

Terms of Service

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 for the Software in accordance with the pricing plan selected by Customer at <https://www.cybrary.it/upgrade> or as otherwise forth in the Order Form. Rates described on the Order Form are exclusive of taxes, levies, duties, governmental charges or expenses. If license fees for the Software are to be recurring, Customer will provide Cybrary with valid and updated credit card or as otherwise approved by Cybrary. If Customer provides credit card information to Cybrary, Customer authorizes Cybrary to charge such credit card for all license fees as provided on the Order Form. Such charges shall be made in advance 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 a rate of the lesser of one and one-half (1.5%) percent per month or the highest rate allowed by law, whichever is less. Customer will be liable for all costs and expenses related to collection of past due amounts, including legal and other professional fees and expenses of litigation. 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.

We do not offer refunds for any subscriptions purchased.

Effective June 8, 2023, our order process is conducted by our online reseller Paddle.com. Paddle.com is the Merchant of Record for all of our orders initiated after June 8, 2023. Paddle provides all customer service inquiries. Your relationship with Paddle is governed by the following Terms and Conditions <https://paddle.com/legal/checkout-buyer-terms> and Privacy Policy <https://paddle.com/legal/privacy>.

For more information about Paddle please visit our [help center](#).

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 will automatically renew for successive one-year periods (together, the "Term") unless either party elects for the Agreement not to automatically renew by providing the other party with written notice at least ninety (90) days prior to the expiration of the current Term. Termination of the Agreement will relieve Cybrary of all obligations to provide Customer access to the Software and any licenses granted under the Agreement.

6. Indemnification

By Cybrary. Cybrary will indemnify and 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. 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.

By Customer. Customer will indemnify and defend Cybrary and its affiliates, directors, officers, employees and agents with respect to any claims, liabilities, damages and expenses, including reasonable attorneys' fees, arising out of (a) Customer's misuse of the Services, (b) Customer's breach of any applicable laws and regulation; or (c) a breach of any of Customer's representations, warranties, obligations, covenants or agreements under the Agreement.

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. 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.

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 laws of the State of Minnesota 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. All disputes arising from or relating to the Agreement will be within the exclusive jurisdiction of the state and/or federal courts located within Hennepin County, Minnesota. Any claim arising from or related to the Agreement must be brought in the state or federal courts located in Minneapolis, Minnesota.

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.

Date: 2025/7/3