

## TERMS OF USE AND NOTICES FOR APQC'S OSBC DATABASE ("TERMS OF USE")

1. APQC's Open Standards Benchmarking Collaborative<sup>SM</sup> ("OSBC") research database consists of surveys, databases, data reports and data collected through APQC's Web site and APQC's Knowledge Base<sup>SM</sup> (collectively, the "OSBC Database").
2. As a condition to accessing the OSBC Database, you agree to provide accurate survey information as requested by APQC. If the source of the survey information is a Source Organization (defined below) rather than your Organization, then, with respect to such survey information, you represent and warrant that you have received assurances from the Source Organization that such survey information is accurate.
3. All data disclosed to APQC will be used in accordance with APQC's Benchmarking Code of Conduct ([www.apqc.org/bmkcode](http://www.apqc.org/bmkcode)).
4. APQC reserves the right to deny or limit privileges to the OSBC Database to any user without notice.
5. Definitions: For purposes of these Terms of Use:
  - a. "you" and "your" means you individually and your employer;
  - b. "Employee" means a person who receives an IRS W-2 Form or international equivalent, whether full-time or part-time, with non-temporary status from an employer;
  - c. "Your Organization" means your employer;
  - d. "Source Organization" means the organization whose data is being submitted to the OSBC Database; and
  - e. "Your submission" means the data provided by you about your Organization or the Source Organization.
6. By accepting the Terms of Use, you represent that (i) you are an Employee of the Organization providing the survey information or (ii) if you are providing survey information on behalf of a Source Organization, you have authorization to provide the Source Organization's data to APQC, and to bind your Organization and/or the Source Organization, as the case may be, to the Terms of Use, provide the information as requested by APQC, including requests reflected in its Web sites and respond to surveys presented therein.
7. You are not allowed at any time to represent and/or provide data for any organization other than your Organization, or the Source Organization, as the case may be, provided if you are acting on behalf of the Source Organization, you have written permission to such effect from the Source Organization. Further, if you are acting on behalf of a Source Organization, you agree to promptly provide APQC with the name address and other contact information

- of a representative of the Source Organization during the data submission process.
8. Company-specific data entered by you to complete each survey and submitted to APQC is confidential and subject to APQC's privacy and anti-trust policies. The OSBC Database and any other information disclosed by APQC to you is confidential. In this regard, if you are providing survey data on behalf of a Source Organization, you represent and warrant that you have authority from the Source Organization to: (i) bind the Source Organization to APQC's privacy and anti-trust policies, and do so bind the Source Organization; and (ii) to receive any report generated by APQC related to the survey information, as agent of the Source Organization. Information provided to APQC via the OSBC surveys will be used in accordance with APQC's Benchmarking Code of Conduct.
  9. The OSBC Database is intended to support the understanding, assessment, measurement, and change of internal processes within an organization. You may only use the OSBC Database on an individual, limited, non-commercial, and personal basis, except if you are acting as representative of a Source Organization, in which event you may only use the OSBC Database as a representative of the Source Organization, at all times for a non-commercial basis (see also paragraph 11). Except as may be provided by special agreement or license between you and APQC, you, on behalf of your Organization or the Source Organization, as the case may be, may not use, modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, or sell any surveys, data, information, products, or services obtained from the OSBC Database.
  10. Without the advance, expressed written permission of APQC, you may not use the OSBC Database in any commercial manner. You acknowledge that violation of this provision would cause irreparable harm to APQC not adequately compensable by monetary damages and, in addition to other relief, you agree that APQC may seek injunctive relief without necessity of posting bond to prevent any actual or threatened violation of this term.
  11. A submission made with respect to a Source Organization will result in one or more output documents including a participant report from APQC. If you are submitting on behalf of a Source Organization, you acknowledge and agree that such output documents may only be used to complete the single engagement with the original Source Organization and for no other purpose. In addition, under no circumstance may you charge for the data produced and reflected in the output documents. You acknowledge that violation of this provision would cause irreparable harm to APQC not adequately compensable by monetary damages and, in addition to other relief, you agree that APQC may seek injunctive relief without necessity of posting bond to prevent any actual or threatened violation of this term.

12. APQC does not claim ownership of the materials you provide to APQC (including feedback and suggestions) or post, upload, input, or submit to the OSBC Database. However, by posting, uploading, inputting, providing, or submitting data, you are giving consent to APQC, in accordance with the APQC Benchmarking Code of Conduct, to use your submission in connection with the operation of its businesses (including, without limitation, the OSBC Database), including, without limitation, the license rights to: copy, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate and reformat your submission; to publish your blinded data in connection with your submission; and to sublicense such rights to any supplier of an OSBC Database. APQC will not pay you any compensation with respect to the use of your submission. APQC is under no obligation to post or use any submission you may provide and APQC may remove any submission at any time in its sole discretion. By posting a submission you warrant and represent that you own or otherwise control all of the rights to your submission as described in these terms of use including, without limitation, all the rights necessary for you to provide, post, upload, input, license, or submit the submissions.
13. APQC provides the OSBC Database “as is” without warranty of any kind, and APQC hereby disclaims all warranties whether express or implied, oral or written, with respect to information comprising the OSBC Database including without limitation all implied warranties of merchantability, fitness for any particular purpose, title, or non-infringement. Changes are periodically made to the OSBC Database and to the information therein.
14. APQC’s liability for damages to you for any cause regardless of the form of any claim or action shall not exceed the fees actually paid by you (if any) during the term of this agreement.
15. You agree that APQC may list your organization name as a participant in promotional materials used by APQC and provided to customers and prospective customers. With respect to a Source Organization, you covenant that you have authority to authorize, and you hereby authorize, APQC to list the Source Organization as a participant in promotional materials used by APQC and provided to customers and prospective customers
16. APQC may change these terms and conditions at any time.
17. All contents of the OSBC Database and APQC’s Knowledge Base are Copyright©1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010 APQC and/or its suppliers, 123 North Post Oak Lane, Houston, Texas 77024 U.S.A. All rights reserved. TRADEMARKS: American Productivity & Quality Center, APQC, the OSBC Database, APQC’s Knowledge Base<sup>SM</sup>, and/or other APQC products and services may also be either trademarks or registered trademarks of APQC. Any rights not expressly granted herein are reserved. The copyright laws of

the United States restrict the copying, including photocopying, of copyrighted materials, which include most books, magazines, newspapers, newsletters, other periodicals, and training materials, in either hard copy or electronic versions. REPRODUCTION OF COPYRIGHTED WORKS WITHOUT THE PERMISSION OF THE COPYRIGHT HOLDER IS GENERALLY PROHIBITED BY FEDERAL LAW. VIOLATIONS CAN RESULT IN CIVIL LIABILITY, INCLUDING ACTUAL DAMAGES, ATTORNEYS FEES, AND/OR STATUTORY DAMAGES, OF UP TO 100,000 USD PER INCIDENT, AND/OR CRIMINAL PENALTIES.

18. You hereby release and hold harmless APQC, its officers, directors, agents, consultants, contractors and employees from any and all claims, actions, injunctive relief, or causes of action for damages relating in way to use of information comprising the OSBC Database.
19. You agree that any dispute regarding this agreement will be resolved only in the state or federal courts located in Harris County, Texas.