

EXHIBIT D

Data Sharing and Confidentiality Agreement

INCLUDING
PARENTS BILL OF RIGHTS FOR DATA SECURITY AND PRIVACY
AND
SUPPLEMENTAL INFORMATION ABOUT THE MLSA

1. Purpose

- (a) This Exhibit supplements the Master License and Service Agreement (“MLSA”) to which it is attached, to ensure that the MLSA conforms to the requirements of New York State Education Law Section 2-d and any implementing Regulations of the Commissioner of Education (collectively referred to as “Section 2-d”). This Exhibit consists of the terms of this Data Sharing and Confidentiality Agreement, a copy of Erie 1 BOCES’ Parents Bill of Rights for Data Security and Privacy signed by the Vendor, and the Supplemental Information about the MLSA that is required to be posted on Erie 1 BOCES’ website.
- (b) To the extent that any terms contained within the MLSA, or any terms contained within any other Exhibits attached to and made a part of the MLSA, conflict with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect. In the event that Vendor has online or written Terms of Service (“TOS”) that would otherwise be applicable to its customers or users of its Product that is the subject of the MLSA, to the extent that any term of the TOS conflicts with the terms of this Exhibit, the terms of this Exhibit will apply and be given effect.

2. Definitions

Any capitalized term used within this Exhibit that is also found in the MLSA will have the same definition as contained within the MLSA.

In addition, as used in this Exhibit:

- (a) “Student Data” means personally identifiable information, as defined in Section 2-d, from student records that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (b) “Teacher or Principal Data” means personally identifiable information relating to the annual professional performance reviews of classroom teachers or principals that is confidential and not subject to release under the provisions of New York Education Law Sections 3012-c or 3012-d, that Vendor receives from a Participating Educational Agency pursuant to the MLSA.
- (c) “Protected Data” means Student Data and/or Teacher or Principal Data to the extent applicable to Vendor’s Product.

- (d) “Participating Educational Agency” means a school district within New York State that purchases certain shared instructional technology services and software through a Cooperative Educational Services Agreement with a BOCES, and as a result is licensed to use Vendor’s Product pursuant to the terms of the MLSA. For purposes of this Exhibit, the term also includes Erie 1 BOCES or another BOCES that is licensed to use Vendor’s Product pursuant to the MLSA to support its own educational programs or operations.

3. **Confidentiality of Protected Data**

- (a) Vendor acknowledges that the Protected Data it receives pursuant to the MLSA may originate from several Participating Educational Agencies located across New York State, and that this Protected Data belongs to and is owned by the Participating Educational Agency from which it originates.
- (b) Vendor will maintain the confidentiality of all Protected Data it receives in accordance with applicable federal and state law (including but not limited to Section 2-d) and this DSC Agreement, as may be amended by the Parties, and Erie 1 BOCES’ policy on data security and privacy. Vendor acknowledges that Erie 1 BOCES is obligated under Section 2-d to adopt a policy on data security and privacy, and that Erie 1 BOCES will provide Vendor with a copy of its policy upon request.

4. **Data Security and Privacy Plan**

Vendor agrees that it will protect the confidentiality, privacy and security of the Protected Data received from Participating Educational Agencies in accordance with Erie 1 BOCES’ Parents Bill of Rights for Data Privacy and Security, a copy of which has been signed by the Vendor and is set forth below.

Vendor’s Data Security and Privacy Plan is available at the following link:
<https://www.kognity.com/privacy/data-security-privacy-plan-us/>

Additional elements of Vendor’s Data Security and Privacy Plan are as follows:

- (a) In order to implement all state, federal, and local data security and privacy requirements, including those contained within this Data Sharing and Confidentiality Agreement, consistent with Erie 1 BOCES’ data security and privacy policy, Vendor will: Review its data security and privacy policy and practices to ensure that they are in conformance with all applicable federal, state, and local laws and the terms of this Data Sharing and Confidentiality Agreement. In the event Vendor’s policy and practices are not in conformance, the Vendor will implement commercially reasonable efforts to ensure such compliance.
- (b) As required by the NIST Cybersecurity Framework, in order to protect the security, confidentiality and integrity of the Protected Data that it receives under the MLSA,
- a. Vendor will have the following reasonable administrative, technical, operational, and physical safeguards and practices in place throughout the term of the MLSA:

- i. Data Security:
 - 1. Data-at-rest & data-in-transit is encrypted
 - 2. Data leak protections are implemented
 - ii. Information Protection Processes and Procedures:
 - 1. Data destruction is performed according to contract and agreements
 - 2. A plan for vulnerability management is developed and implemented
 - iii. Protective Technology:
 - 1. Log/audit records are ascertained, implemented, documented, and reviewed according to policy
 - 2. Network communications are protected
 - iv. Identity Management, Authentication and Access Control:
 - 1. Credentials and identities are issued, verified, managed, audited, and revoked, as applicable, for authorized dev
- (c) Vendor will comply with all obligations set forth in Erie 1 BOCES' "Supplemental Information about the MLSA" below.
- (d) For any of its officers or employees (or officers or employees of any of its subcontractors or assignees) who have access to Protected Data, Vendor has provided or will provide training on the federal and state laws governing confidentiality of such data prior to their receiving access, as follows: Annually, Vendor will require that all of its employees (or officers or employees of any of its subcontractors or assignees) undergo data security and privacy training to ensure that these individuals are aware of and familiar with all applicable data security and privacy laws.
- (e) Vendor X will ___will not utilize sub-contractors for the purpose of fulfilling one or more of its obligations under the MLSA. In the event that Vendor engages any subcontractors, assignees, or other authorized agents to perform its obligations under the MLSA, it will require such subcontractors, assignees, or other authorized agents to execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (f) Vendor will manage data security and privacy incidents that implicate Protected Data, including identifying breaches and unauthorized disclosures, and Vendor will provide prompt notification of any breaches or unauthorized disclosures of Protected Data in accordance with Section 6 of this Data Sharing and Confidentiality Agreement.
- (g) Vendor will implement procedures for the return, transition, deletion, de-identification and/or destruction of Protected Data at such time that the MLSA is terminated or expires, as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

5. **Additional Statutory and Regulatory Obligations**

Vendor acknowledges that it has the following additional obligations with respect to any Protected Data received from Participating Educational Agencies, and that any failure to fulfill one or more of these statutory or regulatory obligations shall be a breach of the MLSA and the terms of this Data Sharing and Confidentiality Agreement:

- (a) Limit internal access to education records to those individuals that are determined to have legitimate educational interests within the meaning of Section 2-d and the Family Educational Rights and Privacy Act (FERPA).
- (b) Limit internal access to Protected Data to only those employees or subcontractors that need access in order to assist Vendor in fulfilling one or more of its obligations under the MLSA.
- (c) Not use education records for any purposes other than those explicitly authorized in this Data Sharing and Confidentiality Agreement.
- (d) Not disclose any personally identifiable information to any other party, except for authorized representatives of Vendor using the information to carry out Vendor's obligations under the MLSA, unless:
 - (i) the parent or eligible student has provided prior written consent; or
 - (ii) the disclosure is required by statute or court order and notice of the disclosure is provided to Participating Educational Agency no later than the time of disclosure, unless such notice is expressly prohibited by the statute or court order.

For the avoidance of doubt, Vendor shall have a right to disclose personally identifiable information to its subcontractors as described in this Data Sharing and Confidentiality Agreement to the extent required to deliver the services under the MLSA, provided such subcontractors execute written agreements as more fully described in Erie 1 BOCES' "Supplemental Information about the MLSA," below.

- (e) Maintain reasonable administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of personally identifiable student information in its custody;
- (f) Use encryption technology that complies with Section 2-d, as more fully set forth in Erie 1 BOCES' "Supplemental Information about the MLSA," below.
- (g) Provide notification to Erie 1 BOCES (and Participating Educational Agencies, to the extent required by, and in accordance with, Section 6 of this Data Sharing and Confidentiality Agreement) of any breach of security resulting in an unauthorized release of Protected Data by Vendor or its assignees or subcontractors in violation of state or federal law or other obligations relating to data privacy and security contained herein.
- (h) Promptly reimburse Erie 1 BOCES, another BOCES, or a Participating School District for the full cost of notification, in the event they are required under Section 2-d to notify affected parents, students, teachers or principals of a breach or unauthorized release of Protected Data attributed to Vendor or its subcontractors or assignees.

6. **Notification of Breach and Unauthorized Release**

- (a) Vendor shall promptly notify Erie 1 BOCES of any breach or unauthorized release of Protected Data in the most expedient way possible and without unreasonable delay, but no more than seven (7) calendar days after Vendor has discovered or been informed of the breach or unauthorized release.
- (b) Vendor will provide such notification to Erie 1 BOCES by contacting Michelle Okal-Frink directly by email at mokal@e1b.org, or by calling (716) 821-7200 (office) or (716) 374-5460 (cell).
- (c) Vendor will cooperate with Erie 1 BOCES and provide as much information as possible directly to Michelle Okal-Frink or her designee about the incident, including but not limited to: a description of the incident, the date of the incident, the date Vendor discovered or was informed of the incident, a description of the types of personally identifiable information involved, an estimate of the number of records affected, the Participating Educational Agencies affected, what the Vendor has done or plans to do to investigate the incident, stop the breach and mitigate any further unauthorized access or release of Protected Data, and contact information for Vendor representatives who can assist affected individuals that may have additional questions.
- (d) Vendor acknowledges that upon initial notification from Vendor, Erie 1 BOCES, as the educational agency with which Vendor contracts, has an obligation under Section 2-d to in turn notify the Chief Privacy Officer in the New York State Education Department ("CPO"). Vendor shall not provide this notification to the CPO directly. In the event the CPO contacts Vendor directly or requests more information from Vendor regarding the incident after having been initially informed of the incident by Erie 1 BOCES, Vendor will promptly inform Michelle Okal-Frink or her designees.
- (e) Vendor will consult directly with Michelle Okal-Frink or her designees prior to providing any further notice of the incident (written or otherwise) directly to any other BOCES or Regional Information Center, or any affected Participating Educational Agency.

EXHIBIT D (CONTINUED)

ERIE 1 BOCES

PARENTS BILL OF RIGHTS FOR DATA PRIVACY AND SECURITY

Erie 1 BOCES is committed to protecting the privacy and security of student, teacher, and principal data. In accordance with New York Education Law § 2-d, the BOCES wishes to inform the community of the following:

- (1) A student's personally identifiable information cannot be sold or released for any commercial purposes.
- (2) Parents have the right to inspect and review the complete contents of their child's education record.
- (3) State and federal laws protect the confidentiality of personally identifiable information, and safeguards associated with industry standards and best practices, including but not limited to, encryption, firewalls, and password protection, must be in place when data is stored or transferred.
- (4) A complete list of all student data elements collected by the State is available for public review at <http://www.nysed.gov/data-privacy-security/student-data-inventory>, or by writing to the Office of Information & Reporting Services, New York State Education Department, Room 863 EBA, 89 Washington Avenue, Albany, New York 12234.
- (5) Parents have the right to have complaints about possible breaches of student data addressed. Complaints should be directed in writing to the Chief Privacy Officer, New York State Education Department, 89 Washington Avenue, Albany, New York 12234. Complaints may also be submitted using the form available at the following website <http://www.nysed.gov/data-privacy-security/report-improper-disclosure>.

BY THE VENDOR:

Signed by:

C416758DDF4C49F...
Signature

Fredrik Eliasson

Printed Name

Legal Associate

Title

7/23/2024

Date

EXHIBIT D (CONTINUED)

SUPPLEMENTAL INFORMATION

ABOUT THE MASTER LICENSE AND SERVICE AGREEMENT

BETWEEN

ERIE 1 BOCES AND KOGNITY USA, INC.

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with Kognity USA, Inc which governs the availability to Participating Educational Agencies of the following Product(s):

Kognity for High School Science

Erie 1 BOCES has entered into a Master License and Service Agreement (“MLSA”) with Kognity USA, Inc. which governs the availability to Participating Educational Agencies of the following Product(s):

Kognity for High School Science

Pursuant to the MLSA, Participating Educational Agencies may provide to Vendor, and Vendor will receive, personally identifiable information about students, or teachers and principals, that is protected by Section 2-d of the New York State Education Law (“Protected Data”).

Exclusive Purpose for which Protected Data will be Used: The exclusive purpose for which Vendor is being provided access to Protected Data is to provide Participating Educational Agencies with the functionality of the Product(s) listed above. Vendor agrees that it will not use the Protected Data for any other purposes not explicitly authorized in the MLSA. Protected Data received by Vendor, or any of Vendor’s subcontractors, assignees, or other authorized agents, will not be sold, or released or used for any commercial or marketing purposes.

Oversight of Subcontractors: In the event that Vendor engages subcontractors, assignees, or other authorized agents to perform one or more of its obligations under the MLSA (including any hosting service provider), it will require those to whom it discloses Protected Data to execute legally binding agreements acknowledging the obligation under Section 2-d of the New York State Education Law to comply with the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. For the sake of clarity, such agreements may be made on the subcontractor’s paper provided they oblige the subcontractor to comply with materially the same data security and privacy standards required of Vendor under the MLSA and applicable state and federal law. Vendor will ensure that such subcontractors, assignees, or other authorized agents abide by the provisions of these agreements by:

Kognity conducts annual cybersecurity assessments of its vendors, collecting evidence of their compliance with relevant frameworks and local legislation, including laws such as Section 2-d of the New York State Education Law. Additionally, Kognity has processes and policies in place to ensure that subcontractors and other agents adhere to their contractual obligations, including periodic trainings in order to ensure adherence to documented information security policies. All third-party collaborators are also subject to confidentiality obligations.

Duration of MLSA and Protected Data Upon Expiration:

The MLSA commences on July 1, 2024 and expires on June 30, 2027.

Upon expiration of the MLSA without renewal, or upon termination of the MLSA prior to expiration, Vendor will securely delete or otherwise destroy any and all Protected Data remaining in the possession of Vendor or its assignees or subcontractors or other authorized persons or entities to whom it has disclosed Protected Data. For the avoidance of doubt, de-identification of data shall be considered as deletion or destruction, provided such data cannot be re-identified. If requested by Erie 1 BOCES and/or any Participating Educational Agency, Vendor will assist a Participating Educational Agency in exporting all Protected Data previously received back to the Participating Educational Agency for its own use, prior to deletion, in such formats as may be requested by the Participating Educational Agency.

In the event the Master Agreement is assigned to a successor Vendor (to the extent authorized by the Master Agreement), the Vendor will cooperate with Erie 1 BOCES as necessary to transition Protected Data to the successor Vendor prior to deletion.

Neither Vendor nor any of its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data will retain any Protected Data, copies, summaries or extracts of the Protected Data. Upon request, Vendor and/or its subcontractors or other authorized persons or entities to whom it has disclosed Protected Data, as applicable, will provide Erie 1 BOCES with a certification from an appropriate officer that these requirements have been satisfied in full.

Challenging Accuracy of Protected Data: Parents or eligible students can challenge the accuracy of any Protected Data provided by a Participating Educational Agency to Vendor, by contacting the student's district of residence regarding procedures for requesting amendment of education records under the Family Educational Rights and Privacy Act (FERPA). Teachers or principals may be able to challenge the accuracy of APPR data provided to Vendor by following the appeal process in their employing school district's applicable APPR Plan.

Data Storage and Security Protections: Any Protected Data Vendor receives will be stored on systems maintained by Vendor, or by a subcontractor under the direct control of Vendor, in a secure data center facility located within the United States. The measures that Vendor will take to protect Protected Data include adoption of technologies, safeguards and practices that align with the NIST Cybersecurity Framework and industry best practices including, but not necessarily limited to, disk encryption, file encryption, firewalls, and password protection.

Encryption of Protected Data: Vendor (or, if applicable, its subcontractors) will protect Protected Data in its custody from unauthorized disclosure while in motion or at rest, using a technology or methodology specified by the secretary of the U.S. Department of HHS in guidance issued under Section 13402(H)(2) of P.L. 111-5.

EXHIBIT E

Vendor's Standard Subscription Agreement Terms

STANDARD SUBSCRIPTION AGREEMENT TERMS (US 2024:1)

Kognity Teaching & Learning Platform Service

1 INTRODUCTION

- 1.1 These standard subscription agreement terms (the "**Standard Terms**") shall apply to the delivery of the Service to the Subscriber and Users and their use thereof.
- 1.2 Kognity reserves the right, in its discretion, to amend, modify or alter these Standard Terms and the Subscription Agreement at any time. The Subscriber will be notified of any material amendment to these Standard Terms or the Subscription Agreement. By continuing to use the Service, or by allowing Users to do so, the Subscriber expresses and acknowledges acceptance of the changes.

2 DEFINITIONS

- 2.1 In this document, unless the context otherwise requires:

"Confidential Information" means User Data and any other information that: (i) if disclosed in writing, is labeled as "confidential" or "proprietary"; (ii) if disclosed orally, is designated confidential at disclosure; or (iii) regardless of its form (written or oral) or explicit designation as confidential, by its nature, or the circumstances of its disclosure, makes it reasonably likely that it is confidential;

"Customer Privacy Policy" means the Kognity customer privacy policy applicable to the delivery of the Service to Subscribers in the United States available at <https://kognity.com/privacy/us-customer-privacy-policy/>, as the same may be updated or amended from time to time;

"De-identified Data" means records and information that have had all personal identifiers removed or obscured such that the remaining information does not permit a User's identity to be personally identifiable, taking into account all reasonably available information;

"Effective Date" means the date on which Subscriber and Kognity execute the Subscription Agreement;

"Feedback" means comments, suggestions, improvements, ideas or other feedback, whether written or oral;

"Intellectual Property Rights" means all copyright and related rights, design rights, registered designs, patents, trade and service marks, database rights, semi-conductor topography rights, know-how, trade secrets, rights in confidential information and all other intellectual property rights, whether registered or unregistered, throughout the world for the full term of the rights concerned;

"Kognity" means Kognity USA, Inc., a Delaware corporation with address 263 Shuman Blvd. Suite 145, Naperville, IL 60563, USA, and its affiliates;

"Order" means the written order form, order confirmation or renewal confirmation entered into by Kognity and Subscriber setting out, *inter alia*, the Subscription Plan and pricing, and referencing these Standard Terms;

"School" means an independent school, organizational unit of a School District or other organization providing education to students, but not including School Districts;

"School District" means a local education agency, school network, other regional educational system or cooperative of such entities, responsible for education;

"Service" means all educational teaching and learning materials, including but not limited to textbooks, videos, assessments, practice centers, laboratories, animations and other digital media, provided by Kognity from time to time for different subjects and curricula;

"Subscriber" means the subscriber set out in the Order, which can be a School or a School District;

"Subscription Agreement" means the Order, these Standard Terms and any supplementary documents referred to in such documents;

"Subscription Period" means the subscription period for each Subscription Plan as defined by the access start and end dates set out in the Order;

"Subscription Plan" means, depending on the context, each individual or all subscription plan(s) for Subscriber and Users' use of the Service, as specified in the Order (for clarity, each subscription plan type (e.g. curricula) will be regarded as one individual subscription plan);

"Terms of Use" means Kognity's "Terms of Use" that Subscriber and Users have to accept to use the Service, available at <https://app.kognity.com/terms/>, as the same may be updated or amended from time to time;

"Trial/Pilot Access" means trial access for Subscriber and Users for purposes of evaluating the Service, for such parts of the Service and for the duration as specified in the Order;

"User Data" means any information that directly relate to an identifiable current or former User, but does not include De-identified Data;

"Users" means individual students, teachers and other Subscriber staff authorized by Subscriber to use the Service, including, if the Subscriber is a School District, any individual School being authorized to use the Service.

3 SUPPLY OF SERVICE

- 3.1 Subject to the Subscriber's compliance with the Subscription Agreement, Kognity will make the Service available to the Subscriber in accordance with the Subscription Agreement during the Subscription Period. Kognity hereby grants to the Subscriber a non-exclusive, non-transferable and non-sublicensable right to permit Users to remotely access and use the Service solely for the Subscriber's own educational purposes as permitted by the Subscription Agreement.
- 3.2 By subscribing to the Service, Subscriber warrants and represents that its representatives are authorized to bind Subscriber to the Subscription Agreement. Subscriber further warrants and represents that: (i) it is registered in any of the 50 states of the United States or any other territory or possession of the United States and will only grant Users access to the Service in that territory; (ii) any information that it submits to Kognity is true, accurate and complete, and it agrees to keep it that way at all times; (iii) it is authorized to grant all permissions and licenses provided in the Subscription Agreement to Users; (iv) it shall comply with any laws and regulations that apply to its use of the Service (in particular local regulatory regimes on privacy and data protection); (v) it shall not provide any information to Kognity that it is not permitted to provide under applicable law, regulation or contract, or that would require Kognity to undertake separate measures such as obtaining consent from a User, a User's parent or guardian, or any other third party; and (vi) it shall not use the Service for any other use than set forth herein and shall not allow any third party to do so.
- 3.3 Use of the Service requires User registration. Upon valid User registration, the Users will receive access to the applicable Subscription Plan for the Subscription Period.
- 3.4 Subscriber confirms that it will accept and comply with Kognity's Terms of Use and other relevant terms for the use of the Service. Subscriber is responsible for ensuring that Users at all times comply with the terms of the Subscription Agreement and adhere to Kognity's requirements and guidelines in relation to the use of the Service, as communicated by Kognity from time to time, including the Terms of Use and applicable instructions.
- 3.5 Subscriber and the Users are responsible for all hardware, communication networks and other equipment necessary for use of Service, and the due installation thereof. Subscriber is solely responsible for all activities conducted by Users. Subscriber is not allowed to engage in service bureau use,

outsourcing, renting, reselling, sublicensing, concurrent use of a single User login, or time-sharing of the Service.

- 3.6 Subscriber shall not and shall not permit Users to: (i) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form; (ii) use the Service in a manner that is contrary to applicable law or in violation of any third party rights of privacy or Kognity's Intellectual Property Rights; (iii) use or knowingly permit the use of any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Service; (iv) access the Service by any means other than through the interfaces that are provided by Kognity; or (v) use, or allow any third party to use, the Service in any unauthorized manner or in breach of the Subscription Agreement.
- 3.7 Kognity will: (i) authorize Users access to and assign unique User passwords and usernames; (ii) grant Users access to the Subscription Plan relevant to each User in accordance with the Subscription Agreement; and (iii) endeavor to ensure that the use of the Service is secure, error-free, and that errors in the Service are reasonably resolved and that the overall system hosting of the Service is free of viruses or other harmful components. Kognity will use its reasonable endeavors to resolve any issues related to the Service as part of its technical support obligations.
- 3.8 Kognity reserves the right to make such changes to the features and functionality of the Service, systems, and interfaces as it sees fit in its discretion, provided that Kognity will notify Subscriber, or where relevant, Users, of any material changes in advance where reasonably practicable and where such prior notice would not adversely affect Kognity's reasonable commercial interests.
- 3.9 TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, KOGNITY DOES NOT GIVE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, CONTENT AND AVAILABILITY OR FITNESS FOR A SPECIFIC PURPOSE OF THE SERVICE, OR THE NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OR A WARRANTY OF MERCHANTABILITY. SUBSCRIBER ASSUMES TOTAL RESPONSIBILITY FOR THE SELECTION OF THE SERVICE TO ACHIEVE SUBSCRIBER'S INTENDED RESULTS.

4 FEES AND PAYMENT

- 4.1 The pricing and conditions for the Subscription Plan are based on the Subscriber's choices as set out in the Order. The User numbers in the Order are final and not subject to reductions during the Subscription Period. There is no right to refund, whether due to a reduction in User numbers or non-use of the Service. The pricing and conditions for each Subscription Plan are however subject to review from time to time in connection with renewals, and Kognity reserves the right to propose adjustments to the pricing no later than two months prior to the expiration of a Subscription Period. Unless Subscriber cancels the subscription pursuant to Section 5.3, the adjusted pricing will apply.
- 4.2 For new subscriptions, Kognity will invoice Subscriber for the full Subscription Period at the start of the Subscription Period, unless otherwise agreed in writing. For renewed Subscription Plans, the invoice will be sent once the last day to give notice of cancellation has passed. Invoiced amounts are in the currency set out in the Subscription Agreement, and exclude taxes, levies or duties of any nature, including sales use or withholding taxes.
- 4.3 To the extent Subscriber's use of the Service exceeds the parameters of a Subscription Plan (e.g. due to exceeding the allocated number of student Users), Kognity reserves the right to issue additional invoices for such excess use, subject to Section 4.4, based on the same pricing structure as the current Subscription Plan. Additional invoices may be issued at the end of the Subscription Period or during it. Subscriber will however be permitted up to 5 per cent good faith excess use for each Subscription Plan without additional fees. If the excess use is more than five per cent, Kognity's right to issue additional invoices will be for the full excess use without deduction of the five per cent buffer. In reference to Section 4.1, however, reductions in User numbers does not result in a right to refund. For the sake of clarity, if the Subscriber is a School District, the Subscriber may, from time to time, freely allocate the number of student Users for each Subscription Plan as between the Schools of the School District.
- 4.4 Notwithstanding Section 5.1, if the Subscription Period is at least 24 months, (i) Kognity may at the end of each twelve month period of the Subscription Period adjust the pricing for inflation based on the United States Consumer Price Index published by the United States Department of Labor, All Urban Consumers, United States City Average, All Items (which excludes food and energy) (1986=100) (or the nearest comparable index if such index is no longer published) (the "**Index**"), using January as the base month, and invoice (during or after the Subscription Period) the Subscriber an amount corresponding to the difference between (a) the *pro rata* Subscription Plan pricing for the first twelve months of the Subscription Period, and (b) the inflation adjusted pricing per the Index for each subsequent twelve month period of the Subscription Period (for the sake of clarity, excluding any prior adjustment pursuant to this sub-section (i) to avoid double compensation), provided that no adjustment may take place if the difference between (a)-(b) is less than two per cent and the increase may not exceed seven per cent, and (ii) following the first twelve months' period of

the Subscription Period, any additional invoices due to excess use pursuant to Section 4.3 will be based on Kognity's then applicable price list.

- 4.5 All invoices are payable within 30 calendar days from the relevant invoice date, unless otherwise agreed in the Subscription Agreement. All amounts owed hereunder, not paid when due, will be subject to penalty interest at a rate of six per cent per annum calculated and compounded daily on the amount overdue, as well as compensation for costs for recovery of late payment. If amounts to be paid are overdue (whether fully or partially), Kognity may, at its own discretion, temporarily restrict Subscriber's or Users' access to the Service until payment has been received in full. For the avoidance of doubt, Subscriber being late with payment for one subscription or invoice may result in Service access under other subscriptions being suspended until payment has been received.

5 SUBSCRIPTION PERIOD, TRIAL/PILOT ACCESS AND CANCELLATION

- 5.1 Unless set out otherwise in the Order, the Subscription Period shall be twelve months commencing on the Effective Date. Unless Subscriber cancels the subscription pursuant to Section 5.3, the Subscription Plan will automatically renew for a subsequent successive Subscription Period of twelve months and, subject to Section 4.1, otherwise based on the same Subscription Plan (e.g. same number of students and pricing) excluding any introductory or otherwise time-limited discounts.
- 5.2 From time to time Kognity may grant Trial/Pilot Access to Subscriber. During Trial/Pilot Access, Subscriber and Users are granted access to use the Service on a trial/pilot basis, in each case as specified in the Order. Unless otherwise agreed, the Trial/Pilot Access shall be for four weeks commencing on the Effective Date, after which Trial/Pilot Access will automatically end unless Subscriber has entered into a Subscription Plan with a start date on or before the last day of the trial or pilot period. Trial/Pilot Access is free-of-charge, provided, however, that Kognity may charge a set-up fee for its trial or pilot onboarding and training costs. Such set-up fee is non-refundable and must be paid in full regardless of whether Subscriber actually uses the Service during the trial or pilot period.
- 5.3 The Subscription Plan is binding during the full duration of the Subscription Period. Subscriber may avoid automatic extension of the Subscription Period pursuant to the terms set forth in the Subscription Agreement by submitting a cancellation notice to Kognity no later than one calendar month prior to the expiration of the Subscription Period.
- 5.4 Any Subscriber requests for modification of the Service's scope or cancellation of the Subscription Period must be submitted in writing to their account manager or to am@kognity.com.
- 5.5 Upon the termination of the Subscription Agreement for any reason, any sum owing or due to Kognity shall be immediately payable and the rights of Subscriber and Users herein shall be immediately canceled.

6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Kognity and its affiliates and licensors, as applicable, shall remain the exclusive owners of all Intellectual Property Rights in and to the Service (including the underlying technology, software and content). Subscriber may not remove any legends or statements in the Service or any materials provided with such legends regarding Kognity's and its licensors' proprietary rights.
- 6.2 Kognity's trademarks, service marks, trade names, logos, domain names, and any other features of the Service are the sole property of Kognity or its licensors. The license granted to Subscriber and Users herein does not grant any rights to use such Intellectual Property Rights or any other features of the Service, whether for commercial or non-commercial use, except as explicitly set out in the Subscription Agreement.
- 6.3 It follows from Kognity's Terms of Use that Subscriber or Users shall remain the owner of any User Content (as defined in the Terms of Use). Notwithstanding the foregoing, Kognity is hereby granted a license to use any User Content on the terms set forth in the Terms of Use. Without prejudice to applicable data protection and privacy laws, Kognity shall in all other respects be the owner of any Intellectual Property Rights arising under the Subscription Agreement. Any such Intellectual Property Rights created by Subscriber or Users, if any, shall immediately, finally, and irrevocably be assigned to Kognity upon its creation.
- 6.4 If the Subscriber or any User provides any Feedback relating to the Service (including in connection with access to and use of the Service by the Users), the Subscriber agrees that Kognity and its affiliates may incorporate such Feedback into the Service without any obligation of attribution, payment or restriction, whether based on Intellectual Property Rights or otherwise.

7 CONFIDENTIALITY AND PRIVACY

- 7.1 All Confidential Information exchanged between Kognity, Subscriber and Users shall be kept confidential and not disclosed to any third party without prior written consent of the owner of the Confidential Information. At all times, Confidential Information shall be treated and stored carefully and appropriately so that the Confidential Information is not inadvertently made available to any third party or otherwise disclosed in breach of the Subscription Agreement.
- 7.2 Notwithstanding Section 7.1, the Subscription Agreement shall not prohibit the disclosure of Confidential Information as permitted or required by law, regulation

or order of a court or other governmental authority. Furthermore, Kognity may: (i) disclose Confidential Information on a need-to-know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in confidence and use it only to facilitate the performance of their services in connection with the Service; and (ii) use, disclose or maintain Confidential Information, including User Data and De-identified Data, for the purposes described in the Customer Privacy Policy.

- 7.3 Subscriber and Users may not copy, make transcriptions or recordings or in any other way reproduce or duplicate any document or other medium containing Confidential Information or Kognity Intellectual Property Rights, without Kognity's written consent.
- 7.4 As applicable, Subscriber confirms that: (i) Users consent to the processing of any personal data as set forth in the Subscription Agreement; or (ii) it is authorized under applicable law to consent to the processing of any personal data as set forth in the Subscription Agreement on the Users' behalf.
- 7.5 Subscriber represents and warrants that: (i) Subscriber must obtain advanced written consent from all parents and guardians whose children under 13 will be accessing the Service; (ii) when obtaining consent, Subscriber must provide parents and guardians with Kognity's Customer Privacy Policy; and (iii) Subscriber must keep all consents on file and provide them to Kognity on request.
- 7.6 Without prejudice to Sections 7.4-5, Kognity will, and will contractually require that its contractors will, comply with all applicable laws pertaining to the privacy and protection of User Data, including, without limitation, the Family Education Rights and Privacy Act (FERPA) and, if applicable, the Children's Online Privacy Protection Act (COPPA) as well as the Customer Privacy Policy, in relation to any User Data that may be collected and processed for the purposes of supplying the Service.
- 7.7 Subscriber agrees that in the event a User, or parent or guardian of a student User, requests to review, modify or delete User Data in accordance with applicable law, Subscriber will manage such request in accordance with applicable law and provide written direction to Kognity on any required modifications or deletions of User Data.

8 LIMITATION OF LIABILITY

- 8.1 TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, KOGNITY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, REVENUE, SALES, OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL PUNITIVE, INCIDENTAL OR SPECIAL LOSS OR DAMAGES OF ANY KIND UNDER OR IN CONNECTION WITH THE SUBSCRIPTION AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SAVE WHERE SUCH LOSS OR DAMAGE IS DUE TO KOGNITY'S WILLFUL VIOLATION OF THE TERMS OF THE SUBSCRIPTION AGREEMENT.
- 8.2 IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY SET FORTH IN THE SUBSCRIPTION AGREEMENT AND TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, KOGNITY'S MAXIMUM LIABILITY DUE TO ANY PERSON, FIRM OR CORPORATION WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, SHALL NOT WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THE SUBSCRIPTION AGREEMENT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE BY THE SUBSCRIBER UNDER THE SUBSCRIPTION AGREEMENT IN THE TWELVE MONTH TERM IN WHICH THE INCIDENT GIVING RISE TO LIABILITY OCCURRED AND KOGNITY'S AGGREGATE LIABILITY ARISING OUT OF OR IN RELATION TO THE SUBSCRIPTION AGREEMENT SHALL IN NO CASE EXCEED THE TOTAL AMOUNT OF SUBSCRIPTION FEES PAID BY THE SUBSCRIBER HEREUNDER, SAVE FOR WHERE SUCH LOSS OR DAMAGE IS DUE TO KOGNITY'S WILLFUL VIOLATION OF THE TERMS OF THE SUBSCRIPTION AGREEMENT. SUBSCRIBER SHALL NOT HAVE THE RIGHT TO TERMINATE THE SUBSCRIPTION AGREEMENT UNLESS SUCH LOSS OR DAMAGE IS DUE TO KOGNITY'S WILLFUL VIOLATION OF THE TERMS OF THE SUBSCRIPTION AGREEMENT.

- 8.3 Kognity shall not be liable for damages for any delay or default in performance of its undertakings or obligations under the Subscription Agreement, if such delay or default is caused by force majeure, including without limitation wars, insurrections, fires, pandemics, passing of laws or any governmental order, regulation or ruling, or any other acts or circumstances beyond the reasonable control of Kognity, and Subscriber shall not have the right to terminate the Subscription Agreement unless such delay or default in performance is caused by force majeure for a period of more than six months. During the force majeure event, Kognity will use all reasonable efforts to avoid, reduce or eliminate the force majeure event's prevention, restriction or delay of the performance of its obligations under the Subscription Agreement.

9 MISCELLANEOUS

- 9.1 Unless otherwise notified by Subscriber to Kognity, Subscriber agrees to Kognity using the Subscriber's name and logo in its marketing materials, including on its website, and as a reference in communications with potential customers, in each case to identify the Subscriber as a user of the Service.
- 9.2 Any notice or other communication to be given or served under or in connection with the Subscription Agreement shall be in writing and shall be sent by e-mail to the other party's contact person set forth in the Order.
- 9.3 Subscriber may not assign, mortgage, charge any of its rights or sub-contract or otherwise delegate any of its obligations under the Subscription Agreement, except with the written consent of Kognity.
- 9.4 The Subscription Agreement constitutes the entire agreement between the parties and supersedes any previous agreement and no modification of the Subscription Agreement shall be effective unless it is made in writing and executed by or on behalf of the parties or otherwise set forth in the Standard Terms. Issuance by Kognity of an Order, and Subscriber's acceptance of any Order, quotation or proposal by Kognity, is expressly limited to and conditioned upon these Standard Terms. The Subscription Agreement shall prevail over any additional, conflicting, or inconsistent terms and conditions, which may appear on any purchase order or any other similar document furnished by Subscriber, and any additional terms and conditions in any such documents shall have no force and effect, notwithstanding Kognity's acceptance or execution thereof.
- 9.5 No failure or delay by any party in exercising any of its rights under the Subscription Agreement shall be deemed to be a waiver of that right, or otherwise prejudice, affect or restrict the rights or remedies of that party in relation to the other party, and no waiver by any party of a breach of any provision of the Subscription Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision of the Subscription Agreement.
- 9.6 All provisions of the Subscription Agreement that can be reasonably interpreted as surviving upon the full performance, expiry, termination, cancellation or avoidance of the Subscription Agreement (in particular provisions on intellectual property rights and confidentiality) shall survive said performance, expiry, termination, cancellation or avoidance.

10 APPLICABLE LAW AND DISPUTE RESOLUTION

The Subscription Agreement shall be governed by the substantive laws of the State of Delaware without regard to conflict of laws and all disputes arising under or relating to the Subscription Agreement shall be brought and resolved solely and exclusively in the state or federal courts in the state of Delaware. Should any legal proceedings be commenced in connection with the Subscription Agreement, the prevailing party in such action will be entitled to recover, in addition to court costs, such amount as the court may adjudge as reasonable attorney's fees. THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS UNDER APPLICABLE LAW TO A TRIAL BY JURY.

EXHIBIT F

Vendor's Terms and Conditions and Use

TERMS AND CONDITIONS OF USE (2024:1)

Kognity Teaching & Learning Platform Service

1 INTRODUCTION

- 1.1 Welcome to the digital teaching and learning platform provided by Kognity.
- 1.2 These Terms are entered into between you, the User, and:
 - (a) Kognity USA, if your use of the Service derives from a Subscriber in the United States; or
 - (b) Kognity AB, if your use of the Service derives from a Subscriber in any jurisdiction except the United States.
- 1.3 These Terms apply to your use of the Service. By using or accessing the Service, User hereby confirms that they have read and agree to be bound by these Terms.

2 DEFINITIONS

"Intellectual Property Rights" means all copyright and related rights, design rights, registered designs, patents, trade and service marks (registered and unregistered), database rights, semiconductor topography rights, know how, trade secrets, rights in confidential information and all other intellectual property rights, whether registered or unregistered, throughout the world for the full term of the rights concerned;

"Kognity" means Kognity AB or Kognity USA depending on which entity is party to these Terms pursuant to section 1.2, or, depending on the context, Kognity AB and Kognity USA;

"Kognity AB" means Kognity AB, a Swedish limited liability company, reg. no. 559023-5080, with address Linnégatan 87D, 115 23 Stockholm, Sweden;

"Kognity USA" means Kognity USA, Inc., a Delaware corporation with address 263 Shuman Blvd. Suite 145, Naperville, IL 60563, USA;

"Service" means all educational teaching and learning materials, including but not limited to textbooks, videos, assessments, practice centers, laboratories, animations and other digital media, provided by Kognity from time to time for different subjects and curricula;

"Subscriber" means any independent school, organizational unit of a school district, school district or any other entity or organization providing education to students that have entered into a Subscription Agreement with Kognity for the provision of the Service;

"Subscription Agreement" means an agreement entered into between Kognity and a Subscriber relating to the subscription of the Service;

"Terms" means these Kognity teaching and learning platform terms and conditions of use and any supplementary documents referred to in these terms;

"US Customer Privacy Policy" means the Kognity customer privacy policy applicable to the delivery of the Service to Subscribers in the United States available at <https://kognity.com/privacy/us-customer-privacy-policy/>, as the same may be updated or amended from time to time;

"User" means individual students, teachers and other Subscriber staff who are authorized by Subscriber to use the Service and, if the Subscriber is a school district, including any individual school being authorized to use the Service.

3 BACKGROUND

- 3.1 The Subscriber and Kognity have entered into a Subscription Agreement relating to the User's use of the Service. Under and in accordance with the Subscription Agreement, the Subscriber is entitled to distribute authorization to use the Service to User.

- 3.2 These Terms apply to Kognity's provision of the Service to User and User's use of the Service. The Subscriber is not a party to these Terms and is not entitled to rely on the Terms as a third party beneficiary and any rights or obligations as between Kognity and the Subscriber are solely governed by the Subscription Agreement.

4 REGISTRATION

In order to access the Service, User must register and create a personal user account. User is responsible for completing the registration process and for providing current, complete and accurate information as well as ensuring that the information is updated from time to time. User will choose a password and a user name. User agrees to keep all login details to the personal user account secure and not disclose such login details to any third party. Notwithstanding the foregoing, User accepts full responsibility for all activities on their personal user account. Kognity is not responsible for any damage or loss caused by any unauthorized use of any personal user account.

5 INTELLECTUAL PROPERTY RIGHTS AND GRANT OF LICENSE

- 5.1 Kognity and its affiliates and licensors, as applicable, shall remain the exclusive owners of all Intellectual Property Rights in the Service (including the underlying technology, software and content). User may not remove any legends or statements in the Service or any materials provided with such legends regarding Kognity's and its licensors' proprietary rights.
- 5.2 Kognity's trademarks, service marks, trade names, logos, domain names and any other features of the Service are the sole property of Kognity and its licensors. The license granted to User herein does not grant any rights to use such Intellectual Property Rights or any other features of the Service, whether for commercial or non-commercial use, except as explicitly set out in the Subscription Agreement and these Terms.
- 5.3 Upon entering into these Terms, Kognity hereby grants User a personal, revocable, non-exclusive, non-transferable, non-sub-licensable and limited right to remotely access and use the Service during the term of the Subscription Agreement for User's own educational purposes (including, if User is a teacher, for student User education purposes or, if the User is a Subscriber administrative staff, for administration purposes relating to student User education) (the **"Purpose"**).
- 5.4 User may in using the Service send, upload, communicate, transmit or otherwise make available, data or content (including images, videos and audio recordings) through the Service to Kognity or other Users (including any Intellectual Property Rights in and to the foregoing, **"User Content"**). User hereby grants Kognity a royalty-free, non-exclusive, irrevocable, perpetual, assignable and sub-licensable right to use (in any form and in any and all media now known or later developed), reproduce, develop and modify the User Content to operate, develop, improve, alter, promote and optimize the Service, including the right to share User Content with Subscribers, Users and any third party through the Service, in each case to the extent permissible by applicable law and in particular data protection and privacy laws and regulations.
- 5.5 User undertakes not to send, upload, communicate, transmit or otherwise make available any User Content through the Service that infringes any third party rights (including Intellectual Property Rights) and warrants that User has the full right to grant the rights to Kognity and the Subscriber (if applicable) to dispose of the User Content in accordance with this Section 5.
- 5.6 If User provides any comments, suggestions, improvements, ideas or other feedback, whether written or oral, User agrees that Kognity and its affiliates may incorporate such feedback into the Service without any obligation of attribution, payment or restriction, whether based on Intellectual Property Rights or otherwise.

6 PROHIBITED CONTENT OR ACTIVITY, ETC.

6.1 User agrees and undertakes:

- (a) not to use the Service for any purpose other than the Purpose and not allow any third party to do so;
- (b) to only send, upload, communicate, transmit or otherwise make available User Content that User owns or is otherwise permitted to send, upload, communicate, transmit or otherwise make available through the Service;
- (c) not to use another person or entity's name or email address in connection with User's use of the Service;
- (d) not to access the Service by any means other than through the interfaces that are provided by Kognity;
- (e) not to "harvest", "scrape" or collect any personal data (such as user name and email address) regarding other Users without their consent;
- (f) not to (i) copy, create derivative works of, decompile, disassemble, reverse engineer or reverse assemble the Service or any part thereof, (ii) distribute, reproduce, license, sub-license, rent, loan or sell codes, software, information or any other part of the Service, (iii) circumvent, deactivate or otherwise interfere with any technological measure or security-related feature of the Service, or (iv) attempt to discover any source code or modify the Service in any way;
- (g) to immediately notify Kognity using the contact details below of any unauthorized use of User's login details or any other known or suspected breach of security;
- (h) to immediately notify Kognity using the contact details below upon discovering any material bugs, deficiencies or defects in the Service;
- (i) not to remove or amend any copyright or other proprietary notices; and
- (j) not to use the Service in a manner that violates third party rights or Kognity's Intellectual Property Rights or is otherwise contrary to applicable law.

6.2 User shall ensure that any User Content:

- (a) is not false or misleading;
- (b) is not, or is not likely to be deemed as, threatening, disparaging, defamatory, pornographic, racially or ethnically offensive, discriminatory, insulting, slanderous or otherwise illegal or inappropriate;
- (c) does not constitute information that User is not legally entitled to distribute;
- (d) does not contain any unsolicited or unauthorized advertising or promotional material; and
- (e) does not contain any viruses, trojans or other forms of code or any other technology that may harm the Service, the interests or property of Kognity or other Users of the Service.

6.3 Kognity reserves the right, in its discretion, but is not obligated to, to remove any User Content from the Service. Kognity does not undertake to review any third party or User information relating to the Service, including User Content, and is accordingly not responsible for any third party data or User Content contained therein, made available or otherwise used in conjunction with the Service, and is not responsible for the deletion or loss of any data.

7 PERSONAL DATA

7.1 To the extent applicable under data privacy legislation, such as the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council (GDPR), Kognity acts as the data processor in relation to User personal data while the Subscriber is

the controller of any such data, provided that to the extent Kognity uses such data for product improvement purposes (for example analytics), Kognity acts as the controller. For more information, refer to Kognity's general privacy notice, available at <https://kognity.com/privacy/general-privacy-notice>, as the same may be updated or amended from time to time. For the sake of clarity, the foregoing does not apply to Users of Subscribers located in the United States.

7.2 If you are a User and have questions regarding the processing of your personal data or information collected or processed in connection with the Service, or if you seek to review, modify, delete or exercise any other right under applicable law in relation to your personal data, contact the relevant Subscriber directly.

7.3 If your use of the Service derives from a Subscriber in the United States, we provide the Service under the school official exception of FERPA 34 CFR Part 99.31(a)(1). You can read more about how Kognity processes your personal data or information in our US Customer Privacy Policy.

7.4 If you are a resident of the state of California and would like to exercise your rights under California law with respect to personal data or information, contact the relevant Subscriber directly. You will also find additional information on Kognity's commitment to comply with California law in Kognity's supplemental privacy statement for California residents, available at <https://kognity.com/privacy/california-privacy-statement>, as the same may be updated or amended from time to time.

8 TERM AND TERMINATION

8.1 These Terms take effect immediately once accepted by User (whether through use of or accession to the Service) and remain in effect until terminated by either party. User may terminate their personal user account at any time by written notification to Kognity. By terminating the personal User account, User automatically terminates these Terms. Kognity may at any time and without any liability disable User access to the Service (or parts thereof) or discontinue the provision of the Service to any or all Users. By permanently disabling User access to the Service, Kognity automatically terminates these Terms.

8.2 If the Subscription Agreement from which User's right to use the Service is derived is terminated by the Subscriber or Kognity, these Terms will automatically terminate.

9 LIABILITY LIMITATION AND DISCLAIMER

9.1 USER AGREES THAT THE SERVICE IS PROVIDED "AS-IS" AND THAT KOGNITY DOES NOT GIVE ANY WARRANTY, EXPRESS OR IMPLIED, AS TO THE QUALITY, CONTENT AND AVAILABILITY OR FITNESS FOR A SPECIFIC PURPOSE OF THE SERVICE, OR THE NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, OR A WARRANTY OF MERCHANTABILITY.

9.2 WITHOUT PREJUDICE TO ANY LIABILITY THAT MAY ARISE TOWARDS THE SUBSCRIBER UNDER THE SUBSCRIPTION AGREEMENT, IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY SET FORTH IN THESE TERMS AND TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, KOGNITY'S MAXIMUM LIABILITY DUE TO ANY PERSON, FIRM OR CORPORATION (EXCEPT TO THE SUBSCRIBER UNDER THE SUBSCRIPTION AGREEMENT) WHATSOEVER ARISING OUT OF OR IN THE CONNECTION WITH ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY OR OTHERWISE, SHALL NOT EXCEED USD 10.

9.3 WITHOUT PREJUDICE TO SECTION 9.2, TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, KOGNITY SHALL NOT BE LIABLE FOR ANY LOSS OF PROFITS, BUSINESS, GOODWILL, REVENUE, SALES OR DATA, OR FOR ANY INDIRECT, CONSEQUENTIAL, PUNITIVE, INCIDENTAL OR SPECIAL LOSS OR DAMAGES OF ANY KIND UNDER OR IN CONNECTION WITH THE SERVICE OR THESE TERMS

WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY.

10 ASSIGNMENT

Save for as explicitly permitted under these Terms, User may not assign any of its rights or obligations under these Terms to any third party without Kognity's prior written consent. Kognity is entitled to freely assign any rights and obligations under these Terms to any third party without User consent.

11 MODIFICATIONS

- 11.1 Kognity reserves the right, in its discretion, to amend, update, modify or alter the Service at any time and without notice, such as by adding or removing features or discontinuing the provision of the Service or parts thereof.
- 11.2 Kognity reserves the right, in its discretion, to amend, modify or alter these Terms at any time. User and the Subscriber will be notified of any material amendment to these Terms which has an adverse effect to User. By continuing to use the Service, User is expressing and acknowledging its acceptance of the changes.

12 MISCELLANEOUS

- 12.1 These Terms constitute the entire agreement between Kognity and User relating to the Service and replace all earlier agreements and understandings between Kognity and User relating to the Service.
- 12.2 If any provision of these Terms is held to be invalid, void or for any reason unenforceable, such provision shall be adjusted to the extent necessary to make it valid, enforceable and compliant with applicable law, and shall not affect the validity and enforceability of the remaining provisions.
- 12.3 Unless User notifies Kognity otherwise in writing using the contact details below, Kognity may contact User to inform of updates to the Service and suggestions as to how User can get the most value from using the Service or conduct surveys to improve the Service (and any such feedback received in connection therewith shall be governed by Section 5.6).
- 12.4 No failure or delay by Kognity in exercising any of its rights under these Terms shall be deemed to be a waiver of that right, or otherwise prejudice, affect or restrict Kognity's rights or remedies in relation to User, and no waiver by Kognity of a breach of any provision of these Terms shall be deemed to be a waiver of any subsequent breach of the same or any other provision of these Terms.
- 12.5 All provisions of these Terms that can be reasonably interpreted as surviving upon the full performance, expiry, termination, cancellation or avoidance of these Terms (in particular provisions on Intellectual Property Rights) shall survive said performance, expiry, termination, cancellation or avoidance.

13 GOVERNING LAW AND ARBITRATION

- 13.1 If your use of the Service derives from a Subscriber in the United States, these Terms shall be governed by the substantive laws of the State of Delaware without regard to conflict of laws and all disputes arising under or relating to these Terms shall be brought and resolved solely and exclusively in the state or federal courts in the state of Delaware. Should any legal proceedings be commenced in connection with these Terms, the prevailing party in such action will be entitled to recover, in addition to court costs, such amount as the court may adjudge as reasonable attorney's fees. THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS UNDER APPLICABLE LAW TO A TRIAL BY JURY.
- 13.2 If your use of the Service derives from a Subscriber in any jurisdiction except the United States, these Terms shall be governed by and construed in accordance with the substantive laws of Sweden. Any dispute, controversy or claim arising out of or in connection with these Terms, or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Arbitration Institute of the Stockholm Chamber of Commerce (the "SCC"). The Rules for Expedited Arbitrations shall apply, unless the SCC in its discretion determines, taking into account the complexity

of the case, the amount in dispute and other circumstances, that the Arbitration Rules shall apply. In the latter case, the SCC shall also decide whether the Arbitral Tribunal shall be composed of one or three arbitrators. The seat of arbitration shall be Stockholm, Sweden. The language to be used in the arbitral proceedings shall be the English language.

14 CONTACT US

If you have any questions related to these Terms, contact us on the contact details provided below:

KOGNITY AB

Address: Linnégatan 87D, 115 23 Stockholm, Sweden

Email: legal@kognity.com