printouts from Work. Subscriber shall not reverse engineer or otherwise intentionally exploit the formulas or methodology contained in the Work.

Subscriber retains all of ownership rights in Content. As between University and Subscriber, University does not acquire any ownership rights in Content. However, by submitting Content to Work, Subscriber hereby grants University a worldwide, non-exclusive, royalty-free license to use, reproduce, distribute, prepare derivative works of, display, and perform aggregate Content in connection with the Work, including without limitation for promoting and redistributing part or all of the Work (and derivative works thereof) in any media formats and through any media channels.

Subscriber shall not sublicense, sell, display, lend, rent, lease or otherwise transfer all or any of Work. Subscriber agrees not to circumvent, disable or otherwise interfere with security-related features of the Work. Subscriber shall not provide reports generated by Work to any third party. This paragraph is subject to the requirements of the Oregon Public Records law.

University does not endorse any Content or any opinion, recommendation, or advice expressed therein.

Subscriber Content

Subscriber may add Content to Work. Subscriber shall use reasonable efforts to insure that complies with Standard.

Subscriber agrees not to alter or modify any part of the Work, except for adding permitted Content.

Subscriber agrees not to use or launch any automated system, including without limitation, "robots," "spiders," or "offline readers," that accesses the Work in a manner that sends more request messages to the Work servers in a given period of time than a human can reasonably produce in the same period by using a conventional on-line web browser. Subscriber agrees not to collect or harvest any personally identifiable information, including account names, from the Work, nor to use the communication systems provided by the Work (e.g. comments, email) for any commercial solicitation purposes.

Subscriber is solely responsible for Content and the consequences of posting or publishing Content on Work. In connection with Content, Subscriber affirms, represents, and warrants that: Subscriber owns or has the necessary licenses, rights, consents, and permissions to use and authorize University to distribute Work and aggregate Content to others.

Subscriber further agrees that Subscriber will not submit Content that is defamatory, copyrighted, protected by trade secret or otherwise subject

to third party proprietary rights, including privacy and publicity rights, unless Subscriber is the owner of such rights or has permission from their rightful owner to post the material and to grant University the license rights granted herein.

Communications Notices to Subscriber shall be sent to the Contact given at subscription sign up.

Confidentiality “Proprietary Information” means information of any form or format disclosed by University to Subscriber pertaining to the Work and identified by University at the time of disclosure as not for public release, or if orally disclosed, reduced to written form and identified by University as not for public release within thirty (30) days of disclosure. Proprietary Information does not include information which (i) Subscriber can demonstrate was previously known to Subscriber, or (ii) has been independently developed by Subscriber by those without access to Proprietary Information, or (iii) has been obtained by Subscriber from sources not breaching any obligation to University; or (iv) which is or in the future becomes public knowledge other than through acts or omissions of Subscriber; or (v) is required to be disclosed by operation of law or the action of a court of competent jurisdiction.

Subscriber shall hold Proprietary Information in confidence for ten (10) years from date of disclosure, using safeguards at least comparable to those by which Subscriber handles its own similar proprietary information, but in any case not less than reasonable safeguards. Subscriber shall not disclose Proprietary Information to any third party, including without limitation any patent or copyright office, unless required by court order..

Technical Assistance University may provide certain training to Subscriber to enable Subscriber’s optimal use of the Work. University shall endeavor to respond to routine requests for clarifications. Any such efforts by University, however, shall be on an “as available” basis.

Delivery University shall provide Subscriber access to Work by means of password and internet address for Work. Delivery is authorized by Subscriber to be made to the Contact, who shall serve as Subscriber’s contact for University with respect to Work. University shall contact Contact within five (5) business days of the Effective Date.

Payment Subscriber shall pay to University License Fee as set forth on Schedule B, due upon execution of this Agreement and as outlined in the payment schedule in Schedule B. Should any payment not be received from Subscriber, University, at its sole discretion, may end Subscriber’s access to Work.

Term This Agreement shall expire three years after June 30th of the same calendar year as the effective date.

Notices All notices to University regarding this Agreement shall be sent by U.S. mail or email per the following:

Portland State University
PO Box 751, Mailcode RSP
Portland, OR 97207
Attention: Director, Innovation & Intellectual Property
Telephone: 503.725.8454
Email: iip@pdx.edu

Termination

Provided Subscriber has paid the portion of the License Fee due, Subscriber may terminate this Agreement at any time upon thirty (30) days written notice to University. University shall not refund to Subscriber any portion of License Fee received by University for early termination.

University may terminate this Agreement upon notice if Subscriber is in breach of this Agreement and fails within thirty (30) days of a written demand for performance to cure such breach. After notice period elapses, access to Work will be immediately terminated. If University determines that University can no longer administer this Agreement, University may terminate the Agreement upon ninety (90) days notice to Subscriber.

The provisions under which this Agreement may be terminated shall be in addition to any and all other legal remedies which either party may have for the enforcement of any and all terms hereof, and do not in any way limit any other legal remedy such party may have.

Termination of this Agreement shall terminate all rights and permissions granted to Subscriber relating to Work. The obligation to pay any required License Fee then due survives termination of this Agreement.

Disclaimers

The Work has been developed as part of research conducted at Portland State University. The Work is experimental in nature and is made available "AS IS," without obligation by University to provide accompanying services or support except as specified in this Agreement. The entire risk as to the quality and performance of the Work is with Subscriber.

UNIVERSITY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, PERTAINING TO THE MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF WORK OR ANY SUBJECT MATTER OTHERWISE PROVIDED TO SUBSCRIBER UNDER THIS AGREEMENT.

The Work may contain links to third party websites that are not owned or controlled by University. University has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites. In addition, University will not and cannot censor or edit the content of any third-party site. By using the Work, Subscriber expressly agrees that University has no liability arising from Subscriber's use of any third-party website. University does not guarantee security or privacy of any Content.

University does not permit copyright infringing activities and infringement of intellectual property rights on Work, and University will remove all Content if properly notified that such Content infringes on another's intellectual property rights.

University reserves the right to remove Content without prior notice.

Indemnification

Subscriber shall save, hold harmless and indemnify the State of Oregon, the State Board of Higher Education, University, and their agencies, subdivisions, officers, employees and agents from and against any and all claims, suits, actions, losses, demands, damages, costs, expenses (including, but not limited to, those arising out of personal injuries, wrongful death or property damage suffered by any third party) and reasonable attorneys' fees incurred by University, arising out of or related to Subscriber's use of Work or any other activities of Subscriber or its officers, employees, subcontractors or agents under this Agreement.

General

Subscriber may not assign any of its rights under this Agreement. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition of the Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party. In the event that any provision hereof is found to be invalid or unenforceable pursuant to a final judgment or decree, the remainder of this Agreement shall remain valid and enforceable according to its terms. Nothing contained in this Agreement shall be construed as creating a joint venture, partnership or employment relationship between the parties hereto. Except as specified herein, neither party shall have the right, power or implied authority to create any obligation or duty, express or implied, on behalf of the other party hereto. Subscriber and University are the only parties to this Agreement and are the only parties entitled to enforce its terms; nothing in this Agreement gives or is intended to give, or shall be construed to give or provide any benefit or right, whether directly, indirectly or otherwise, to any third persons. Subscriber agrees not to use the name of University or any of its employees, in any advertisement or sales promotion relating to any Work without prior written approval by University. This document represents the entire Agreement between the parties as to the matters set forth and integrates all prior discussions or understandings between them. This Agreement may only be modified or amended in writing by a document signed by an authorized representative of University and Subscriber.

Access Agreement
Schedule A
Work

The Total Employer Cost of Compensation Software (TECC) Enabled Benchmarking System was developed at Portland State University's Center for Public Service and refined with input from the Local Government Personnel Institute. This software allows jurisdictions to efficiently input compensation related information and then calculates the Total Employer Cost of Compensation value as determined through university research. Aspects that the University considers proprietary are the survey design (including questions) and process and order in which questions are asked as well as the actual calculations to determine the TECC. The software then assists the jurisdiction in making comparisons of like jobs and comparable jurisdictions. The methodology, including questions and rating system to determine like jobs is considered proprietary. The determination of candidates for comparable jurisdictions is also proprietary. Finally, the job descriptions and selection called "Standard Jobs" in the software is also proprietary.

**Access Agreement
Schedule B
License Fee, Payment Schedule**

Updated 10.06.2016

License Fee

Fees are for a three (3) year term.

Subscriber Size¹	Normal Fee²	Applicable discounts³
Smallest <input type="checkbox"/> County/SD up to 10k City up to 5K	\$2,000	\$1,600
Small <input type="checkbox"/> County/SD 10k to 100K City 5K to 20K	\$4,000	\$3,200
Medium <input type="checkbox"/> County/SD 100K to 200K City 20K to 50K	\$5,500	\$4,400
Large <input type="checkbox"/> County/SD over 200K City over 50K	\$7,000	\$5,600

Payment Schedule

Due	Within 30 days of Execution	Within 30 days of July 1 of 2nd calendar year	Within 30 days of July 1 of 3rd calendar year
Amount	50% of License Fee	25% of License Fee	25% of License Fee

- 1) The determination of a given jurisdiction's population will be based on census data from the most recently certified and published population estimates from the PSU Population Research Center. Subscribers are guaranteed to remain within that pricing tier during the entire period of their 3-year subscription. PSU's Center for Public Service, the provider of the TECC software-enabled service, has the authority to change and set pricing terms at any time for future subscribers.
- 2) A yearly pricing review will occur annually on July 1. Discount pricing and terms can be reviewed and changed at any time for future subscribers.
- 3) Applicable discounts are available to subscribers affiliated with certain TECC partner organizations. Subscribers may also be eligible to exceptional pricing upon approval. For an application, please contact TECC directly at tecc@pdx.edu.