



eTrac® Terms of Use

Revised: April 2020

eTrac is a registered trade mark of MSS
900 Ocean Street | Saint Paul, Minnesota 55106
651-778-1000 | mssmn.org/etrac

This is a legal agreement between you and MSS. As used herein, “you” means a user of the eTrac program (the “service”) and in addition, when the user of the service is provided access to use the service by a school and/or school district or other organization (an “entity”), the term “you” also includes such entity. You should carefully read this agreement, and the MSS general privacy policy (the “privacy policy”), which are incorporated into, a part of, and governed by this agreement.

MSS owns or operates the websites listed at the following link; mssmn.org/etrac; e-trac.mrooms3.net. These websites and the services available thereon and other services MSS may make available from time to time (together with associated and successor websites and services) are referred to as the “Service”.

This agreement governs your use (and that of any person you provide access to use) of the service. By using or accessing the service, or by providing access to another person to use the service, you agree to be bound by this agreement. If you do not agree to be bound by this agreement, you are not permitted to use the service or to provide another person with access to use the service.

1. Changes to this Agreement. MSS reserves the right, at its sole discretion, to change, modify, add to, supplement or delete any of the terms and conditions of this Agreement (including the Privacy Policies, as provided therein, which are incorporated into, a part of, and governed by this Agreement) at any time, effective with or without prior notice; provided, however, that MSS will provide a user with notification of any material changes by email, postal mail, website posting, pop-up screen, or in-service notice. If any future changes to this Agreement are unacceptable to you or cause you to no longer be in compliance with this Agreement, you must immediately stop using the Service. Continued use of the Service following any revision to this Agreement constitutes your acceptance of any and all such changes.

2. Access to the Service.

2.1. Subject to your acceptance of and compliance with this Agreement, MSS grants to you a non-exclusive, non-transferable, revocable limited license to use the Service for your personal non-commercial, private use. You agree not to use the Service for any commercial purposes, or to download, save, copy, transmit or distribute the content of the Service, including without limitation on any other website or networked computer environment, except as specifically allowed in this Agreement.

2.2. MSS may change, modify, suspend, or discontinue any aspect of the Service at any time. MSS may also impose limits on certain features or restrict or prohibit your access to parts or all of the Service without notice or liability. You agree to be bound by any application-, tool- or content-specific rules published within the Service.

2.3. You expressly agree that the content of the Service may be viewed and accessed only by end users and not by any other website or web publisher.

2.4. Your use of the Service is conditioned upon your compliance with this Agreement; any use of the Service in violation of this Agreement will be regarded as an infringement of MSS copyrights in and to the Service. MSS reserves the right to terminate your access to the Service without notice if you violate this Agreement or for any reason at MSS's discretion.

3. Use of the Service by Vulnerable Adults and Minors. Vulnerable adults and individuals under the age of 18 may not use the Service unless their Entity enters into an agreement with MSS that allows such individuals to use the Service. In the event that you provide a vulnerable adult or a minor with access to use the Service, you hereby agree to this Agreement on behalf of yourself and such vulnerable adult and minor, and you understand and agree that you will be responsible for all uses of the Service by the vulnerable adult and the minor you provide access to use the Service whether or not such uses were authorized by you.

4. Representations of Organizations, School Districts and Schools. If you are an Entity providing a student or a client with access to use the Service, you hereby represent and warrant that you are authorized by such student's or client's parents or guardians to agree to the terms of this Agreement and the Privacy Policies and that you have obtained all parental consents and permissions in connection with the Service required by federal, state, and local law (and all regulations and rules thereunder), including without limitation the Children's Online Privacy Protection Act and the Family Educational Rights and Privacy Act.

5. Ownership of Intellectual Property

5.1. Unless otherwise specified in writing, all materials that are part of the Service are owned, controlled, or licensed by MSS and its licensors and are protected by law from unauthorized use. The entire contents of the Service (including without limitation all visual content, audio visual content, text (including without limitation, exam and survey questions) (the "Content"), and the arrangement, sequence, structure, and organization of the Service, are copyrighted under the United States copyright laws and/or similar laws of other jurisdictions. MSS and eTrac logos are trademarks of MSS and may not be used without the express written permission of MSS.

5.2. You do not acquire any ownership rights by using the Service or downloading material from the Service.

5.3. All comments, feedback, suggestions, ideas, and other submissions disclosed, submitted, or offered by you in connection with your use of the Service, including without limitation by email to MSS (collectively, "Submissions") will be the exclusive property of MSS. You agree that unless otherwise prohibited by law, MSS may use, sell, exploit, disclose, revise, and delete the Submissions in any manner, including any public manner, without restriction, without compensation to you, and without identifying you as the creator of the Submissions. You represent and warrant that any Submissions are your original creations, that you have all rights to the Submissions, and that the Submissions do not infringe or violate the rights of any party,

including without limitation any intellectual property rights or rights of privacy or publicity. You agree that the provisions in this paragraph will survive any termination of your account(s), the Service, or this Agreement.

6. Passwords. MSS has several tools that allow you to record and store information in your account. You are responsible for all actions on the Service by you or under your Service password or account and for taking all reasonable steps to ensure that no unauthorized person shall have access to your Service password or account. Without limiting the foregoing: (a) you are responsible for all actions taken by individuals that you provide access to use the Service; and (b) it is your sole responsibility to (i) control the dissemination and use of any login code and password; (ii) authorize, monitor, and control access to and use of your Service account and password; (iii) promptly inform MSS of any need to deactivate a password. You grant MSS and all other persons or entities involved in the operation of the Service the right to transmit, monitor, retrieve, store, and use any information recorded and/or stored in your account in connection with the operation of the Service.

7. Usage Rules.

7.1. As a condition of your use of and access to the Service, you agree to comply, and to ensure that the individuals you provide access to use the Service comply, with the following usage rules, which are provided as an example rather than as a limitation, and any application-tool- or content-specific rules published within the Service. You agree that your activities on the Service, and those of the individuals you provide access to use the Service, will not:

- (a) copy or adapt the Service's software including but not limited to Flash, PHP, HTML, Java, CSS, JavaScript or other code;
- (b) reverse engineer, decompile, reverse assemble, modify or attempt to discover any software (source code or object code) that the Service create to generate web pages or any software or other products or processes accessible through the Service;
- (c) use or launch, develop or distribute any automated system, including, without limitation, any spider, robot (or "bot"), cheat utility, scraper or offline reader that accesses the Service, or use or launch any unauthorized script or other software;
- (d) distribute any virus, time bomb, trap door, or other harmful or disruptive computer code, mechanism or program;
- (e) cover or obscure any notice, banner or advertisement on the Service;
- (f) interfere with or circumvent any security feature of the Service or any feature that restricts or enforces limitations on use of or access to the Service;
- (g) sell the Service or any part thereof including but not limited to user accounts and access to them in exchange for anything of value;
- (h) violate any applicable law, including without limitation any applicable export laws;
- (i) harvest or otherwise collect information about others, including email addresses;

- (j) infringe or violate the rights of any other party, including without limitation any intellectual property rights or rights of privacy or publicity;
- (k) be obscene, offensive, pornographic, fraudulent, deceptive, defamatory, threatening, harassing, abusive, slanderous, hateful, or cause embarrassment to any other person as determined by MSS in its sole discretion;
- (l) deliberately mislead anyone as to your identity or impersonate another;
- (m) allow another person or entity to use your identity in order to access the Service;
- (n) advertise or solicit business;
- (o) solicit personally identifiable or personal information from another person; or
- (p) engage in cheating or any other conduct deemed by MSS to be in conflict with the spirit or intent of the Service, including without limitation, by restricting any other user from using or enjoying the Service or exposing MSS or another to any liability or detriment of any kind.

8. Privacy and Protection of Personal Information. MSS respects the privacy of visitors to, and users of, the Service. Information collected from you and any individual you provide access to use the Service is subject to MSS's Privacy Policies. Please see MSS's Privacy Policies at mssmn.org for more information on the collection and use of your information. You acknowledge and agree that the MSS's Privacy Policies, including, but not limited to, the manner in which MSS collects, uses and discloses your personally identifiable information and non-personally identifiable information, is incorporated and made part of this Agreement. By accepting this Agreement, you agree to all of the terms of the Privacy Policies. If you are an Entity (or a representative thereof) that provides a user with access to use the Service, you agree to hold all user information you may receive from MSS in confidence and in compliance with all applicable laws.

9. No Professional Advice. The Service and the Content are provided for informational purposes only. MSS does not provide medical, legal, or any professional advice nor does the service constitute the practice of medicine, law, or any other profession. Any information provided to you by MSS as a result of your participation in the Service is being provided to you solely for your educational and informational benefit and should not be considered medical, legal, or professional advice or a substitute for the foregoing.

10. Disclaimers; Limitations; Waivers of Liability.

10.1. You expressly agree that use of the service is at your sole risk and is provided on an "as is" basis without warranties of any kind, either express or implied, including, but not limited to, warranties of title or implied warranties of non-infringement, merchantability or fitness for a particular purpose (except only to the extent prohibited under the laws applicable to terms of use with any legally required warranty period to the shorter of thirty days from first use or the minimum period required). Without limiting the foregoing, neither MSS nor its affiliates

or subsidiaries, or any of their directors, employees, agents, attorneys, third-party content providers, distributors, licensees or licensors, nor anyone who has been involved in the creation, production, or delivery of the service (collectively, "MSS parties") warrant that the service, including without limitation the information made available through the service, will be uninterrupted, uncorrupted, accurate, reliable, complete, current, timely, or error-free, that defects will be corrected, or that the pages or the server that makes the service available are free from viruses, worms or other harmful components.

10.2. The MSS parties will not be liable for any direct, indirect, incidental, special, exemplary or consequential damages, personal injury/wrongful death, lost or anticipated profits, lost data, or business interruption, the use or misuse of submissions or content in any way whatsoever arising out of the use of, or inability to use, the service, whether or not the MSS parties are advised of the possibility of such damages. In the event that the foregoing exclusion of liability is found by a court of competent jurisdiction to be unenforceable, under no circumstances will the MSS parties be liable to you for more than the amount you have paid MSS in the ninety (90) days immediately preceding the date on which you first assert any such claim.

10.3. To the fullest extent permitted by law, these disclaimers of liability apply to any and all damages or injury whatsoever caused by or related to use of, or inability to use, the service under any cause or action of any jurisdiction, including, without limitation, actions for breach of warranty, breach of contract or tort (including negligence).

11. Release. You forever release, discharge, and covenant not to sue the MSS Parties from any and all liability, claims, actions, and expenses that may arise, whether caused by the negligence of the MSS Parties, or otherwise, in connection with use of the Service or through or as a result of the Service. In other words, you agree that you cannot sue the MSS Parties if anything happens to you, any individual that you provide access to use the Service, or your property in connection with use of the Service or through or as a result of the Service. You agree that the provisions in this paragraph will survive any termination of your account(s), the Service, or this Agreement.

12. Indemnification. You agree to defend, indemnify and hold harmless the MSS Parties from and against all liability, claims, actions, and expenses, including attorneys' fees and costs, arising out of your use of the Service, or that of any individual you provide access to use the Service and/or your breach or alleged breach, or that of any individual you provide access to use the Service, of any term, condition, obligation, representation or warranty in this Agreement. You agree that the provisions in this paragraph will survive any termination of your account(s), the Service, or this Agreement.

13. Objectionable Content/Copyright Takedown: If you believe your rights have been violated by, or you otherwise object to, any posting, content or information on the Service, please contact MSS promptly so we can evaluate the claim and take appropriate action. If your complaint includes a claim of copyright infringement, the following policy will apply:

Copyright Policy: It is MSS's policy to respond promptly to claims of copyright infringement, and to remove, or disable access to, infringing material. If you believe that any of the content or materials appearing on this Service contain infringements, please send a notice to the individual and address stated below. Your notice should contain the following: a physical or electronic signature of a person (i.e., claimant) authorized to act on behalf of the copyright owner; identification of the copyrighted work claimed to be infringed; identification of the content or material claimed to be infringing; a reference or link to the infringing material or activity, or the subject of the infringing activity, including information to enable us to locate that material or reference; the address, telephone number or email address of the claimant; a statement that the claimant has a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and a statement that the information in the notice is accurate and, under penalty of perjury, that the claimant is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. MSS will also terminate a subscriber's account if a subscriber is deemed to be a repeat infringer, namely, one who has been notified of bona fide infringing activity more than twice. To report infringement claims or other complaints contact our designated agent, Stan Thompson, at sthompson@mssmn.org.

14. Third Party Sites and Products. We may include links to third party sites or services, or information about third party products or services. You should review the terms of use and privacy policies of all sites and services you link to from or are referred to by our Service. We do not endorse or take responsibility for these third-party offerings. We do not vet or take responsibility for third party sites, services or products or the postings or communications of other users.

15. Severability of This Agreement. If any provision of this Agreement is found by a court or other binding authority to be invalid, you agree that every attempt shall be made to give effect to the parties' intentions as reflected in that provision, and the remaining provisions contained in this Agreement shall continue in full force and effect.

16. Governing Law/Waiver of Injunctive Relief.

16.1. This Agreement and all aspects of the Service will be governed by and construed in accordance with the internal laws of the United States and the State of Minnesota governing contracts entered into and to be fully performed in the State of Minnesota (i.e., without regard to conflict of laws provisions) regardless of your location. With respect to any Disputes or claims not subject to informal dispute resolution or arbitration (as set forth below), you agree not to commence or prosecute any action in connection therewith other than in the state or federal courts located in Ramsey County of the State of Minnesota, and you hereby consent to, and waive all defenses of lack of personal jurisdiction and forum non conveniens with respect to, venue and jurisdiction in the state and federal courts located in Ramsey County the State of Minnesota.

16.2. To expedite resolution and control the cost of any dispute, controversy or claim related to this Agreement ("Dispute"), you and MSS agree to first attempt to negotiate any Dispute

informally for at least thirty (30) days before initiating any arbitration or court proceeding. Such informal negotiations commence upon written notice from one person to the other. You will send your notice to **MSS at 900 Ocean St., St. Paul, MN 55106**

16.3. To the extent not resolved through negotiation, any Dispute shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall be conducted in Ramsey County before a single arbitrator.