

COBIT® 5 ONLINE TERMS AND CONDITIONS

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 **Authorized Users** are those who agree to the Terms and Conditions and have tendered the required payment corresponding to the level of access as provided by ISACA.
- 1.2 **Account Administrator** is the individual or individuals who have been granted rights to manage roles and add or remove Authorized Users or Account Administrators on behalf of the enterprise.
- 1.3 **Access Fee** is the fee required to gain access to specified parts of COBIT® 5 Online.
- 1.3 **COBIT® 5 Online** is defined as the online platform through which the Materials are accessed.
- 1.4 **Materials** are defined as all content contained within COBIT® 5 Online.

2. AUTHORIZED USES

- 2.1 Authorized Users are granted a non-exclusive, nontransferable, limited right to access and use for internal management, reference and informational purposes (non-commercial purposes) as follows:
 - 2.1.1 Display of COBIT® 5 Online and Materials to Authorized Users;
 - 2.1.2 Use brief excerpts of Materials, as permitted by copyright law, in consulting engagements with full attribution as follows: *Title of Material(s), COBIT® 5 Online, Date of Download @ ISACA, for more information, go to www.isaca.org.*
- 2.2 Printouts of COBIT® 5 Online may be made consistent with the “fair use” provisions of the Copyright Act of 1976 (17 U.S.C. Sec. 107).
- 2.3 If you wish to use COBIT® 5 Online or the Materials in any manner not expressly permitted by these Terms and Conditions, you may request permission or licensure by sending an e-mail detailing the Materials and purpose of such use to ipinfo@isaca.org. Where licensure for the use is required, there may be a fee.

3. RESTRICTIONS

- 3.1 Unless expressly permitted by Section 2, you shall not,
 - 3.1.1 distribute, redistribute, disseminate, transmit, retransmit, publish, allow access to, market, rent, lease, sell, assign, sublicense, pledge, or otherwise transfer COBIT® 5 Online or Materials in whole or in part, to any third party;
 - 3.1.2 remove or alter any copyright, trademark, or other propriety notices, legends, symbols, or labels appearing on or within COBIT® 5 Online or any Materials;
 - 3.1.3 modify, decompose, disassemble or reverse engineer COBIT® 5 Online;
 - 3.1.4 use COBIT® 5 Online or the Materials as part of services bureau, time-sharing or like arrangement;
 - 3.1.5 create an archive of COBIT® 5 Online or the Materials;
 - 3.1.6 use any robot, spider, other automatic device, or manual process to “screen scrape,” monitor, “mine,” or copy COBIT® 5 Online or the Materials in whole or in part;
 - 3.1.7 attempt, conduct or cause to be attempted or conducted any unlawful or unauthorized access to COBIT® 5 Online or the Materials;
 - 3.1.8 trespass, tamper or seek unauthorized access to COBIT® 5 Online users, or attempt to hack COBIT® 5 Online;
 - 3.1.9 download any Materials or other files from COBIT® 5 Online and post them on the Internet or any extranet or intranet;
 - 3.1.10 use COBIT® 5 Online or the Materials in any way that violates the intellectual property or proprietary rights of ISACA or any third party; or
 - 3.1.11 use COBIT® 5 Online via mechanical, programmatic, robotic, scripted or other automated means.

4. ACKNOWLEDGEMENT/ WARRANTY DISCLAIMER

4.1 You (and the organization or entity through which you have obtained access to COBIT® 5 Online and the Materials) acknowledge that:

- 4.1.1 COBIT® 5 ONLINE, THE MATERIALS AND SELECTION OF SUCH, INCLUDING THE COBIT® AND ISACA® TRADEMARKS, IS THE SOLE AND EXCLUSIVE INTELLECTUAL PROPERTY OF ISACA AND ITS LICENSORS;

4.1.2 YOU HAVE READ, UNDERSTOOD AND AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, AND YOU AGREE TO COMPLY WITH ALL APPLICABLE LAWS AND REGULATIONS, INCLUDING U.S. EXPORT AND RE-EXPORT CONTROL LAWS AND REGULATIONS.

4.1.3 IF YOU FAIL TO COMPLY IN ANY WAY WITH THESE TERMS AND CONDITIONS, YOUR AUTHORIZATION TO ACCESS AND TO USE COBIT® 5 ONLINE AUTOMATICALLY TERMINATES AND YOU MUST IMMEDIATELY DESTROY ANY DOWNLOADED OR PRINTED MATERIALS.

4.1.4 YOU HAVE NO USE RIGHTS TO THE ISACA® OR COBIT® TRADEMARKS.

4.1.5 ISACA HAS DESIGNED, CREATED AND SELECTED COBIT® 5 ONLINE AND THE MATERIALS PRIMARILY AS AN EDUCATIONAL RESOURCE FOR GOVERNANCE OF ENTERPRISE IT (GEIT), ASSURANCE, RISK AND SECURITY PROFESSIONALS. ISACA MAKES NO CLAIM THAT USE OF COBIT® 5 ONLINE OR THE MATERIALS WILL ASSURE A SUCCESSFUL OUTCOME.

4.1.6 COBIT® 5 ONLINE OR THE MATERIALS SHOULD NOT BE CONSIDERED INCLUSIVE OF ALL PROPER INFORMATION, PROCEDURES AND TESTS OR EXCLUSIVE OF OTHER INFORMATION, PROCEDURES AND TESTS THAT ARE REASONABLY DIRECTED TO OBTAINING DESIRED RESULTS. IN DETERMINING THE PROPRIETY OF ANY SPECIFIC INFORMATION, PROCEDURE OR TEST, AUTHORIZED USERS SHOULD APPLY THEIR OWN PROFESSIONAL JUDGMENT TO THE SPECIFIC GOVERNANCE OF ENTERPRISE IT (GEIT), ASSURANCE, RISK AND SECURITY CIRCUMSTANCES PRESENTED BY THE PARTICULAR SYSTEMS OR INFORMATION TECHNOLOGY ENVIRONMENT.

4.1.7 YOU ARE RESPONSIBLE FOR APPLYING PROFESSIONAL JUDGMENT TO THE SPECIFIC CIRCUMSTANCES PRESENTED TO DETERMINE THE APPROPRIATE PROCEDURES, TESTS, OR CONTROLS.

4.1.8 COBIT® 5 ONLINE AND THE MATERIALS, INCLUDING ALL CONTENT, APPLICATIONS, SOFTWARE, FUNCTIONS, AND INFORMATION, IS PROVIDED "AS IS," "WITH ALL FAULTS" AND WITHOUT ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. ISACA AND ITS LICENSORS DISCLAIM ALL WARRANTIES WITH RESPECT TO COBIT® 5 ONLINE AND THE MATERIALS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, QUIET ENJOYMENT, MERCHANTABILITY OF COMPUTER PROGRAMS, DATA ACCURACY, SYSTEM INTEGRATION, AND INFORMATIONAL CONTENT.

4.1.9 ISACA AND ITS LICENSORS DO NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE OPERATION OF COBIT® 5 ONLINE, THE USE, VALIDITY, ACCURACY OR RELIABILITY OF, OR THE RESULTS OF THE USE OF THE MATERIALS ON THIS ONLINE SERVICE OR ANY OTHER WEBSITE LINKED TO COBIT® 5 ONLINE. COBIT® 5 ONLINE MATERIALS MAY BE OUT OF DATE. YOU ACKNOWLEDGE THAT ISACA AND ITS VENDORS AND LICENSORS DO NOT OPERATE OR CONTROL THE INTERNET.

4.1.10 ISACA DOES NOT WARRANT THAT THE MATERIALS OR ANY FILES AVAILABLE FOR DOWNLOAD FROM COBIT® 5 ONLINE, IF ANY, WILL BE FREE FROM INFECTION, VIRUSES, WORMS, TROJAN HORSES OR OTHER CODE THAT MANIFEST CONTAMINATING OR DESTRUCTIVE PROPERTIES.

4.1.11 ISACA DOES NOT WARRANT THAT COBIT® 5 ONLINE, SOFTWARE, MATERIALS, PRODUCTS OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT ANY DEFECTS IN COBIT® 5 ONLINE, SOFTWARE, MATERIALS, PRODUCTS OR SERVICES WILL BE CORRECTED.

4.1.12 YOU AGREE THAT ISACA SHALL NOT BE RESPONSIBLE OR LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY DAMAGE OR LOSS CAUSED OR ALLEGED TO BE CAUSED BY, OR IN CONNECTION WITH, THE ACCESS, USE OF, OR ON RELIANCE ON THIRD PARTY SITE(S) ACCESSIBLE THROUGH COBIT® 5 ONLINE.

4.1.13 COBIT® 5 ONLINE, THE MATERIALS AND ANY FEATURE OR FUNCTIONALITY MAY BE CHANGED BY ISACA WITHOUT NOTICE.

4.1.14 NEITHER YOU, NOR ISACA CAN ASSIGN THIS AGREEMENT, UNLESS BOTH PARTIES CONSENT.

4.1.15 FAILURE TO ENFORCE ANY PROVISION OF THIS AGREEMENT DOES NOT CONSTITUTE A WAIVER OF SUCH PROVISION OR OF THE RIGHT TO ENFORCE SUCH RIGHT AT A LATER DATE.

4.1.16 THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE PARTIES WITH RESPECT TO ACCESS AND USE OF COBIT® 5 ONLINE AND THE MATERIALS CONTAINED THEREIN AND REPLACES AND SUPERCEDES ANY PRIOR WRITTEN OR VERBAL COMMUNICATIONS, REPRESENTATIONS OR PROPOSALS.

4.1.17 YOU ARE AUTHORIZED TO ENTER INTO THIS AGREEMENT.

5. COBIT® 5 ONLINE USER NAME/PASSWORD

The log in information provided to you, as an Authorized User, to access COBIT® 5 Online should not be provided to others to enable their access (“Credentials”). You remain responsible for all access to COBIT® 5 Online under your username and password, even if not authorized by you. You will use commercially reasonable methods to prevent the unauthorized use of Credentials issued to you. Your Account Administrator is responsible for maintaining a roster of Authorized Users. If you believe your credentials have been misappropriated, please contact Cobitonline@isaca.org.

6. USE OF PERSONALLY IDENTIFIABLE INFORMATION PROVIDED BY AUTHORIZED USERS TO ISACA

ISACA’s Privacy Policy, located at <http://www.isaca.org/pages/Privacy.aspx> describes how ISACA collects, uses, shares and retains personally identifiable information you provide. Contact privacy@isaca.org with any questions regarding ISACA’s Privacy Policy.

7. TERM AND TERMINATION

7.1 These Terms and Conditions apply to your use of COBIT® 5 Online and the Materials. This Agreement will have an initial term of one year (“Initial Term”) and shall renew automatically for additional one-year terms (“Renewal Term”) on the anniversary of the Effective Date of this Agreement unless you notify ISACA at ipinfo@isaca.org. You or ISACA may terminate at any time by providing ten (10) business days’ notice of such termination to the other party to the business address and e-mail addresses provided to your Account Administrator by ISACA.

7.2 This Agreement will terminate automatically without any prior notice if you violate the Terms and Conditions of this Agreement.

7.3 Upon any termination of your right to access COBIT® 5 Online, you must destroy all copies of Materials obtained from COBIT® 5 Online or all copies of COBIT® 5 Online or the Materials for which access was terminated. You will no longer be an Authorized User and no refund of monies paid shall be issued other than as provided in Price Changes/Cancellation.

8. PRICE CHANGES/CANCELLATION

Price Changes for COBIT® 5 Online may be issued from time to time. You will receive no less than thirty (30) business days’ notice of any price changes prior to your Renewal Term to the Notice Address provided above. In the event that the Agreement renews and there has been a price change, you will see such increase on the invoice provided by ISACA and you may terminate the Agreement if you do not accept the Price Change.

9. CHANGES TO AGREEMENT AND OR CONDITIONS FOR ACCESS TO COBIT® 5 ONLINE

ISACA may, at any time, remove, restrict or impose additional conditions on use of and access to COBIT® 5 Online and/or the content and materials accessible through COBIT® 5 Online. Such changes could include, but are not limited to, how content may be accessed and how content may be used. You will be notified of any such changes and changes will be indicated at www.isaca.org.

10. INDEMNIFICATION

You agree to defend, indemnify and hold harmless ISACA, its licensors, and any of their respective officers, directors, employees, subcontractors, agents, successors, assigns, affiliates or subsidiaries, from and against any and all claims, causes of action, lawsuits, proceedings, losses, damages, costs and expenses (including reasonable legal and accounting fees) arising or resulting from (i) your use of COBIT® 5 Online; (ii) your violation of this Agreement ; (iii) incomplete or inaccurate information or data provided by you; or (iv) unauthorized use of any Materials available on or through COBIT® 5 Online. ISACA reserves the right, at its discretion, to assume or participate, at your and your [business, partnership or corporation’s] expense, in the investigation, settlement and defense of any action or claim to which ISACA is entitled to indemnification. No claim shall be

settled without ISACA's prior written consent unless such settlement includes a complete release of ISACA from any and all liability and does not contain or contemplate any payment by, or injunctive or other equitable relief binding upon ISACA.

11. LIMITATION OF LIABILITY

11.1 IN NO EVENT WILL ISACA AND ITS LICENSORS, AND ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, SUBCONTRACTORS, AGENTS, SUCCESSORS, ASSIGNS, AFFILIATES OR SUBSIDIARIES, BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, DAMAGES RESULTING FROM LOST PROFITS, LOST DATA OR BUSINESS INTERRUPTION ARISING OUT OF RELATING TO THE USE OR INABILITY TO USE COBIT® 5 ONLINE, THE MATERIALS, SOFTWARE OR OTHER INFORMATION CONTAINED THEREIN, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED IN CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO, NEGLIGENCE) OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WHERE APPLICABLE LAW DISALLOWS THE ABOVE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IT WILL NOT APPLY.

11.2 YOUR USE OF COBIT® 5 ONLINE AND THE MATERIALS IS AT YOUR OWN RISK, HOWEVER, IF YOU SHOULD HAVE ANY LIABILITY FOR ANY LOSS, HARM OR DAMAGE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR YOUR USE OF COBIT® 5 ONLINE OR THE MATERIALS, ISACA'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS SHALL NOT EXCEED THE AMOUNT OF FEES PAID BY YOU OR YOUR [BUSINESS, PARTNERSHIP OR CORPORATION'S] IN THE PRECEDING SIX (6) MONTHS. YOU ACKNOWLEDGE THAT ABSENT YOUR AGREEMENT TO THIS LIMITATION, ISACA AND ITS LICENSORS WOULD NOT PROVIDE YOU ACCESS TO COBIT® 5 ONLINE OR THE MATERIALS ACCESSIBLE HEREIN.

12. GOVERNMENT RESTRICTED RIGHTS

Access to COBIT® 5 Online and the Materials contained therein is provided with "Restricted Rights." Use, duplication, or disclosure by the government is subject to restrictions as set forth in applicable laws, regulations and this Agreement. Use of the materials by the government constitutes acknowledgment of ISACA's or its Licensor's proprietary rights in them.

13. LINKS FROM COBIT® 5 ONLINE TO THIRD PARTY CONTENT

Links to third party websites ("Links") contained within COBIT® 5 Online are provided solely as a convenience to you. If you use these links, you will exit the COBIT® 5 Online platform. Third party websites are not reviewed by ISACA and ISACA does not endorse the websites accessible via Links contained in COBIT® 5 Online ("Third Party Sites"). You access Third Party Sites at your own risk. ISACA does not endorse or make any representations with respect to Third Party Sites and is not responsible for any aspect of Third Party Sites, including but not limited to content, advertisements, products, software, information, privacy policies, use of tracking cookies, personally identifiable information disclosed to such Third Party Sites or compliance with applicable law.

14. DIGITAL MILLENNIUM COPYRIGHT ACT ("DMCA") NOTICE

14.1 ISACA takes no responsibility for third party content on COBIT® 5 Online. If you believe any materials on COBIT® 5 Online infringe a copyright, you should provide us with written notice that at a minimum contains:

14.1.1 A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;

14.1.2 Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site;

14.1.3 Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material;

14.1.4 Information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an electronic mail address at which the complaining party may be contacted;

14.1.5 A statement that the complaining party 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

14.1.6 A statement that the information in the notification is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

14.2 All DMCA notices should be sent to our designated agent as follows: ipinfo@isaca.org. ISACA may, in appropriate circumstances and at its discretion, terminate the account or access of users who infringe the intellectual property rights of others.

15. RESPONSIBILITY FOR MINORS

In cases where you have authorized a minor to use COBIT® 5 Online, you recognize that you are fully responsible for: (i) the online conduct of such minor; (ii) controlling the minor's access to and use of COBIT® 5 Online; and (iii) the consequences of any misuse by the minor.

16. MISCELLANEOUS

16.1 *Severability.* To the extent provided by applicable law, you and ISACA waive any provision of the law that would render any clause of this Agreement invalid or unenforceable. In the event this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions will continue in full force and effect.

16.2 *No waiver.* ISACA's failure to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by in writing.

16.3 *Assignment.* This Agreement may be assigned by ISACA in whole or in part at any time. This Agreement may not be assigned in any manner by you without the express, prior written permission of ISACA.

16.4 *Force Majeure.* Performance of hereunder is subject to interruption and delay due to causes beyond its reasonable control such as acts of God, acts of any government, war or other hostilities, the elements, fire, explosion, power failure, acts or omissions of carriers, transmitters, or providers of telecommunications or Internet services, industrial or labor dispute, inability to obtain supplies and the like, or breakdown of equipment or any other causes beyond ISACA's control.

16.5 *No Additional Terms.* No additional terms provided on any website, invoice or purchase order shall apply to this Agreement, unless the Parties consent in writing in an amendment to this Agreement.

16.6 *Conflict of Law and Jurisdiction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois notwithstanding any conflict of law provisions. You irrevocably and unconditionally (i) consent to submit to the exclusive jurisdiction of the state and federal courts in the State of Illinois, Cook County ("Venue") for any litigation or dispute arising out of or relating to this Agreement, (ii) agree not to commence any litigation arising out of or relating to this Agreement except in the Venue, (iii) agree not to plead or claim that such litigation brought therein has been brought in an inconvenient forum, and (iv) agree the Venue represent the exclusive jurisdiction for all disputes relating to this Agreement. THE PARTIES, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.