



## Terms of Use Agreement for the H LAYER Credentialing Site

**Effective Date:** 11/14/2022

**Overview:** The Certification Management Group, Inc. doing business as H LAYER Credentialing (collectively "H LAYER" or "we" or "us" or "our") owns and provides the Security Awareness and Culture Professional ("SACP") Exam (the "SACP Exam") and the foundational certification for those individuals that pass the SACP Exam and meet certain requirements known as the Security Awareness and Culture Professional (SACP)<sup>TM</sup> credential (the "SACP credential"). Individuals that register for the SACP Exam, that apply for or inquire about the SACP credential through our website, or otherwise interact with the H LAYER Credentialing website, any of our related applications or mobile apps (collectively the "Site") are collectively referred to in this Agreement as "users" or individually as "you" or "your".

**This Terms of Use Agreement** (the "**Agreement**" or "**Terms of Use**" or "**Terms**") is between the user of the Site and H LAYER.

**By using the Site, you accept and agree to our Terms of Use and acknowledge that you have read and understand our H LAYER Site Privacy Policy. Your submission of personal information through the Site is governed by our [H LAYER Credentialing Privacy Policy](#). Please read these Terms of Use carefully.**

### 1. Site Terms

**Only individuals that are 18 years of age or older may use this Site, register for the SACP Exam and/or receive a SACP Credential.** By agreeing to these Terms of Use, you represent that you are at least 18 years of age to consent to this Agreement. A breach or violation of any part of this Agreement will result in an immediate termination of use of the Site.

### 2. Use of This Site

Subject to your compliance with these Terms of Use, H LAYER grants you a limited, non-exclusive, non-transferable, non-sublicensable license to access and make use of this Site for your personal, non-commercial use. This license grant does not include: (a) any resale or commercial use of this Site or content therein; (b) the collection and use of any product listings or descriptions; (c) making derivative uses of this Site and its contents; or (d) use of any data mining, robots, or similar data gathering and extraction methods on this Site. You may not use, frame or utilize framing techniques to enclose any of our trademark, logo, content or other proprietary information (including the images found at this Site, the content of any text or the layout/design of any page or form contained on a page) without our express written consent. Further, you may not use any meta tags or any other "hidden text" utilizing our name, trademark, or product name without our express written consent. Any breach of these Terms of Use shall result in the immediate revocation of the license granted in this paragraph without notice to you. You are granted a limited, revocable, and nonexclusive right to create a hyperlink to the homepage of this Site so long as the link does not portray us, the Site or our products or services in a false, misleading, derogatory, or otherwise offensive matter. This limited right may be revoked at any time. You may not use any of our logos or other proprietary graphics or trademarks as part of the link without express written permission.

### **3. Intellectual Property Rights**

With the exception of any Personal Information (see definition in the Site Privacy Policy) provided by you, H LAYER retains all right, title and interest in and to the Site, and any materials on the Site and any patent, copyright, trade secret, trademark, service mark, as well as other intellectual property or proprietary right in any of the foregoing. With the exception of any Personal Information provided by you, the information available through the Site is the property of H LAYER and is protected by United States copyright, trademark, and other intellectual property laws, or the similar laws of other countries; any copy made of such information obtained from the Site as provided herein must include the H LAYER copyright and/or trademark notice when applicable. You agree not to reproduce, retransmit, distribute, disseminate, sell, publish, broadcast, circulate, or create any derivative work or the Materials or information owned by H LAYER on the Site, or received from any other party or individual through the Site, to anyone, including but not limited to others in your organization. Use, reproduction, copying, or redistribution of the Site or the H LAYER name, mark, or logo or any name, mark, or logo of any third-party sites' is strictly prohibited without written permission from H LAYER .

### **4. Privacy**

We will use your personal information as set out in our [Privacy Policy](#) and in accordance with any other specific privacy policy presented to you on our Site.

### **5. Electronic Communications**

When you use this Site, or send emails to us, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices on this Site or through our other services. You agree that all agreements, notices, disclosures and other communication that we provide to you electronically satisfy any legal requirements that such communications be in writing.

### **6. Feedback**

You may have the ability to submit questions, comments suggestions, reviews, ideas, plans, designs, notes, proposals, drawings, original or creative materials and other information regarding this Site, us and our products or services (collectively "Feedback"). You agree that Feedback is non-confidential and shall become H LAYER's sole property. We shall own exclusive rights, including all intellectual property rights, in and to such Feedback and shall be entitled to the unrestricted use and dissemination of the Feedback for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

### **7. Test Taker Requirements**

For individuals that have registered for and will be taking the SACP exam, you will receive instructions about the exam from us and from Pearson VUE that delivers the test for us. You will be required to review and agree to H LAYER's Test Taker Agreement and the *SACP Candidate Information Bulletin* at the time of registration and again when you take a test; the Test Taker Agreement sets forth all of the terms and conditions related to your testing. Information about the exam can be found in the [SACP Candidate Information Bulletin](#).

### **8. Restrictions on Rights to Use**

You agree you shall not (and you agree not to allow any other individual or entity using your password and identification to):

- Download, modify, reproduce, adapt, translate, reverse engineer, create derivative works based upon, publicly display, sell, rent, license, or in any way commercially exploit any portion of this Site, except and to the extent expressly permitted under these Terms;
- Remove any copyright, trademark or other proprietary rights notice contained in or on the Site;
- Use any robot, spider, site search/retrieval application, or other device to retrieve or index any portion of this Site;
- Collect any information about other users (including usernames and/or email addresses) for any purpose;
- Reformat or frame any portion of any Web pages that are part of this Site;
- Create user accounts by automated means or under false or fraudulent pretenses;
- Create or transmit to other users unsolicited electronic communications, such as “spam,” or otherwise interfere with other users’ enjoyment of the Site;
- Submit to this Site any content that falsely states or implies that such content is sponsored or endorsed by us;
- Transmit or upload to this Site any item containing or embodying any virus, worm, defect, malware, Trojan horse, software bomb or other feature designed to damage or degrade in any manner the performance of this Site, any other Web site, or any computer or other device or system, or the enjoyment of this Site by any user;
- Use this Site to violate the security of or gain unauthorized access to any computer or computer network or other device or system (including unauthorized attempts to discover passwords or security encryption codes);
- Submit to this Site any content that is unlawful or facilitates, constitutes, promotes or encourages illegal activity; or otherwise use the Site to transfer or store illegal material, including any material deemed threatening or obscene;
- Take any action that imposes, or may impose, in our sole discretion, an unreasonable or disproportionately large data or traffic load on this Site or the IT infrastructure used to operate and make this Site available; or
- Use this Site and/or any User Content, intentionally or unintentionally, to violate any applicable local, state, federal or international law.

We have no obligation to monitor any user conduct on this Site, and we reserve the right and have absolute discretion to monitor any user conduct on this Site at any time and for any reason without notice.

## **9. Links to Third Party Sites**

Although the Site may include links providing a user with direct access to third-party Internet sites as a convenience, the inclusion of a link does not imply endorsement of the linked site by H LAYER. H LAYER takes no responsibility for the content or information contained on those other sites, and does not exert any editorial or other control over those other sites, nor does H LAYER take responsibility for the privacy policies and practices of these third-party links. H LAYER encourages users to review the privacy policy of any third-party site the user wishes to visit.

## **10. Disclaimers and Limitation of Liability**

### **General Disclaimers**

ALL INFORMATION, PRODUCTS, OR SERVICES CONTAINED ON OR PROVIDED THROUGH THIS SITE ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, H LAYER AND ITS AFFILIATES (INCLUDING BUT NOT LIMITED TO H LAYER'S

PARENT COMPANY AND OTHER RELATED ENTITIES), DIRECTORS, OFFICERS, MANAGERS, EMPLOYEES OR OTHER REPRESENTATIVES (COLLECTIVELY, "AFFILIATES") HEREBY DISCLAIM ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND FREEDOM FROM COMPUTER VIRUS STRAINS. WITHOUT LIMITING THE FOREGOING, H LAYER AND ITS AFFILIATES MAKE NO WARRANTY AS TO THE RELIABILITY, ACCURACY, TIMELINESS, USEFULNESS, ADEQUACY, COMPLETENESS OR SUITABILITY OF THE SITE OR SITE SERVICES, INFORMATION RECEIVED THROUGH THE SITE, AND OTHER SERVICES PROVIDED HEREUNDER.

### **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL H LAYER OR ITS AFFILIATES (INCLUDING BUT NOT LIMITED TO H LAYER'S PARENT COMPANY AND OTHER RELATED ENTITIES) BE LIABLE FOR ANY DAMAGES OR OTHER LIABILITY TO YOU OR ANY OTHER USERS OF THE SITE OR SITE SERVICES. IN NO EVENT SHALL H LAYER OR ANY OF ITS AFFILIATES BE LIABLE FOR ANY SPECIAL, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO PERSONAL INJURY, WRONGFUL DEATH, LOSS OF GOODWILL, LOSS OF USE, LOSS OF PROFITS, INTERRUPTION OF SERVICE OR LOSS OF DATA, WHETHER IN ANY ACTION IN WARRANTY, CONTRACT, TORT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE OR FUNDAMENTAL BREACH), OR OTHERWISE ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF, OR THE INABILITY TO USE, THIS SITE OR ANY SERVICE OFFERED THROUGH THIS SITE OR ANY MATERIAL OR INFORMATION CONTAINED IN, ACCESSED THROUGH, OR PRODUCTS OR SERVICES OBTAINED THROUGH THIS SITE, EVEN IF AN AUTHORIZED REPRESENTATIVE OF H LAYER HAS BEEN ADVISED OF THE LIKELIHOOD OR POSSIBILITY OF ANY DAMAGES.

### **11. Indemnification**

To the fullest extent permitted by applicable law, you agree to indemnify, defend, and hold harmless H LAYER and its affiliates (including but not limited to H LAYER's parent company and other related entities), officers, employees, and agents from and against all losses, liability, expenses, damages and costs, including reasonable attorney's fees, arising out of or related to any breach of this Terms of Use Agreement, any negligent or wrongful action or omission by you related to your use of or providing of services through the site, or any negligent or wrongful use of the site (including, without limitation, infringement of third party intellectual property rights or negligent or wrongful conduct) by you or any other person accessing your account.

### **12. Term and Termination**

This Terms of Use Agreement shall commence upon the date you first access or use the Site. Either you or H LAYER may terminate this Agreement and your right to use the Site at any time, with or without cause, subject to any terms that survive such termination. The licenses granted to use the Site hereunder shall terminate without notice in the event you (or any authorized person using your account) fail to comply with the terms and conditions of this Terms of Use posted on the Site from time to time.

### **13. Dispute Resolution and Arbitration**

PLEASE READ THIS SECTION CAREFULLY. IT AFFECTS YOUR LEGAL RIGHTS, INCLUDING YOUR RIGHT TO FILE A LAWSUIT IN COURT.

A. Informal Negotiations

1. To expedite resolution and control the cost of any dispute, controversy, or claim related to these Terms of Use (each a "Dispute" and collectively, the "Disputes") brought by either you or H LAYER (individual, a "Party" and collectively, the "Parties"), the Parties agree to first attempt to negotiate any Dispute (except those Disputes expressly provided below) informally for at least thirty (30) days before initiating arbitration. Such informal negotiations commence upon written notice from one Party or the other.

B. Binding Arbitration

1. If the Parties are unable to resolve a Dispute through informal negotiations, the Dispute (Except those Disputes expressly excluded below) will be finally and exclusively resolved by binding arbitration. YOU UNDERSTAND THAT WITHOUT THIS PROVISION, YOU WOULD HAVE THE RIGHT TO SUE IN COURT AND HAVE A JURY TRIAL. The arbitration shall be commenced and conducted under the Commercial Arbitration Rules of the American Arbitration Association (AAA) and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes (AAA Consumer Rules), both of which are available at the AAA website [www.adr.org](http://www.adr.org). Your arbitration fees and your share of arbitrator compensation shall be governed by the AAA Consumer Rules and, where appropriate, limited by the AAA Consumer Rules. If such costs are determined by the arbitrator to be excessive, we will pay all arbitration fees and expenses. The arbitration may be conducted in person, through the submission of documents, by phone, or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by either Party. The arbitrator must follow applicable law, and any award may be challenged if the arbitrator fails to do so. Except as otherwise required by the applicable AAA rules or applicable law, the arbitration will take place in Florida. Except as otherwise provided herein, the Parties may litigate in court to compel arbitration, stay proceedings pending arbitration, or to confirm, modify, vacate, or enter judgment on the award entered by the arbitrator.
2. If for any reason, a Dispute proceeds in court rather than arbitration, the Dispute shall be commenced or prosecuted in the state and federal courts located in Florida and the Parties hereby consent to, and waive all defenses of lack of personal jurisdiction, and forum non conveniens with respect to venue and jurisdiction in such state and federal courts. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act (UCITA) are excluded from these Terms of Use.
3. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

C. Restrictions

1. The Parties agree that any arbitration shall be limited to the Dispute between the Parties individually. To the full extent permitted by the law, (a) no arbitration shall be joined with any other proceeding; (b) there is no right or authority for any Dispute to be arbitrated on a class-action basis or to utilize class action procedures; and (c) there is no right or authority for any Dispute to be brought in a purported representative capacity on behalf of the general public or any other persons.

#### D. Exceptions to Informal Negotiations and Arbitration

1. The parties agree that the following Disputes are not subject to the above provisions concerning informal negotiations and binding arbitration:
  - Any Disputes seeking to enforce or protect, or concerning the validity of, any of the intellectual property rights of a Party
  - Any Dispute related to, or arising from, allegations of theft, piracy, invasion of privacy, or unauthorized use
  - Any claim for injunctive relief
2. If this provision is found to be illegal or unenforceable, then neither Party will elect to arbitrate any Dispute falling within that portion of this provision found to be illegal or unenforceable and such Dispute shall be decided by a court of competent jurisdiction within the courts listed for jurisdiction above, and the Parties agree to submit to the personal jurisdiction of that court.

#### **14. Class Action Waiver**

YOU AND H LAYER AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. If any court or arbitrator determines that the class action waiver set forth in this paragraph is void or unenforceable for any reason or that an arbitration can proceed on a class basis, then the arbitration provisions set forth above shall be deemed null and void in their entirety and the parties shall be deemed to have not agreed to arbitrate disputes.

#### **15. Governing Law**

These Terms of Use and your use of the Site are governed by and construed in accordance with the state of Florida law applicable to agreements made and to be entirely performed within the state of Florida, without regard to its conflict of law principles.

#### **16. No Third-Party Beneficiaries**

These Terms are for the benefit of, and will be enforceable by, the parties only. These Terms are not intended to confer any right or benefit on any third party or to create any obligations or liability of a party to any such third party.

#### **17. Site Modifications**

Any new features or tools which are added to the Site shall also be subject to the Agreement. You can review the most current version of this Agreement at any time on this page. We reserve the right to update, change, or replace any part of these Terms of Use by posting updates and/or changes on this page. You will be able to determine the most current version of the Agreement by reference to the "Effective Date" shown at the top of the agreement. It is your responsibility to check this page periodically for changes. Your continued use of or access to the Site following the posting of any changes to the Terms of Use constitutes acceptance of those changes.

#### **18. Miscellaneous**

No agency, partnership, joint venture, or employment relationship is created as a result of these Terms, and you do not have any authority of any kind to bind H LAYER in any respect whatsoever. We may provide you with notices, including those regarding changes to these Terms, by email, regular mail, or postings on this Site. These Terms, which shall be deemed accepted by you upon your use of the Site, constitute the entire agreement among you and us regarding use of this Site. Our failure to exercise or enforce any right or provision of these Terms shall not constitute a waiver of the enforcement of such right or provision. If any provision of these Terms is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that these Terms shall otherwise remain in full force and effect and enforceable. These Terms are not assignable, transferable or sublicensable by you, except with our prior written consent. These Terms include and incorporate by reference our Privacy Policy, which can be found <https://www.thehlayer.com/wp-content/uploads/privacy-policy-hlayer.pdf> and any notices regarding the Site.

### **19. Contact Information**

Questions or inquiries regarding this Agreement should be directed to: [info@thehlayer.com](mailto:info@thehlayer.com).