

## Terms of Use and Service

This Terms of Use and Service Agreement ("Agreement") is an agreement between the American Academy of Actuaries ("Academy"), and the user of TRACE™ services and related website ("User" or "You" and "Your"). As used herein the term "User" and "You" shall also include any and all Users who log in to the Services described herein and use the software or services on the website, or any person(s) that visit the website. Your use of the software, website and services herein (collectively, the "Services") constitutes acceptance, and consent to being bound by, of all the terms of this Agreement.

### 1. Use Policy and Responsibilities

**(a) Grant of License.** The Academy hereby grants to User a limited, non-exclusive, non-transferable, non-assignable, royalty-free license, exercisable solely for the term and in accordance with this Agreement, to use the Services solely for the purposes described herein. This Agreement does not transfer from the Academy to any User any of the Academy's technology, and any rights, titles, and interests in and to any of the Services which shall remain solely the Academy's property.

**(b) Use Policy.** User shall use the Services solely for recordkeeping of his or her continuing education credits pursuant to the applicable continuing education rules promulgated under the U.S. Qualification Standards and/or the Regulations of the Joint Board for the Enrollment of Actuaries, and accepts full and sole responsibility for the contents of same. The Academy does not intend to monitor, screen, edit, or confirm the content or the accuracy of any information submitted by a User that is stored on, or distributed or disseminated by User, in this database (the "User Content"). Accordingly, under this Agreement, You will be solely responsible for Your User Content. **Use of the Services and User Content shall not constitute a confirmation or endorsement by the Academy that User is in compliance with the requirements of the U.S. Qualification Standards or the Regulations of the Joint Board for the Enrollment of Actuaries. Instead, it is the sole responsibility of the User to review any applicable continuing education requirements and correctly input such data.** Notwithstanding anything to the contrary contained in this Agreement, the Academy may immediately take corrective action, including removal of all or a portion of the User Content, disconnection or discontinuance of any and all Services, or termination of this Agreement in the event of notice of possible violation by User of these Terms of Service, and/or any violation of applicable laws, rules, or regulations, and User hereby agrees that the Academy shall have no liability to User due to any corrective action that Academy may take (including, without limitation, suspension, termination or disconnection of Services).

User shall not have the right to transfer his or her rights hereunder to any third party. User's use, publication and display of the User Content will not infringe any copyright, patent, trademark, trade secret or other proprietary or intellectual property right of any person, or constitute a defamation, invasion of privacy or violation of any right of publicity or any other right of any person, including, without limitation, any contractual, statutory or common law right or similar right however denominated.

User agrees that he or she may not reproduce, duplicate, copy, sell, trade or resell any of the Services (other than the downloadable information permitted in the software) which are the subject of this Agreement, all of which shall remain the property of the Academy (including any names, trade marks, service marks, logos, or domain names).

**(c) User's Responsibilities.** User is solely responsible for the quality, accuracy, reliability, and content of the User Content. User is solely responsible for making back-up copies of the User Content in the event of any interruption of services or other causes beyond the control of the Academy, as the Academy cannot guarantee that the contents will never be deleted or corrupted. The Academy recommends that User copy all content to a local computer to ensure the availability of the files. User is responsible for maintaining the confidentiality of his or her login information. User will comply with all applicable laws, rules and regulations regarding the User Content and the website and will use the website only for lawful purposes. User shall use his or her best efforts to ensure that the User Content is and will at all times remain free of all computer viruses, worms, Trojan horses and other malicious code.

**2. Termination; Cancellation Policy.** The Academy reserves the right to terminate User's rights under this Agreement with or without notice to User, if the Services are prohibited by applicable law, or become impractical or unfeasible for any technical reasons, or for violations of these Terms of Service or any other reasons. The Academy shall endeavor to provide prior notice to User of any such termination if reasonably practicable. The Academy also reserves the right to suspend Services from time to time to upgrade or modify the features and other aspects of the Services, without prior notice to you.

In the event that any User wishes to terminate his or her use under this Agreement, he or she shall notify the Academy in writing at the Academy's principal place of business, and all of the content that User has established in the database shall be destroyed subject to any valid subpoena as set forth in Section 7.

**3. User Acknowledgment of Third-Party Vendor.** User hereby acknowledges and agrees that the Services provided hereunder by the Academy are hosted by a third-party vendor, and the Academy remains subject to the

Terms of Service and other obligations described at <http://www.readyhosting.com/legal/index.bml>.

**4. Disclaimer of Warranty.** User agrees to use all Services provided hereunder, at User's own risk. THE SERVICES PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN AS IS, AS AVAILABLE, BASIS. NEITHER THE ACADEMY NOR ITS EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, AFFILIATES, AGENTS, ATTORNEYS, SUPPLIERS, THIRD-PARTY INFORMATION PROVIDERS, MERCHANTS, LICENSORS OR THE LIKE (EACH, A "RELATED PERSON") MAKE ANY WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, FOR THE SERVICES OR ANY EQUIPMENT WE PROVIDE. NO RELATED PERSON MAKES ANY WARRANTIES THAT THE SERVICES WILL NOT BE INTERRUPTED OR ERROR FREE; NOR DO ANY OF THEM MAKE ANY WARRANTIES AS TO THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION, SERVICES OR MERCHANDISE CONTAINED IN OR PROVIDED THROUGH THE SERVICES. WE ARE NOT LIABLE, AND EXPRESSLY DISCLAIMS ANY LIABILITY, FOR THE CONTENT OF ANY DATA TRANSFERRED EITHER TO OR FROM USER OR STORED BY USER VIA THE SERVICES PROVIDED BY US. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ANY RELATED PERSON, WILL CREATE A WARRANTY; NOR MAY YOU RELY ON ANY SUCH INFORMATION OR ADVICE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES WILL BE DONE SOLELY AT YOUR OWN DISCRETION AND RISK. The terms of this section shall survive any termination of this Agreement.

**5. Limitation of Liability.**

- a. **THE ACADEMY CANNOT GUARANTEE CONTINUOUS SERVICE, SERVICE AT ANY PARTICULAR TIME, INTEGRITY OF DATA, INFORMATION OR CONTENT STORED OR TRANSMITTED VIA THE INTERNET. THE ACADEMY IS NOT LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR ANY CORRUPTION, ERASURE, THEFT, DESTRUCTION, ALTERATION OR INADVERTENT DISCLOSURE OF, DATA, USER CONTENT, INFORMATION OR CONTENT TRANSMITTED, RECEIVED OR STORED ON ITS SYSTEM.**
- b. **THE ACADEMY SHALL NOT BE LIABLE IN ANY WAY TO ANY USER OR ANY OTHER PERSON FOR ANY LOST PROFITS OR REVENUES, LOSS OF USE, LOSS OF DATA OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, LICENSES OR SERVICES OR SIMILAR ECONOMIC LOSS, OR FOR ANY**

**PUNITIVE, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES OF ANY NATURE, WHETHER FORESEEABLE OR NOT, UNDER ANY WARRANTY OR OTHER RIGHT HEREUNDER, ARISING OUT OF OR IN CONNECTION WITH THE PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT.**

- c. The limitations contained in this Section apply to all causes of action in the aggregate, whether based in contract, tort or any other Terms of Service theory (including strict liability), other than claims based on fraud or willful misconduct.
- d. This limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. The terms of this Section 5 shall survive any termination of this Agreement.

**6. Indemnification.** User agrees to indemnify, defend and hold harmless the Academy and its officers, directors, employees, shareholders, attorneys and agents (each an "indemnified party" and, collectively, "indemnified parties") from and against any and all claims, damages, losses, liabilities, suits, actions, demands, proceedings (whether legal or administrative), and expenses (including, but not limited to, reasonable attorney's fees) threatened, asserted, or filed by a third party against any of the indemnified parties arising out of or relating to User's use of the Services and the website. The terms of this section shall survive any termination of this Agreement.

**7. Subpoena Service.** The Academy will not release any information contained on the database in connection with the Services except as and when required to do so by the third-party host vendor, applicable law, or to comply with legal process properly served on the Academy or the third-party host vendor, in respect of any civil, criminal, or regulatory action. Upon receipt by the Academy of any subpoena for information contained on the database, the Academy will notify the User that is the subject of the subpoena via email or regular mail to the last known address provided by User to the Academy of such service of process.

**8. Waiver of Jury Trial.** The User and Academy each agree to waive all respective rights to a jury trial of any claim or cause of action related to or arising out of this Agreement. Each party further warrants and represents that each has had the opportunity to review this Agreement and consult with counsel as needed.

**9. Miscellaneous.**

- a. **Headings.** The headings herein are for convenience only and are not part of this Agreement.

- b. **Severability.** All rights and restrictions contained in this Agreement may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render this Agreement illegal, invalid or unenforceable. If any provision or portion of any provision of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining provisions or portions thereof shall constitute their agreement with respect to the subject matter hereof, and all such remaining provisions or portions thereof shall remain in full force and effect.
- c. **Waiver.** No failure or delay by any party hereto to exercise any right or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy by any party preclude any other or further exercise thereof or the exercise of any other right or remedy. No express waiver or assent by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other term or condition hereof.
- d. **Assignment; Successors.** User may not assign or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of the Academy. Any attempted assignment in violation of the foregoing provision shall be null and void and of no force or effect whatsoever. The Academy may assign its rights and obligations under this Agreement, and may engage subcontractors or agents in performing its duties and exercising its rights hereunder, without the consent of User. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- e. **Force Majeure.** Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

The Academy reserves the right to change or modify these Terms of Use and Service at any time without prior notice to Users.