

## **EstiMod.com Terms of Service**

Updated June 21, 2022

Welcome to EstiMod, the premiere ExMod (Experience Modification) Calculator for Workers Compensation Professionals, provided by IntelliComp.

**BINDING EFFECT. This is a binding agreement.** By using the website at [estimod.com](http://estimod.com) (the "Site") or any services provided in connection with the Site (the "Service"), YOU AGREE TO ABIDE BY THESE TERMS OF SERVICE, which may be modified by IntelliComp from time to time in its sole discretion pursuant the terms of this Agreement. For purposes of this Agreement, you the subscriber are referred to "You" or "Client," IntelliComp, the provider, is referred to as "Company" or "IntelliComp."

YOU AGREE THAT BY USING THE SERVICE YOU REPRESENT THAT YOU ARE AT LEAST 18 YEARS OLD AND LEGALLY COMPETENT TO ENTER INTO THIS AGREEMENT; YOU FURTHER REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF ANY COMPANY OR ENTITY ON WHOSE BEHALF YOU ARE ACTING.

**REGISTRATION.** Your use of EstiMod and its Service requires registration. You may not register with EstiMod unless you agree to these Terms of Service. You must complete the registration process by providing the complete and accurate information requested on the registration form. You will also be asked to provide or provided an email address and password. You are entirely responsible for maintaining the confidentiality of your password. You may not use the account, email address and password of someone else at any time. Company shall not be liable for any loss that you incur as a result of someone else using your password, either with or without your knowledge.

**SECURITY BREACH.** Client must promptly inform IntelliComp of any suspected breach of security, such as loss or theft; or unauthorized disclosure or use of its user identification codes and password. Until Client notifies IntelliComp, Client will remain liable for any damages, or losses incurred by IntelliComp resulting from the use of the Client's user identification codes and password by non-authorized parties.

**LICENSE.** All information furnished under this Agreement at or through IntelliComp's Site is licensed for the non-exclusive, non-transferable use of the Client and shall not be made available by the Client in whole or in part to any other person or entity in any form or manner whatsoever, on paper, on magnetic media, electronic or otherwise. Client recognizes and agrees that such disclosure to others would be damaging to IntelliComp. All information is to be used by the Client only and may not be transferred to others. The contents of the service are subject to copyright protection under the laws of the United States.

**USE OF DATA.** The licensed data information furnished hereunder may be used by the Client during the term of this Agreement, but not thereafter. Client acknowledges that the format, presentation and manner of presentation of the licensed data is copyrighted, and may not be republished, distributed, transferred or sold by the Client or Client's employees, agents, or representatives, without the express written consent of the IntelliComp.

Client acknowledges and agrees that all information furnished to the Client by IntelliComp is and will be subject to copyright and other property rights of IntelliComp, representing the gathering

of a large amount of information, the selection therefrom and the rendition thereof into useable forms and formats. Customer shall not permit any act of omission or commission by its agents, employees, or any third party which will impair the copyright or IntelliComp's proprietary rights in the information or manner of expression thereof.

Client understands that that no title or ownership of any data is transferred by use of this Service, and that IntelliComp is solely licensing the use of the data during the term of this Agreement. Client acquires no ownership rights in the data. Sole ownership and title of this licensed data remains with the IntelliComp.

IntelliComp may make certain Data available to you from the Site, including specifically its ExMod Calculator output and related functions. If you access or download Data or information from the Site, the Data, including all files and images contained in or generated by the the Site or Service, are deemed to be licensed to you by Company, for your business or noncommercial use only. Company does not transfer either the title or the intellectual property rights to the Data, and Company retains full and complete title to the Data as presented, as well as all intellectual property rights therein. You may not sell, redistribute, or reproduce the Data, nor may you decompile, reverse-engineer, disassemble, or otherwise convert the Site's software or calculation functions to a human-perceivable form. All trademarks and logos are owned by Company or its licensors and you may not copy or use them in any manner except as part of your use of the Data.

**NO AUTOMATION.** Client shall not use automated methods to access, review, retrieve, or download Data or any information from the Site or Service. Client acknowledges and agrees that IntelliComp has an business interest in limiting data and bandwidth use and abuse by users, and that the disallowing automated access includes an intention to avoid server issues and downtime caused by multiple clients' use of the Site or Service.

**FEE FOR SERVICE.** Fees are set forth on estimod.com and during the registration process. All payments shall be made in advance. If your credit card or other method of payment fails to remit timely payment, IntelliComp reserves the right to refuse access to the Site or Service, or cancel such access as the case may be.

A. Fees are subject to change in the sole discretion of IntelliComp. However, if IntelliComp changes its fee schedule, Client's fees for the remainder of Client's Term will remain the same until the beginning of the next Term, as defined below.

B. No service or other fees are refundable in the event of early termination of this contract by either Party.

**TERM OF AGREEMENT.** The Term of this Agreement will be for an initial term of 12 months commencing the day following the date of acceptance of this Agreement by IntelliComp, via Client's registration and payment of fees. It will automatically renew for additional 12 month periods thereafter, unless IntelliComp receives a written notice, at least 30 days in advance of the end of any initial or subsequent 12 month period, of Client's intent to terminate.

IntelliComp reserves the right to terminate this Agreement immediately upon your material breach of any of the provisions of this Agreement, for nonpayment when due, or as otherwise set forth herein.

**USER CONTENT.** You grant IntelliComp a license to use the materials and information you input or post to the Site or Service. By inputting, posting, downloading, displaying, transmitting, or otherwise distributing information or other content (“User Content”) to the Site or Service, you are granting Company, its affiliates, officers, directors, employees, consultants, agents, and representatives a license to use User Content in connection with the operation of the the Site and Service, and the business of IntelliComp, its affiliates, officers, directors, employees, consultants, agents, and representatives, including without limitation, a right to copy, distribute, transmit, reproduce, edit, translate, and reformat User Content. By posting User Content on the Site or Service, you warrant and represent that you own the rights to the User Content or are otherwise authorized to post, distribute, display, perform, transmit, or otherwise distribute User Content.

**INTELLICOMP UTILIZES USER CONTENT SOLELY FOR THE PURPOSES OF PROVIDING THE SERVICE TO THE CLIENT.** IntelliComp understands the potentially confidential nature of data that may be entered by Client; the license granted to IntelliComp by this section is solely to allow IntelliComp to process the User Data entered by the Client.

**COMPLIANCE WITH INTELLECTUAL PROPERTY LAWS.** When accessing the Site or using the Service, you agree to obey the law and to respect the intellectual property rights of others. Your use of the Service and the Site is at all times governed by and subject to laws regarding copyright ownership and use of intellectual property. You agree not to upload, download, display, perform, transmit, or otherwise distribute any information or content (collectively, “Content”) in violation of any third party’s copyrights, trademarks, or other intellectual property or proprietary or legal rights. You agree to abide by laws regarding copyright ownership and use of intellectual property, and you shall be solely responsible for any violations of any relevant laws and for any infringements of third party rights caused by any Content you provide or transmit, or that is provided or transmitted using your User ID. The burden of proving that any Content does not violate any laws or third party rights rests solely with you.

**PROHIBITED USES.** IntelliComp imposes certain restrictions on your permissible use of the Site and the Service. You are prohibited from violating or attempting to violate any security features of the Site or Service, including, without limitation, (a) accessing content or data not intended for you, or logging onto a server or account that you are not authorized to access; (b) attempting to probe, scan, or test the vulnerability of the Service, the Site, or any associated system or network, or to breach security or authentication measures without proper authorization; (c) interfering or attempting to interfere with service to any user, host, or network, including, without limitation, by means of submitting a virus to the Site or Service, overloading, “flooding,” “spamming,” “mail bombing,” “crashing” or DDoS attacks; (d) using the Site or Service to send unsolicited e-mail, including, without limitation, promotions, or advertisements for products or services; (e) forging any TCP/IP packet header or any part of the header information in any e-mail or in any posting using the Service; or (f) attempting to modify, reverse-engineer, decompile, disassemble, or otherwise reduce or attempt to reduce to a human-perceivable form any of the source code used by Company in providing the Site or Service. Any violation of system or network security may subject you to civil and/or criminal liability.

**ALLEGED VIOLATIONS.** IntelliComp reserves the right to terminate your use of the Service and/or the Site. To ensure that Company provides a high quality experience for you and for other users of the Site and the Service, you agree that Company or its representatives may access your account and records on a case-by-case basis to investigate complaints or

allegations of abuse, infringement of third party rights, or other unauthorized uses of the Site or the Service. Company does not intend to disclose the existence or occurrence of such an investigation unless required by law, but Company reserves the right to terminate your account or your access to the Site immediately, with or without notice to you, and without liability to you, if Company believes that you have violated any of the Terms of Service, furnished Company with false or misleading information, or interfered with use of the Site or the Service by others.

**PRIVACY POLICY.** Company respects your privacy and permits you to control the treatment of your personal information.

A. **INTELLICOMP WILL NOT SELL YOUR PERSONAL INFORMATION.** IntelliComp may utilize information provided by you for purposes of providing the Service to you, or communicating with you regarding the Site or Service. IntelliComp is committed to your privacy and will not sell your information to third parties, or use it for any purpose other than as outlined herein.

B. **CONSENT TO ESSENTIAL COOKIES.** IntelliComp uses limited “cookies” and other tracking technologies that allow it to store a small piece of data on your computer about your visit to the Site. IntelliComp primarily utilizes cookies to assist in authentication of your account. Cookies help us learn which areas of the Site are useful and which areas need improvement. You can choose whether to accept cookies by changing the settings on your browser. However, if you choose to disable this function, your experience at the Site may be diminished and some features may not work as they were intended. IntelliComp does not utilize third-party cookies.

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**NO WARRANTY ON DATA PROVIDED.** IntelliComp has made its best efforts to assure the accuracy of the data and has acquired data by means and from sources it deems reliable. IntelliComp does not warrant or guarantee the correctness or completeness of the information furnished. IntelliComp will not be liable for any damages, expenses or other costs incurred by Client due to any errors, omissions or misstatements of the data provided. IntelliComp is not liable for any losses or other costs incurred by Client if service is off-line for a period of time due to technical problems or acts of God.

**LIMITED LIABILITY.** COMPANY’S LIABILITY TO YOU IS LIMITED. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL COMPANY BE LIABLE FOR DAMAGES OF ANY KIND (INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, LOST PROFITS, OR LOST DATA, REGARDLESS OF THE FORESEEABILITY OF THOSE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH YOUR USE OF THE SITE OR ANY OTHER MATERIALS OR SERVICES PROVIDED TO YOU

BY COMPANY. This limitation shall apply regardless of whether the damages arise out of breach of contract, tort, or any other legal theory or form of action.

**AFFILIATED OR LINKED SITES.** Company has no control over, and no liability for any third party websites or materials. From time to time in connection with your use of the Site, you may have access to content or websites that are owned by third parties. You acknowledge and agree that Company makes no guarantees about, and assumes no responsibility for, the accuracy, currency, content, or quality of this third party content.

**INDEMNITY.** You agree to indemnify Company for certain of your acts and omissions. You agree to indemnify, defend, and hold harmless Company, its affiliates, officers, directors, employees, consultants, agents, and representatives from any and all third party claims, losses, liability, damages, and/or costs (including reasonable attorney fees and costs) arising from your access to or use of the Site, your violation of this Agreement, or your infringement, or infringement by any other user of your account, of any intellectual property or other right of any person or entity. Company will notify you promptly of any such claim, loss, liability, or demand, and will provide you with reasonable assistance, at your expense, in defending any such claim, loss, liability, damage, or cost.

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**GOVERNING LAW AND JURISDICTION.** These Terms of Service shall be construed in accordance with and governed by the laws of the United States and the State of California, without reference to their rules regarding conflicts of law. You hereby irrevocably consent to the exclusive jurisdiction of the state or federal courts in San Diego County, California, in all disputes arising out of or related to the use of the Site or Service.

If any controversy or dispute arises between the parties to this Agreement, whether in law or in equity, the prevailing party in any such litigation or arbitration will be entitled to recover their reasonable attorney's fees and costs from the other party.

**SEVERABILITY; WAIVER.** If, for whatever reason, a court of competent jurisdiction finds any term or condition in these Terms of Service to be unenforceable, all other terms and conditions will remain unaffected and in full force and effect. No waiver of any breach of any provision of these Terms of Service shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**NO LICENSE.** Nothing contained on the Site or Service should be understood as granting you a license to use any of the trademarks, service marks, or logos owned by Company or by any third party.

**CALIFORNIA-BASED.** The Site is controlled and operated by Company from its offices in the State of California. IntelliComp makes no representation that any of the materials or the services to which you have been given access are available or appropriate for use in other locations. Your use of or access to the Site should not be construed as Company's purposefully availing itself of the benefits or privilege of doing business in any state or jurisdiction other than California.

**MODIFICATIONS.** IntelliComp may, in its sole discretion and without prior notice, (a) revise these Terms of Service; (b) modify the Site or Service; and (c) discontinue the Site and/or Service at any time. IntelliComp may send registered users email notifying them of any changes to the Terms of Service, or otherwise advise such users. Any such change, update, or modification will be effective immediately upon posting on the Site for new users, and upon notice to existing users with registration access. If you do not expressly assent to updates to the updated Terms of Service, you will remain bound by the Terms of Service in place as of the date you first assented to the Terms. It is your responsibility to review these Terms from time to time to ensure that you continue to agree with all of its terms.

**ACKNOWLEDGEMENT.** BY USING THE SITE AND SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS OF SERVICE AND AGREE TO BE BOUND BY THEM.