



CYBRScore One Time Purchase ClickThru Terms and Conditions

By clicking on the "Agree" or "Accept" or a similar button at the end of this Agreement ("Acceptance"), or authorizing any other person to do so, you are representing to TCS that you are (i) authorized to bind Customer; and (ii) agreeing on behalf of Customer that the terms of this Agreement shall govern the relationship of the Parties with regard to the subject matter in this Agreement and are waiving any rights, to maximum extent permitted by applicable law, to any claim anywhere in the world concerning the enforceability or validity of this Agreement. If you do not have authority to agree to the terms of this Agreement on behalf of the Customer, or do not accept the terms of this Agreement on behalf of Customer, click on the "Cancel" or "Decline" or other similar button at the end of this Agreement and/or immediately cease any further attempt to use this Service. TCS reserves the right to change or modify the terms and conditions set forth herein, except for changes in price, at any time and in its sole discretion. Any changes will be effective immediately upon posting them to this website. Your continued use of the Service will confirm your acceptance of such changes or modifications. If you do not agree to the amended terms, you must stop using the Services. TCS and Customer collectively shall be referred to herein as the "Parties" and each individually as a "Party." This Agreement is effective as of the date of your Acceptance of these terms ("Effective Date")

- 1. Definitions.** The following terms used in this Agreement shall have the meanings set forth in this Section 1. Unless specifically stated otherwise, capitalized terms used in Exhibits shall have the meaning set forth in this Agreement.

"Content" means training materials, labs, and other materials reduced to written form in any form or medium (excluding software). Content includes, but is not limited to, TCS Content.

"End User" means authorized employees or other individual persons who are designated by Customer as being licensed to use the Services.

"Exhibits" mean the documents attached hereto and incorporated by this reference, as may be amended from time to time by agreement of the Parties. In the event of any inconsistency, the document shall take precedence in the following order: Ordering Documents, Terms and Conditions, and Exhibits. Exhibits include, without limitation, the following:

Exhibit A: Services Description

"Hosted Services" means online hosting services, owned, operated or controlled by TCS consisting of various infrastructure components, including but not limited to servers, networking components, system software, internet access, and Content all as more specifically defined in an appropriate Ordering Document.

"Ordering Document" means the online ordering form (e.g. shopping cart) that itemizes the particular Services that Customer is accessing and TCS Content that Customer is licensing under this particular online transaction.

"Specifications" means, as appropriate (a) the specifications for the Hosted Services as set forth in Exhibit A (Services Description); and (b) the specifications for the TCS Content as set forth in Ordering Documents.

"TCS Content" means Content owned or licensed by TCS.

"Services" means the Hosted Services.

"Voucher" means a prepaid access key to use the Services including access methods such as training keys.

- 2. Term.** This Agreement shall commence as of the Effective Date, and unless earlier terminated as provided herein, shall continue until all Vouchers under the Ordering Document have been used or expired.

3. License Rights and Obligations. Subject to the terms and conditions of this Agreement, including any payment obligations, TCS grants to Customer, and Customer accepts, strictly during the Term of this Agreement the following licenses (collectively, the “**Licenses**”):

3.1 Hosting License Grant. TCS grants Customer, in consideration for the Customer’s payment obligations, a limited, nontransferable, and nonexclusive license to access and use the Hosted Services during the term set forth in the Ordering Document or Voucher and in accordance with the Specifications consistent with the provisions of this Agreement for Customer’s internal usage only. No license is granted to access, copy, or use the software that supports the Hosted Services, except in connection with the Hosted Services.

3.2 Content License Grant. TCS grants Customer a limited, nontransferable, and nonexclusive license to access TCS Content as described in the Service Description (a “**Content License**”) (but not to create derivative works thereto) consistent with the provisions of this Agreement.

3.3 Limitations on Use. No license is given to Customer to the object code or source code to the software that operates the Hosted Services. Without the express written authorization from TCS, Customer shall not (nor through any third party): (i) use, copy, duplicate or reproduce all or any portion of the Services (including the Documentation) for any purpose other than as specified in this Agreement; (ii) decompile, disassemble, re-program, analyze, reverse engineer any of the Services (in whole or in part) or otherwise attempt to reconstruct, identify or discover any underlying ideas, underlying user interface techniques or algorithms, or source code, or disclose any of the foregoing (except to the extent such restriction is prohibited by law); (iii) except as expressly authorized herein, sell, rent, lease, license, sublicense or in any way redistribute any or all of the Services or TCS Content; (iv) use the Services or TCS Content to create a service bureau, timesharing arrangement, or application service provider; (v) modify, adapt, translate, prepare derivative works of all or any portion of the Services or TCS Content or attempt to do so; (vi) remove, obscure or alter TCS’s or its licensors’ product identification, copyright notices, trademarks or other proprietary rights notices affixed to or contained within the Services (or Documentation) or TCS Content; (vii) permit the Services or TCS Content to be used, examined, reviewed or inspected by others, other than by Customer’s employees, auditors or governmental agencies as required by law; (viii) disclose the results of any benchmark or evaluation of the Services to any third party (whether or not obtained with TCS’s assistance) without TCS’s prior express written consent; (ix) use the TCS Content, Services, Documentation or any information contained therein or otherwise provided by TCS or its licensors for the purposes of developing, or having developed, any products or services competitive with the TCS Content or Services; (x) incorporate, link, or distribute the Services with any code or software licensed under the GNU General Public License (“**GPL**”), Lesser General Public License (“**LGPL**”), Mozilla, or any other open source license, in any manner that could cause or could be interpreted or asserted to cause the Services (or any modifications thereto) to become subject to the terms of the GPL, LGPL, Mozilla or such other open source license. Customer shall not authorize, or acquiesce in, any other person engaging in any of the foregoing activities, or attempting to do so.

3.4 End User License Agreement and Privacy Policy. End Users use of the Services are subject to the terms and conditions of the End User license set forth in all the documentation accompanying the Services, including the applicable End User license agreement set forth at [EULA website] (the “**EULA**”) and TCS’s privacy policy set forth on [Privacy Policy Website] (the “**Privacy Policy**”).

3.5 No License to Affiliates. Any and all Licenses are granted to Customer and not, by implication or otherwise, to any affiliate of Customer.

3.6 Reserved Rights. TCS reserves all rights not expressly granted under this Agreement.

4. Customer Obligations

4.1 Not for Resale or Redistribution. Customer’s use of the Services shall be for Customer’s own internal use and not for resale to third parties. Customer shall have no right or license to redistribute any version of the Services or TCS Content.

4.2 Access and Passwords. After the Service is ready for use by Customer, TCS shall issue (a) a link to Customer that will enable Customer to access the Service; and (b) a Voucher and

password to access the Service. Customer and its End Users are responsible for accessing the Service in accordance with the terms of this Agreement and maintaining the confidentiality of all passwords at all times and for ensuring that issued passwords are used only by the authorized End User(s). Customer is entirely responsible for all activities that occur under Customer's account and all charges incurred in connection with use of the Service using Customer's passwords. Customer shall immediately notify TCS of any unauthorized use of Customer's account, including, without limitation, each password of an End User accessing the Service by means of Customer's account, or any other breach of this Agreement or any security breach known to Customer. TCS shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements.

4.3 Cooperation and Assistance. Customer shall provide TCS with access to technical personnel and information in connection with performance of the Services and will furnish all information and assistance required to be provided by Customer under the Ordering Document. Customer will promptly notify TCS in sufficient detail of any defect, deficiency or error known to or discovered in the Services by Customer in sufficient detail to enable TCS to duplicate the condition, and TCS will make all reasonable efforts to implement a remedy in a timely manner.

4.4 Export of Services. All Services, TCS Content, documents, technical data, and any other materials delivered under this Agreement are subject to U.S. export control laws and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with these laws and regulations and acknowledges that it has the responsibility to obtain any licenses to export, re-export, or import as may be required after delivery to Customer. Any delays attributable to TCS's ability to secure appropriate export licenses or other required export documentation shall not be considered a breach of this Agreement.

4.5 Report Defects. Customer shall promptly inform TCS of any suspected defects or safety problems and End User complaints stemming from the Services.

5. Vouchers. TCS shall provide Customer with Vouchers for End Users' access and use of the Services in consideration for Customer's purchase of such Vouchers using an online payment portal designated by TCS. No refunds shall be provided by TCS to Customer for any Vouchers that are not redeemed or have expired.

6. Payment.

6.1 Payment Terms. All payments made through the online payment system that are rejected by the credit card company are due immediately upon rejection (the "**Due Date**"). Any payment not made by Customer when due under this Agreement will be subject to interest from the Due Date through the date paid, at a rate of one and one half (1 ½%) percent per month, or the maximum rate allowable at law, if less. No discounts for early payment are authorized.

6.2 Failure to Pay. Failure to pay any fees or other charges or amounts (including Taxes) due to TCS on or before the Due Date and after written notification by TCS shall be a breach of this Agreement ("**Failure to Pay**"). Notwithstanding anything else contained in this Agreement, in the event that a Failure to Pay is not cured within fifteen (15) days, TCS may suspend access to the Services and/or terminate this Agreement for default. Any suspension may be continued until the Failure to Pay has been cured. TCS shall be entitled to recover reasonable attorney's fees and costs incurred by TCS in collecting all unpaid amounts hereunder following a Failure to Pay.

6.3 Currency. Unless specified otherwise in an Ordering Document, all Prices and all payments shall be in United States dollars.

6.4 Taxes. Taxes are not included in prices. Customer shall pay all applicable sales, customs, duty, use, property, withholding, value-added, excise and any other taxes or duties imposed under the authority of any foreign, federal, state or local taxing jurisdiction, except any tax assessed upon TCS's net income (collectively, "**Taxes**"). Customer shall not reduce any fees or charges owed to TCS as a result of any such taxes or duties.

7. Intellectual Property Rights

7.1 TCS Intellectual Property Rights. Customer acknowledges and agrees that the intellectual property rights underlying the Services and TCS Content, and any other deliverables provided to

Customer hereunder (“**TCS IP**”) are owned by, and shall remain the sole property of TCS and its licensors, that the TCS IP contains, embodies and is based upon worldwide patented or patentable inventions, trade secrets, copyrights and other intellectual property rights (collectively, “**Intellectual Property Rights**”) owned or licensed by TCS and its licensors, and that TCS and its licensors shall continue to be the sole owner of all Intellectual Property Rights in and to the TCS IP worldwide including, without limitation, any derivative works. This Agreement does not convey to Customer title or ownership of the Intellectual Property Rights underlying the TCS IP, but only a right of limited use in accordance with this Agreement. Customer acknowledges that the TCS IP provided by TCS pursuant to this Agreement is entitled to protection under applicable copyright and other intellectual property laws and constitute valuable assets, trade secrets and proprietary rights of TCS or its licensors.

7.2 Suggestions. Many of TCS’s changes to Content, user interfaces, features, functionality, and other aspects of the Services and TCS Content come as a result of suggestions made by customers and partners, whether in the form of suggestions, enhancement requests, recommendations, or other feedback (collectively, “**Suggestions**”). All customers benefit from TCS incorporating Suggestions in future releases of the Services and/or TCS Content. Customer grants to TCS an irrevocable, worldwide, royalty-free, perpetual license to use as TCS deems appropriate any Suggestions that Customer, or any person or entity under the direction or control of Customer, provides to TCS, to incorporate such Suggestions in any form into the Services, TCS Content, or any other products or services, and to exercise any other rights with respect to such Suggestions. TCS shall be entitled to use any Suggestions without restriction and without obligation to Customer or any third party.

7.3 Aggregated Data. As between the Parties, each Party shall have the right to use all De-identified data (the “**Aggregated Data**”) for purposes of improving the Services and/or TCS Content or creating other products and services without providing additional compensation to the other Party. For the purposes of this Agreement, “**De-identified**” means information that does not identify any individual or entity and with respect to which there is no reasonable basis from which the information can be used to identify an individual or entity.

8. Confidentiality

8.1 “Confidential Information” means all such information, material and data received by one Party (the “**Receiving Party**”) from the other Party (the “**Disclosing Party**”), whether disclosed in writing or verbally, (i) that is labeled or designated in writing as confidential or proprietary, (ii) which Receiving Party is advised is proprietary or confidential or (iii) which, in view of the nature of such information or the circumstances of its disclosure, Receiving Party knows or reasonably should know is confidential or proprietary. Confidential Information includes the terms and conditions of this Agreement. Confidential Information shall not include information which (a) is or becomes publicly available through no act or omission of the Receiving Party; (b) is rightfully received from a third without an obligation of confidence; (c) is independently developed by the Receiving Party without reference to Confidential Information; or (d) is required to be disclosed in accordance with a judicial or governmental order or decree, provided that the Receiving Party provides prompt notice of the order or decree to the Disclosing Party and reasonably cooperates with the Disclosing Party to limit the disclosure and use of the Confidential Information.

8.2 Use of Confidential Information. The Receiving Party will hold any Confidential Information in strict confidence for a period of three (3) years from termination of this Agreement, except that the obligation of the Receiving Party to maintain the confidentiality of trade secrets and personally identifiable data shall survive indefinitely. The Receiving Party will use such Confidential Information only in accordance with the terms of this Agreement. The Receiving Party shall limit the use of, and access to, the Confidential Information to its employees or agents whose use of or access to the Confidential Information is necessary to carry out the intent of this Agreement. The Receiving Party shall, by appropriate means, prevent the unauthorized disclosure, publication, display or use of any Confidential Information. Without limiting the generality of the foregoing, the Receiving Party shall require all employees, agents, or contractors who shall have access to the Confidential Information to execute, prior to such access, a non-disclosure agreement providing for at least the same protection of the Confidential Information as is provided for by this section.

8.3 Destruction or Return of Confidential Information. Upon expiration or termination of this Agreement for any reason, each Party shall promptly return to the other Party, or, if requested, destroy all copies of the other Party's Confidential Information. All copies, notes or other derivative material relating to the Confidential Information shall be promptly retrieved or destroyed, as agreed, and no such material shall be retained or used by the Receiving Party in any form or for any reason.

9. Warranties. The following warranties supersede any warranties in the EULA:

9.1 Hosted Services Warranty. TCS warrants during the Term of this Agreement that the Hosted Services will be provided in accordance with the Specifications for Hosted Services.

9.2 TCS Content Warranty. TCS warrants during the Term of this Agreement that (a) the TCS Content will be created and delivered in a workmanlike manner consistent with applicable industry standards; and (b) the TCS Content provided to Customer under applicable Ordering Documents are warranted to conform to the Specifications.

9.3 WARRANTY DISCLAIMER. THE FOREGOING WARRANTIES ARE IN LIEU OF, AND THE PARTIES EXPRESSLY DISCLAIM, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. TCS SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE.

9.4 Sole Remedy. Customer's sole remedy and TCS's sole obligation for any warranty claims under this Section 9 shall be to correct such failures at no charge to Customer.

10. Limitation of Liability.

10.1 LIMITATION ON INDIRECT DAMAGES. NEITHER OF THE PARTIES NOR THEIR LICENSORS SHALL BE LIABLE TO THE OTHER FOR INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, ECONOMIC, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF BUSINESS REVENUE OR EARNINGS, LOST DATA, DAMAGES CAUSED BY DELAYS, OR A FAILURE TO REALIZE EXPECTED SAVINGS) DIRECTLY OR INDIRECTLY ARISING OUT OF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, WHETHER OR NOT SUCH DAMAGES COULD REASONABLY BE FORESEEN OR THEIR LIKELIHOOD HAS BEEN DISCLOSED TO EITHER PARTY OR THEIR LICENSORS.

10.2 LIMITATION ON DIRECT DAMAGES. BOTH PARTIES SHALL BE LIABLE TO THE OTHER FOR DIRECT DAMAGES ONLY, IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE FOR ALL CLAIMS US\$1,000.00.

10.3 Survival of Limitations. The limitations of liability set forth in this Section 10 shall survive the expiration or termination of this Agreement.

11. Suspension. Upon TCS' reasonable belief that criminal or otherwise improper activity may be associated with Customer's use of the Services, TCS may, without incurring any liability, temporarily suspend or discontinue Customer's use of the Services.

12. Termination.

12.1 Termination By Either Party. A non-breaching Party may terminate this Agreement for cause by written notice to breaching Party upon the occurrence of any of the following events: (i) the material breach by breaching Party of any term, provision, representation or warranty of this Agreement that remains uncured thirty (30) days after the non-breaching Party provides written notice thereof; (ii) a material breach of any of its intellectual property, confidentiality obligations; or (iii) Party becomes insolvent or subject to any proceeding under the federal bankruptcy laws or other similar laws for the protection of creditors, and such event continues for ninety (90) days after the non-breaching Party provides written notice thereof.

12.2 TCS Termination. TCS may terminate this Agreement for cause by written notice to Customer upon Customer's failure to pay any amounts due to TCS within fifteen (15) days following a Failure to Pay.

12.3 Termination for Convenience by Customer. Customer may terminate this Agreement for convenience at any time by providing written notice to TCS, however no refunds shall be provided for any Vouchers.

12.4 Rights Upon Termination. Upon termination of this Agreement by either Party:

- a) Each Party will promptly cease using and destroy or return to the other Party all items that contain any Confidential Information of the other Party;
- b) All licenses granted hereunder shall terminate immediately; and
- c) Termination or expiration of this Agreement shall not release either Party from: (i) any liability which has already accrued to the other Party hereto at the time of termination or expiration; (ii) any liability which thereafter may accrue with respect to any act or omission prior to termination or expiration; or (iii) any obligation which is expressly stated herein to survive termination or expiration.

13. General Provisions

13.1 Force Majeure. Neither Party shall be liable to the other Party or shall be subject to termination of the Agreement by the other Party for any delay, nonperformance, loss or damage (other than for failure to pay any amount when due) because of reasons beyond its reasonable control including, but not limited to, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving TCS employees), communication systems failures, internet service provider failures or delays, or denial of service attacks, war, riots, power failures, accidents in transportation or other causes beyond the reasonable control of the respective Party (“**Force Majeure**”).

13.2 Assignment. This Agreement and the rights and obligations hereunder may not be assigned, delegated, sublicensed or transferred without the prior written consent of the other Party. Notwithstanding the foregoing, either Party shall be free to assign its rights and obligations hereunder (in whole or in part) to a successor or Affiliate at any time or to a third party in connection with a sale by such Party of a part of its business to that third party provided that the assigned-to party (a) agrees to be bound by the terms and conditions of this Agreement and (b) is not a competitor of the other Party.

13.3 Compliance with Laws. Each Party agrees to abide by all local, state, national, and international laws and regulations applicable to such Party's performance under this Agreement, including, without limitation, all intellectual property and privacy laws.

13.4 Miscellaneous Provisions. A failure or delay of either Party to this Agreement to enforce any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions. In the event that any provision of this Agreement shall be held to be invalid, the remaining provisions of this Agreement shall be unimpaired and the invalid provisions shall be replaced by a mutually acceptable provision. The Parties agree that where the context of any provision indicates an intent that it shall survive the termination of this Agreement, then it shall so survive. This Agreement shall not create, or in any way be interpreted as a joint venture, partnership or formal business organization of any kind. Except as set forth in this Agreement, neither Party has the right to make commitments of any kind for the other Party. Under no circumstances shall any personnel of either Party be considered to be an employee or agent of the other Party. There are no intended third party beneficiaries of any provision of this Agreement. Damages shall be an inadequate remedy in the event of a breach by either Party to this Agreement and that any such breach by either Party will cause the other Party great and irreparable injury and damage. Accordingly, both Parties agree that the Party claiming breach shall be entitled, without posting a bond or waiving any additional rights or remedies otherwise available to it at law or in equity or by statute, to injunctive and other equitable relief. This Agreement constitutes the entire understanding between the Parties concerning the subject matter hereof and supersedes all prior discussions, agreements and representations, whether oral or written and whether or not executed by the Parties. All notices required hereunder shall be in writing and transmitted to the address for such Party as set forth in the Ordering Documents. Notices shall be effective upon the date of confirmed delivery or at such time as delivery is refused by addressee upon presentation. The preamble hereto shall form an integral part of this Agreement. The headings in this Agreement are for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any of its provisions. All personal

pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular shall include the plural, and vice versa, as the context may require. This Agreement shall be governed by the laws of the State of Maryland without regard to its conflict of laws provisions and the Parties hereby consent to suit in, and to the personal jurisdiction of the federal courts located in Baltimore, Maryland and state courts located in Anne Arundel County, Maryland with respect to any matter arising out of this Agreement.

-- EXHIBITS FOLLOW ON NEXT PAGE --

EXHIBIT A SERVICES DESCRIPTION

This Exhibit outlines the potential Services and TCS Content that may be offered to Customer. The specific Services and TCS Content offered to Customer are as set forth in the Ordering Document.

Instructor Led Courses: TCS will provide the instructor, course materials and access to online labs. End Users will have access the online labs for up to 6 months after the course has been delivered. Courses are available in three delivery formats

- **TCS Site:** The facility is provided by TCS.
- **Customer Site:** The facility is provided by Customer.
- **Live Online:** The course is delivered via online web-based video conferencing.

Pricing for “TCS Site” is valid for continental US locations.

On Demand Courses: TCS will provide access to an online course experience that End Users can take at their own pace. End Users will have 6 months to complete an On Demand Course after they have started it.

Course Kits: TCS will provide the materials and access to online labs for a course. End Users will have access the online labs for up to 6 months after the course is has been delivered. TCS is required to provide the instructor.

Lab Bundles: TCS will provide access to online labs. End Users will have access the online labs for up to 6 months after initial purchase.

Skills Assessments: TCS will provide access to a single assessment. Assessments may be taken once up to 6 months after initial purchase.

Uptime Requirements: TCS operates the Hosted Services 24 hours per day 7 days per week (the “Uptime Requirements”), except for:

- a) TCS’s pre-planned maintenance windows. Customer shall be notified in advance of maintenance windows; or
- b) Any unavailability caused by circumstances beyond TCS reasonable control, including without limitation, events of Force Majeure.

Support Services: TCS will provide Support Services directly to Customer (and not End Users).

“Support Services” includes but is not limited to such tasks as:

- Work with Customer to resolve issues.
- Ensure that the application software is functioning in accordance with the Specifications.
- Ensure that the Hosted Services are functioning in accordance with the Specifications.

The following tasks are NOT included as part of Support Services and shall be the responsibility of the Customer:

- diagnosing restrictive policies on the End User’s local computer;
- supporting browser, firewall, proxy, and security software; and
- diagnosing local and/or network restrictions that prevent End Users from accessing the application software.