

Cybrary End User License Agreement

The following Terms of Service (the "Terms") govern Customer's (as defined on the Order Form) use of the Software (as defined below) as agreed on the Order Form. The Terms, together with the Order Form, shall be referred to as the "Agreement."

1. Access to Software.

License Grant. Subject to the terms and conditions of the Agreement, Cybrary, Inc. ("Cybrary") grants to Customer a non-exclusive, non-transferable, limited term, license to access and use the software applications developed, owned and hosted by Cybrary, as identified on the Order Form (the "Software") solely for Customer's internal business purposes. Cybrary and its licensors reserve all rights in and to the Software not expressly granted to Customer. Customer will provide, at Customer's location, hardware, software, and communications equipment which will allow Customer to access and use the Software. Customer will be responsible for providing all additional equipment and internet connectivity at its own expense.

Updates. From time to time, Cybrary may make offer updates to the Software, which will be governed by these Terms. Cybrary is not responsible for performance of updates in connection with any unauthorized plugins installed by Customer. Except as provided on an applicable Order Form, Cybrary is not obligated to provide any updates or other modifications to Customer. Customer may purchase upgrades, which might include new features to the Software for an additional fee not to exceed the then current price of such upgrades offered by Cybrary.

Support Services. Cybrary will provide routine support and troubleshooting services ("Support Services") to Customer. Customer may request Support Services by submitting a support ticket online which can be found at support@cybrary.it

2. **Restrictions on Use.** Customer may not: (a) copy or otherwise reproduce or permit the copying or other reproduction of all or any part of the Software except as otherwise permitted herein; (b) reverse engineer, decompile, disassemble or create derived works based on the Software; (c) modify, adapt, translate into other programming forms or languages or extend the Software to operate in other environments or on other platforms, except in accordance with these Terms; or (d) allow access to the Software by other software products for any purpose without prior approval of Cybrary.

3. **Fees and Payment.** Customer will pay Cybrary or its authorized reseller as applicable for the Software in accordance with the pricing plan selected by Customer at <https://www.cybrary.it/upgrade/?www=nav> or as otherwise forth in the Order Form. Cybrary or its authorized reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

Such charges shall be made upon execution of the order within ten (10) days of receipt of a proper invoice in accordance with the billing frequency set forth in the Order Form. Fees remaining unpaid for more than thirty (30) days from receipt will accrue interest at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. Cybrary's rights under this section will be in addition to all other rights and remedies available to Cybrary upon Customer's default. If Customer's usage exceeds the amount applicable to the package purchased by Customer for a period of twelve (12) months, Cybrary will automatically upgrade Customer's purchased package at the end of the then current Term.

4. Proprietary Rights.

Software Applications. All right, title and interest (including all intellectual property rights embodied therein) in and to the Software and will remain the sole and exclusive property of Cybrary or its licensors. These Terms grant Customer no title or right of ownership in or to the Software, or any component thereof including source code, or to any associated materials, documentation, intellectual property, or in or to any derivatives of the Software, enhancements, modifications or improvements thereto. Customer will not, at any time, take or cause any action, which would be inconsistent with or tend to impair the rights of Cybrary or its affiliates in the Software. Customer may not remove or alter any proprietary or copyright notices, trademarks or logos of Cybrary.

5. Term and Termination. The Agreement will commence upon the Effective Date as stated on the Order Form and remain effective for the period set forth in the Order Form unless terminated as permitted in this Section (the "Initial Term"). Unless otherwise agreed upon in the Order Form, the Initial Term may be renewed for successive one-year periods (together, the "Term") by executing an order for the successive one-year term. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cybrary shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer. Termination of the Agreement will relieve Cybrary of all obligations to provide Customer access to the Software and any licenses granted under the Agreement will immediately cease.

6. Indemnification.

By Cybrary. Cybrary will indemnify and have the right to intervene to defend Customer and its affiliates, directors, officers, employees and agents with respect to any claims, liabilities, damages and expenses, including reasonable attorneys' fees, arising out of any third-party claim that

the Software as provided by Cybrary infringes on any copyright, patent, trademark, trade secret or other intellectual property right of any third party. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Notwithstanding the foregoing, Cybrary will have no obligation pursuant to the foregoing indemnification provision to the extent that any claim is based on or related to: (a) any use of the Software in violation of the Agreement, (b) any use of the Software in conjunction with any third-party service, data, hardware or software not provided by Cybrary, or (c) any material or data provided by Customer. If Customer's use of the Software becomes, or is likely to become, the subject of an infringement claim, Cybrary may, at its option and expense (i) procure the right for Customer to continue using the Software, (ii) replace or modify the infringing components of the Software with non-infringing components of substantially equivalent functionality. The foregoing states the entire liability of Cybrary with respect to this Section, and Customer hereby expressly waives any other remedies for infringement claims.

Reserved.

Indemnification Procedures. A party seeking indemnification hereunder (an "Indemnified Party") will give the Party from whom indemnification is sought (the "Indemnifying Party"):

(a) reasonably prompt notice of the relevant claim; (b) reasonable cooperation and assistance, at the Indemnifying Party's request and expense, in the defense or settlement of such claim; and (c) sole control the defense and settlement of any such claim; provided, however, that the Indemnifying Party will not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party's rights or interest. The Indemnified Party will have the right to participate in the defense at its own expense.

7. WARRANTY AND WARRANTY DISCLAIMER.

No Harmful Code. Cybrary warrants that: (A) the Software does not and will not contain any undisclosed feature, including, without limitation, a time bomb, virus, software lock, drop-dead device, malicious logic, worm, Trojan horse, or spyware, that is designed to (or that allow untrusted party to be capable of) (i) accessing, modifying or deleting in an unauthorized manner, or (ii) damaging, disabling, deactivating, interfering with or otherwise harming any computers, networks, data, other electronically stored information, or computer programs or systems; (B) to Cybrary's knowledge, the content and information contained in the Software is not materially incorrect or incomplete; and (C) the Software does not infringe on the intellectual property rights of any third party.

LIMITATION. CYBRARY WARRANTS THAT THE SOFTWARE WILL, FOR A PERIOD OF SIXTY (60) DAYS FROM THE DATE OF YOUR RECEIPT, PERFORM SUBSTANTIALLY IN ACCORDANCE WITH SOFTWARE WRITTEN MATERIALS ACCOMPANYING IT. EXCEPT AS EXPRESSLY SET FORTH IN THE FOREGOING, EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN SECTION 7.2, ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COMMON LAW OR IN ANY OTHER WAY, INCLUDING ANY IMPLIED WARRANTIES AS TO QUALITY, PERFORMANCE, TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, ARE EXCLUDED FROM THE AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS AND CUSTOMER'S USE OF THE SOFTWARE IS AT ITS OWN RISK. CYBRARY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR COMPLETELY SECURE OR ERROR-FREE.

8. Limitation of Liability. EXCEPT FOR ITS INDEMNIFICATION OBLIGATIONS UNDER SECTION 6, IN NO EVENT WILL (A) CYBRARY BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SOFTWARE; AND (B) CYBRARY'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE AMOUNT PAID TO CYBRARY UNDER THE AGREEMENT DURING THE PREVIOUS TWELVE (12) MONTH PERIOD. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

9. Miscellaneous.

Assignment. Customer may not assign the Agreement or any right created hereunder without the prior written consent of Cybrary. Any prohibited assignment is void. The Agreement shall inure to the benefit of the parties' respective permitted successors and assigns

Amendments; Waiver; Severability. The Agreement may only be amended or modified in a writing duly executed by authorized representatives of both parties. Any waiver of any breach of any term or any condition of the Agreement will not be construed as a waiver of any subsequent breach of any term or condition of the Agreement. If any part, term or provision of the Agreement will be held to be illegal or unenforceable it will not affect the validity or enforceability of the remainder of the Agreement. The parties will replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.

Publicity. Cybrary will not disclose or make public its relationship with Customer pursuant to this Agreement without the prior written consent of Customer.

Disputes. The Agreement will be governed and construed in accordance with the Federal laws of the United States without giving effect its conflict of law principles. The 1980 U.N. Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

Entire Agreement. The Agreement, including the Order Form and any other exhibits, comprises the entire agreement between the parties relating to the subject matter hereof. The Agreement supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of the Agreement. The Agreement may be executed in several counterparts, each of which will be deemed to be an original, and all of which, when taken together, will constitute one and the same instrument. Sections 4 (Proprietary Rights), 7 (Warranty and Warranty Disclaimer), 8 (Limitation of Liability), and 9 (Miscellaneous) survive termination of the Agreement.