



## **Cognia® Terms of Use**

**Effective December 1, 2022**

These Terms of Use are applicable in addition to site [User Terms](#) and [General Website Terms of Use](#) and will apply to your access to and use of the Cognia Services (as defined below) as provided by Cognia, Inc. and its subsidiaries and affiliates (“**Cognia**,” “**us**,” or “**we**”). PRIOR TO ANY ACCESS OR USE OF THE COGNIA SERVICES, YOU (A “USER”) MUST COMPLETE A QUOTE, SALES ORDER, PROFILE, AND/OR REGISTRATION OR BE ADDED AS A USER BY YOUR COMPANY ADMINISTRATIVE USER.

CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS BEFORE ACCESSING THE COGNIA SERVICES OR ANY CONTENT OR MATERIAL AVAILABLE THROUGH THE COGNIA SERVICES. BY AGREEMENT TO TERMS, YOU (I) REPRESENT AND WARRANT THAT YOU ARE AT LEAST 18 YEARS OF AGE AND HAVE AUTHORITY TO BIND THE INDIVIDUAL AND ENTITY IDENTIFIED (“COMPANY”) AND (II) ACKNOWLEDGE AND AGREE THAT YOU HAVE READ, UNDERSTOOD AND ACCEPTED THESE TERMS OF USE AND THE SITE TERMS OF USE.

IF “USER” IS AN EDUCATIONAL INSTITUTE OR COMPANY, YOU AGREE THAT (i) YOU ARE AN EMPLOYEE, DIRECTOR, OR AUTHORIZED AGENT OF THE EDUCATIONAL INSTITUTE OR COMPANY; (ii) YOU HAVE CONFIRMED THAT EDUCATIONAL INSTITUTE OR COMPANY HAS AGREED TO BE BOUND TO THESE TERMS OF USE; AND (iii) THE EDUCATIONAL INSTITUTE OR COMPANY HAS AUTHORIZED YOU TO USE THE COGNIA SERVICES ON ITS BEHALF.

### **SCOPE OF TERMS AND COGNIA SERVICES**

**Cognia Services.** Cognia offers services, membership, subscriptions, and operates a web-based solution, including mobile applications, that enables users, including students, instructors, and administrators of educational institutions and companies, to access and use certain online applications, content, tools, functionality, products, and services and related courses, content and information (the “**Cognia Content**”) (collectively, the “**Cognia Services**”). The Cognia Services may be delivered to you through the Internet via your browser or application (mobile or otherwise).

Upon approval of the quote and sales order, and/or invoice for purchase of, Cognia Services and payment of applicable fees, Cognia grants you (as User, if registering as an individual) and your Company and its Authorized Users a limited, personal, non-exclusive, non-assignable, and non-transferable license to access and use the selected Cognia Services solely for non-commercial, personal or internal business use only. Users may access the Cognia Services in accordance with the access method authorized by Cognia and selected by that User. Neither Cognia nor its licensors warrant the accuracy or completeness of any information or content on the Cognia Services. You agree that you must evaluate, and bear all risks associated with, the use of any information or content, including any reliance on the accuracy, completeness, or usefulness of such information and content.

All Users agree to abide by the terms of the Acceptable Use Policy (referenced below) in connection with any access to and use of the features or content on the Cognia Services.



**Ownership and Grant of Rights for Cognia Services.** The Cognia Services and any supporting software and Cognia Content are the proprietary property of Cognia and/or its licensors and are protected by copyright, trademark and other intellectual property laws. Cognia (its vendor(s) or licensor(s)) owns and retains, to the fullest extent allowed by such laws, the right in copyright in the selection, coordination, arrangement, and enhancement of such Cognia Services. Use of the Cognia Services for any purpose other than as contemplated in these Terms of Use is a violation of Cognia's and/or its licensors' copyright and proprietary rights. If you commit such violation, your right to access and use the Cognia Services may be immediately terminated without notice and you must, at Cognia's discretion, return or destroy any copies of the content you have reproduced. You may download a reasonable amount of material from the Cognia Services for non-commercial, personal use provided you retain all copyright, trademark, and other proprietary notices contained in the material. You may not adapt, download, revise, broadcast, reverse engineer, duplicate, publish, modify, disseminate, display, perform, transfer, sub-license, or otherwise distribute any content or other material on the Cognia Services, unless specifically authorized by Cognia or these Terms of Use. No right, title, or interest in or to the Cognia Services or any content is transferred to you by reason of access to the Site or provision of Cognia Services. All rights not expressly granted herein are reserved by Cognia.

Unless otherwise indicated, trademarks that appear on the Cognia Services are trademarks of Cognia. All other trademarks not owned by Cognia that appear in the Cognia Services are the property of their respective owners, who may or may not be affiliated with, connected to, or contracted by Cognia. You agree not to display, disparage, dilute, or taint our trademarks or use any confusing similar marks or use our trademarks in such a way that would misrepresent the ownership of such marks. Any permitted use of our trademarks by you shall be to the benefit of Cognia.

**Additional Terms.** All use of the Cognia Services is subject to these Terms of Use and any additional terms agreed to by the parties in connection with the applicable Cognia Services, including, without limitation, any restrictions and disclaimers posted or made available at the time of use of the applicable Cognia Services and prohibitions on distribution of the Cognia Content.

**Additional Services.** These Terms of Use apply to the use of the Cognia Services available through the Cognia online services as well as any professional services, including, without limitation, assessment, accreditation and related services, provided by Cognia to any User unless set forth in a separate agreement between Cognia and the User which may not waive any rights of ownership of Cognia's content and services.

Please note that the Cognia Services may also provide links to other sites brought to you by Cognia. The privacy statement and terms of use of other Cognia sites may vary from these Terms of Use. Please review the privacy statements, terms of use and other policies or terms that may apply to other Cognia sites prior to your use of such sites.

**Changes in Terms of Use.** Cognia has the right to update or modify these Terms of Use at any time. We will provide you with notice of any changes in a manner we choose that complies with law, including, but not limited to, posting within the Service, or by electronic or conventional mail, messaging, or by any other means by which you may obtain notice. Such changes or modifications shall be effective immediately upon notice. Any use of the Cognia Services by you



subsequent to such notice shall be deemed to constitute your acceptance of such changes or modifications.

**Features and Changes to the Cognia Services.** We may from time to time make changes, delete, adapt, or make available additional features on the Cognia Services without any notice or obligation to the User, at Cognia's sole discretion. Those features and any changes or updates are subject to these Terms of Use and any other applicable terms and conditions associated with them on the applicable Cognia Services, as those may be updated from time to time.

**Privacy.** During the course of your use of the Cognia Services, you may be asked to provide certain information in order to provide you with the Cognia Services. Our information collection and use policies are set forth in our [Privacy Notice \(referenced herein\)](#).

**Feedback.** Cognia welcomes suggestions and comments regarding the Cognia Services. Any comments or suggestions submitted regarding Cognia Services or Cognia, either online or offline, will become Cognia's property upon their submission. This policy is intended to avoid the possibility of future misunderstandings when projects developed by Cognia might seem to others to be similar to their own submissions or comments.

**Copyright Policy.** We expect our Users to respect copyrights. We have adopted Copyright Policy in accordance with the Digital Millennium Copyright Act and other copyright law. Contact [legal@cognia.org](mailto:legal@cognia.org) with questions.

## **REGISTERING FOR COGNIA SERVICES**

**Account Registration.** The Cognia Services are available to individual users and individuals representing qualified educational institutions and companies. Upon receipt of registration information, we will initiate the enrollment process. Registration is subject to our confirmation. You acknowledge and agree that we reserve the right, at our discretion, to deny registration or refuse to activate an account, if you or your Company does not qualify for registration or has not fully completed the registration process. Each Company applying for the registration must determine an administrative user for the Company's account who will have the ability and responsibility to create, modify and disable certain Company's employees and/or representatives as Users of your Company's account (collectively, "**Authorized Users**") and enter information and engage in communications on behalf of the Company.

**Your Account.** You must provide current, complete and accurate information and must promptly update all information to keep your account(s) current, complete and accurate (such as a change in address, phone numbers, company information, e-mail, etc.), and must promptly notify us, if any information changes, including the authority of any administrative user or User to act on Company's behalf. You are fully responsible for ensuring that all information provided to us by you or any Users or otherwise posted under your account is accurate and complete and properly maintained. You are responsible for maintaining the security and confidentiality of all usernames and passwords that are created during the registration process and for all activities that occur under your Company account. Access to and use of password-protected and secure areas of the Cognia Services is restricted to Users only. We are not liable for any loss or damage arising from failure to comply with this provision. You acknowledge and agree that we have the right to suspend, disable or terminate your account at any time, in our sole discretion.



**Subscriptions and Payments.** Unless otherwise provided on a quote/sales order and invoice, all fees for the applicable Cognia Services will be charged immediately upon acceptance of terms **and are non-refundable.** Fees exclude applicable taxes. Initial fees for reoccurring products/services represent an introductory price and are subject to change. Cognia will notify you of any change in these types of sales as provided in these Terms of Use. Cognia Services are specific to a Company / User's account and may not be re-sold, bartered, brokered or otherwise transferred.

All invoices and remittance information will be sent via email. Further payment instructions are provided at [www.cognia.org](http://www.cognia.org) or <https://www.cognia.org/pay-online/>. If a payment is declined, you must provide alternative instructions or method of payment promptly or your Cognia Services and/or Content will be placed on hold -suspended which may lead to termination as defined herein.

## **USE OF COGNIA SERVICES**

**Uploads, Messaging Features, and Comments.** To the extent that the Cognia Services may provide you with an opportunity to participate in community board, messaging features, or upload comments, content, or material (collectively "Uploads"), BE ADVISED THAT COGNIA HAS NO OBLIGATION TO SCREEN, EDIT, OR REVIEW SUCH UPLOADS PRIOR TO THEIR APPEARANCE ON THE COGNIA SERVICES, and Uploads do not necessarily reflect the views or policies of Cognia. You acknowledge Cognia only acts as a passive conduit for the Uploads provided by Users, and, to the fullest extent permitted by applicable laws, in no event shall Cognia have any responsibility or liability for the Uploads (or the loss thereof for any reason) or for any claims, damages, or losses resulting from their use (or loss) and/or appearance on the Cognia Services. Please keep in mind that Uploads may be discoverable by, and viewable to, other users of the Cognia Services. Cognia reserves the right, but have no obligation, to monitor the Uploads and to reject, refuse to post, or remove anything which we consider in our absolute discretion to be offensive, ineffective or otherwise in breach of these Terms of Use or for any other reason as Cognia deems necessary or to suspend or terminate accounts or user IDs, to prohibit access to the Cognia Services, and to take technical and legal steps to disable access for users creating possible legal liabilities or acting inconsistently with the letter or spirit of these Terms of Use or our policies. Our decisions to reject, refuse to post or remove content (including messages or comments) posted by Users or to terminate accounts or user IDs are final.

BY SUBMITTING AN UPLOAD, YOU GRANT COGNIA THE ROYALTY-FREE, PERPETUAL, IRREVOCABLE, NON-EXCLUSIVE RIGHT AND LICENSE TO USE, REPRODUCE, MODIFY, ADAPT, PUBLISH, PERFORM, TRANSLATE AND DISTRIBUTE SUCH UPLOAD (IN WHOLE OR IN PART) WORLDWIDE AND/OR TO INCORPORATE IT IN OTHER WORKS IN ANY FORM, MEDIA OR TECHNOLOGY NOW KNOWN OR HEREAFTER DEVELOPED FOR THE FULL TERM OF ANY COPYRIGHT THAT MAY EXIST IN SUCH UPLOAD, WITHOUT THE NEED FOR ANY ACKNOWLEDGMENT OR COMPENSATION. YOU ACKNOWLEDGE THAT WE HAVE NOT PROMISED YOU ANY COMPENSATION FOR YOUR UPLOADS OR USE OF YOUR UPLOADS. YOU AGREE THAT WE ARE NOT REQUIRED TO SUBMIT TO YOU ANY MATERIALS THAT INCLUDE YOUR UPLOADS FOR REVIEW OR APPROVAL PRIOR TO



POSTING YOUR UPLOADS ON THE COGNIA SERVICES OR OTHERWISE, AND YOU HEREBY WAIVE ANY RIGHT TO INSPECT OR APPROVE THOSE MATERIALS.

If the Cognia Services permit you to upload third-party content for use with your use of the Cognia Services, you represent and warrant that prior to performing any such upload, you will secure all necessary rights to grant and will grant Cognia the right to make such third-party content available to Users in the same manner and to the same extent as the Cognia Content provided as part of the Cognia Services, and that such third-party content will not infringe any intellectual property or other rights of third parties. Additional terms and conditions may be presented through the user upload interface available on the Cognia Services which shall be in addition to, and not in lieu of, these Terms of Use.

You acknowledge that it may be possible for third parties to access, view, copy, and distribute your Uploads. If you desire to maintain certain content or information as confidential, secure, or proprietary, you should not provide that content or information as an Upload to the Cognia Services.

If you save Uploads as part of the Cognia Services with your account, we have the right to store those Uploads for access by you at a later date. We may delete Uploads at any time consistent with then-current Cognia policies and upon termination of your account. Uploads may become inaccessible or deleted for other reasons and you should not rely on Cognia Services for storage or archiving of Uploads.

### **ACCEPTABLE USE POLICY**

Without limiting the terms otherwise provided in the Site Terms of Use, the following is a partial list of what we expect you will and will not do while using the Cognia Services:

You agree that you will:

- Comply with applicable law and regulatory requirements;
- Provide accurate and truthful information; and
- Conduct yourself in a professional manner.

You agree that you will not (and will ensure that your Authorized Users will not):

- Provide false or misleading content or registration information, use the account, user ID, password, or personal information of another user or disclose your or another user's account information to others.
- post or transmit any infringing, libelous, defamatory, obscene, inflammatory, or profane material or any material that could constitute or encourage conduct that would be considered a criminal offense, give rise to civil liability, or otherwise violate any law.
- Transmit any "junk mail," "chain letters," or unsolicited mass mailing or "spamming" in connection with the Cognia Services.
- Violate the intellectual property or other rights of Cognia or any third parties, including any other educational institutions, including, without limitation, (i) copying, using, disclosing, or distributing our case studies, training materials, videos or other materials or (ii) copying or distributing whether directly or through third parties (such as search engines) our technology; or (iii) using the word "COGNIA" or our logos, or trademarks or logos of any third



parties without prior written consent of Cognia or the third-party owner of the trademark or logo, as applicable.

- Use any robot, spider, site search/retrieval application or automatic device to retrieve, index “data mine” or in any way reproduce or circumvent the navigational structure or presentation of the Cognia Services or its content.
- Disclose information that you do not have the consent to disclose (such as confidential information of others and your Company).
- Modify the content, programs or other materials on the Cognia Services or hack into or access Cognia servers or the website. Do not override any security feature or bypass or circumvent any access controls or use limits of the Cognia Services.
- “Frame” or “mirror” or deep link to any part of the Cognia Services.
- Impersonate another person, User or any Cognia staff, employee, or representative or imply that any statements you make, any content you provide, or your services are endorsed or approved by Cognia.
- Take actions to interrupt, damage, disable, overburden, interfere with or obstruct, or limit the functionality of, the Cognia Services, or any software, hardware or equipment.
- Post or Upload anything that contains software viruses, worms other harmful code, or any other contaminating or destructive devices or features.
- Post or exchange any information with other users that involves pricing, specific supply terms, or that would violate competition laws. Any communications with other users or business entities regarding specific business or sourcing engagements should be handled outside of the website.

**Representations and Warranties.** As a condition of your use of the Cognia Services, you warrant to Cognia that you will not use the Cognia Service for any purpose that is unlawful or prohibited by the Terms of Use. You agree not to obtain or attempt to obtain any materials or information not intentionally made available to you on the Cognia Services.

**Cancellation; Termination.** We may suspend or terminate, at our sole and absolute discretion, any User account or access to the Cognia Services if we (i) do not receive payment as invoiced or are unable to successfully charge an eligible payment method or (ii) believe the User has abused restrictions for the Cognia Services, acted inconsistently with these Terms of Use or the law, or acted in a manner harmful to Cognia. In the event that User commits a material breach of these Terms of Use (other than breach of its payment obligations, for which COGNIA may terminate an account immediately), COGNIA may terminate that User’s account on five (5) business days’ prior written notice to User, provided that User fails to cure such breach within such five (5) business day period. Termination by Cognia of a User account will result in cancellation of all associated benefits, and Cognia has no obligation to refund any fees following such termination by Cognia. Cognia shall be the sole arbiter in cases of suspected abuse, fraud or violation of these Terms of Use, and any decision it makes relating to termination or disabling of an account shall be final and binding.

Cognia reserves the right to cancel a User’s account or access to the Cognia Services for any reason with at least sixty (60) days prior written notice. Cognia further reserves the right at any time, and from time to time, to discontinue, temporarily or permanently, the Cognia Services or any part thereof. If Cognia terminates the Cognia Services or a User’s account (other than for cause as provided in the foregoing Section), at Cognia’s election, Cognia will either maintain the



Cognia Services until expiration of the applicable membership or services term or refund a pro rata portion of the fee for the remaining portion of the applicable membership or services term.

Users may cancel their subscription or membership to the Cognia Services by (a) providing Cognia with no less than sixty (60) days' prior written notice; with cancellation effective the earlier of one (1) year after User's initial term or the end of the then-current one (1) year renewal term. There will be no prorated refunds for any subscription or membership reoccurring services.

You agree that Cognia will not be liable to you or any third party for any modification, suspension, or discontinuation of the Service, or any part thereof. Upon termination for any reason, you must cease all access to the Service. All provisions of these Terms of Use as to limitation and disclaimer of warranties, limitation of liability, Cognia's ownership rights and your representations and indemnities shall survive termination.

**Third Party Products and Services and Websites.** You may have linked to the Cognia Services from a third-party website and the Cognia Services may provide links to other third-party websites or resources (collectively, "3P Sites"). Because we do not control such 3P Sites, you acknowledge and agree that Cognia is not responsible or liable for the content, products or performance of those 3P Sites, and you hereby irrevocably waive any claim against Cognia with respect to such 3P Sites. Cognia reserves the right to terminate any link at any time without notice. The inclusion of a link to such 3P Sites does not constitute or imply an endorsement, authorization, sponsorship, or affiliation by Cognia of that 3P Site, or any products or services provided therein. The information practices of those 3P Sites are not covered by the Terms of Use or any other policies or terms applicable to the Service. We recommend that you review any terms of use and privacy policy of those 3P Sites linked to the Service before providing any information to those websites or using their products and services.

Certain features of Cognia Services may be provided by third parties and the use of such features may be conditioned upon your agreement to such third parties' terms of use and privacy policies. You understand that these Terms of Use apply only to the parts of the Cognia Services that reside on Cognia's (or its service provider's) servers and not to those that reside on third-party servers or are not controlled or provided by Cognia. Cognia is not liable for any action or inactions related to communications, materials or content provided by any user of third-party.

PLEASE NOTE THAT THE USAGE TERMS, PURCHASE TERMS AND/OR PRIVACY POLICIES OF OTHER COGNIA AND THIRD-PARTY PRODUCTS AND SERVICES LINKED TO OR FROM THE COGNIA SERVICES MAY VARY FROM THE TERMS HEREIN SO PLEASE MAKE SURE TO CHECK THE TERMS AND POLICIES APPLICABLE TO SUCH OTHER PRODUCTS AND SERVICES PRIOR TO USE.

**Disclaimer of Warranties.** YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

(a) YOUR USE OF THE COGNIA SERVICES IS AT YOUR OWN RISK. THE COGNIA SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. YOU ACKNOWLEDGE AND AGREE THAT NO WARRANTIES OF ANY KIND, WHETHER



EXPRESS OR IMPLIED, ARE MADE BY COGNIA OR ITS LICENSORS OR SERVICE PROVIDERS AND COGNIA AND ITS LICENSORS AND SERVICE PROVIDERS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

(b) NEITHER COGNIA NOR ITS LICENSORS MAKE ANY WARRANTY THAT (i) THE COGNIA SERVICES WILL MEET YOUR REQUIREMENTS; (ii) THE COGNIA SERVICE WILL BE UNINTERRUPTED, AVAILABLE FOR ANY LENGTH OF TIME, SECURE, OR ERROR-FREE; (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE COGNIA SERVICES WILL BE ACCURATE OR RELIABLE; (iv) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE COGNIA SERVICE WILL MEET YOUR EXPECTATIONS; AND (v) ANY ERRORS OR DEFECTS IN THE COGNIA SERVICE WILL BE CORRECTED.

(c) ANY MATERIAL UPLOADED/DOWNLOADED OR OTHERWISE OBTAINED FROM THE COGNIA SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK; NEITHER COGNIA NOR ITS LICENSORS SHALL BE LIABLE, AND YOU WILL BE SOLELY RESPONSIBLE, FOR ANY AND ALL LOSS, OR CORRUPTION, OF DATA UPLOADED OR INPUTTED BY YOU THROUGH THE USE OF THE COGNIA SERVICES, AND ALL SERVICING, REPAIR, OR CORRECTION AND ANY DAMAGE TO YOUR HARDWARE AND SOFTWARE THAT MAY RESULT FROM THE USE OF THE COGNIA SERVICES.

**Limitation of Liability.** IN NO EVENT SHALL COGNIA OR ITS EMPLOYEES, AGENTS, LICENSORS, OR SERVICE PROVIDERS BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE OF DATA, OR OTHER INTANGIBLE LOSSES (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (i) THE LOSS OF DATA AND/OR THE USE OR THE INABILITY TO USE THE COGNIA SERVICES; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES RESULTING FROM ANY GOODS, DATA, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO THROUGH OR FROM THE COGNIA SERVICES; (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (iv) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE COGNIA SERVICES; OR (v) ANY OTHER MATTER RELATING TO THE COGNIA SERVICES.

Some jurisdictions do not allow the exclusion of certain warranties or the limitation or exclusion of liability for incidental or consequential damages. Accordingly, the limitations above may not apply to you.

**Indemnification.** You agree to indemnify and hold Cognia and its subsidiaries, affiliates, officers, agents, directors, licensors, contractors and employees harmless from any claims, actions, costs, liabilities, expenses and damages, including reasonable attorneys' fees and expenses, made against Cognia by any third party due to or arising out of your use of the Cognia Services, your connection to the Cognia Services, your breach of any representation, warranty or obligation, your violation of these Terms of Use, or your violation of any rights of another User.





Applicable law may prohibit government entities from agreement to indemnify or hold harmless another person or entity. Accordingly, the indemnification provision above may not apply to you.

**Acceptance of Responsibility.** THIS SECTION APPLIES TO GOVERNMENT AGENCIES PROHIBITED FROM AGREEING TO INDEMNIFY OF HOLD HARMLESS ANOTHER PERSON OR ENTITY BY APPLICABLE LAW AND ALL OTHERS. Contractor accepts responsibility for any and all loss, damage, cost, or expense, including but not limited to reasonable costs and expenses, applicable federal, state or local taxes (to the extent allowed by law), liabilities, penalties, fees, or any other payments due which arise out of or suffered through any act or omission of the Contractor or anyone acting on the Contractor's behalf or at the direction of the Contractor in the performance of the Consulting Services, the breach of any covenant or representation or certification contained herein (collectively the "Claims"), to the fullest extent permitted by applicable law. Without limited the foregoing, Claims shall include all actions, damages, costs, and expenses relating to any of the following, so long as the following are not a result of the willful acts of the Company: (i) damage to, discretion of, or loss of property or the injury to or death of any person arising out of or in connection with the Contractor's performance of its obligations and the Consulting Services hereunder; and (ii) the negligent or wrongful acts or omissions of the Contractor or its employees, agents, contractors, or anyone acting on the Contractor's behalf or at the direction of the Contractor.

### **COGNIA™ PRIVACY NOTICE**

Cognia, Inc.™ ("Cognia", "we", "us" or "our") understands you value the privacy of your information. This Privacy Notice (the "Notice") sets forth our privacy practices and policies and describes the type of information we collect about you, how and when we collect it, how we use it, with whom we may share your information, and your rights regarding our use of your information. This Notice applies to all information collected through your interaction or communication with us, whether electronic, written or oral; information collected on this website and through our mobile application (the "Site"); information collected through your interactions with us related to your use of our products and services (the "Services"); as well as any other information about you we may collect or receive from third parties and through your interactions with us through our online community, portals and networks which may connect users of Cognia's services to each other ("Learning Community").

From time to time, we may clarify, revise or update this Notice. This may include making changes to the way we collect, maintain and store information. If we make changes to this Notice, we will update the Effective Date at the top of this Notice. Changes to this Notice will be effective once they are posted.

This Policy does not apply to information collected or received through other means, to information collected by any third party, including websites or applications we may link to, or the collection, use and sharing of deidentified or anonymous data. Third-party websites and applications may be subject to their own privacy notices.

- Information We Collect
- How We Use Information



- Information Sharing and Disclosures
- Your Communication Choices
- Your Privacy Rights
- Children's' Privacy Rights
- Security
- Contact Us

### **Information We Collect**

We collect information from several sources. The information we collect depends on how you interact with our Site or Services.

### **Information You Provide**

We collect information that you provide to us when you interact with our Site or Services, through surveys, or through other communications. We may collect data from entities you have requested or authorized to provide information to us in connection with a Service. For example, we collect information when you:

- Purchase or request a Service;
- Register for, manage or update a Service;
- Manage your online account;
- Use the Site, Services or the associated resources and materials;
- Access other applications and services from the Site;
- Subscribe to newsletters or other communications from us;
- Provide feedback, request information, or otherwise contact us through the Site or Services;
- Participate in social media platforms where Cognia maintains a presence, such as Facebook, or when you make information available to us and others via social media or via forums, blogs, email lists, chat rooms or other similar technologies;
- Participate in our Learning Community, including by posting, responding to posts, participating in discussions or otherwise creating and uploading content to the Learning Community platform;
- Participate in surveys, studies or promotions;



- Act as an end-user of our Services as provided to a school, college, university, or other educational institution (the “Institution”) with which you may be affiliated;
- Conduct searches through the Site; and/or
- Otherwise share information about yourself with the Sites or through our Services, or authorize a third party to share such information about you with us.

We may collect the following information, including as reasonably required to complete a request, provide a Service, or complete a transaction on your behalf: first and last name, home or other physical address, telephone number, email address, other identifiers that permit an individual to be contacted physically or online, date of birth, data about transactions with us (such as Service purchase history), Institution name and address (if applicable), shipping options and instructions, employment and professional information, credit or debit card number and other financial information, race, disability status, voice recordings, or other information.

#### Information We Collect Automatically

We may collect information automatically using data collection technologies such as cookies, web beacons, pixel tags or other similar current and future technologies as they develop (the “Data Technologies”). We may have access to information automatically collected by Data Technologies across our Site, third-party websites and mobile applications, or as compiled by marketing and advertising partners.

When you download or use our mobile application or use mobile devices to access our Sites, we may receive information about your location and your mobile device by, for example, using satellite, cell phone tower or Wi-Fi- signals. This may include a unique identifier for your device, device settings, analytical information about how you use your mobile device and other information that may be stored on or accessed through your mobile device. In some cases, we may receive information from mobile applications not operated by us or from other devices connected to your mobile device.

Information collected automatically, including through Data Technologies, may include: your IP address and associated activity tracking; the type of computer or device you use; the type of browser and operating system you use; the date and time you access the Site; the address of websites you visit prior to or after visiting our Sites; the number of times you access our Sites; the pages viewed and features you access during your visit to our Sites; how long you viewed each page; responses to advertisements and promotions on the Sites, other websites and mobile applications; Cognia emails you open and links you click within those emails; data regarding your internet service provider or mobile carrier geolocation data (to the extent provided by you or your device); and inferences which we may gather relating to your preferences, attitudes, characteristics or behaviors.

#### Information from Your Institution

We may collect information about you from your Institution in compliance with applicable laws, by fair means and, where appropriate, with your knowledge or consent including if you are a student, test-taker, employee, or contractor of such Institution. That information may include a student’s name; parents’ names; addresses of students or families; a student’s ID number; a student’s



student number; a student's biometric record; your username and password, or credentials assigned to your Institution or to you by your Institution; other information, such as a student's date of birth, place of birth and mother's maiden name, other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty; or information requested by a person who the educational agency or institution reasonably believes knows the identity of the student to whom the education record relates.

### Information We Collect from Other Sources

We may collect information about you from other third-party sources, including from commercially available sources such as data brokers or other companies that collect or analyze information about consumers or users. Examples of information we receive from third-party sources include: (1) demographic information from data brokers and other sources to help anticipate consumer trends and needs; (2) information provided from sources you have authorized to share information with us, either on our Site or via third-party applications, devices, websites, or other digital interfaces; and (3) other similar types of information. We may also gather information from other third parties who maintain their own privacy practices and policies. We may combine information obtained from other sources with information we collect ourselves.

### How We Use Information

We may use information we collect to operate our business, including the following:

- for our everyday business purposes, such as providing Services, information you request and customer support;
- to evaluate your or your Institution's eligibility for Services;
- for special events, programs, surveys, promotions, some of which may have additional rules or provisions addressing how your information is used or shared;
- to price and develop new and existing Services or technology and analyze the effectiveness of Services, marketing trends, mobile applications and websites;
- to maintain the quality or safety of Services or technology which we may own, control or provide;
- to conduct internal research;
- to conduct studies for or on behalf of Institutions, including for the purposes of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction;
- to carry out an Institution's accrediting functions or process;
- to deliver content and marketing communications that we think may interest you, including ads or offers tailored to you based upon your browsing and usage history, both within this



Site and on other websites and mobile applications;

- to comply with the law, regulations and other legal obligations;
- to properly verify your identity, prevent fraud and enhance security;
- to audit and provide reporting relating to particular transactions and interactions, including online interactions you may have with us or others on our behalf or through our Learning Community;
- to allow you to utilize features and personalized content within our Sites when you grant us access to information from your device (e.g., contact lists, geolocation, etc.), including location-based services;
- to contact you, including via telephone, text or chat;
- to connect you with other users of our Services and sites through our Learning Community;
- for short-term, transient use including contextual customization of ads;
- to protect our rights, interests or property and the rights, interests or property of others; and/or
- for other purposes, as permitted by law or to which you, your Institution, or a student's parents' consent.

### **Information Sharing and Disclosure**

We may share the information that we collect about you to support our business. In some cases, and for some forms of information (e.g., regulated student information), our use will be limited as required by law. Generally, entities with which we share or disclose information may include the following:

#### Affiliates and Service Providers

We may share information with our affiliates and subsidiaries, service providers, data processors, third-party contractors, payment processors and others who perform services for us in connection with our Sites, Learning Community, or our businesses, to complete or confirm a transaction or series of transactions or to provide Services to you (e.g., your Institution or your employer, if you work at an Institution). In some cases, as permitted by law, we may share information with our affiliates to market their products and services to you.

#### Institutions

We provide Services to Institutions. In connection with that activity, we may exchange information about you, including with your Institution.

#### Other Entities



We may share information as part of an actual or proposed merger, acquisition or other sale or transfer of all or part of our assets or business. To the extent you register for or purchase a Service online, we may share your information with all the entities you have authorized us to share information with or request information from.

#### Government Entities, Regulators, and Law Enforcement

We may disclose information about you to third parties under certain circumstances, such as in connection with illegal activity on the Sites, or to respond to a subpoena, court order or other legal process. We may release information that we collect to law enforcement, government officials, auditors, professional advisors, or third parties as required or permitted by law, to protect our rights and the rights of others, or in our discretion to prevent fraud, harm or loss to you, ourselves or others.

#### Social Media

We may include widgets, tool bars, or icons from social media providers on our Sites that allow you to interact or share information with them, and these social media networks may collect information about your browsing on the pages of our Sites. Such collection may occur even when you do not click on or otherwise activate the widget, tool bar, or icon. These and other entities may also collect information about your activities via Data Technologies, discussed above. The privacy policy of the relevant social media network controls the collection, use and disclosure of all information collected by that social media network.

#### Marketing, Analytics, and Advertising Partners

Third parties may collect personally identifiable information about your online activities over time and across different Web sites when you use our Services. We may share information with marketing providers, analytics providers and advertising networks which deliver targeted advertisements to consumers, including advertisements with links to Cognia websites, and which generate related statistics and metrics. These partners may utilize information collected through a variety of Data Technologies to provide advertising placement, customization, auditing, research and reporting for us and other advertisers.

#### Your Choices

You may make certain choices about how we communicate with you or the information we collect. For example, you may: elect not to provide your information; adjust your device or browsing settings to disable, prohibit or turn off Data Technologies or geolocation or location services features; and adjust your device's settings regarding the use of advertising identifiers. (Please note that when you adjust settings or delete Data Technologies in one device or browser, those same settings or deletions may not be effective on other devices or browsers.) As of the effective date above, we do not respond to Do Not Track signals or other mechanisms that provide consumers the ability to exercise choice regarding the collection of personally identifiable information about an individual consumer's online activities over time and across third-party websites. If you choose to limit collection of your information in these ways, certain Site or mobile application features may not function properly, or at all, and certain Services may not be available to you. If you do not want to receive marketing emails from us, you can follow the unsubscribe link provided in those emails.



## **Your Privacy Rights**

### **Accessing Your Information**

If you created an online account, you could log in to that account to access all or some of the information you previously provided.

### **Correcting Your Information**

If you believe that the information we maintain about you is inaccurate, you may request that we correct or amend the information by contacting us as indicated in the Contact Us section below. In many cases, you may also access your online account or contact your Institution to correct your information, as appropriate. We may limit our response to your requests as permitted by applicable law.

### **For California Residents**

If you are a resident of the State of California, pursuant to California Civil Code Section 1798.83 permits you to request certain information regarding our disclosure of your personal information to third parties for their direct marketing purposes during the preceding calendar year. Please contact us at the email provided in "Contact Us" below to make such a request. Additionally, if you are a resident of the State of California under the age of 18 and you interact with our Site, Services or Learning Community, through surveys, or through other communications, you may request that we remove content or information that you have posted to our Site or Learning Community. You may request removal by contacting us at the email provided in "Contact Us" below. PLEASE NOTE that such request or subsequent removal of content does not ensure complete or comprehensive removal of such content or information posted, as, for example, some of your content posted publicly may have been copied or reposted by another user. Your content or information may remain on our servers in some form, while no longer visible nor accessible to other users of our Site, Services or Learning Community.

## **Children's Privacy Rights**

If an Institution is providing us information relating to children of any age, we rely solely on those Institutions to collect appropriate parental consent, as required. Therefore, we do not knowingly collect any information of children under the age of 13 unlawfully or without parental consent. Additionally, Cognia does not direct marketing communications to students or individuals under the age of 18.

## **Security**

We use administrative, technical and physical security measures designed to safeguard your information against loss, theft, unauthorized use, disclosure or modification. Of course, despite these measures, no network or system is entirely secure, and we cannot guarantee the security of networks and systems we operate or that are operated on our behalf.

## **Contact Us**



If you have any questions or comments about this Notice, please contact us by email at [legal@cognia.org](mailto:legal@cognia.org). Cognia, Inc. 9115 Westside Parkway, Alpharetta GA 30009.

**Notices and Messages.** You agree that we may provide notices and messages to you about the Cognia Services in the following ways: (1) within the applicable applications or platforms, or (2) in accordance with the contact information you provided us (e.g., email or physical address).

**General Information; Governing Law.** These Terms of Use constitute the entire agreement between you and Cognia, govern your use of the Cognia Services, and supersede any prior agreements between you and Cognia concerning the Cognia Services. You also may be subject to additional terms and conditions that may apply when you use affiliated services, third-party content or third-party software. These Terms of Use and the relationship between you and Cognia will be governed by the laws of the State of Georgia, without regard to its conflict of law provisions. You and Cognia agree to submit to the personal and exclusive jurisdiction of the courts located within the County of Fulton, State of Georgia. Failure of Cognia to exercise or enforce any right or provision of these Terms of Use shall not constitute a waiver of such right or provision. If any provision of these Terms of Use is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of these Terms of Use remain in full force and effect. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Cognia Services or these Terms of Use must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**Notice for California Users.** Under California Civil Code Section 1789.3, California users of the Cognia Services are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 400 R Street, Suite 1080, Sacramento, California 95814, or by telephone at (916) 445-1254 or (800) 952-5210.

**How to Contact Us.** For questions or concerns regarding these Terms of Use or the Cognia Services, please contact us via email at [legal@cognia.org](mailto:legal@cognia.org) or by mail as follows:

Cognia, Inc. Attn: Legal Department, 9115 Westside Parkway, Alpharetta, GA 30009.