



ONLINE TRIAL AGREEMENT
FOR
SKYGRAPH

PLEASE SCROLL DOWN AND READ ALL OF THE FOLLOWING TERMS OF USE CAREFULLY. THIS IS A LEGAL AGREEMENT (“AGREEMENT”) BETWEEN YOU AND APPLICATIONS CONSULTING TRAINING SOLUTIONS, INC. (“ACTS”) STATING THE TERMS AND CONDITIONS THAT GOVERN YOUR USE OF THE SKYGRAPH ONLINE TRIAL. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” AND “YOUR” SHALL REFER TO SUCH ENTITY. BY CLICKING “I ACCEPT” OR BY USING THE SKYGRAPH ONLINE TRIAL, YOU ARE AGREEING TO ALL OF THE TERMS AND CONDITIONS STATED HEREIN. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK “I ACCEPT,” AND DO NOT USE THE SKYGRAPH ONLINE TRIAL

A. Agreement Definitions

“ACTS” refers to Applications Consulting Training Solutions, Inc. “You” and “your” refers to the individual or entity that has ordered the Skygraph Online Trial by having clicked “I ACCEPT” during the order process or otherwise having used the Skygraph Online Trial.

The terms “Skygraph Online Trial,” the “Trial,” and the “services,” mean the service offerings that ACTS makes available through this webportal, including any software (including ACTS programs), technology platform and other materials that ACTS makes available as part of the services for your access and use with the Trial environment. The Skygraph Online Trial may be used for trial, non-production purposes only.

The term “ACTS programs” refers to the software products owned or distributed by ACTS to which ACTS grants you access as part of the services, including user guides, and any program updates provided as part of the services.

The term “users” means those individuals authorized by you or on your behalf to use the services.

The term “your applications” means all software programs that you or any user create using the services, including any source code for such programs.

The term “your content” means all software (other than your applications), data, and data files provided by you or any user and that reside on, or run on or through, your Trial environment. You agree not to include any production data in your content.

B. Trial Period

This agreement is effective upon your acceptance of this agreement (the “effective date”), and will terminate thirty (30) days from the effective date unless ended earlier in accordance with this agreement (the “Trial Period”). Certain Skygraph Online Trials may permit you a one-time option to extend the Trial Period by an additional thirty (30) days, by selecting that option on the Trial. If you would like to use the services after the Trial Period or for production purposes, provided that ACTS has made the services commercially available, you must purchase such services from ACTS under a separate contract.

C. Rights Granted

{37689155;2}

Skygraph Online Trial



For the duration of the Trial Period, you have the nonexclusive, nontransferable, non-assignable, limited right to use the services, subject to the terms of this agreement, and solely for your internal business purposes to evaluate ACTS's Cloud Service offering and not for any production or commercial purposes. You may allow your users to use the services for this purpose and you are responsible for your users' compliance with this agreement.

You acknowledge that ACTS has no delivery obligation and will not ship copies of any ACTS programs to you as part of the services. Third party technology that may be appropriate or necessary for use with some ACTS programs will be specified by ACTS. Your right to use such third party technology is governed by the terms of the third party technology license agreement specified by ACTS and not under this agreement.

You do not acquire any license to use the services, including any ACTS programs to which ACTS provides you with access as part of the services, in excess of the scope and/or duration of the services defined in this agreement. Upon the end of this agreement or the services hereunder, your right to access or use the services and ACTS programs shall terminate.

D. Ownership and Restrictions

You retain all ownership and intellectual property rights in and to your content and your applications. ACTS or its licensors retain all ownership and intellectual property rights to the services and ACTS programs, including derivative works thereof, and anything developed and delivered by ACTS under this agreement.

You may not, and may not cause or permit others to:

- remove or modify any program or services markings or any notice of ACTS's or its licensors' proprietary rights;
- make the services, including any ACTS programs or materials to which you are provided access, available in any manner to any third party;
- modify, make derivative works of, disassemble, reverse compile, reverse engineer, reproduce, distribute, republish or download any part of the services (the foregoing prohibitions include but are not limited to review of data structures or similar materials produced by ACTS programs), or access or use the services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to ACTS;
- disclose results of any benchmark tests or performance tests of the services or ACTS programs without ACTS's prior written consent;
- perform or disclose any of the following security testing of the Services Environment or associated infrastructure: network discovery, port and service identification, vulnerability scanning, password cracking, remote access testing, or penetration testing; and
- license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the services, ACTS programs or materials available, to any third party.

E. Disclaimers and Exclusion of Warranties

THE SERVICES ARE PROVIDED TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND ACTS HEREBY DISCLAIMS ALL EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, GUARANTEES, AND CONDITIONS WITH REGARD TO (A) THE SERVICES, INCLUDING BUT NOT LIMITED TO SOFTWARE, HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS AND (B) MERCHANTABILITY, SATISFACTORY QUALITY, NONINFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE.

ACTS DOES NOT GUARANTEE THAT (A) THE SERVICES WILL BE PERFORMED ERROR-FREE OR UNINTERRUPTED, OR THAT ACTS WILL CORRECT ALL ERRORS IN THE SERVICES; (B) THE SERVICES WILL OPERATE IN COMBINATION WITH YOUR CONTENT OR YOUR APPLICATIONS, OR WITH ANY OTHER SOFTWARE, HARDWARE, SYSTEMS, OR DATA; (C) YOUR CONTENT AND YOUR APPLICATIONS



WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED; AND (D) THE SERVICES, INCLUDING ANY PRODUCTS, INFORMATION OR OTHER MATERIAL YOU OBTAIN OR PURCHASE FROM ACTS UNDER THIS AGREEMENT, WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS. YOU ACKNOWLEDGE THAT ACTS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. ACTS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

YOU ARE SOLELY RESPONSIBLE FOR ANY CONTENT, APPLICATION OR NON-ACTS SOFTWARE THAT YOU LOAD INTO OR CREATE WITHIN THE TRIAL ENVIRONMENT, AND AGREE, AT YOUR SOLE COST AND EXPENSE, TO DEFEND ACTS AGAINST ANY CLAIM AND INDEMNIFY ACTS FROM ANY DAMAGES, LIABILITIES, COSTS AND EXPENSES OR THE SETTLEMENT AGREED TO BY YOU, ARISING OUT OF OR IN ANY WAY CONNECTED WITH ANY SUCH CONTENT, APPLICATION OR NON-ACTS SOFTWARE. ACTS IS NOT RESPONSIBLE FOR THE SECURITY OF ANY CONTENT, APPLICATION OR SOFTWARE THAT YOU LOAD INTO OR CREATE WITHIN THE TRIAL ENVIRONMENT.

ACTS RESERVES THE RIGHT TO MAKE CHANGES OR UPDATES TO THE SERVICES, ACTS PROGRAMS AND TRIAL AT ANY TIME WITHOUT NOTICE.

F. User Accounts

To use the services, you must have an [ACTS.com](https://acts.com) account. Access to and use of password protected or secure areas of the Trial site is restricted to authorized users only. You may not share your password(s), account information, or access to the Trial site. You are responsible for identifying and authenticating all users, for approving access by such users to the services, for controlling against unauthorized access by users, and for maintaining the confidentiality of usernames, passwords and account information. By federating or otherwise associating your and your users' Single Sign-On with ACTS, you accept responsibility for timely and proper termination of user records in your local (intranet) identity infrastructure and on your local computers. ACTS is not liable for any harm caused by users, including individuals who were not authorized to have access to the services but who were able to gain access because usernames, passwords or accounts were not terminated on a timely basis in your local identity management infrastructure or your local computers. You are responsible for all activities that occur under your and your users' passwords or accounts or as a result of your or your users' access to the Trial site, and agree to notify ACTS immediately of any unauthorized use. You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Trial.

G. Support Services

The Skygraph Online Trial provides an opportunity for current and potential ACTS customers to experience Skygraph before purchasing the service. The Trial is provided as a convenience and you agree that ACTS is not obligated to provide any technical support, phone support, or updates for the services or for any ACTS program accessed or used within the Trial environment. As a Trial user, you agree not to open ACTS Service Requests, use ACTS Support Channels, or otherwise contact ACTS to request assistance with questions or problems experienced during the use of the Trial. Certain Trials may provide you with access to a "live chat" help feature as part of the Trial, and if so provided, you may use the live chat feature to contact ACTS with respect to any questions or problems that you have during your use of the Trial.

H. End of Agreement



Services provided under this agreement shall be provided for the Trial Period defined above unless earlier terminated in accordance with this agreement. At the end of the Trial Period, all rights to access or use the services, including any ACTS programs that are part of the services, shall end.

You may discontinue your use of the services at any time. ACTS may terminate your password, account, and access to or use of the services at any time for any reason. You acknowledge and agree that ACTS has no obligation to retain your content and applications, and that your content and applications will be irretrievably deleted, following the termination of the services.

Provisions that survive termination or expiration of this agreement are those which by their nature are intended to survive.

I. Fees and Taxes

The services under this agreement are provided to you free of charge during the Trial Period.

J. Nondisclosure

By virtue of this agreement, you may have access to information that is confidential to ACTS, including but not limited to the services and ACTS programs, and any information related to the services and ACTS programs ("ACTS Confidential Information"). ACTS Confidential Information shall not include information which: (a) is or becomes a part of the public domain through no act or omission of the other party; or (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; or (c) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (d) is independently developed by the other party. You agree, both during the term of this agreement and for a period of three years after termination of this agreement and of all licenses granted hereunder, to hold ACTS's Confidential Information in confidence. You agree not to make ACTS's Confidential Information available in any form to any unauthorized third parties. You agree to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provisions of this agreement.

K. Entire Agreement

You agree that this agreement including the information which is incorporated into this agreement by written reference (including reference to information contained in a URL or referenced policy), is the complete agreement for the services ordered by you, and that this agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such services. If any term of this agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of this agreement. It is expressly agreed that the terms of this agreement shall supersede the terms in any purchase order or other non-ACTS document and no terms included in any such purchase order or other non-ACTS document shall apply to the services ordered. This agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed or accepted online through the ACTS Store by authorized representatives of you and of ACTS. Notwithstanding the foregoing, ACTS may make changes to the services and this agreement, and you agree that your continued use of the services constitutes your acceptance of, and agreement to, such changes.

L. Limitation of Liability

IN NO EVENT SHALL ACTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS, DATA, OR DATA USE, ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, EVEN IF ACTS HAS BEEN ADVISED OF THE POSSIBILITY OF



SUCH DAMAGES. IN NO EVENT SHALL ACTS'S TOTAL LIABILITY TO YOU UNDER THIS AGREEMENT FOR ALL DAMAGES EXCEED THE AMOUNT OF ONE THOUSAND UNITED STATES DOLLARS (\$1,000.00).

M. Export

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the services. You agree to comply fully with export laws and regulations of the United States and any other applicable export laws ("Export Laws") to assure that none of the services (including technical data), any services deliverables provided under this agreement, or any direct products thereof, are: (1) exported, directly or indirectly, in violation of this agreement or Export Laws; or (2) used for any purposes prohibited by the Export Laws, including, without limitation, nuclear, chemical, or biological weapons proliferation, or development of missile technology.

N. Other

1. ACTS is an independent contractor and we each agree that no partnership, joint venture, or agency relationship exists between us. We each will be responsible for paying our own employees, including employment related taxes and insurance. ACTS reserves the right to provide the services from locations, and/or through use of affiliates and subcontractors, worldwide.
2. You are responsible for obtaining at your sole expense any rights and consents from third parties necessary for your content, your applications, and other vendors' products provided by you and used with the Trial environment, including all rights and consents to such content, applications and products necessary for ACTS to provide the services.
3. This agreement is governed by the substantive and procedural laws of the State of California and you and ACTS agree to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to this agreement.
4. If you have a dispute with ACTS, you will promptly send written notice to: Attention: Legal Counsel, 100 North Laura Street, Suite 700, Jacksonville, Florida 32202. ACTS may give notice applicable to ACTS's customer base by means of a general notice on the ACTS portal for the services, and notices specific to you by electronic mail to your e-mail address on record in ACTS's account information or by written communication sent by first class mail or pre-paid post to your address on record in ACTS's account information.
5. You may not assign this agreement or give or transfer the services or an interest in them to another individual or entity.
6. Except for actions for breach of ACTS's proprietary rights, no action, regardless of form, arising out of or relating to this agreement may be brought by either party more than two years after the cause of action has accrued.
7. ACTS may use software tools to audit and otherwise request information from you regarding your use of the services. You agree to cooperate with ACTS's audit and provide reasonable assistance and access to information.
8. The Uniform Computer Information Transactions Act does not apply to this agreement or orders placed under it. You understand that ACTS's business partners, including any third party firms retained by you to provide computer consulting services, are independent of ACTS and are not ACTS's agents. ACTS is not liable for nor bound by any acts of any such business partner, unless the business partner is providing services as an ACTS subcontractor on an engagement ordered under this agreement.



O. Force Majeure

Neither of us shall be responsible for events outside the reasonable control of the obligated party. We both will use reasonable efforts to mitigate the effect of a force majeure event.

P. Your Content

ACTS makes no assurances that any of your content or your applications loaded into the Trial environment will be secured or that such data will remain confidential. You acknowledge that the Skygraph Online Trial is not designed for use with production data (including business content and personal information) and accordingly, you shall not include any production data in your content or use the services for any commercial purpose. **YOU SHOULD FREQUENTLY BACK UP ANY CONTENT, APPLICATION OR SOFTWARE THAT YOU LOAD INTO, OR CREATE WITHIN, THE TRIAL ENVIRONMENT. ACTS RESERVES THE RIGHT AT ITS SOLE DISCRETION TO DELETE, AT ANY TIME AND FOR ANY REASON, ANY CONTENT, APPLICATION OR SOFTWARE IN THE TRIAL ENVIRONMENT, AND ANY SUCH CONTENT, APPLICATION OR SOFTWARE MAY BECOME PERMANENTLY LOST IF SO DELETED.**

ACTS has no obligation to monitor your content and your applications, but at its sole discretion, may access, monitor, and/or review your activity, content and applications in the environment. You agree to provide any notices and obtain any consents related to your use of the services and ACTS's provision of the services, and you shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of your content and your applications. You warrant and represent that your content and your applications do not contain any viruses, Trojan horses, worms or other components that would limit or harm the functionality of a computer including ACTS's Cloud services.

You shall not upload, email, post, publish, distribute or otherwise transmit any of your content containing a solicitation of funds, promotion, advertising, solicitation for goods or services, or other commercial matter. You agree not to solicit other users of the Skygraph Online Trial to use or join or become members of any commercial online or offline service or other organization. Except where expressly authorized by ACTS, you agree not to collect or store personal data about other users. You agree that ACTS has no obligation to retain or archive any content or applications posted on the Trial site. At the end of the Trial Period, ACTS will disable the Trial accounts and remove any associated content and your applications.

Your content, including text and images, may be disclosed as required by law without your prior consent. ACTS will use diligent efforts to inform you, to the extent permitted by law, of any request for such disclosure promptly upon receipt of such request.

You remain solely responsible for your regulatory compliance in connection with your use of the services.

Q. Restrictions on Use of the Services

You agree not to use or permit use of the services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to ACTS under this agreement, ACTS reserves the right to remove or disable access to any material that violates the foregoing restrictions. ACTS shall have no liability to you in the event that ACTS takes such action. You agree to defend and indemnify ACTS against any claim arising out of a violation of your obligations under this section.

{37689155;2}

Skygraph Online Trial



R. Third Party Web Sites, Content, Products and Services

The services may enable you to add links to Web sites and access to material, products and services of third parties, including users, advertisers, affiliates and sponsors of such third parties. ACTS is not responsible for any third party Web sites or third party material provided on or through the services. You bear all risks associated with the access and use of such Web sites and third party material, products and services.

S. Unsolicited Communication

You share the Trial with a large number of other participants and may be able to interact with those users as if they were members of the same enterprise. You agree to respect the other participants and not interfere with their experience. You agree that you will not send unsolicited communication to other participants using any Cloud Services channel (email, instant messaging, documents, etc). You agree that you will not send unsolicited communication to anyone outside of the Trial environment with the exception of your users.

T. Feedback

“Feedback” shall mean any input regarding ACTS’s products and/or services (including the Cloud Service Online Trial), including changes or suggested changes to ACTS’s current or future products and/or services. Notwithstanding anything that you may note or state in connection with providing Feedback, all Feedback provided by you shall not be considered confidential information and shall be received and treated by ACTS on a non-confidential and unrestricted basis. You agree that ACTS or its licensors retain all ownership and intellectual property rights (including all derivatives or improvements thereof) in and to any Feedback provided by you or any other party, and acknowledge that ACTS may use the Feedback for any purpose, including but not limited to incorporation or implementation of such Feedback into an ACTS product or service, and to display, market, sublicense and distribute such Feedback as incorporated or embedded in any product or service distributed or offered by ACTS.