

**ACCESSING NON-CONFIDENTIAL PROPRIETARY DATA  
IN THE ECONOMIC RESEARCH SERVICE**

**National Establishment Time-Series (NETS) Database**

Purveyors of proprietary data retain the ownership, including the title and all applicable rights to patents and copyrights. This means that:

1. ERS is licensed to use NETS data until September 30, 2022 ERS has the right to use the data and information for that limited time.
2. ERS can only share the data (provide access) with others for joint collaboration on ERS-sponsored research projects. The data cannot be transferred outside the building or agency computers.
3. ERS staff must maintain the security of the data to avoid access by unauthorized individuals or release of the data outside of ERS.

**ERS User Responsibilities:**

1. Submit a signed copy of this form to David Dudgeon ([david.dudgeon@usda.gov](mailto:david.dudgeon@usda.gov)).
2. Data will only be used for the project described below.
3. All analyses will be conducted on ERS computers. The data must remain within ERS, either on the user's PC or in their secure storage area on the ERS LAN. Teleworkers may access the data from home using ERS approved remote access software. However, they cannot transfer the data or statistical output to their home Computer. All analysis must take place on ERS servers or personal computers.
4. Data will NOT be transferred to portable computers and devices, or media such as USB memory chips, email attachments, or File Transfer Protocol (FTP) servers.
5. The data are from public sources and are not confidential. However, ownership is retained by the data purveyor.
6. The data must not be accessed after the expiration date of the data owner's agreement.
7. Pursuant to this policy, only statistical results may be released. Statistical results may include summary statistics, econometric estimates, and economic analysis. Raw data may not be published, released, or shared with staff not on this project. If in doubt, contact David Dudgeon ([david.dudgeon@usda.gov](mailto:david.dudgeon@usda.gov)) or Eliana Zeballos ([eliana.zeballos@usda.gov](mailto:eliana.zeballos@usda.gov)).
8. Read the NETS Database End-User agreement with Walls & Associates and abide by the contract.

**Data Expiration date** 09/30/2022

**Project Title:**

**Description:**

I, \_\_\_\_\_, agree to the responsibilities specified above.  
*(print name)*

**User's Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Branch Chief's Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

NETS database license fee for approximately 71.5 million establishments in the national 2019 NETS Database delivered electronically on December 15, 2020. The one-time delivery of the NETS Database was in tab-delimited ASCII and MS SQL server database format with fields defined in the National Establishment Time-Series (NETS) Database: 2019 Database Description (with Address information). In addition, the term of use for USDA is extended to March 31, 2022, with provisions for automatic extension in the event that a professional journal or other publications needs confirmation, verification or re-estimation of results in a refereed paper produce with the licensed data (see paragraph 5 of the NETS Database End-User Agreement).

**NETS DATABASE  
END-USER AGREEMENT**

This NETS DATABASE END-USER AGREEMENT, dated as of \_\_\_\_\_, 2021 (this "Agreement"), is by and between WALLS & ASSOCIATES ("Walls") and USDA-ECONOMIC RESEARCH SERVICE ("Licensee").

WHEREAS, the National Establishment Time-Series (NETS) Database ("NETS") is a proprietary business and industry database, authored by Walls & Associates ("Walls"); and

WHEREAS, NETS uses proprietary information on individual businesses provided by Dun & Bradstreet, Inc. ("D&B Information"); and

WHEREAS, Walls desires to license Licensee to use the NETS Database; and

WHEREAS, Licensee understands that, in order to use NETS and the embedded D&B Information, it must enter into this Agreement and agree to certain conditions concerning the use of said NETS data and D&B Information.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. NETS Data License. Subject to the terms and conditions of this Agreement, Walls grants to Licensee a nontransferable, non-exclusive, non-sublicensable right to use the National NETS Database solely in Licensee's business, for the Term, as defined herein, for the purpose of analyzing business and industry performance included in the set of provided establishment records. The NETS Database available to the Licensee includes approximately 64.4 million establishments which will be delivered no later than 5 working days after the execution of this Agreement. The one-time delivery of the individual establishment time-series records will be in *MS SQL Server* and/or tab-delimited *ASCII* database format with fields defined in the *National Establishment Time-Series (NETS) Database: 2017 Database Description* publication (including *Address* information). Licensee and agents may not copy the database beyond those copies needed to provide access to statistical tools and allow off-site usage by Licensee or agent pursuant to the terms of this Agreement.

2. D&B Information License. Subject to the terms and conditions of this Agreement, Walls grants to the Licensee a nontransferable, fully paid-up, non-exclusive right to use NETS data solely in Licensee's business for analytical, research and marketing purposes only. Licensee acknowledges that D&B's Information is contained in the NETS Database and Licensee will not make any credit decisions based on such information. The information may not be used to determine an individual's eligibility for credit or insurance to be used primarily for personal, family or household purposes or to determine an individual's eligibility for employment. Address information is provided for research purposes only and may not be used for mailings, marketing, or to facilitate other contacts with the addressee. No other entity other than the Licensee shall be permitted to access the said NETS data.

3. Scope of License.

(a) Site License.

A Site License is available to companies, commercial institutions, educational institutions, government agencies, and business entities. If Licensee has acquired a Site License, as defined on Schedule A attached hereto, Licensee may provide access to NETS to any number of researchers, academics or students at or formally associated with Licensee's institution or business, but not to exceed the "Maximum Number of Users" specified on Schedule A.

(b) Seat License.

(i) If Licensee in an academic institution that has acquired a license for use by one or more individuals (each, a "Seat License"), as specified on Schedule A, Licensee may provide access to NETS solely to that number of users, researchers, academics, or students at or formally associated with Licensee's institution. The specific users of Licensee's Seat Licenses are as specified on Schedule A.

(ii) Licensee may transfer a Seat License from a named user to a new named user who is an employee, researcher affiliated with the Licensee, academic, student, contractor, or consultant of Licensee, solely on behalf of Licensee, in the event that the prior named user will have no further access to or use of NETS on behalf of or in connection with Licensee.

4. Restrictions on Use. Licensee agrees to use NETS solely for Licensee's own business. Only Licensee's employees, contractors, faculty members, consultants, or other parties as expressly authorized by Walls may use NETS, and only so long as such use is in compliance with the terms of this Agreement. Except as otherwise expressly permitted herein, Licensee shall not permit any affiliated entities or third parties to use NETS.

Under no circumstances shall Licensee sell, license, publish, display, distribute, or otherwise transfer or provide access to NETS, in whole or in part, without Walls's prior written consent.

5. Reservation of Rights. This Agreement shall confer to Licensee no ownership rights of any kind in NETS or D&B Information, other than the license rights granted herein. Licensee will not remove, deface, or destroy, and shall retain in all copies of NETS, any copyright, patent, trademark, or service mark notice, other proprietary markings or confidential legends placed on or within NETS or technical documentation. Licensee acknowledges that all information relating to NETS and technical documentation are proprietary and valuable. Licensee will not use such information except as licensed hereunder and shall not disclose such information to any person other than to Licensee's employees, unless such information (i) is or, without fault of Licensee, becomes part of the public knowledge or (ii) is hereafter rightfully furnished to Licensee by a third party without restrictions on disclosure. The foregoing confidentiality provisions of this Agreement shall survive and continue after termination of this Agreement, and shall bind the representatives, successors, and assigns, if any, of Licensee.

6. Quality Control. Licensee agrees (i) not to use NETS data in any way other than specified in this Agreement, except in such form and manner as shall be specifically approved in advance by Walls in writing; (ii) in no event to use NETS data in any way outside Licensee's business; and (iii) to follow any other reasonable standards as may be conveyed to Licensee by Walls. Notwithstanding the above, Licensee may incorporate summary/aggregate NETS data into works that Licensee or its agents create, including research papers (such as papers prepared for publication in academic journals), speeches, testimony, reports, official publications, and internal policy.

7. Term. This Agreement shall be for two (2) years from the date of the initial license, as specified on Schedule A, unless otherwise terminated pursuant to the terms of this Agreement. Upon the expiration or termination of this Agreement, Licensee's license to use NETS and the D&B Information shall terminate. Licensee, however, may continue to distribute, publish, promote, and otherwise circulate to the public, work products that were created using and/or citing NETS data and the D&B Information during the Term. In the event that a professional journal or other publication needs confirmation, verification, or re-estimation of results in a refereed paper produce with the licensed data, the Term will be automatically extended to accommodate such verification. Licensee acknowledges that its access to the services described in this Agreement is dependent upon the continuation of the existing data supply relationship between D&B and Walls and in the event such data supply relationship should expire or be terminated, Walls reserves the right to terminate the provision of services under this Agreement.

8. License Fee. Licensee shall pay Walls a one-time license fee as specified on Schedule A (the "License Fee"). Said License Fee shall be due and payable within thirty (30) days of the Licensee's receipt of the initial NETS data delivery.

9. Termination. Either party may terminate this Agreement for a material breach that has not been cured within thirty (30) days following notice thereof from the terminating party.

10. Effect of Termination or Cancellation.

(a) Walls shall not, by reason of the termination or cancellation of this Agreement, be liable to Licensee for compensation, reimbursement, or any damages, either actual, consequential, incidental, special, or punitive, arising out of such termination or cancellation.

(b) After the termination of this Agreement by its terms, operation of law or otherwise, all rights, privileges and obligations arising from this Agreement shall cease to exist and Licensee shall promptly return all copies of the NETS data and all information, either contained therein or exported therefrom, to Walls and Licensee shall retain no copies of such material.

11. Walls Indemnity.

(a) Walls will defend, indemnify, and hold Licensee harmless from and against any and all claims, demands, liabilities, actions, suits or proceedings (i) asserting that the NETS Database was created or distributed in violation of the protected trade secret, mask work right, copyright, trademark, moral right, or contract right of another party within the U.S., or (ii) arises out of Walls's material breach of this Agreement, and will pay resulting costs, damages and attorneys' fees finally awarded (except that in no event will Walls be liable for lost profits or for any other incidental, consequential, special, or punitive damages), provided that:

(i) Licensee promptly notifies Walls of the claim;

(ii) Licensee cooperates with Walls in the defense of the claim; and

(iii) Walls has sole control of the defense and all related settlement negotiations relating to the claim.

(b) If such a claim occurs, or in Walls's opinion is likely to occur, Walls may, at its option and expense, either procure for Licensee the right to continue to use the current version of the NETS data or replace or

modify the NETS data so that it becomes non-infringing. If the use of the current version of the NETS Database is enjoined and the foregoing remedies cannot reasonably be accomplished, then Walls may require the return of the NETS data and this Agreement shall terminate and Licensee shall have no further remedy or claim for damages against Walls.

(c) Walls represents and warrants that it has all rights necessary to convey the licenses granted to Licensee in this Agreement. Otherwise, Walls makes no representations or warranties of any kind with regard to the D&B Information inserted into any version of the NETS Database.

(d) These rights of indemnification shall survive the termination of this Agreement. The foregoing states the entire obligation of Walls, and the sole remedies of Licensee, with respect to infringement of copyrights, trade secrets, patents, mask work rights, moral rights, trademarks, and other third-party proprietary rights.

12. Licensee Responsibility. Except to the extent that Walls has a duty to defend such claim under Section 11 of this Agreement, Licensee will defend and hold Walls and Dun and Bradstreet ("D&B") harmless from and against any and all claims, demands, liabilities, actions, suits, or proceedings (i) asserted or brought against Licensee, D&B or Walls by any third party regarding Licensee's use of NETS data; (ii) which may be incurred by D&B or Walls on account of the breach by Licensee of its obligations under this Agreement; or (iii) otherwise arising out of Licensee's use of NETS data.

13. Disclaimer of Warranty.

(a) LICENSEE ACKNOWLEDGES THAT NETS (AND EACH MODIFICATION THAT MAY BE PROVIDED HEREUNDER) AND ANY D&B INFORMATION CONTAINED THEREIN IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WALLS AND D&B MAKE NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO NETS AND ANY D&B INFORMATION CONTAINED THEREIN. BY WAY OF EXAMPLE, BUT NOT OF LIMITATION, WALLS AND D&B MAKE NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, IN NO EVENT SHALL WALLS OR D&B BE LIABLE FOR ANY BUSINESS OUTCOME RESULTING FROM DATA OR INFORMATION OBTAINED BY LICENSEE THROUGH ITS USE OF NETS.

(b) LICENSEE ALSO ACKNOWLEDGES THAT THE TYPE OF INFORMATION TO BE PROVIDED WILL CONTAIN A DEGREE OF ERROR AND MAY BE DATED AND ESTIMATED. D&B AND WALLS DO NOT GUARANTEE OR WARRANT THE CORRECTNESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE INFORMATION OR OF THE MEDIA ON WHICH THE INFORMATION IS PROVIDED AND SHALL NOT BE LIABLE TO LICENSEE FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY WALLS'S OR D&B'S NEGLIGENT ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, OR DELIVERING INFORMATION OR IN OTHERWISE PERFORMING THEIR OBLIGATIONS UNDER THIS AGREEMENT.

(c) IN NO EVENT SHALL WALLS OR D&B BE LIABLE TO THE LICENSEE OR TO ANY THIRD PARTY FOR ANY LOST REVENUES, LOST PROFITS, OR OTHER DIRECT, INDIRECT OR CONSEQUENTIAL DAMAGES CAUSED, IN WHOLE OR IN PART, BY THE USE OF NETS, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR OTHERWISE ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. Limitation of Liability. IF FOR ANY REASON WHATSOEVER, PARAGRAPH 13 ABOVE IS HELD TO BE INOPERATIVE, UNENFORCEABLE, OR INVALID, THEN LICENSEE AGREES THAT WALLS'S AGGREGATE LIABILITY, IF ANY, FOR ANY AND ALL LOSSES OR INJURIES TO LICENSEE ARISING OUT OF ANY ACTS OR OMISSIONS OF WALLS OR D&B IN CONNECTION WITH ANYTHING TO BE DONE OR FURNISHED HEREUNDER, REGARDLESS OF THE CAUSE OF THE LOSS OR INJURY (INCLUDING NEGLIGENCE) AND REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL NEVER EXCEED THE AMOUNT PAID BY LICENSEE FOR NETS DATA OR \$2,500 WHICHEVER IS GREATER, AND LICENSEE COVENANTS AND PROMISES THAT IT WILL NOT SEEK PUNITIVE DAMAGES IN ANY SUIT AGAINST WALLS OR D&B.

15. Governing Law; Attorneys' Fees. The law of the United States and the State of Colorado shall govern this Agreement, as if both parties hereto were resident and doing business in such state. In any action arising under, to enforce, or otherwise relating to this Agreement, the prevailing party as determined by the court or other body with jurisdiction by agreement of the parties shall be entitled to recover from the other party, in addition to all other awards and remedies to which it is entitled, its reasonable attorneys' fees and costs incurred in such action.

16. Payment Schedule. Any amounts due Walls hereunder shall be payable per the schedule in paragraph 8 above. Late payments shall be subject to interest on the unpaid amount equal to the highest lawful rate.

IN WITNESS WHEREOF, the parties to this Agreement executed and delivered this Agreement as of the day and year first above written.

WALLS & ASSOCIATES

By \_\_\_\_\_

Name Donald W. Walls

Its President

LICENSEE:

USDA-ECONOMIC RESEARCH SERVICE

By \_\_\_\_\_

Name \_\_\_\_\_

Its \_\_\_\_\_