

AGB Benchmarking Service Agreement

This is a legal agreement between the Subscriber Institution and the Association of Governing Boards of Universities and Colleges (“AGB”), pursuant to which Subscriber Institution is subscribing to the AGB Benchmarking Service, which is a web-based service providing access to data from the United States Department of Education’s Integrated Postsecondary Education Data System (IPEDS), and other selected data, and facilitating timely comparisons with other institutions (the “AGB Benchmarking Service”).

1. USE AUTHORITY. AGB hereby grants to Subscriber Institution, and Subscriber Institution accepts, the right to use the AGB Benchmarking Service only as authorized in this Agreement.

The Subscriber Institution is entitled to one year of service from the date the account is activated. Subscriber Institution may generate reports for its own use, print them from the web, and copy reports into other applications. During the subscription term, Subscriber Institution has unlimited access to the AGB Benchmarking Service and may create as many data comparison groups as it desires.

2. SUBSCRIPTION FEES. Subscriber Institution shall pay an annual basic fee as shown in the document executed by an authorized official of Subscriber Institution (“Fee”) for the use of the AGB Benchmarking Service by no more than five persons who are employed by or affiliated with Subscriber Institution. Subscriber Institution shall pay an additional annual fee, as set forth in a written agreement with AGB, for more than five users employed by or affiliated with Subscriber Institution to use AGB Benchmarking Service.

3. ROLES.

Unit Administrator – Subscriber Institution shall designate a Unit Administrator to manage its account. For the basic Fee, the Unit Administrator will have the authority and responsibility to establish and update password-protected accounts for Subscriber Institution. The Unit Administrator may change the users within the Subscriber Institution without notice to or approval by AGB.

AGB – AGB will establish the Subscriber Institution’s account online and provide the Unit Administrator with direct access to establish the authorized users. Once the user information is entered, each authorized user within the Subscriber Institution will receive an e-mail message indicating that the account is active and how to use it.

User – User agrees to use AGB Benchmarking Service in accordance with the terms of this Agreement.

4. COPYRIGHT AND RESTRICTIONS. Subscriber Institution and each User acknowledges and agrees that the AGB Benchmarking Service is a proprietary product of AGB, as properly enabled by and derived from underlying technology from Peerfocus, LLC, and that both the service and any related documentation are protected under U.S. copyright law. Subscriber Institution and each User further acknowledges and agrees that all right, title, and interest in and to the AGB Benchmarking Service, including all other associated intellectual property rights, are and shall remain with AGB and Peerfocus, LLC. AGB or Peerfocus, LLC may commence a civil action seeking damages, attorneys' fees and injunctive relief and shall be entitled to any or all such relief in the event of any breach of this Agreement.

5. NO ASSIGNMENT OF AGREEMENT. Subscriber Institution agrees to use the AGB Benchmarking Service for the sole benefit of the Subscriber Institution, and agrees not to share its account with or generate reports for others. Use of the AGB Benchmarking Service for hire or resale of reports is strictly prohibited. Subscriber Institution may not assign, or in any way transfer its rights under this Agreement to any third party.

6. LIMITED WARRANTY. AGB warrants that AGB Benchmarking Service will perform substantially in accordance with the functional specifications in the AGB brochure describing AGB Benchmarking Service.

Disclaimer. AGB is not responsible for IPEDS or other data that may be incorrectly reported or liable for any actions that may be taken based on incorrectly reported IPEDS or other data.

As Subscriber Institution's exclusive remedy for any defect or error in the AGB Benchmarking Service covered by such warranty, and in complete satisfaction of AGB's entire liability in contract, tort, or otherwise, AGB will correct any error or defect and issue a modification to the AGB Benchmarking Service or corrected instructions, as appropriate. Subscriber Institution agrees that the foregoing constitutes Subscriber Institution's sole and exclusive remedy for breach by AGB of any warranty made under this Agreement.

7. NO OTHER WARRANTIES. EXCEPT FOR THE SPECIFIC LIMITED WARRANTY PROVIDED IN PARAGRAPH 6 ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AGB DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANT-ABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CHARACTER, FUNCTION, OR CAPABILITIES OF THE AGB BENCHMARKING SERVICE, OR ITS APPROPRIATENESS FOR SUBSCRIBER INSTITUTION'S PURPOSES.

8. LIMITATION OF LIABILITY. AGB's cumulative liability to Subscriber Institution or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement, including, without limitation, any costs or damages associated with loss of use of the AGB Benchmarking Service or any other resources, loss of business or

profits, any loss of data, any third-party claims or costs of substitute programs, shall not exceed the aggregate amount of the fees paid by Subscriber Institution to AGB hereunder in the twelve (12) months immediately proceeding the events that gave rise to the Subscriber Institution's cause of action.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL AGB BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF DATA, DELAY IN THE DELIVERY OF BUSINESS PRODUCTS (OR SERVICES, OR ANY OTHER PECUNIARY LOSS) SUFFERED BY SUBSCRIBER INSTITUTION OR ANY OTHER PERSON OR ENTITY, WHETHER FROM THE USE OF OR INABILITY TO USE THE AGB BENCHMARKING SERVICE, ANY FAILURE THEREOF, OR OTHERWISE, EVEN IF AGB OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. ENTIRE AGREEMENT. This Agreement together with the document(s) executed by an authorized official of Subscriber Institution in connection with the payment of the annual Fee and any supplemental fee for additional Users, constitute the full and complete Agreement between the parties and supersede all prior agreements, understandings, negotiations and discussions regarding Subscriber Institution's use of the AGB Benchmarking Service, whether oral or written between the parties.

10. APPLICABLE LAW. This Agreement shall be governed by the laws of the State of New York as such laws are applied to agreements without application of conflicts of law principles. AGB and Subscriber Institution agree that venue for adjudication of any dispute arising under this Agreement shall be the United States Federal District Court for the District of Columbia or the Superior Court of the District of Columbia, as jurisdiction applies.