

THE COGNITY

TERMS AND CONDITIONS OF SERVICE

Welcome to The Cognito! The Cognito is an AI-platform for learning social skills (the “Platform”) located at <https://thecognito.com/> and any related sub-domains or portals through which the Platform is made available (the “Website(s)”).

These terms and conditions are a legal agreement (this “Agreement”) between you (together with the business entity, if any, that you represent, “You” or “Your” or “Client”) and The Cognito Inc. (“The Cognito” or “we”, “us” or “our”), establishing terms and conditions under which You shall access and use the services and features available on the Platform or Website. The date You first agree to or accept this Agreement, or that You otherwise first access and use the Platform following the date this Agreement is first made available on the Platform, is referred to herein as the “Effective Date”. Your use of the Platform is also subject to our [Privacy Policy](#) posted on our Website from time to time.

BEFORE YOU CLICK ON THE “I ACCEPT” OR SIMILAR BUTTON OR ACCESS OR USE THE SERVICES OR THIS WEBSITE, CAREFULLY READ THE TERMS AND CONDITIONS OF THIS AGREEMENT. BY CLICKING ON THE “I ACCEPT” BUTTON OR USING THE SERVICES OR ACCESSING THE WEBSITE, YOU AND THE BUSINESS ENTITY THAT YOU REPRESENT ARE AGREEING TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS AGREEMENT. YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE BUSINESS ENTITY YOU REPRESENT. YOU HEREBY COVENANT TO ENSURE THAT ALL USERS THAT GAIN ACCESS TO THE PLATFORM AND/OR THE SERVICES FROM YOU ARE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN DO **NOT** CLICK “I ACCEPT” OR A SIMILAR INDICATION OF AGREEMENT AND YOU SHALL NOT BE PERMITTED TO ACCESS AND/OR USE THE SERVICES.

YOU ARE SOLELY RESPONSIBLE FOR ALL CONTENT THAT YOU SUBMIT OR PROCESS USING OUR SERVICES. YOU MUST PROVIDE US ONLY AUDIOVISUAL AND OTHER CONTENT FOR WHICH YOU HAVE ALL RIGHTS NECESSARY TO COPY, USE, MODIFY AND EXPLOIT SUCH AUDIOVISUAL MATERIALS AS CONTEMPLATED IN THIS AGREEMENT OR ANY ORDER. YOU SHALL INDEMNIFY AND HOLD HARMLESS THE COGNITY, ITS OFFICERS, DIRECTORS, EMPLOYEES AND SERVICE PROVIDERS FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS THAT THE SUBMISSION OR USE OF THE CONTENT YOU PROVIDE INFRINGES, MISAPPROPRIATES OR VIOLATES THE INTELLECTUAL PROPERTY OR OTHER PROPRIETARY RIGHTS OF ANY THIRD PARTY.

FURTHER, THESE TERMS OF SERVICE CONTAIN AN AGREEMENT TO ARBITRATE, WHICH REQUIRES THAT YOU AND THE COGNITY ARBITRATE CERTAIN CLAIMS BY BINDING, INDIVIDUAL ARBITRATION INSTEAD OF GOING TO COURT AND LIMITS CLASS ACTION CLAIMS UNLESS YOU OPT OUT AS PROVIDED IN SUCH AGREEMENT TO ARBITRATE (SEE SECTION 12 “AGREEMENT TO ARBITRATE”).

AGREEMENT

1. DEFINITIONS.

1.1 “Affiliate” means any corporation or entity of either party, which is owned or controlled by or under common control with a party. For purposes of this definition, “control” shall mean the right to exercise directly or indirectly, more than fifty percent (50%) of the voting rights attributable to the shares of the corporation or entity or the power to direct or cause the direction of the management or policies of the corporation or entity.

1.2 “Ancillary Services” means any implementation, installation, support, training, consulting, custom development or other professional services provided by The Cognity to Client hereunder in connection with the Platform.

1.3 “Client Content” means content, including recordings and still images of Users and other audiovisual materials, uploaded to and which may be stored in the Platform by the Client and its Users in connection with the Platform and information regarding Client’s and its Users’ use of the Platform.

1.4 “Client System” means Client’s website(s), systems, servers and third party hosted services, equipment and software used in the conduct of Client’s business.

1.5 “Documentation” means any proprietary user documentation made available to Client by The Cognity, including any documentation available on the Website or otherwise, as amended or updated by The Cognity from time to time in its discretion.

1.6 “Fees” means the fees set forth in an Order from time to time.

1.7 “Free Services” means the use of the Subscription Services without charge as may be permitted by The Cognity from time to time in The Cognity’s sole discretion.

1.8 “Intellectual Property Rights” means all intellectual property rights or similar proprietary rights, including: (a) patent rights and utility models; (b) copyrights and database rights; (c) trademarks, trade names, domain names and trade dress and the goodwill associated therewith; (d) trade secrets; (e) mask works; and (f) industrial design rights; in each case, including any registrations of, applications to register, and renewals and extensions of, any of the foregoing in any jurisdiction in the world.

1.9 “Order” means an order for the purchase by Client of Subscription Services and/or Ancillary Services provided through the Platform or Website, as mutually agreed by the parties through the Platform or Website or in a separate written order from time to time. For the avoidance of doubt, an Order can be created by You agreeing to subscribe to our Subscription Services through the Platform or Website.

1.10 “Output” means the progress indicators and other statistics relating to Your use of the Platform generated by the Platform from Client Content as part of the Subscription Services in accordance with the Documentation.

1.11 “Paid Subscription Services” means the Subscription Services subject to Fees for which Client has subscribed pursuant to an Order.

1.12 “PII” means information that can be used to identify, contact, locate, distinguish or trace an individual’s identity, either alone or when combined with other personal or identifying information that is linked or linkable to a specific individual. For the sake of clarity, PII shall exclude prohibited information as outlined in Section 8.1(b).

1.13 “Services” means Subscription Services and/or Ancillary Services, as applicable.

1.14 “Subscription Services” means those services offered by the Platform, including the Free Services, if any, and Paid Subscription Services. For the avoidance of doubt, Subscription Services do not include Ancillary Services.

1.15 “Subscription Term” means the subscription period set forth in an Order for the relevant Subscription Services purchased pursuant to such Order, commencing on the date of such Order. The Subscription Term shall be monthly unless otherwise provided in the applicable Order.

1.16 “Users” means Client and any employees of Client or its third party vendors who: (a) are authorized by Client to use the Platform and the Subscription Services; (b) have agreed to the terms of this Agreement; and (c) who have been supplied user identifications and passwords by Client pursuant to Section 3.1.

2. **THE PLATFORM.**

2.1 **Free Services; Paid Subscription Services.** During the term of this Agreement, Client may subscribe to Free Services through an Order and use such Free Services at no charge, subject to the terms and conditions of this Agreement. Subject to the terms and conditions of this Agreement, Client may purchase Paid Subscription Services pursuant to Orders. Each Order is deemed incorporated into this Agreement by reference.

2.2 **Access and Use.** Subject to the terms and conditions of this Agreement, The Cognity hereby grants to Client, during the relevant Subscription Term, a limited, non-exclusive, non-transferable right for its Users to access and use the Subscription Services via the Platform in accordance with the Documentation, solely for Client's internal business or personal purposes and not for the benefit of any other person or entity. Client agrees that its purchases under this Agreement are neither contingent on the delivery of any future functionality or features of the Platform nor dependent on any oral or written public comments made by The Cognity regarding future functionality or features. Further, if The Cognity provides You with any API or software outside the Platform ("Ancillary Software"), The Cognity hereby grants You a limited, non-exclusive, non-transferable right to use that Ancillary Software solely in connection with Your use of the Platform. For the avoidance of doubt, Client and its Users shall not have the right to access or use the Platform except for the access and use of Subscription Services through the Platform as provided in this Section 2.2 and in connection with any Ancillary Services.

2.3 **Restrictions.** Client shall not, directly or indirectly, and Client shall not permit any User or third party to: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the object code, source code or underlying ideas or algorithms of the Platform; (ii) modify, translate, or create derivative works based on any element of the Platform or Documentation; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer its rights to use the Subscription Services or the Platform; (iv) use the Subscription Services or the Platform for timesharing purposes or otherwise for the benefit of any person or entity other than for the benefit of Client, its Users and Client's direct clients; (v) remove any proprietary notices from the Documentation; (vi) publish or disclose to third parties any evaluation of the Subscription Services or the Platform without The Cognity's prior written consent; (vii) use the Subscription Services or the Platform for any purpose other than its intended purpose; (viii) interfere with or disrupt the integrity or performance of the Subscription Services or the Platform; or (ix) attempt to gain unauthorized access to the Subscription Services or the Platform.

2.4 **Hardware and Software.** Client is responsible for: (i) obtaining, deploying and maintaining the Client System, and all computer hardware, software, modems, routers and other communications equipment necessary for Client and its Users to access and use the Subscription Services and the Platform via the Internet; (ii) contracting with third party ISP, telecommunications and other service providers to access and use the Subscription Services and the Platform via the Internet; and (iii) paying all third party fees and access charges incurred in connection with the foregoing. Except as specifically set forth in this Agreement, The Cognity shall not be responsible for supplying any hardware, software or other equipment to Client under this Agreement.

2.5 **Ancillary Services.** The parties may agree to, from time to time, Ancillary Services to be provided by The Cognity to Client pursuant to an Order.

2.6 **Arrangements between You and Your Third Party Service Providers.** The Platform may enable You to link Your The Cognity account to Your accounts with certain third party service providers from time to time. You agree and acknowledge that You are solely responsible for all arrangements between You and such third party service providers and that the terms governing such third party services shall govern Your use thereof.

2.7 **Changes to the Platform.** You agree and acknowledge that The Cognity may update and otherwise change the Platform from time to time in its sole discretion from time to time during or after Your Subscription Term.

3. LOGIN CREDENTIALS.

3.1 **Passwords.** The Cognity will issue to Client and/or authorize each User and/or a Client account manager to create and issue to each User, a user login and password for access and use of the Subscription Services and the Platform. Client and its Users are responsible for maintaining the confidentiality of all user logins and passwords and for ensuring that each user login and password is used only by the User to which it was issued. Client is solely responsible for any and all access and use of the Subscription Services or the Platform that occurs under Client's account. Client shall restrict its Users from sharing passwords. Client agrees to immediately notify The Cognity of

any unauthorized use of Client's or any User's account and/or login and password, or any other breach of security known to Client. The Cognity shall have no liability for any loss or damage arising from Client's failure to comply with the terms set forth in this Section.

3.2 No Circumvention of Security. Neither Client nor any User may circumvent or otherwise interfere with any user authentication or security of the Platform. Client will immediately notify The Cognity of any breach, or attempted breach, of security known to Client.

3.3 No Guaranty of Security. Client acknowledges that, notwithstanding the security precautions deployed by The Cognity, the use of, or connection to, the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Platform and Client Content. The Cognity cannot and does not guarantee the privacy, security, integrity or authenticity of any information transmitted over or stored in any system connected to or accessible via the Internet or otherwise or that any such security precautions will be adequate or sufficient.

4. FEES AND PAYMENT.

4.1 Fees. The Free Services, if any, will be made available at no charge. Orders will provide for Fees for the Paid Subscription Services, which may be based certain criteria as set forth in the Order. Client shall pay to The Cognity the Fees for the Paid Subscription Services for the applicable Subscription Term as set forth in the relevant Order. Unless otherwise expressly set forth in the relevant Order, Client will be billed in arrears on a monthly basis for the applicable Fees for such Services. In the event Client believes a billing error has occurred in respect of any usage or other criteria, Client may alert The Cognity via the Platform. We will promptly investigate and, if applicable, adjust Your Fees for such Subscription Term accordingly. Except as otherwise specified in an Order Form, subscriptions and Fees are non-cancelable during the Subscription Term, and the subscriptions purchased cannot be decreased during the relevant Subscription Term on the Order. The Cognity may change the Fees in its sole discretion at any time; provided that Fees for Client's then-current Subscription Term will not change until the expiration of such then-current Subscription Term. Client may modify the selected Subscription Services at any time via the Platform, which changes will take effect upon renewal of the then-current Subscription Term.

4.2 Other Fees. Client shall pay to The Cognity the Fees, if any, set forth in an Order for Ancillary Services, together with any pre-approved out-of-pocket expenses that may be incurred by The Cognity or its personnel in connection with the Ancillary Services, including any travel and living expenses.

4.3 Invoices and Payment Terms. Except as otherwise expressly set forth in any Order, The Cognity shall invoice Client on a monthly basis, and Client shall pay The Cognity, for amounts due under this Agreement. Client shall pay The Cognity the amount due under any invoice within thirty (30) days of the date of invoice by such payment methods as are supported by The Cognity at the time of payment. Past due amounts will be subject to an interest charge equal to the lesser of one and one-half percent (1.5%) per month or the highest rate allowed by applicable law. If Client's account is past due for thirty (30) days or more, then The Cognity reserves the right to discontinue access to the Platform and the Subscription Services and suspend the performance of any outstanding Ancillary Services until all past due invoices are paid in full. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction.

4.4 Taxes. Client shall pay all applicable sales (unless an exemption certificate is furnished by Client to The Cognity), use and value-added taxes (except for taxes imposed on The Cognity's net income) with respect to this Agreement or furnish The Cognity with evidence acceptable to the taxing authority to sustain an exemption therefrom. All payments under this Agreement shall be made free and clear of (and without deduction for or grossed up for, as applicable) any withholding or other taxes levied by any country or jurisdiction on payments to be made pursuant to this Agreement that applicable law requires Client to withhold.

4.5 Payment Processing. We use third party payment processor services to bill and/or facilitate processing of Fees. By submitting payment account information, Client grants to The Cognity and its payment processor the right to store and process Client's information with the third-party payment service, which may change from time to time. Client agrees that during the Subscription Term, The Cognity may charge and the payment processor may pay to The Cognity any Fees as they become due. Client agrees that The Cognity will not be responsible for any failure of the

third party to adequately protect such information. Any payment processor services will be subject to the payment processor's separate terms and conditions in addition to this Agreement. In no event will The Cognity be responsible for any action or omission of any payment processor, including as to whether any payment is sent or received or sent or received to a party other than the intended party. Client agrees that The Cognity may change the third-party payment service and move Client's information to other service providers.

5. REPRESENTATIONS AND WARRANTIES.

5.1 The Cognity Limited Warranty.

(a) **Platform Warranty.** The Cognity warrants to Client that during the Subscription Term for Subscription Services, such Subscription Services shall, under normal use and service, substantially conform to, and perform in all material respects, the functions described in the applicable Documentation. If any such Subscription Services fail to comply with the foregoing warranty, Client shall provide written notice to The Cognity prior to the expiration of the warranty period set forth above and such notice will describe in reasonable detail the nature of the non-conformity. In such event, The Cognity shall use reasonable efforts to repair or rectify such non-conformity. If The Cognity is unable to repair or rectify such non-conformity, then The Cognity may terminate this Agreement (including without limitation the licenses granted in this Agreement) with respect to the non-conforming Subscription Services and in such event, The Cognity will refund to Client on a pro-rata basis as applicable the portion of Fees paid to The Cognity prior to termination applicable to the access and use of such non-conforming Subscription Services after the termination date. THE REMEDY SET FORTH IN THIS SECTION SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY AND THE COGNITY'S SOLE OBLIGATION FOR ANY BREACH OF THIS AGREEMENT.

(b) **Exclusions.** The warranty set forth in this [Section 5.1](#) does not cover defects or non-conformities arising from: (i) misuse of the Platform or the Documentation; (ii) any modifications to the Platform made by any person or entity other than The Cognity that is not previously approved by The Cognity; (iii) any use of the Subscription Services or the Platform by Client or its Users beyond the scope of the express rights licenses granted in this Agreement; (iv) any use of the Platform in combination with other software, hardware or data; or (v) The Cognity's compliance with Client's request for changes to the Platform or with Client's designs, specifications or instructions. Further, notwithstanding anything herein to the contrary, the Free Services, and any other services provided at no charge by The Cognity, are provided "AS IS" without any warranty, express or implied.

5.2 Client Warranties.

(a) **Client System Warranty.** Client represents and warrants that Client has the right, including in respect of all relevant Intellectual Property Rights and applicable data privacy and other laws, to provide The Cognity access to and use of the Client Content, including without limitation, for use in connection with the Subscription Services, Platform or Ancillary Services.

(b) **Other Client Representations and Warranties.** Client represents, warrants and covenants that: (i) Client has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (ii) Client's execution of and performance under this Agreement shall not breach any oral or written agreement with any third party or any obligation owed by Client to any third party to keep any information or materials in confidence or in trust.

5.3 **Disclaimer.** THE WARRANTIES SET FORTH IN THIS [SECTION 5](#) ARE IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, AND, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS [SECTION 5](#), THE PLATFORM, SUBSCRIPTION SERVICES, AND ANCILLARY SERVICES ARE PROVIDED ON AN AS-IS BASIS. CLIENT'S USE OF THE PLATFORM, SUBSCRIPTION SERVICES AND ANCILLARY SERVICES IS AT ITS OWN RISK. THE COGNITY DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE.

THE COGNITY DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES OR THE PLATFORM IS OR WILL BE UNINTERRUPTED OR ERROR FREE. CLIENT ACKNOWLEDGES AND AGREES THAT THE PLATFORM (AS WITH TECHNOLOGY GENERALLY), MAY HAVE ERRORS (OR “BUGS”) AND MAY ENCOUNTER UNEXPECTED TECHNICAL PROBLEMS. ACCORDINGLY, FROM TIME TO TIME, CLIENT MAY EXPERIENCE DOWNTIME AND ERRORS IN THE OPERATION, FUNCTIONALITY OR PERFORMANCE OF THE PLATFORM OR THE SUBSCRIPTION SERVICES. ACCORDINGLY, CLIENT SHALL PUT IN PLACE REASONABLE INTERNAL PROCEDURES AND PROCESSES TO ENABLE IT TO MINIMIZE ANY INCONVENIENCE AND ANY ADVERSE IMPACT OF ANY SUCH DOWNTIME OR ERROR.

6. INDEMNIFICATION.

6.1 **The Cognito Indemnity.** The Cognito shall, subject to the terms and conditions set forth in this Agreement: (i) defend Client from and against any and all third party claims, actions, suits, demands or proceeding brought against Client (a “Claim”) alleging that Client’s use of the Platform and the Subscription Services in accordance with the terms of this Agreement infringes any United States copyright or United States patent issued as of the Effective Date, and (ii) indemnify and hold harmless Client against any damages awarded to the third party bringing the Claim or any settlement amount approved by The Cognito in writing and paid to the third party bringing the Claim in order to settle the Claim. The Cognito’s obligations under this Section are conditioned upon: (a) The Cognito being promptly notified in writing of such Claim, (b) The Cognito having the exclusive right to control the defense and/or settlement of the Claim, and (c) Client providing all reasonable assistance (at The Cognito’s request and expense) in the defense of the Claim. In no event shall Client settle any Claim without The Cognito’s prior written approval. Client may, at its own expense, engage separate counsel to advise Client regarding a Claim and to participate in the defense of the Claim, subject to The Cognito’s right to control the defense and settlement thereof.

(a) **Mitigation.** In the event of any such third party Claim or threat thereof, The Cognito, at its sole option and expense, may: (i) procure for Client the right to continue to use the allegedly infringing Subscription Services or the Platform; or (ii) replace or modify the Platform with functionally equivalent software and/or Services. If neither subpart (i) nor (ii) of this paragraph is commercially reasonable or practical in the reasonable opinion of The Cognito, The Cognito may terminate this Agreement with respect to the allegedly infringing Subscription Services or the Platform, and the license thereto granted hereunder, upon fifteen (15) days written notice to Client. In the event of such termination, The Cognito shall refund to Client any portion of Fees paid to The Cognito by Client for use of the allegedly infringing Subscription Services or the Platform following the date of such termination.

(b) **Exclusions.** Notwithstanding anything to the contrary in this Agreement, The Cognito shall have no obligations to Client pursuant to this Section 6.1 with respect to any infringement or alleged infringement resulting or arising from: (i) any modifications to the Platform made by any person or entity other than The Cognito that is not previously approved by The Cognito; (ii) any use of the Platform or the Subscription Services by Client or its Users beyond the scope of the express rights and licenses granted in this Agreement; (iii) any use of the Subscription Services or the Platform in combination with other service, software, hardware or data; or (iv) The Cognito’s compliance with Client’s request for changes to the Platform or with Client’s designs, specifications or instructions.

(c) **Sole Remedy.** THE FOREGOING STATES THE ENTIRE LIABILITY OF THE COGNITY WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE SUBSCRIPTION SERVICES OR THE PLATFORM OR OTHERWISE, AND CLIENT HEREBY EXPRESSLY WAIVES ANY OTHER LIABILITIES OR OBLIGATIONS OF THE COGNITY WITH RESPECT THERETO.

6.2 **Client Indemnity.** Client shall indemnify and hold harmless, and at The Cognito’s request defend, The Cognito and its Affiliates, licensors, successors and assigns (and its and their officers, directors, employees, contractors, customers, customers and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys’ fees and court costs) which arise out of or relate to: (a) any third party claim or threat thereof that the Client Content or Client System (and the exercise of the rights by The Cognito granted herein with respect thereto) infringes, misappropriates or violates any third party’s Intellectual Property Rights; (b) Client’s use or alleged use of the Subscription Services or the Platform (other than

claims arising from The Cognito's breach of this Agreement or from claims subject to Section 6.1); (c) any transactions between Client and any third party, or (d) any breach or alleged breach by Client of any of its covenants, representations or warranties set forth in this Agreement. The Cognito shall notify Client promptly of any claim or liability for which indemnification is sought, provided, however, that the failure to give such notice shall not relieve Client of its obligations hereunder except to the extent that Client was actually and materially prejudiced by such failure. Client may not settle any claim for which indemnification is sought under this Section without the prior written approval of The Cognito, which approval shall not be unreasonably withheld or delayed.

7. **CONFIDENTIALITY.**

7.1 Confidential Information. "Confidential Information" means any and all non-public technical and non-technical information disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") in any form or medium, whether oral, written, graphical or electronic, pursuant to this Agreement, that is marked confidential and proprietary, or that the Disclosing Party identifies as confidential and proprietary, or that by the nature of the circumstances surrounding the disclosure or receipt ought to be treated as confidential and proprietary information, including but not limited to: (i) techniques, sketches, drawings, models, inventions (whether or not patented or patentable), know-how, processes, apparatus, formulae, equipment, algorithms, software programs, software source documents, APIs, and other creative works (whether or not copyrighted or copyrightable); (ii) information concerning research, experimental work, development, design details and specifications, engineering, financial information, procurement requirements, purchasing, manufacturing, customer lists, business forecasts, sales and merchandising and marketing plans and information; (iii) proprietary or confidential information of any third party who may disclose such information to Disclosing Party or Receiving Party in the course of Disclosing Party's business; and (iv) the terms of this Agreement and any Order. Confidential Information of The Cognito shall include the Platform and Subscription Services. Confidential Information also includes all summaries and abstracts of Confidential Information.

7.2 Non-Disclosure. Each party acknowledges that in the course of the performance of this Agreement, it may obtain the Confidential Information of the other party. The Receiving Party shall, at all times, both during the Term and thereafter, keep in confidence and trust all of the Disclosing Party's Confidential Information received by it. The Receiving Party shall not use the Confidential Information of the Disclosing Party other than as necessary to fulfill the Receiving Party's obligations or to exercise the Receiving Party's rights under the terms of this Agreement. Each party agrees to secure and protect the other party's Confidential Information with the same degree of care and in a manner consistent with the maintenance of such party's own Confidential Information (but in no event less than reasonable care), and to take appropriate action by instruction or agreement with its employees, Affiliates or other agents who are permitted access to the other party's Confidential Information to satisfy its obligations under this Section. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any person or entity other than its officers, employees, Affiliates and agents who need access to such Confidential Information in order to effect the intent of this Agreement and who are subject to confidentiality obligations at least as stringent as the obligations set forth in this Agreement.

7.3 Exceptions to Confidential Information. The obligations set forth in Section 7.2 shall not apply to the extent that Confidential Information includes information which: (a) was known by the Receiving Party prior to receipt from the Disclosing Party either itself or through receipt directly or indirectly from a source other than one having an obligation of confidentiality to the Disclosing Party; (b) was developed by the Receiving Party without use of the Disclosing Party's Confidential Information; or (c) becomes publicly known or otherwise ceases to be secret or confidential, except as a result of a breach of this Agreement or any obligation of confidentiality by the Receiving Party. Nothing in this Agreement shall prevent the Receiving Party from disclosing Confidential Information to the extent the Receiving Party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the Receiving Party shall: (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the Disclosing Party in writing of the agency's order or request to disclose; and (iii) cooperate fully with the Disclosing Party in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality. Notwithstanding the foregoing, Client authorizes The Cognito to list Client's name and logo in a list of customers on The Cognito's website and marketing materials.

8. CLIENT CONTENT.

8.1 **Client Content.** Client, not The Cognition, shall be solely responsible for the accuracy, quality, integrity, legality, reliability, appropriateness of and the parties' respective rights to use all Client Content under this Agreement. Client shall be responsible for obtaining any consents and other rights necessary to collect, submit, use and process Client Content on the Platform in connection with the Subscription Services. Subject to our rights under Sections 8.2 and 9, You may request deletion of Your Client Content at any time by emailing contact@thecognition.com

(a) **Personally Identifiable Information.** Client acknowledges that PII will be collected and processed by the Platform or its Client Systems pursuant to this Agreement. Client represents and warrants that (i) it will provide all required notice to and obtain all required consent from each individual regarding the collection, disclosure, analysis and use of any of their PII in the Client Content including, for certainty and without limitation, recordings and still images of Users, and (ii) that the collection, disclosure, analysis and use of Client Content, as contemplated under this Agreement, complies with all applicable laws, rules and regulations.

(b) **Prohibited Use.** Client shall not use the Subscription Services or the Platform to collect, or otherwise transmit to The Cognition, any sensitive PII about third parties, including passwords, credit or debit card number, Social Security number, financial account number or other financial information, driver's license, passport or other government identification number, health information, or biometric data.

(c) **Compliance with Laws.** Client represents and warrants that it will ensure that the collection and use of information via the Subscription Services complies with all applicable laws, rules and regulations and this Agreement.

(d) **Storage of Client Content.** You agree and acknowledge that the Platform is not a storage service and You are solely responsible for backing up all Client Content and any Output. Subject to Section 11.3 and unless otherwise provided in an applicable Order, we do not warrant that Output and related Client Content will be available for any period of time following any termination or expiration of the Subscription Term. Notwithstanding the foregoing, we will use commercially reasonable efforts to ensure Your progress statistics remain available to You.

8.2 **Usage Data.** Notwithstanding anything else in the Agreement or otherwise, The Cognition may monitor Client's use of the Subscription Services and the Platform and use data and information related to Client Content and Client's use of the Subscription Services in an aggregate or de-identified manner, to compile statistical and performance information related to the provision and operation of the Platform and Subscription Services and to provide Client with suggestions for Ancillary Services or third party services which may be of interest to Client based on such data and information. Client agrees that The Cognition may make such data and information publicly available, and use such information to the extent and in the manner required by applicable law or regulation and/or for purposes of data gathering, analysis, service enhancement and marketing, provided that such data and information does not identify Client or its Confidential Information. The Cognition retains all Intellectual Property Rights in such data and information.

9. PROPRIETARY RIGHTS.

9.1 **Ownership.** Client acknowledges that the Platform and the Subscription Services, and all Intellectual Property Rights therein, are the sole and exclusive property of The Cognition and its licensors. The Cognition acknowledges that the Client System and Output, and all Intellectual Property Rights therein, are the sole and exclusive property of Client and its licensors. Each party retains all other rights not expressly granted in this Agreement.

9.2 **The Cognition Developments.** Except for Output, all inventions, works of authorship and developments conceived, created, written, or generated by or on behalf of The Cognition, whether solely or jointly, including without limitation, in connection with The Cognition's performance of the Subscription Services or Ancillary Services

hereunder, including Deliverables (“The Cognito Developments”), including all Intellectual Property Rights therein, shall be the sole and exclusive property of The Cognito.

9.3 License to Client Content. Client grants to The Cognito a royalty-free, nonexclusive, irrevocable, limited, perpetual, fully paid-up, sublicensable (through one or more tiers) right and license to use the Client Content: (a) in order to provide the Subscription Services; (b) to analyze and improve The Cognito and the Subscription Services including through the application of machine learning algorithms; (c) for The Cognito’s internal business purposes; (d) to compile and use aggregate or de-identified data, statistics, measurements or other metrics derived from Client Content (including in combination with the aggregate or de-identified customer data of other The Cognito customers) for its own purposes; and/or (e) to provide Client with suggestions for Ancillary Services or third party services which may be of interest to Client based on such data and information. Aggregate or de-identified data means data that does not identify any Client or individual.

9.4 Disclosure of Client Content. The Cognito shall not disclose Client Content to third parties, except: (a) as necessary to provide the Subscription Services to You; (b) to our service providers who are not permitted to use such data except on behalf of The Cognito, (c) as required by law or to comply with legal process; (d) to protect and defend the rights or property of The Cognito, including as evidence in litigation; (e) to troubleshoot problems with the Subscription Services; (f) to any successor in interest, including as part of a merger, acquisition or transfer of assets, or as part of a bankruptcy proceeding; or (g) in aggregate or de-identified form.

9.5 Feedback. Client hereby grants to The Cognito, at no charge, a non-exclusive, royalty-free, worldwide, transferable, sublicensable (through one or more tiers), perpetual, irrevocable license under Client’s Intellectual Property Rights in and to suggestions, comments and other forms of feedback (“Feedback”) regarding the Platform and/or The Cognito Developments provided by or on behalf of Client or its Users to The Cognito, including Feedback regarding features, usability and use, and bug reports, to reproduce, perform, display, create derivative works of the Feedback and distribute such Feedback and/or derivative works in the Platform or any other products or services. Feedback is provided “as is” without warranty of any kind and shall not include any Confidential Information of Client.

10. LIMITATION OF LIABILITY.

10.1 No Consequential Damages. THE COGNITY AND ITS LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR ANY DAMAGES FOR LOST DATA, BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF THE COGNITY OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, ANY SUCH DAMAGES ARISING OUT OF THE LICENSING, PROVISION OR USE OF THE PLATFORM, SUBSCRIPTION SERVICES, ANCILLARY SERVICES OR RESULTS THEREOF. THE COGNITY SHALL NOT BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES.

10.2 Limits on Liability. THE COGNITY AND ITS LICENSORS SHALL NOT BE LIABLE FOR CUMULATIVE, AGGREGATE DAMAGES GREATER THAN THE SUM OF THE AMOUNTS HAVING THEN ACTUALLY BEEN PAID BY CLIENT TO THE COGNITY UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE THE CLAIM AROSE, MINUS, IN ALL CIRCUMSTANCES, ANY AMOUNTS PREVIOUSLY PAID (AS OF THE DATE OF SATISFACTION OF SUCH LIABILITY) BY THE COGNITY TO CLIENT IN SATISFACTION OF ANY LIABILITY FOR DAMAGES UNDER THIS AGREEMENT. CLIENT RELEASES THE COGNITY AND ITS LICENSORS FROM ALL OBLIGATIONS, LIABILITY, CLAIMS, OR DEMANDS RELATING TO THE PLATFORM, SUBSCRIPTION SERVICES OR ANCILLARY SERVICES, AND THIS AGREEMENT IN EXCESS OF THE LIMITATION PROVIDED FOR IN THIS SECTION 10.2.

10.3 Essential Purpose. Client acknowledges that the terms in this Section 10 (Limitation of Liability) are an essential basis of the bargain described in this Agreement and that, were The Cognito to assume any further liability, the Fees payable hereunder would out of necessity, be set much higher. THE LIMITATIONS IN THIS SECTION 10 (LIMITATION OF LIABILITY) SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY

APPLICABLE LAW AND SHALL APPLY EVEN IF AN EXCLUSIVE OR LIMITED REMEDY STATED HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

11. TERM AND TERMINATION.

11.1 **Term.** The term of this Agreement shall commence on the Effective Date and continue until the expiration or termination of the Subscription Term for Subscription Services, unless earlier terminated as provided in this Agreement.

11.2 **Termination.** Client may terminate this Agreement by providing notice of non-renewal at least five (5) days prior to the end of the then-current Subscription Term. The Cognity reserves the right to terminate this Agreement for no reason in its sole discretion at any time; provided that, in the event such termination of Paid Subscription Services without cause, The Cognity will provide a pro-rata refund to Client of any pre-paid Fees for the then-current Subscription Term. Further, either party may terminate this Agreement (and all Subscription Term(s)) upon written notice to the other party in the event the other party: (a) becomes insolvent or bankrupt or admits its inability to pay its debts as they mature, makes an assignment for the benefit of its creditors or ceases to function as a going concern or to conduct its operations in the normal course of business and such termination shall occur immediately upon notice; or (b) commits a material breach of any provision of this Agreement and does not remedy such breach within thirty (30) days after receipt of notice from the non-defaulting party or such other period as the parties may agree.

11.3 **Effects of Termination.** Upon expiration or termination of this Agreement: (a) Client's use of and access to the Subscription Services and Platform and the performance of all Ancillary Services shall cease; (b) all Order(s) shall terminate; and (c) all Fees and other amounts owed under this Agreement shall be immediately due and payable by Client, including without limitation, all Fees incurred under any outstanding Orders up through the date of termination for any Ancillary Services completed and a pro-rated portion of the Fees incurred for any partially completed Ancillary Services. In addition, within ten (10) days of the effective date of termination each Receiving Party shall: (i) return to the Disclosing Party, or at the Disclosing Party's option, the Receiving Party shall destroy, all items of Confidential Information then in the Receiving Party's possession or control, including any copies, extracts or portions thereof, except for information subject to the rights set forth in Sections 8.2 and 9 hereof; and (ii) upon request shall certify in writing to Disclosing Party that it has complied with the foregoing. Following such 10-day period, The Cognity shall have no obligation to maintain or provide any Client Content and may thereafter unless legally prohibited, delete all Client Content in its systems or otherwise in its possession or under its control.

11.4 **Survival.** This Section 11.4 and Sections 1 (Definitions), 4 (Fees and Payments), 5 (Representations and Warranties), 6 (Indemnification), 7 (Confidentiality), 8 (Client Content), 9 (Proprietary Rights), 10 (Limitation of Liability), 11.3 (Effects of Termination), 12 (Agreement to Arbitrate) and 13 (Miscellaneous) shall survive any termination or expiration of this Agreement according to their respective terms.

12. AGREEMENT TO ARBITRATE.

12.1 **Arbitration.** You agree that all disputes between You and The Cognity (whether or not such dispute involves a third party) arising out of or relating to these Terms of Service, the Website, the Subscription Services, Ancillary Services, and/or Privacy Policy shall be finally resolved by arbitration before a single arbitrator conducted in the English language in San Francisco, California, U.S.A. under the Commercial Arbitration Rules of the American Arbitration Association ("AAA") and You and The Cognity hereby expressly waive trial by jury. You and The Cognity shall appoint as sole arbitrator a person mutually agreed by You and The Cognity or, if You and The Cognity cannot agree within thirty (30) days of either party's request for arbitration, such single arbitrator shall be selected by the AAA upon the request of either party. The parties shall bear equally the cost of the arbitration (except that the prevailing party shall be entitled to an award of reasonable attorneys' fees incurred in connection with the arbitration in such an amount as may be determined by the arbitrator). All decisions of the arbitrator shall be final and binding on both parties and enforceable in any court of competent jurisdiction. Notwithstanding this, application may be made to any court for a judicial acceptance of the award or order of enforcement. Notwithstanding the foregoing, The Cognity shall be entitled to seek injunctive relief, security or other equitable remedies from the United States District Court for a district in Massachusetts or any other court of competent jurisdiction. Under no circumstances shall the arbitrator be authorized to award damages, remedies or awards that

conflict with this Agreement or to award punitive damages, including but not limited to pursuant to federal or state statutes permitting multiple or punitive awards.

12.2 Waiver of Class Actions. Any claims brought by You or The Cognity must be brought in the party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. Neither You nor The Cognity will participate in a class action or class-wide arbitration for any claims covered by these Terms of Service. You hereby waive any and all rights to bring any claims related to these Terms of Service and Privacy Policy as a plaintiff or class member in any purported class or representative proceeding. You may bring claims only on Your own behalf.

12.3 Opt Out. You may opt out of this agreement to arbitrate in this Section 12. If You do so, neither You nor we can require the other to participate in an arbitration proceeding. To opt out, You must notify us in writing within thirty (30) days of the date that You first became subject to this arbitration provision. The opt out notice must state that You do not agree to the Agreement to Arbitrate and must include Your name, address, phone number, Your login credentials to which the opt out applies and a clear statement that You want to opt out of this agreement to arbitrate. You must sign the opt out notice for it to be effective. This procedure is the only way You can opt out of the Agreement to Arbitrate. You must use this address to opt out: The Cognity Inc. ATTN: Arbitration Opt-out, contact@thecognity.com.

13. MISCELLANEOUS.

13.1 Notices. Whenever, under the terms of or in connection with this Agreement, any notice, consent, approval, authorization or other information is proper or required to be given by either party, such notice, consent, approval, authorization or other information shall be in writing and shall be given or made by reputable overnight courier with documentation of receipt to the intended recipient thereof or by registered or certified mail, return receipt requested, and with all postage prepaid, to the address set forth in the preamble of this Agreement, or to such other address for either party as may be supplied by notice given in accordance herewith.

13.2 Amendment; Waiver. This Agreement may be amended or supplemented only by a writing that is signed by duly authorized representatives of both parties or through a click through agreement accepted by Client. No term or provision hereof shall be considered waived by either party, and no breach excused by either party, unless such waiver or consent is in writing signed on behalf of the party against whom the waiver is asserted. No consent by either party to, or waiver of, a breach by either party, whether express or implied, shall constitute consent to, waiver of, or excuse of any other, different, or subsequent breach by either party.

13.3 Severability. If any provision of this Agreement is held invalid or unenforceable for any reason, the remainder of the provision shall be amended to achieve as closely as possible the economic effect of the original term and all other provisions shall continue in full force and effect.

13.4 Governing Law. This Agreement and the rights and obligations of the parties to and under this Agreement shall be governed by and construed under the laws of the State of California as applied to agreements entered into and to be performed in such State without giving effect to conflicts of laws rules or principles which would apply the laws of any other state or country. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement. Subject in all respects to Section 12 hereof, for any disputes arising out of this Agreement, the parties consent to exclusive jurisdiction and venue in the state and federal courts located in San Francisco, California, USA.

13.5 Attorneys' Fees. In any action to enforce this Agreement, the prevailing party shall be awarded all court costs and reasonable attorneys' fees incurred, including such costs and attorneys' fees incurred in enforcing and collecting any judgment.

13.6 Force Majeure. Neither party shall be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather; unavailability of necessary utilities or raw materials; Internet service provider failures or delays, or denial of service attacks; war, civil unrest, acts of terror, insurrection, riot, acts of God or the public enemy; strikes or other labor problems; any law, act, order, proclamation,

decree, regulation, ordinance, or instructions of government or other public authorities, or judgment or decree of a court of competent jurisdiction (not arising out of breach by such party of this Agreement); or any other event beyond the reasonable control of the party whose performance is to be excused.

13.7 **Subcontractors.** The Cognity may utilize subcontractors and subprocessors (“**Subcontractors**”) in connection with the activities contemplated by this Agreement including processing Client Content and generating Output; provided that The Cognity shall remain liable for the acts and omissions of any such Subcontractors as if they were acts and omissions of The Cognity under this Agreement.

13.8 **Assignment.** Neither party may assign its rights or obligations under this Agreement, whether voluntarily or by operation of law or otherwise, without the other party’s prior written consent. Notwithstanding the foregoing, either party may assign this Agreement in connection with an acquisition, sale or transfer of all or substantially all of its assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this Section shall be void. Subject to the foregoing restrictions, this Agreement shall bind and benefit the parties and their successors and permitted assigns.

13.9 **Relationship of the Parties.** The Cognity is an independent contractor to Client. There is no relationship of agency, partnership, joint venture, employment, or franchise between the parties. Neither party has the authority to bind the other or to incur any obligation on its behalf.

13.10 **Construction of Agreement.** Each party acknowledges that it has had the opportunity to have legal counsel review this Agreement and to negotiate its terms and conditions. Should any questions of construction or interpretation of this Agreement arise, then the parties agree that no presumption shall be applied against the party drafting this Agreement or any portion thereof and that the language of this Agreement shall, in all cases, be construed as a whole according to its fair meaning and not strictly for or against either party.

13.11 Entire Agreement. This Agreement, including all Order(s), constitutes the entire agreement between the parties relating to this subject matter and supersedes all prior or simultaneous understandings, representations, discussions, negotiations, and agreements, whether written or oral.

13.12 **Export.** The Subscription Services and Platform utilize software and technology that may be subject to United States and foreign export controls. Client acknowledges and agrees that the Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, “**Embargoed Countries**”), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, “**Designated Nationals**”). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Subscription Services, Client represents and warrants that it is not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. The Platform may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000. Client agrees to comply strictly with all applicable export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required. The Cognity and its licensors make no representation that the Subscription Services are appropriate or available for use in other locations.

[End of Terms and Conditions of Service]