

Usage Agreement and Disclaimer

1. ACCEPTANCE OF TERMS

Abadan Plan Center Services (APCS) makes available for your use and access to the APCS Online Plan Service (the "Site") certain information, documents, software and products (collectively, the "Materials") and various services (the "Services") subject to the terms and conditions set forth in this Usage Agreement and Disclaimers (the "Agreement"). By accessing this Site, you agree to the Agreement. APCS reserves the right to change the Agreement from time to time at its sole discretion. Your use of the Site will be subject to the most current version of the Agreement posted on the Site at the time of such use. In addition, when using particular Services or Materials on this Site, you shall also be subject to any posted guidelines or rules applicable to such particular Services or Materials all of which are incorporated into this Agreement by reference.

Use of site is at your sole risk. The site is provided on an "as is" and "as available" basis. It is your responsibility to review all documents to assure that all aspects of your bid are reviewed, as represented in blueprint documents, specifications, addenda and memoranda. The plans, specifications and addenda obtained from this site are to be used for reference only by general contractors, subcontractors, material suppliers and manufacturers. Companies wishing to bid as prime or general contractors must obtain a full set from the owner or issuing office of the project.

You MUST be a current APCS Member (valid Internet subscriber) of APCS to access this Site. If you are not a current Site participant or if you breach any provision of the Agreement, your authorization to use this Site is automatically terminated and you must immediately destroy any Materials downloaded or printed from this Site.

2. LIMITED LICENSE

You are hereby granted a nonexclusive, nontransferable and revocable license to utilize the Materials and Services on this Site, and any necessary software used in connection with the Site ("Software") solely for the purpose of preparing estimations and proposals for the projects identified herein. The license is expressly limited to this purpose, and excludes all other uses except as permitted in writing by APCS. No transfer of title or assignment of interest shall accompany this license.

This license is personal to you. You shall not assign, transfer or sublicense this license, or the use of the Materials, Services, Site or Software, either in whole or in part, to any other person or entity, for any reason whatsoever.

You shall be solely responsible for all costs and expenses incurred by you in the use of the Materials, Services, Site or Software. Although APCS may, from time to time, provide additional Materials, Services or Software for the Site, it is not required to do so, nor is it required to update, maintain or replace such items. You shall also be solely responsible for providing, in your own name, and at your own expense, any necessary insurance. APCS does not insure any of your interests in this license, and does not provide any insurance coverage at all to you or any other person or entity under the terms hereof.

APCS may, at its sole and unfettered discretion, and for any reason whatsoever or for no reason at all, revoke this license at any time, without any prior warning to you. If APCS revokes this license, APCS shall have no liability to you, or any third party, for any costs or expenses incurred, including, but not limited to, document duplication costs, delivery charges, express handling fees or other monetary expenses.

3. COPYRIGHT

You acknowledge and agree that Materials, Services, Site and Software contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Except as expressly authorized by APCS, you agree not to modify, rent, lease, loan, sell, distribute or create derivative works based on the Materials, Services, or the Software, in whole or in part. Furthermore, APCS and the copyright owner(s) do not grant any express or implied right to you under any patents, copyrights, trademarks, or trade secret information with respect to the Materials, Services, Site or Software.

The Software and accompanying documentation that are made available for download from the Site are copyrighted work of APCS and/or its suppliers. Use of the Software is governed by the terms of the end user license agreement that accompanies or is included with such software. You will not be able to download or install any software that is accompanied by or includes an end user license agreement unless you agree to the terms of such end user license agreement. If you do not agree to such terms, you will not

be able to use the software. You may not decompile, reverse engineer or otherwise attempt to discover the source code of any software available on the Site.

4. USE OF SITE INFORMATION

Except as otherwise indicated elsewhere on this Site, you may view, download and/or print the Materials available on this Site subject to the following conditions:

- A. The Materials may be used solely for preparing cost estimates for those construction projects provided on the Site and/or for your reference during the construction process of same and for no other purpose.
- B. The Materials may not be modified or altered in any way.
- C. You may not remove any copyright or other proprietary notices contained in the Materials.
- D. APCS reserves the right to revoke the authorization to view, download and print the Materials available on this Site at any time, and any such use must be discontinued immediately upon written notice from APCS.

The rights specified above to view, download and print the Materials available on this Site are not applicable to the design or layout of this Site. Elements of this Site are protected by trade dress and other laws and may not be copied or imitated in whole or in part.

5. UNAUTHORIZED USE

Only APCS members, are entitled to access the Site, and view and use the Materials and Services (including all plans, specifications and addenda therein). In addition, you acknowledge and agree that the unauthorized disclosure of Site Materials could cause competitive harm to the APCS , and you promise to receive and maintain the Site Materials in trust and confidence, and take reasonable precautions against such disclosure to any unauthorized users.

You are not permitted to redistribute, or allow access to, the Site Materials or Services to any third party who is not a Site participant.

6. MODIFICATIONS TO SERVICE

APCS reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Site (or any part thereof) with or without notice. You agree that APCS is not liable to you or to any third party for any modification, suspension or discontinuance of the Site, or any Service.

7. ACCOUNT, PASSWORD AND SECURITY

You are responsible for maintaining the confidentiality of the password and account, and are fully responsible for all activities that occur under your password or account. You agree to:

- A. Refrain from sharing your account login or password with any third party;
- B. immediately notify APCS of any unauthorized use of your password or account or any other breach of security; and
- C. Ensure that you exit from your account at the end of each session. APCS cannot and will not be liable for any loss or damage arising from your failure to comply with this section.

8. NO AGENCY RELATIONSHIP

APCS is not a partner, joint venturer, employee or agent of you, or any project owner or contractor whose Materials appear on this Site or whose projects are described herein. APCS does not have the power to obligate or bind any project owner or contractor, and expressly disclaims any implication of such power. Each user of the Site assumes full responsibility for its own acts, and the acts of its own personnel, subject to this Agreement.

9. TERMINATION

You agree that APCS , in its sole discretion, may terminate your password, account or use of the Site (or any part thereof) for any reason, including, without limitation, if APCS believes that you have violated or acted inconsistently with the letter or spirit of the Agreement. APCS may also in its sole discretion and at any time discontinue providing the Site, or any part thereof, with or without notice. You agree that any termination of your access to the Site under any provision of this Agreement may be effected without prior notice, and acknowledge and agree that APCS may immediately deactivate your account. Further, you agree that APCS shall not be liable to you or any third party for any termination of your access to the Site.

10. DISCLAIMER OF WARRANTIES

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

- A. YOUR USE OF THE SITE IS AT YOUR SOLE RISK. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. EFFORTS HAVE BEEN MADE TO ASSURE THE ACCURACY OF THE INFORMATION, BUT APCS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF ACCURACY MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- B. THE BEST SOURCES OF INFORMATION FOR PROJECT FILES ARE THE ACTUAL PLANS AND SPECIFICATIONS MAINTAINED AT THE MAIN OFFICES OF THE PROJECT OWNER, GENERAL CONTRACTOR AND/OR APCS. IF YOU BELIEVE THAT THE MATERIALS ARE ILLEGIBLE IN ANY MANNER (WHETHER AS A RESULT OF A WATERMARK, STAMP OR OTHER ANNOTATION, OR A SCANNING OR DUPLICATION ERROR), OR THAT YOU CANNOT ACCURATELY ASSESS THE SCOPE OR DETAILS OF THE PROJECT FROM THE PROVIDED MATERIALS, IT IS YOUR RESPONSIBILITY TO REVIEW THE ACTUAL PLANS AND SPECIFICATIONS THEMSELVES.
- C. APCS MAKES NO REPRESENTATION OR WARRANTY THAT:
 - i. THE MATERIALS PRESENTED ON THIS SITE CONFORM TO THE ACTUAL PLANS AND SPECIFICATIONS FOR ANY PROJECT DESCRIBED ON THE SITE;
 - ii. THE SERVICE AND MATERIALS OFFERED ON THE SITE WILL MEET YOUR REQUIREMENTS;
 - iii. THE SERVICE AND MATERIALS, AND ACCESS TO THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE;
 - iv. THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE;
 - v. THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR MATERIAL OBTAINED BY YOU THROUGH THE SITE WILL MEET YOUR EXPECTATIONS; AND
 - vi. THAT ANY ERRORS IN THE SOFTWARE OR MATERIALS WILL BE CORRECTED.
- D. ANY MATERIALS DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SITE IS DONE AT YOUR OWN DISCRETION AND RISK YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- E. IF YOU ARE DISSATISFIED WITH THE MATERIALS, SERVICES, SITE OR SOFTWARE, YOUR SOLE REMEDY IS TO SURRENDER THE LICENSE AND CEASE USE OF THE MATERIALS, SERVICES, SITE AND SOFTWARE.
- F. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM APCS OR THROUGH OR FROM THE SERVICE OR MATERIALS SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE AGREEMENT.

11. LIMITATION OF LIABILITY

IN NO EVENT SHALL APCS OR ANY OF ITS AFFILIATES, SUBSIDIARIES, PARTNERS, SHAREHOLDERS, OFFICERS, CONTRACTORS, AGENTS OR CO-BRANDERS BE LIABLE TO YOU, OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY BID PREPARATION OR ESTIMATION ERRORS, UNAWARDED CONTRACTS, LOST PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION OR PROGRAMS OR OTHER DATA ON YOUR INFORMATION HANDLING SYSTEM) THAT ARE RELATED TO THE USE OF, OR THE INABILITY TO USE, THE CONTENT, MATERIALS, SERVICES AND FUNCTIONS OF THE SITE, WHETHER BASED UPON CONTRACT. TORT. WARRANTY OR OTHER LEGAL THEORY EVEN IF APCS IS EXPRESSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12. DEFENSE AND INDEMNITY

You agree to defend, indemnify and hold APCS , and its subsidiaries, affiliates, shareholders, officers, employees, subcontractors, agents, co-branders and other partners, harmless from all losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees and expert witness fees, in connection with any claim, action, suit or proceeding that: (i) alleges facts, if true, would constitute a breach of this Agreement by you; (ii) arises from any alleged act, omission or misrepresentation by you, or your personnel or subcontractors, related to the Site, Materials, Services, Software or Agreement; (iii) arises out of your use of the Site, your connection to the Site, or any Materials or Services on or related to the Site; or (iv) arises from your violation of any rights of another.

13. ENTIRE AGREEMENT

This Agreement, and the other terms and conditions found throughout the Site, constitute the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersede any and all prior or contemporaneous oral or written communications pertaining to said subject matter, all of which are merged in this Agreement. No course of prior dealings between the parties, and no usage of the trade, shall be relevant to supplement or explain any term or condition herein. Acceptance or acquiescence in the course of performance shall not be relevant to determine the meaning of any term or condition, even if the accepting or acquiescing party has knowledge of the nature of the performance, and an opportunity for objection. In accepting this Agreement, you have not relied upon any warranty, representation, assurance or inducement that is not expressly set forth herein. No other agreement, statement, or promise that is not contained herein, or elsewhere on the Site, shall be valid or binding.

14. CONSTRUCTION

You are not required to use this Site, or any of the Materials or Services offered herein. Your decision to use, and continue to use, the Site is made solely by you, in your sole and unfettered discretion, and you may voluntarily cease to use the Site at any time. You agree that no ambiguity herein shall be construed more strictly against APCS as the drafter of this Agreement.

The failure of APCS to exercise or enforce any right or provision of the Agreement does not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect.

15. AMENDMENT

This Agreement may only be amended by a written instrument executed by the party to be charged. A waiver of any right provided by this Agreement shall be valid only if reflected in a written instrument executed by the party to be charged. No waiver of any right, or extension of time for any performance, shall affect any other right, occasion, obligation or action.

No agent, employee or representative of APCS shall have any authority to modify any affirmation, representation or warranty provided herein, or bind APCS to any additional affirmation, representation or warranty, unless said affirmation, representation or warranty is in writing on official APCS letterhead, and executed by APCS with specific reference to this Agreement.

16. GOVERNING LAW AND JURISDICTION

The Agreement and the relationship between you and APCS are governed by the laws of the State of Washington without regard to its conflict of law provisions. You also agree that this Agreement is entered into between you and APCS in Spokane, Washington, and the place of performance and delivery of all obligations provided herein is in Spokane. As such, you agree that the proper venue for any action to interpret or enforce the terms of this Agreement, or which concern the Site, Materials and/or Services, shall be Spokane, to the exclusion of all other forums and jurisdictions, regardless of the domicile of the parties.

17. TIME FOR BRINGING ACTION

You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Site, Materials, Services or the Agreement must be filed within one year after such claim or cause of action arises, or be forever barred.

By agreeing to these terms, you agree to be bound, individually and on behalf of any owner, contractor, material supplier or other entity you represent, by each term set forth above, including each disclaimer of warranty. It is further agreed that these terms bind the subscribers, heirs, assigns, partners, employees, joint venturers and successors in interest.