

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 WILFUL 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.

