

**ADVANCED CONTINUING EDUCATION ASSOCIATION, INC.**  
**ACEA INDIVIDUALS END-USER LICENSE AGREEMENT**  
**TERMS AND CONDITIONS**

**This Advanced Continuing Education Association (ACEA) End-User License Agreement Terms and Conditions Agreement (“ACEA EULA” or “Agreement”) is a legally binding agreement between ACEA (“Company”) and the customer (“You” or “User” or “Customer”). You must accept the terms and conditions of this Agreement in order to access the Services (described below) licensed by ACEA. Please click “I accept” once you read and understand the terms and conditions below. If you do not accept the information set forth in this document, do not click “I accept.” You will be free to return and accept the conditions at any time thereafter.**

**1. SOFTWARE SERVICES AND SUPPORT**

1.1 Subject to the terms of this ACEA EULA, ACEA will use commercially reasonable efforts to provide Customer the ACEA Services (“ACEA Software”) in accordance with agreed to terms between Customer and ACEA. As part of the registration process, Customer will identify an administrative user name and password for Customer’s account. ACEA reserves the right to cancel, or refuse registration of passwords it deems inappropriate.

1.2 Subject to the terms hereof, ACEA will provide Customer with reasonable technical support services in accordance with the terms set forth in Exhibit B.

**2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the ACEA Services or any software, documentation or data related to the ACEA Services; modify, translate, or create derivative works based on the ACEA Services or any ACEA Software (except to the extent expressly permitted by ACEA); use the ACEA Services or any ACEA Software for time-sharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels. With respect to any Software that is distributed or provided to Customer for use on Customer premises or devices, Company hereby grants Customer a non-exclusive, non-transferable, non-sublicensable license to use such Software during the Term only in connection with the Services.

2.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the ACEA Services, ACEA Software or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the ACEA Software and documentation are “commercial items” and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be “commercial computer software” and “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this ACEA EULA.

2.3 Customer represents, covenants, and warrants that Customer will use the ACEA Services only in compliance with ACEA’s standard published policies then in effect (the “Policy”) and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless ACEA against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys’ fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer’s use of ACEA Services. Although ACEA has no obligation to monitor Customer’s use of the ACEA Services, ACEA may do so and may prohibit any use of the ACEA Services it believes may be (or alleged to be) in violation of the foregoing.

2.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the ACEA Services, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of the Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

### **3. CONFIDENTIALITY; PROPRIETARY RIGHTS**

3.1 Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "Proprietary Information" of the Disclosing Party). Proprietary Information of ACEA includes non-public information regarding features, functionality and performance of the Services, the Services, Software and associated source code, and all associated documentation for the Software and Services. Proprietary Information of Customer includes non-public data provided by Customer to ACEA to enable the provision of the ACEA Services ("Customer Data"). The Receiving Party agrees: (i) to take reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the ACEA Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. The Disclosing Party agrees that the foregoing shall not apply with respect to any information after five (5) years following the disclosure thereof or any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party or (e) is required to be disclosed by law.

3.2 As between Customer and ACEA, (i) Customer shall own all right, title and interest in and to the Customer Data, as well as any data that is based on or derived from the Customer Data and provided to Customer as part of the ACEA Services; and (ii) ACEA

shall own and retain all right, title, and interest in and to (a) the ACEA Services and ACEA Software, all improvements, enhancements or modifications thereto, (b) any software, applications, inventions or other technology developed in connection with Implementation Services or support, and (c) all intellectual property rights related to any of the foregoing. Consistent with ACEA's Privacy Policy, Customer has the right at any time to receive a copy of the Customer Data (through submitting a "Request to Know" form). Customer also maintains the right to have ACEA delete the Customer Data (through submitting a "Request to Delete" form; submitting this Request to Delete form will also delete Customer's account) and terminate this Agreement.

3.3 Notwithstanding anything to the contrary, ACEA shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the ACEA Services and related systems and technologies (including, without limitation, information concerning Customer Data and data derived therefrom), and ACEA will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the ACEA Services and for other development, diagnostic and corrective purposes in connection with the ACEA Services and other ACEA offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

### **4. PAYMENT OF FEES**

4.1 Customer will pay ACEA any and all relevant fees included within their chosen Services Package if they decide to use the non-free version of the product. If Customer's use of the Services requires the payment of additional fees, Customer shall be billed for such usage and Customer agrees to pay the additional fees in the manner provided herein. ACEA reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of the Initial Service Term and in subsequent renewal terms upon thirty (30) days prior notice to Customer (which may be sent by email). If Customer believes that ACEA has billed Customer incorrectly, Customer must contact Company no later than 60 days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. Inquiries

should be directed to ACEA's customer support department, as set forth in Exhibit B.

4.2 Company may choose to bill through an invoice, in which case, full payment for invoices issued at any time must be received by Company thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Service. Customer shall be responsible for all taxes associated with the ACEA Services other than U.S. taxes based on ACEA's net income.

## **5. TERM AND TERMINATION**

5.1 Subject to earlier termination as provided below, this Agreement is for the Initial Service Term, which is one year commencing once Customer selects a Service Package, agrees to these terms, and supplies its payment information, and shall be automatically renewed for additional periods of the same duration as the Initial Service Term (collectively, the "Term"), unless either party requests termination at least thirty (30) days prior to the end of the then-current term.

5.2 In addition to any other remedies it may have, either party may also terminate this Agreement upon thirty (30) days' notice (or without notice in the case of nonpayment), if the other party materially breaches any of the terms or conditions of this Agreement and does not cure such breach within such 30-day period.

5.3 Upon any termination, (a) ACEA will make all Customer Data available to Customer for electronic retrieval for a period of sixty (60) days, but thereafter Company may, but is not obligated to, delete stored Customer Data; (b) Customer will immediately cease all use of and access to the Services; (c) all Fees then owed by Customer will become immediately due and payable and Customer shall pay in full for the Services up to and including the last day on which the Services are provided. All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, confidentiality obligations, warranty disclaimers, and limitations of liability.

## **6. WARRANTY AND DISCLAIMER**

6.1 ACEA shall use reasonable efforts consistent with prevailing industry standards to maintain the ACEA Services in a manner which minimizes errors and interruptions in the ACEA Services and shall perform updates in a professional and workmanlike manner. ACEA Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by ACEA, or by third-party providers, or because of other causes beyond ACEA's reasonable control, but ACEA shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

6.2 HOWEVER, ACEA DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DO THEY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES AND IMPLEMENTATION SERVICES ARE PROVIDED "AS IS" AND ACEA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

6.3 If ACEA provides links to other websites, do not infer or assume that ACEA operates, controls, or is otherwise connected with them. When You click on a link within ACEA's Services, ACEA is not obligated to warn You that You are leaving ACEA's Software under the Services and You will be subject to the terms and conditions (including privacy policies) of the third-party website. This ACEA EULA does not govern the use of other websites outside of the Services and ACEA has no responsibility or liability with regard to such other websites.

## **7. INDEMNITY**

ACEA shall hold Customer harmless from liability to third parties resulting from infringement by the ACEA component(s) of the Services of any United States patent or any copyright or misappropriation of any trade secret, provided ACEA is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume sole control over defense and settlement; ACEA will not be responsible for any settlement it does not

approve in writing. The foregoing obligations do not apply with respect to portions or components of the Services (i) not supplied by ACEA, (ii) made in whole or in part in accordance with Customer specifications, (iii) that are modified after delivery by ACEA, (iv) combined with other products, processes or materials where the alleged infringement relates to such combination, (v) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, or (vi) where Customer's use of the Services is not strictly in accordance with this ACEA EULA. If, due to a claim of infringement, the Services are held by a court of competent jurisdiction to be or are believed by ACEA to be infringing, ACEA may, at its option and expense (a) replace or modify the Services to be non-infringing provided that such modification or replacement contains substantially similar features and functionality, (b) obtain for Customer a license to continue using the Services, or (c) if neither of the foregoing is commercially practicable, terminate this ACEA EULA and Customer's rights hereunder and provide a refund of any prepaid, unused fees for the ACEA component(s) of the Services.

## **8. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, ACEA AND THEIR SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS ACEA EULA OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY

MATTER BEYOND ACEA'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO ACEA FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT COMPANY AND ACEA HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **9. MISCELLANEOUS**

If any provision of this ACEA EULA is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this ACEA EULA will otherwise remain in full force and effect and enforceable. This ACEA EULA is not assignable, transferable or sublicensable by Customer except with prior written consent from ACEA. ACEA may transfer and assign any of its rights and obligations under this ACEA EULA without consent. This ACEA EULA is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this ACEA EULA, and that all waivers and modifications must be in a writing signed by ACEA, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this ACEA EULA and Customer does not have any authority of any kind to bind ACEA in any respect whatsoever. In any action or proceeding to enforce rights under this ACEA EULA, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this ACEA EULA will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This ACEA EULA shall be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions.