



FITSI CERTIFIED INSTRUCTOR AGREEMENT

This FITSI Certified Instructor Agreement (the “*Agreement*”) is made and entered into as of the date both parties have signed below (the “*Effective Date*”), by and between the Federal IT Security Institute (“*FITSI*”), and undersigned FITSI certified instructor (“*FCI*”).

RECITALS

A. FITSI is a certification body that certifies individuals serving in or supporting the federal workforce in applying appropriate federal information technology standards, and distributes, licenses and promotes certification and training programs for such individuals.

B. FCI is an individual applying to obtain and maintain status as a FITSI certified instructor.

C. FCI and FITSI agree to enter into an independent contractor relationship, whereby FCI agrees to perform his/her duties as a FCI to conduct FITSI authorized courses only to or through FITSI authorized training centers (“*ATC’s*”).

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained as well as for other good and valuable consideration, the parties do hereby agree to the following:

1. QUALITY STANDARDS

FCI agrees to uphold the high standards of FITSI as stated in FITSI’s written policies and procedures. FCI will maintain current knowledge of FCI’s discipline in teaching and research. In all associations with students, FCI will accept the role of mentor, foster high aspirations, communicate effectively, and instruct intelligently. FCI will promote autonomous learning, encourage a participatory environment, identify learning resources, and guide students in developing a wider network of professional colleagues. FCI will approach his/her position in a cooperative and creative manner and encourage these traits in students. FCI will exhibit sensitivity to and an understanding of the diverse academic, socioeconomic, cultural, religious, ethnic, and geographic backgrounds of students.

FCI agrees that FITSI has the right to determine in its absolute discretion whether the training services to be provided by FCI (“*Training Services*”) meet FITSI’s high standards of merchantability. In the event that FITSI determines that the FCI is no longer meeting FITSI’s accepted level of quality and/or integrity, FITSI agrees to advise and provide FCI with a commercially reasonable time of no less than two weeks to meet the above-referenced standards

of quality and integrity and to cure any deficiency noted by FITSI. If such deficiency is not cured to FITSI's satisfaction within two weeks following FITSI's notice to FCI, then FITSI may terminate automatically FCI's status as a FITSI certified instructor and this agreement upon providing written notice to FCI.

2. PUBLIC NOTICES; RELEASE TO USE IMAGE

FCI consents and agrees that FITSI, or any affiliate, employee or agent of FITSI has the right to take photographs, videotape or digital recordings ("**Media**") of FCI in any authorized FITSI training session in which FCI participates, and to use and display such Media along with FCI's name, bio and contact information in print and electronic form publicly or privately and to distribute copies for purposes of marketing FITSI certification programs. FCI shall keep current all contact information contained in FCI's file at FITSI, and shall notify FITSI immediately should there be changes to FCI's contact information. FCI waives any rights, claims, or interest FCI may have to control the use of FCI's identity or likeness in whatever Media used.

FCI understands that there will be no financial or other remuneration for recording FCI, either for initial or subsequent transmission or playback.

FCI agrees and understands that FITSI or any affiliate is not responsible for any expense or liability incurred as a result of FCI's participation in any Media recording.

3. INTELLECTUAL PROPERTY

a. Trademark License. FITSI hereby grants to FCI a non-exclusive, royalty-free, non-assignable, non-sublicenseable, license to use, subject to the terms and conditions set forth herein, FITSI's trademarks and trade names set forth on Schedule A hereof ("**Marks**") solely for the purpose of promoting and marketing the FITSI certification programs in accordance with this Agreement. FCI agrees to use no other trademarks or trade names in connection with the FITSI certification programs, except for its own trademark as approved in writing by FITSI, such approval not to be unreasonably withheld. FITSI agrees to provide FCI with such documentation and other assistance as may be reasonably necessary for FCI to exercise the above rights with regard to the Marks. The Marks are the only trademarks and trade names that FCI is authorized by FITSI to employ in connection with the FITSI certification programs and FCI agrees that it has no rights therein other than those specifically granted herein. All benefit and goodwill arising from FCI's use of the Marks shall inure to the benefit of FITSI.

b. Trademark Use Restrictions.

(1) To the extent that FCI creates any advertising materials, the Marks of FITSI used by FCI shall conform as to artwork, lettering, color and size to those used by FITSI and shall identify FITSI as the owner of such Marks. Each intended use of such Marks shall be approved in advance by FITSI.

(2) FCI shall not use the Marks in such a manner that would cause a reasonable person to infer that FCI has any affiliation with FITSI or right in or to the certification programs, or Marks, other than as provided in this Agreement.

(3) FCI affirms and agrees that FCI and his/her affiliates have not registered or applied to register and shall not register or apply to register in any jurisdiction any trademarks, trade names, service marks, symbols or logos that are the same as or similar to the Marks.

(4) FCI agrees not to represent itself as a partner, joint-venturer, agent, employee or general representative of FITSI through the use of the Marks. FCI shall clearly identify itself as an independent contractor and FITSI certified instructor in any business dealings, advertising and promotional activities.

(5) FCI shall not remove or obliterate any Mark appearing on any marketing materials prepared by FITSI.

(6) Promptly following the termination or expiration of this Agreement, FCI shall discontinue all use of the Marks.

c. Copyright License Grant. FITSI hereby grants to FCI, and FCI hereby accepts, a limited, non-exclusive, royalty-free license to use any of FITSI's materials, written or otherwise, provided by FITSI to FCI hereunder, whether such materials have been registered or unregistered, solely in connection with FCI's satisfaction of its obligations hereunder. FCI shall not, without the prior written consent of FITSI, copy any materials, including, without limitation, training manuals, provided by FITSI to FCI. Promptly following the termination or expiration of this Agreement, FCI shall discontinue all use of the materials described in this Section 3(c).

d. Ownership. FITSI does and shall continue to own all right, title and interest in and to all of its training materials, instructional manuals, catalogues, promotional literature, patents, Marks, copyrighted works and trade secrets and any other intellectual property ("***Intellectual Property***") that may be provided by FITSI to FCI hereunder, including any modifications or derivative works thereof, whether created by FITSI or FCI.

e. Further assurances. FCI agrees that it shall execute all instruments and documents and all things that may be reasonably necessary to protect the rights of FITSI and vest in FITSI ownership of the Intellectual Property; and to the extent, by operation of this Agreement or otherwise, any Intellectual Property rights of FITSI shall become vested in FCI, FCI agrees that, at the request and expense of FITSI, FCI shall execute all instruments and documents and do all things that may be reasonably necessary to protect the rights of FITSI and vest or re-vest in FITSI and its assigns all Intellectual Property rights therein. In the event that FITSI is unable, after reasonable effort, to secure the signature of FCI on any document or documents needed to apply for or prosecute any patent, copyright, or other right or protection relating to the Intellectual Property, for any reason whatsoever, FCI hereby designates and appoints FITSI and its duly authorized officers and agents as FCI's agent and attorney-in-fact to act for and on FCI's behalf to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of patents, copyrights, or similar protections thereon with the same legal force and effect as if executed by FCI.

f. Infringement. FCI shall promptly notify FITSI in the event that it discovers actual, suspected or threatened infringement of the Intellectual Property, and FCI shall cooperate, at FITSI's expense, in the conduct of any law suits concerning the same.

4. PURCHASE AND USE OF COURSE AND TRAINING MATERIALS; RESTRICTIONS ON USE

- a. FCI shall purchase all course and training materials used in FITSI certification and training programs from FITSI or an ATC at prices to be determined from time to time by FITSI. FCI may resell such course and training materials directly to students, subject to guidelines published by FITSI from time to time.
- b. FCI may not use FITSI course and training materials or any copies thereof, in the delivery of non-FITSI Courses or for any other purposes.
- c. FCI agrees not to register or use any internet domain name that contains any of FITSI's Marks in whole or in part or any other name that is confusingly similar thereto.
- d. FCI shall use commercial best efforts to prevent the unauthorized manufacture, copying, distribution or use of the FITSI course and training materials and student kits, and any component thereof.
- e. FCI agrees to take all available steps to protect FITSI and its products, certification exams, and courseware against piracy or other infringement of any copyright or trademark, and the misappropriation of unauthorized disclosure of any FITSI trade secret or confidential information and to protect FITSI's right, title, and interest in and to the FITSI products, technologies and courseware.
- f. FCI agrees to promptly notify FITSI at contactus@fitsi.org (or such other contact information specified by FITSI from time to time) with specific details of any illegal use or copying of any courseware or other infringement of any mark of FITSI, of any misappropriation or unauthorized disclosure if any trade secrets or confidential information of FITSI.
- g. This section will survive the expiration or other termination of this Agreement.

5. TERM AND RENEWAL

The initial term of his Agreement is one (1) year, commencing on the Effective Date. Thereafter, this Agreement will automatically renew for successive one (1) year terms, unless one party gives at least 30 days notice to the other party that it does not desire that the term be renewed or the Agreement is terminated in accordance with Section 6 below.

6. TERMINATION OF AGREEMENT

Termination by FITSI: Without prejudice to any rights FITSI may have under this Agreement or in law, equity or otherwise, FITSI may terminate this Agreement immediately, including termination of FCI certification, if FCI fails to comply with any of the terms of this Agreement ("**Default**"). Defaults shall include, without limitation, the following events:

- a. FCI fails to perform any of FCI's obligations under this Agreement or breaches any term of this Agreement.

- b. FCI offers training or certification programs without complying with the testing or certification requirements of the Agreement or as published from time to time by FITSI on its web site, or FCI discontinues offering the Training Services.
- c. FITSI determines that Training Services provided by FCI are defective or improper in any way, manner or form, subject to the cure provisions set forth in this Agreement.
- d. FCI receives any actual or potential adverse publicity or other public reprimand or sanction that reflects poorly on FITSI's reputation, as determined in FITSI's sole discretion.
- e. FITSI determines in its sole discretion that FCI's continued provision of Training Services or FCI use of the Marks causes or may cause damage of any kind to FITSI whatsoever.
- f. FCI fails to comply with the continuing certification requirements.
- g. FCI engages in misappropriation or unauthorized disclosure of any trade secret or confidential information of FITSI or pirates any FITSI product or course, or otherwise infringes any other Intellectual Property rights of FITSI, or engages in any activities prohibited by law.
- h. FCI misrepresents his/her certification status or relationship with FITSI.
- i. FCI offers Training Services below the standard of quality and integrity determined by FITSI.
- j. FCI provides or offers to provide training or certification of any competitor of FITSI.
- k. FITSI offers training or certification courses at any training center or location that is not an ATC.

In the event that a Default occurs, FITSI will use reasonable efforts to provide FCI with written notice of such Default.

Termination by Either Party: Each party may terminate this Agreement at any time, with or without cause, on thirty (30) calendar days' prior notice to the other party.

Upon termination of this Agreement for any reason, FCI must immediately cease all display, advertising, and other use of the Marks and will return all badges, training materials and collateral to FITSI. Upon termination, all right granted under the Agreement will immediately and automatically revert to FITSI.

7. CONFIDENTIALITY

FITSI may, from time to time, provide information to FCI which FITSI considers to be confidential. Such information shall, if tangible, be marked as "Confidential" or if communicated orally, designated as "Confidential" at the time and promptly confirmed in writing as such. Information that is so marked or designated and confirmed, and all instructor training materials

regardless of form or designation, always shall be considered “Confidential Information” under this Agreement.

Confidential Information shall be held in trust by FCI and used only as necessary for the performance of this Agreement. FCI shall treat all Confidential Information with the same degree of care FCI uses to avoid the disclosure to third parties as is used with respect to FCI’s own confidential information, but not less than a reasonable degree of care.

Confidential Information shall be disclosed only to those students or agents of a party who have a need to know such information and are under binding obligations of confidentiality with respect to any such information received. Confidential information shall not be disclosed by FCI to any other third party without the prior written consent of FITSI. FCI agrees to defend, indemnify and save FITSI harmless from and against any and all damages, loss or liability, including reasonable attorney fees and costs, sustained or arising as a result of the unauthorized use or disclosure of FITSI’s Confidential Information.

8. HOLD HARMLESS PROVISION

FCI agrees to indemnify and hold FITSI harmless against any loss, damage, liability, cost or expense (including reasonable legal fees and costs) arising from or out of any claims or suits made against FITSI in connection with the Training Services being rendered by FCI. In no event will FCI be liable to FITSI for any special, indirect, consequential, punitive, exemplary or any similar type of damages arising out of or in any way related to this Agreement.

9. REPRESENTATIONS AND WARRANTIES

- a. Each party represents and warrants that it has the right, power and authority to enter into this Agreement and to fully perform its obligations hereunder.
- b. FCI represents and warrants that he/she (i) has a minimum of 5 years as an IT security professional, (ii) has a minimum of 2 years of training experience or possesses an existing IT trainer’s credential (e.g., MCT, CCSI, CTT+), (iii) has passed the corresponding FITSP examination, (iv) has never been convicted of a felony, and (v) is currently a member in good standing of FITSI.

10. HANDLING OF DISPUTES

Except for any breach or threatened breach of Section 3, 4, 7 or 12, both parties agree that irreconcilable disputes will go to mediation, and, if that fails, by binding arbitration, costs shared equally, with such arbitration being held in Fairfax County, Virginia, pursuant to the rules of the American Arbitration Association. Any decision or award by an arbitrator shall be final and binding on the parties, and judgment upon such decision or award may be entered in any competent court or application may be made to any competent court for judicial acceptance of such decision or award and an order of enforcement. In the event of any procedural matter not covered by the aforesaid rules, the procedural law of Virginia shall govern.

FCI hereby expressly acknowledges that any breach or threatened breach of any of the terms and/or conditions set forth in Section 3, 4, 7 or 12 of this Agreement shall result in substantial,

continuing and irreparable injury to FITSI. Therefore, in addition to any other remedy that may be available to FITSI, FITSI shall be entitled to injunctive or other equitable relief by a court of appropriate jurisdiction in the event of any breach or threatened breach of the terms of Section 3, 4, 7 or 12 of this Agreement. Any period during which any covenants contained in those sections shall apply shall be extended by any periods during which FCI is found by a court to have been in violation of such covenants.

11. APPLICABLE LAW/LEGAL FEES

The laws of the Commonwealth of Virginia shall govern this Agreement. If any legal action, arbitration, or other proceeding is brought under this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses and other costs incurred in which action, arbitration or proceeding, in addition to any other relief to which it may be entitled.

12. ASSIGNMENT

FCI shall not assign any of his/her rights or delegate any of his/her obligations under this Agreement without the prior written consent of FITSI, which consent may be withheld in its sole discretion. Any prohibited assignment or delegation shall be null and void. FITSI may assign its rights and obligations to any third party under its control or under common control with FITSI.

13. NOTICES

All notices and other communications required by permitted hereunder to FITSI shall be deemed duly given only when in writing, signed by or on behalf of the person giving the same, and either (i) personally delivered (with receipt acknowledged), (ii) sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent by overnight next business day courier, to the following address or such other address as shall be provided by FITSI on its web site:

FITSI
3213 Duke Street, #190
Alexandria, Virginia 22314

Any notice to be given to FCI shall be sent to the address shown on the signature page hereof. All such notices and communications shall be effective (i) when received or receipt refused if delivered by personal delivery or overnight courier or (ii) upon three days following deposit in the mail if given by certified or registered mail, when delivered to the address specified above.

14. WAIVER

Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing signed by the waiving party to be effective. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

15. SEVERABILITY

If any term, condition or provision in this Agreement is found to be invalid, unlawful or unenforceable to any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

16. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, understandings and agreements, where oral or written, between the parties with respect to the subject matter hereof. This Agreement may be amended only with the written consent of both parties.

17. NO THIRD PARTY BENEFICIARIES

Nothing herein expressed or implied is intended or should be construed to confer upon or give to any Person other than the parties hereto and their successors and assigns any rights or remedies under or by reason of this Agreement.

18. FORCE MAJEURE

Neither FCI nor FITSI shall be responsible for any delay in performance or failure to perform if caused by fire, flood, explosion, war, strike, embargo, government requirement, civil or military authority, act of God or other similar causes beyond the parties' control and occurring without the fault or negligence of the delayed or non-performing party.

19. DISPARAGING REMARKS

Both parties agree that they will not make any disparaging remarks, whether orally or in writing, about FITSI or FCI, their subsidiaries and/or related entities, their products, services, officers, board of directors, managers, supervisors, and employees, to any persons whatsoever during or after the term of this Agreement. The obligation under this paragraph includes, but is not limited to, refraining from making any disparaging, degrading or demeaning remarks or casting any aspersions on FITSI or FCI which might have a harmful effect on their respective reputations.

20. MATERIALS

FCI shall utilize all FITSI prescribed materials and texts and shall verify and use only current versions of materials and texts and courses prior to the first schedule of the course.

21. INDEPENDENT CONTRACTOR

FITSI and FCI agree that the relationship of the FCI to FITSI is at all times that of an independent contractor and not that of an employee, partner or joint-venturer of or with FITSI. FCI hereby acknowledges that he/she is not, and shall not be, entitled to any benefits that may be afforded to employees of FITSI from time to time, including, without limitation, any insurance, employee benefit plans or FITSI policies that may be in effect from time to time.

22. EXAM PROCTORING

FCI agrees that he/she will not engage in exam proctoring of an FITSI related certification exams for those training programs listed in Schedule B, whether at FITSI dedicated exam events (FITSI sponsored) or those exam events which are sponsored by a FITSI Authorized Training Center (FATC).

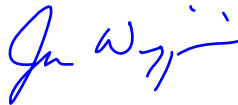
23. EXAM ITEMS

FCI agrees that he/she will not participate in FITSI Exam Development Committees that have access to actual certification exam items (questions) for those training programs listed in Schedule B.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of last date signed below:

For FITSI (please sign next to your name):

Name: Jim Wiggins



Title: Executive Director

Date:

For FCI (please sign next to your name):

Name:

Title:

Date:

SCHEDULE A: LIST OF FITSI MARKS

FITSI Certified Instructor

FCI

SCHEDULE B: LIST OF COURSES TO BE TAUGHT BY FCI (once the FCI has passed the corresponding FITSP examination)

1. Authorized FITSP-Manager Instructor Led Training
2. Authorized FITSP-Designer Instructor Led Training
3. Authorized FITSP-Operator Instructor Led Training
4. Authorized FITSP-Auditor Instructor Led Training