

# Subscription Agreement - Key Terms

US 2022:1

## Important documents

Your subscription agreement with us consists of the agreement form, the standard subscription agreement terms and the [Customer Privacy Policy](#). Each user's access to the Kognity service is also governed by our [Terms of Use](#).

## Trial/pilot access

If your agreement form is for a trial or pilot access to the Kognity service, it's important to remember that the trial or pilot is valid for a limited period of time. We want the decision to buy Kognity to be entirely yours, so we don't automatically convert you to a full subscriber at the end of the trial or pilot. However, the end of your trial or pilot means the end of user access, and after a short period your users' data may also be deleted or anonymized. **Make sure to liaise with your Kognity sales contact before the end of the access period to ensure a smooth transition for your users from trial or pilot to subscription.**

## Renewal terms and fees

You'll get a message from us well ahead of the end of your subscription period asking you to confirm your subscription numbers for the next period (or cancel the subscription). **If we haven't heard from you when 30 days remain of the subscription period, we'll assume that you have renewed the subscription for another period based on the same student numbers and other service deal details and issue an invoice for the renewed subscription period.** Please note that any discounts will not be automatically applied to renewals.

Make sure to pay your invoices on time. We'll remind you in case of overdues, but if you do not act timely, user access may be suspended until the overdue amount (even if partial or relating to another year group or curriculum) is settled.

## Change in number of students

While access to the service is for a committed number of students, we appreciate that sometimes there may be slightly more students needing access than you anticipated at the start of your subscription. **If your student numbers increase by no more than 5% above the amount set out on the agreement form during the subscription period, we'll not charge you additional subscription fees for that.** If the increase is larger than that, we retain the right to invoice you for the increased usage from the first additional student, for example 6% for 106% usage, either at the end of the subscription period or during it. Reductions in student numbers below the committed number are, however, not refundable.

**Make sure to review the [full legal terms](#) on the following pages.**

# STANDARD SUBSCRIPTION AGREEMENT TERMS (US 2022:1)

## Kognity Teaching & Learning Platform Service

### 1 INTRODUCTION

- 1.1 Service Reseller is a reseller of the Service provided by its parent company Service Provider. This Subscription Agreement is made solely between Service Reseller and Subscriber, provided that Service Provider shall be entitled to rely on relevant terms of this Subscription Agreement relating to it as a third party beneficiary.
- 1.2 Subject to the terms and conditions of this Subscription Agreement and during the Subscription Period, Service Reseller shall procure that Service Provider will make the subscribed Service available to Subscriber, solely for use according to the Terms of Use, which supplement the terms and conditions of this Subscription Agreement.
- 1.3 Occasionally Service Reseller may, in its discretion, make changes to the Service and the Subscription Agreement. Upon such material changes to the Subscription Agreement or Services, Service Reseller shall notify Subscriber. By continuing to use the Service or entitle the Users to continue using the Service after changes are made, Subscriber is expressing and acknowledging its 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) whether it being written or oral and whether it being designated as confidential or not, by its nature, or the circumstances of its disclosure, makes it reasonably likely that it is confidential;

**“Customer Privacy Policy”** means the Customer Privacy Policy adopted by the Service Provider 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 have had all personal identifiers removed or obscured such that the remaining information does not permit a User’s identify to be personally identifiable, taking into account all reasonably available information;

**“Effective Date”** means the date on which Subscriber and Service Reseller 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;

**“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 Service Provider from time to time for different Subject Matters;

**“Service Deals”** means Service Reseller’s product offering from time to time to Subscriber and its Users as set forth in the agreement form (or, if applicable, in the email from the account manager, or other relevant representative of Service Reseller);

**“Service Provider”** means Kognity AB, a Swedish limited liability company, Reg. No. 559023-5080, with address Linnégatan 87D, 115 23 Stockholm, Sweden;

**“Service Reseller”** means Kognity USA, Inc., a Delaware corporation with address 55 Shuman Blvd., Ste. 850, Naperville, IL 60563, USA;

**“Subject Matter”** means all Services provided by Service Provider on selected topics from time to time, *inter alia*, biology, chemistry, physics, history, business management, geography, humanities and languages, environmental

systems and societies, mathematics, economics and psychology;

**“Subscriber”** means the subscriber set out in the agreement form, which can be a School or a School District;

**“Subscription Agreement”** means the agreement form (executed in written form online or by other means), these subscription agreement terms and conditions and any supplementary documents referred to in either of these documents;

**“Subscription Period”** means the Service subscription period for each Service Deal as defined by the access start and end dates set out in the agreement form;

**“Terms of Use”** means Service Provider’s supplementary document “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 its Users for purposes of evaluating the Service, for such parts of the Service and for the duration as specified on the agreement form;

**“User Account Information”** means information requested by Service Provider on Subscriber’s Users in order to setup and register the Users for Services;

**“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 who are authorized by Subscriber to use the Service, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Subscriber (or by Service Provider at Subscriber’s request), and if the Subscriber is a School District, including any individual school being authorized to use the Service pursuant to the School District’s Subscription Agreement.

### 3 SUPPLY OF SERVICES

- 3.1 Service Reseller hereby undertakes to procure the supply by Service Provider to Subscriber the subscribed Service Deals on the terms set out in this Subscription Agreement. Service Reseller hereby grants on behalf of the Service Provider 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 this Subscription Agreement and during its term.
- 3.2 By subscribing to Services, Subscriber warrants and represents that its representatives are authorized to bind Subscriber to this Subscription Agreement. Subscriber further warrants and represents that: (i) it is registered in its territory and will only grant User access to the Services in that territory; (ii) it complies with and will comply with the subscription requirements set out in the Subscription Agreement; (iii) any registration information that it submits to Service Reseller or Service Provider is true, accurate and complete, and it agrees to keep it that way at all times; (iv) it is authorized to grant all permissions and licenses provided in this Subscription Agreement to its Users; (v) it shall comply with any laws and regulations that apply to its use of the Services (in particular local regulatory regimes on privacy and data protection); (vi) it shall not provide any information to Service Reseller or Service Provider that it is not permitted to provide under law, regulation or contract or that would require Service Reseller or Service Provider to undertake separate measures such as obtaining consent from a User, a User’s parent or guardian, or any other third party; and (vii) it shall not use the Services for any other use than set forth herein and shall not allow any third party to do so.
- 3.3 Use of the Services requires User registration with Service Provider. The registration is made by Service Provider upon receiving the requested User Account Information from Subscriber (directly or indirectly via any third party on the Subscriber’s behalf).
- 3.4 Subscriber confirms that it will accept and comply with Service Provider’s Terms of Use and other relevant terms, and that: (i) Users consent to the processing of any personal data as set forth in this Subscription Agreement; or (ii) Subscriber is authorized under applicable law to consent on the Users’ behalf. Subscriber hereby provides verifiable consent on behalf of parents under the Children’s Online Privacy Protection Act (COPPA) for the collection of User Data from children under the age of 13. Upon valid User registration, Service Provider will activate the subscribed Subject Matters for the registered User in its system.
- 3.5 Subscriber is responsible for that its Users at all times comply with the terms of the Subscription Agreement and adhere to Service Provider’s requirements and guidelines in relation to use of the Service, as designated by Service

Provider or Service Reseller from time to time, including applicable Terms of Use and instructions.

- 3.6 Subscriber or registered Users are responsible for all hardware, communication networks and other equipment necessary for use of Services, and the due installation thereof. Subscriber is solely responsible for all activities conducted by Users, through each of any User's logins. 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.
- 3.7 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 Service Provider'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 Service Provider; or (v) use or allow Users or third parties to use the Services in any unauthorized manner or in breach of the Terms of Use.
- 3.8 Service Reseller shall procure that Service Provider will: (i) authorize registered Users access to and assign unique User passwords and usernames; (ii) grant Users access to any subscribed Subject Matter relevant to that User in accordance with this Subscription Agreement; and (iii) endeavor that the use of the Service is secure, error-free, or that the Service will meet the subscribed requirements, or 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. Service Reseller shall procure that Service Provider will use its reasonable endeavors to resolve any issues related to the Service as part of its technical support obligations.
- 3.9 Service Reseller and Service Provider reserve the right to make such changes to the features and functionality of the Service, systems and interfaces as they see fit in their discretion. The foregoing notwithstanding, Service Reseller will notify Subscriber, or where relevant Service Provider will notify Users, of any material changes in advance where reasonably practicable and where such prior notice would not adversely affect Service Reseller's or Service Provider's commercial interests.
- 3.10 TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, NEITHER SERVICE RESELLER NOR SERVICE PROVIDER GIVES 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 Services are provided in Service Deals, the prices and conditions for which are based on Subscriber's choice as set forth in the agreement form. The User numbers in the agreement form 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 prices and conditions for each Service Deal are however subject to review from time to time in connection with renewals, and Service Reseller reserves the right to propose adjustments to the prices at the latest two months prior to the expiration of a Subscription Period. Unless Subscriber cancels the subscription pursuant to the terms set forth herein, the adjusted prices for the subscribed Service Deals will apply when the subscription is renewed for a subsequent successive Subscription Period.
- 4.2 Unless otherwise agreed in writing, Service Reseller will invoice Subscriber for the full Subscription Period at the start of the Subscription Period for new subscriptions. For renewed Subscription Periods, 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 value-added, sales use or withholding taxes.
- 4.3 To the extent Subscriber's use of the Service exceeds the parameters of the Service Deal (e.g. due to exceeding the allocated number of student Users), Service Reseller reserves the right to issue additional invoices for fees due for such excess use, subject to section 4.4, based on the same pricing structure as the relevant Service Deal. Additional invoices will be issued at the end of the Subscription Period or during it. Subscriber will however be permitted up to 5% excess use for a single Service Deal subscription type (e.g. one curriculum) without additional fees provided such excess use is in good faith. If the excess use is more than five per cent, Service Reseller'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 Subject Matter subject to the Service Deal as between the schools of the district.
- 4.4 Notwithstanding Section 5.1, if the Subscription Period exceeds 24 months (i) the Service Reseller 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* Service Deal 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 due pursuant to section 4.3 will be based on the Service Reseller's then applicable price list and not the original Service Deal pricing.

- 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), Service Reseller may, at its own discretion, temporarily restrict Subscriber's or its 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, TRIAL/PILOT ACCESS AND CANCELLATION

- 5.1 Unless otherwise agreed in the Subscription Agreement, the Subscription Period shall be twelve months commencing on the Effective Date. Unless Subscriber cancels the subscription pursuant to the terms set forth herein, a subscription is automatically renewed for a subsequent successive Subscription Period of twelve months and, subject to section 4.1, otherwise based on the same Service Deal (e.g. number of students and price) excluding any introductory or otherwise time-limited discounts.
- 5.2 From time to time Service Reseller may grant Trial/Pilot Access to Subscriber. During Trial/Pilot Access, Subscriber and its Users are granted access to use Services for all Subject Matters available to Users at the Effective Date. 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 Service Deal with a start date on or before the last day of the trial or pilot period. Trial/Pilot Access may be granted subject to Service Reseller charging 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 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 this Subscription Agreement by submitting a cancellation note to Service Reseller at the latest one calendar month prior to expiration of a 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](mailto:am@kognity.com).
- 5.5 Upon the termination of this Subscription Agreement for any reason, any sum owing or due to Service Reseller shall be immediately payable and the rights of Subscriber and Users herein shall be immediately canceled.

#### 6 INTELLECTUAL PROPERTY RIGHTS

- 6.1 Service Provider and its affiliates (including Service Reseller) 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 Service Provider's and its licensors' proprietary rights.
- 6.2 Service Provider's trademarks, service marks, trade names, logos, domain names, and any other features of the Service are the sole property of Service Provider and its licensors. The license granted to Subscriber and its Users herein does not grant any rights to use Intellectual Property Rights or any other features of the Service, whether for commercial or non-commercial use.
- 6.3 It follows from Service Provider's Terms of Use that Subscriber or its Users shall remain the owner of any User Data (as defined in the Terms of Use). Notwithstanding the foregoing, Service Provider is hereby granted a license to use said posted content on the terms set forth in the Terms of Use. Without prejudice to applicable data protection and privacy laws, Service Provider shall in all other respects be the owner of any Intellectual Property Rights arising under this Subscription Agreement. Any such Intellectual Property Rights created by Subscriber or its Users, if any, shall immediately, finally and irrevocably be assigned to Service Provider upon creation thereof.
- 6.4 If the Subscriber or any of its Users provide any Feedback relating to the Service (including in connection with access to and use of the Service by the Users), the Subscriber agrees that the Service Provider or Service Reseller may incorporate into the Service any such Feedback without any obligation,

attribution, payment or restriction based on Intellectual Property Rights or otherwise.

## 7 CONFIDENTIALITY AND PRIVACY

- 7.1 All Confidential Information exchanged between Service Reseller, Service Provider, 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 this Subscription Agreement.
- 7.2 Notwithstanding section 7.1, this Subscription Agreement shall not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted or required by law, regulation or order of a court or other governmental authority. Furthermore, Service Reseller and Service Provider 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 Services; and (ii) use and disclose User Data for purposes described in the Customer Privacy Policy; and use and maintain De-identified Data for purposes described in the Customer Privacy Policy.
- 7.3 Subscriber and its 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 Intellectual Property Rights, without Service Reseller's written consent.
- 7.4 Service Reseller will, and will contractually require, that Service Provider 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 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.
- 7.5 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 the Service Reseller on any required modifications or deletions of User Data.

## 8 LIMITATION OF LIABILITY

- 8.1 TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW THE SERVICE RESELLER 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 THIS SUBSCRIPTION AGREEMENT WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SAVE WHERE SUCH LOSS OR DAMAGE IS DUE TO SERVICE RESELLER'S WILLFUL VIOLATION OF THE TERMS OF THIS SUBSCRIPTION AGREEMENT.
- 8.2 IN ADDITION TO ANY OTHER LIMITATIONS OF LIABILITY SET FORTH IN THIS SUBSCRIPTION AGREEMENT AND TO THE FULLEST EXTENT POSSIBLE UNDER APPLICABLE LAW, SERVICE RESELLER'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 THIS SUBSCRIPTION AGREEMENT EXCEED THE SUBSCRIPTION FEES PAID OR PAYABLE BY THE SUBSCRIBER UNDER THIS SUBSCRIPTION AGREEMENT IN THE TWELVE MONTH TERM IN WHICH THE INCIDENT GIVING RISE TO LIABILITY OCCURRED AND THE SERVICE RESELLER'S AGGREGATE LIABILITY ARISING OUT OF OR IN RELATION TO THIS 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 THE SERVICE RESELLER'S WILFUL VIOLATION OF THE TERMS OF THIS SUBSCRIPTION AGREEMENT. SUBSCRIBER SHALL NOT HAVE THE RIGHT TO TERMINATE THIS SUBSCRIPTION AGREEMENT UNLESS SUCH LOSS OR DAMAGE IS DUE TO SERVICE RESELLER'S WILLFUL VIOLATION OF THE TERMS OF THIS SUBSCRIPTION AGREEMENT.
- 8.3 Service Reseller shall not be liable for damages for any delay or default in performance of its undertakings of obligations under this 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 Service Reseller or the Service Providers, and Subscriber shall not have the right to terminate this 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, Service Reseller 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 this Subscription Agreement.

- 8.4 For the avoidance of doubt, Service Provider shall not have any liability of any kind, whether to Subscriber or any third party, under this Agreement and Subscriber's only recourse shall be against Service Reseller.

## 9 MISCELLANEOUS

- 9.1 Any notice or other communication to be given or served under or in connection with this Subscription Agreement shall be in writing and shall be sent by e-mail to the other party's contact person set forth in the agreement form.
- 9.2 Subscriber may not assign, mortgage, charge any of its rights or sub-contract or otherwise delegate any of its obligations under this Subscription Agreement, except with the written consent of Service Reseller.
- 9.3 This Subscription Agreement constitutes the entire agreement between the parties and supersedes any previous agreement and no modification of this Subscription Agreement shall be effective unless it is made in writing and executed by or on behalf of the parties unless otherwise set forth in this Subscription Agreement.
- 9.4 No failure or delay by any party in exercising any of its rights under this 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 this Subscription Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision of this Subscription Agreement.
- 9.5 All provisions of this 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

This 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 this Subscription Agreement shall be brought and resolved solely and exclusively in the state or federal courts in the state of Delaware. Should any legal fee be commenced in connection with this 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.

