

AMSTAT Terms and Conditions

AMSTAT Service subscriptions and Service Demos are covered by the AMSTAT Terms and Conditions. The key elements of these Terms and Conditions, subject to change, are detailed below. Note that AMSTAT Service demos are FREE and that any reference to payment below would only apply should you decide to subscribe.

- MASTER AGREEMENT. This Agreement between the parties shall govern all transactions between the parties. From time to time, the parties may add additional goods or services by executing an amendment to the AMSTAT Services Order Form. Unless otherwise specified in such amendment, all other terms and conditions of this Agreement remain in full force and effect.
- LICENSE GRANT AND RESTRICTIONS. Subject to these terms and conditions, AMSTAT hereby grants to Client a limited, revocable, non-exclusive, nontransferable, non-sublicensable license to: (a) access, download, install, and use the designated AMSTAT web based applications and software applications ("the Services) and demo versions of said Services (including all programs and associated or related documentation provided by AMSTAT including but not limited to disks, user's guides, explanatory material, demonstration materials, and all enhancements, improvements or modifications thereof) associated with the Services set forth in the Services Order Form; and (b) access, download, utilize, create reports from, print, and export the data and information as provided to Client as part of the designated Services (the "Data") with the exception of demo versions of the Software which exclude full printing and exporting capabilities. The Client acknowledges and agrees that the Services and Data are protected by copyright, trade secret, and other applicable intellectual property laws. All rights not specifically granted herein are reserved for AMSTAT. Nothing in this agreement shall convey ownership rights of the Services or Data to Client. Client shall have the right to utilize the Services and Data solely in the ordinary course of Client's business and/or for its internal purposes. Unless otherwise specified as a "Permitted Use" herein, the Services, Data, and any other information contained therein may not be sold or otherwise transferred by Client to any third party, including but not limited to the sale or transfer of any product or service that utilizes any portion of the Services and/or Data in whole or part. Client shall not have the right to create derivative works of AMSTAT's copyrighted material. Further, Client agrees that it shall not: copy, publish, divulge, disassemble, or reverse engineer the Services or Data provided to Client hereunder, by any means or media, including but not limited to Client's own website, mass email communications, printed materials, and/or electronic copies. "Permitted Uses" are limited to the following uses of the Services and/or Data by Client: i) delivery of necessary portions of Data to those full time employees of Client whose principal offices are located at the premises to which the Data is mailed or transmitted by AMSTAT (the "delivery address") and who are required to review the Data as part of their regular duties for Client, ii) delivery of necessary portions of Data to those full time employees of Client whose principal offices are located at any additional license locations of Client covered by this Agreement and

who are required to review the information as part of their regular duties for Client, and iii) delivery of necessary portions of Data to the customers or prospective customers of Client (but, in that instance, only to the extent necessary to further the ordinary course of Client's business). Upon termination or expiration of a subscription Agreement or demo of an Service, for any reason, Client shall immediately: (i) cease to have any rights to the use of the Services, and the Data contained therein; (ii) shall immediately return all copies of the Software to AMSTAT; and (iii) shall verify by written affidavit that all copies of the Software provided to Client under this Agreement have been returned.

- 3. <u>LICENSE USER QUANTITY LIMITATIONS</u>. Unless otherwise authorized in writing by AMSTAT, each user license entitles a single user to access, from a single user account, the Data via the AMSTAT Service. Client shall not facilitate or permit access to the Services by any unlicensed users, including, but not limited to sharing of Web Application user account credentials with any person not licensed to access the Services via this Agreement. Client shall be required to take reasonable precaution to protect user's account credentials from misuse. Any user action or inaction that results in unauthorized access to user's account is a material breach of this Agreement and AMSTAT's intellectual property rights as set forth in Section 2, above.
- 4. ACCOUNT CREDENTIALS. Any user account credentials (login name and password) required to access the Services are personal to Client and are confidential. Client is solely responsible for maintaining the confidentiality of Client's account credentials. AMSTAT shall not be liable for any loss resulting from an unauthorized person using Client's account credentials.
- 5. AMSTAT eAlerts SERVICE. To be eligible for the AMSTAT eAlerts service, Client must: (a) maintain an active subscription to the AMSTAT Premier service with live/daily updates, and (b) agree to the terms and conditions of the eAlerts service as contained in the clickwrap agreement on the AMSTAT website.

6. **CLIENT RESPONSIBLITIES**.

- a. To the extent that Client provides or modifies data in connection with the AMSTAT Services, Client shall have the sole responsibility to ensure the accuracy, quality, integrity, reliability and appropriateness of all such Client provided or modified data. Further, Client agrees and acknowledges that it has the legal rights to provide and/or modify such data.
- b. Client agrees and acknowledges that the computer programs, web applications and software including, without limitation, the design thereof, documentation and other information relating thereto, are trade secrets owned by AMSTAT. Client shall not take any actions which might encumber or expose the Services to any claims, liens, transfers, or conversion or otherwise challenge AMSTAT's intellectual property rights thereto.
- c. Client shall advise its employees, customers, and prospective customers of the terms and conditions of sections 2, 3, 6, 7, 8 and 9 of these Terms and

- Conditions, including without limitation, the disclaimer and limitations of liability contained herein.
- d. Client shall indemnify and hold harmless AMSTAT and AMSTAT employees, directors and officers from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties, and expenses (including reasonable attorney's fees) that arise out of or result from any delay or failure of Client's failure to comply with this Section.
- DISCLAIMER. INFORMATION IS REPORTED AS SUPPLIED TO AMSTAT, CANNOT BE VERIFIED BY AMSTAT, AND IS SUBJECT TO CHANGE. UNDER NO CIRCUMSTANCES SHALL AMSTAT BE REQUIRED TO REVEAL ANY OF ITS SOURCES OF INFORMATION. **AMSTAT** MAKES NO **WARRANTIES** OR REPRESENTATIONS **EXPRESS** OR IMPLIED. INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SUCH INFORMATION OR ANY PARTICULAR AIRPLANE OR BRAND OF AIRPLANE. AMSTAT ASSUMES NO RESPONSIBILITY WITH RESPECT TO: (i) THE ACCURACY OF THE INFORMATION, OR (ii) THE USE TO WHICH THE INFORMATION PROVIDED BY AMSTAT IS PUT BY CLIENT, ITS AGENTS, EMPLOYEES, CLIENTS OR AMSTAT ADVISES THAT ALL CUSTOMERS. INFORMATION PROVIDED WITHIN THE SERVICES MUST BE VERIFIED BY CLIENT AND ITS CUSTOMERS PRIOR TO ENTERING INTO ANY TRANSACTION. AMSTAT MAKES NO REPRESENTATIONS OR WARRANTIES THAT THE SERVICE WILL OPERATE UNINTERUPTED OR ERROR FREE.
- 8. NO CONSEQUENTIAL DAMAGES. AMSTAT SHALL NOT BE LIABLE FOR ANY AND ALL INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST BUSINESS, REVENUES OR PROFITS; DAMAGE TO COMPUTER HARDWARE OR SOFTWARE; LOSS OR UNAVAILABILITY OF OR DAMAGE TO DATA; OR COSTS OF SOFTWARE RESTORATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 9. <u>LIMITATION OF LIABILITY</u>. IN NO EVENT, SHALL AMSTAT'S LIABILITY TO CLIENT OR CLIENT'S CUSTOMERS FOR DAMAGES OF ANY KIND OR NATURE EXCEED THE VALUE OF CLIENT'S ORDER OF GOODS AND SERVICES FROM AMSTAT FOR THE CALENDAR MONTH PRECEDING THE INCIDENT GIVING RISE TO THE DAMAGES.
- 10. <u>CONFIDENTIALITY</u>. During the Term of this Agreement, Client may have access to certain confidential and proprietary information of AMSTAT, including but not limited to, all information contained in the Services and Data (the "Confidential Information"). Client hereby agrees that during the Term of this Agreement and for a period of five (5) years thereafter, Client and its employees shall not disclose such Confidential Information to any third party.
- INJUNCTIVE RELIEF. Client acknowledges that, in the event of a breach or threatened breach of the provisions of Sections 2, 6 or 10, above, AMSTAT shall suffer damages

- which cannot be measured adequately in money alone. Client hereby consents to the issuance of an injunction against Client without any requirement to post a bond thereof restraining any breach or potential breach of this Agreement at any time when AMSTAT, in the exercise of its reasonable business judgment, believes such a breach has occurred or is imminent. Breach or threatened breach of Sections 2, 6 or 10 shall be cause for immediate termination of this Agreement by AMSTAT, without notice, and of refusal by AMSTAT to renew or reinstate this Agreement or to provide any other service to Client. The remedies set forth in this Section shall be available to AMSTAT in addition to any other remedies provided by law.
- 12. MODIFICATION. AMSTAT reserves the right to modify the Services provided pursuant to this Agreement upon thirty (30) days prior notice. AMSTAT further reserves the right to modify these terms and conditions at any time in its sole discretion.
- 13. PRICE INCREASES. AMSTAT reserves the right to increase the price of the Services effective upon the beginning of any new agreement term or renewal period. AMSTAT shall give Client sixty (60) days written notice prior to the effective date of any such price increase. Per the renewal terms set forth in the Agreement, Client shall have the option to reject such price increase by electing not to renew the Agreement. Such action requires proper notice by Client as set forth in the Agreement.
- 14. <u>ATTORNEYS' FEES</u>. In the event Client brings an action against AMSTAT and does not prevail against AMSTAT, Client shall pay to AMSTAT all of AMSTAT's costs and expenses in defending the action, including reasonable attorney's fees and disbursements.
- 15. COLLECTION ACTION. In the event that AMSTAT sends a matter to an agency or attorney for collection or brings an action against Client and secures an injunction or recovers damages or other legal or equitable relief from Client, Client shall pay to AMSTAT all collection and attorney fees, together with interest on the amount recovered by AMSTAT, if any, at the rate of 18% per annum (or the highest rate permitted by law if less than 18% per annum) from the date at which such amounts became due to AMSTAT through the date of final judgment against Client.
- 16. <u>WAIVER</u>. A waiver of any provision of this Agreement shall not be deemed a continuing waiver of any such provision absent a written statement of such waiver.
- 17. <u>SEVERABILITY</u>. If any provision in this Agreement is found or held to be invalid or unenforceable, then such provision shall be severed from this Agreement and the remainder shall remain in full force and effect.
- 18. NOTICES. All notices required or permitted under this Agreement shall be deemed to have been duly given when made in writing and when mailed, by U.S. mail, postage prepaid by certified or registered mail, return receipt requested. Notices shall be provided at the address of the parties as set forth herein. Either party may

designate a different address by written notice as provided herein.

- 19. GOVERNING LAW AND VENUE. This Agreement, its construction, validity, performance and all other questions arising hereunder shall be construed in accordance with and governed by the laws of the State of New Jersey, without regard to its provisions concerning the applicability of the laws of other jurisdictions. Any suit hereunder shall be brought in the federal or state courts in the districts which include Monmouth County, New Jersey and Customer hereby agrees and submits to the personal jurisdiction and venue thereof.
- 20. <u>LIMITATION ON SERVICE DEMOS</u>. AMSTAT reserves the right to limit the number of demo versions of each AMSTAT service provided to any one entity, company or individual to one per calendar year per service.