

# Cognassist - Terms and Conditions (Terms)

## PARTIES

- (1) **COGNASSIST UK LIMITED** incorporated and registered in England and Wales with company number 12159846 whose registered office is at **Cognassist Limited, c/o RMT Accountants and Business Advisers Limited, Gosforth Park Avenue, Newcastle-upon-Tyne, Tyne and Wear, NE12 8EG (Cognassist)**
- (2) **The Customer**

## BACKGROUND

(A) Cognassist has developed certain software and a Cognassist Platform which it makes available to the Customer.

(B) The Customer wishes to use Cognassist's Services.

(C) Cognassist has agreed to provide and the Customer has agreed to take and pay for Cognassist's Services subject to the terms and conditions of this agreement.

### 1. Definitions and Interpretation

1.1 The definitions and rules of interpretation in this condition apply in these Terms:

**"Access" or "Accessing"** accessing, Using, viewing the content of or otherwise obtaining information from the Cognassist Platform;

**"Accounts"** the accounts created by Cognassist for use of the Cognassist Platform, by Authorised Users;

**"Administrator"** the administrator appointed by Customer pursuant to condition 3.3 who shall be granted access to an administration Account by Cognassist and who shall have the User and administration rights as set out in the Services Plan;

**"Authorised Users"** means Administrators, Employee Users and End Users;

**"Business Day"** a day (other than a Saturday, Sunday or public holiday in England) when banks in London are open for Business;

**"Charges"** the charges that the Customer shall pay to Cognassist in consideration for the Services, as detailed in the Services Plan and subject to adjustment in accordance with this Contract;

**"Cognassist Data Retention Policy"** means the policy of that name as may be amended from time to time;

**"Cognassist Platform"** means our Cognassist software platform available at the Website;

**"Commencement Date"** means the commencement date of this Contract as set out in the Services Plan;

**"Confidential Information"** information that is proprietary or confidential and is either clearly labelled as such or otherwise identified as Confidential Information and shall include all information relating to the parties' trade secrets, clients, Business plans, strategies, services, forecasts and forecast assumptions, finances, charging rates and pricing plans, costs, profit or margin information, employees, assets, revenues and any other income, rebates, methods of operation, intellectual property, technology (including databases and networking systems), data, information relating to systems or controls and information designated in writing or orally as being confidential, and all information or materials derived therefrom or based thereon;

**"Contract"** means the contract between Customer and Cognassist for the provision of the Services, which consists of the Services Plan, and these Terms. If there is any

conflict or ambiguity between the Services Plan and these Terms, the Services Plan shall have priority over the Terms.

**"Data Protection Laws"** means:

- (a) the UK GDPR.;
- (b) the Data Protection Act 2018;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003;
- (d) any laws which implement any such laws; and
- (e) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing and any other laws which relate to the processing or protection of personal data;

**"Deliverables"**

means any reports, analyses, statistics, benchmarking information and data reviews provided to Customer as part of the Services as described in the Services Plan, including but not limited to the End User Reports;

**"Employee User"**

means the Customer's employees, contractors and agents who are granted access as "employee Users" or "employee managers", with each such User being entitled to the Access rights set out for that type of User within the Services Plan (such Users might also be referred to interchangeably as "tutors" or "tutor managers");

**"End Date"**

means the end date for an End User's Account as specified within the Cognassist Platform;

**"End User"**

means Customer end Users (who may be employees, candidates, or learners) who may be invited by an Employee User to access the Account to access Services such as cognitive profiling screening assessments and/or other tests that may from time to time be available, and such User being entitled to the Access rights set out for an "End User" within the Services Plan;

**"End User Report"**

means any reports generated by the Cognassist Platform in relation to individual End Users in relation to tasks completed by those End Users on the Cognassist Platform, including but not limited to in relation to any cognitive assessment;

**"Excluded Losses"** means:

- (a) any loss of profits, sales, Business, or revenue;
- (b) loss or corruption of data, information or software;
- (c) loss of Business opportunity;
- (d) loss of anticipated savings;
- (e) loss of goodwill; and
- (f) any indirect or consequential loss;

**"Event Outside Our Control"**

means any act or event beyond our reasonable control, including, without limitation, power failures, internet failures, system failures, failure of public or private telecommunications networks, hack or attack on the Cognassist Platform including a distributed denial of service attack or man in the middle attack, strikes, lock-outs or other industrial action by third parties, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, pandemic, epidemic or other natural disaster;

**"Initial Term"** means the initial term of this Contract as specified in the Service Plan, and in the absence of any initial term specified in the Service Plan the initial term shall be five (5) years;

**"Input Data"**

means all data and information entered into the Cognassist Platform by Customer or any Authorised Users, including the input data in relation to End User Reports;

**"Insolvency Event"** means (a) a petition is filed, notice is given, a resolution is passed, or an order is made for or in connection with the winding up of the Defaulting Party; (b) an application is made to court (or an order is made) for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed in respect of the Defaulting Party; (c) a receiver, administrative receiver or manager is appointed over the Defaulting Party and/or all or any of the assets of the Defaulting Party or a person becomes entitled to appoint such a receiver, administrative receiver or manager; (d) the Defaulting Party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986; (e) the Defaulting Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors; (f) the Defaulting Party suspends or threatens to suspend payment of its debts or (being a company or LLP) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (as if the words "it is proved to the satisfaction of the Court" did not appear in sections 123(e) or 123(2) of the Insolvency Act 1986) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so in either case within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing applies; (g) if the Defaulting Party is an individual, the Defaulting Party is the subject of a bankruptcy petition, application or order; (h) the Defaulting Party suspends, ceases or threatens to suspend or cease carrying on a substantial part of its Business; or (i) any event occurs, or proceeding is taken, with respect to the Defaulting Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events referred to above.

**"Intellectual Property Rights"** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, Business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

**"Neurodiversity Training"** means training in the topic of neurodiversity and cognitive diversity provided to Customer during any implementation and on-boarding as a Customer as may be amended or updated by Cognassist from time to time, and as set out on our Website <https://cognassist.com/neurodiversity-library> as amended from time to time;

**"Order"** means Customer order for the Services, as set out in the Services Plan;

**"Privacy Policy"** means our privacy policy which can be accessed at <https://cognassist.com/privacy-policy>;

**"Prohibited Activity"** means the activities set out in condition 4.1

**"Renewal Period"** shall have the meaning given to it in condition 14.1;

**"Services"** means the provision of the Software together with any other services that Cognassist provide or agree to provide Customer, as detailed in the Services Plan together with any Deliverables;

**"Services Plan"** means the detailed plan describing the Services to be provided by Cognassist to Customer, as agreed in writing between Customer and Cognassist including the Special Terms (if any), and taking the form of our standard "Service Plan";

**"Software"** means the software accessed via the Cognassist Platform as described in the Services Plan;

**"Software Licence Fee"** the fee that Customer will pay to Cognassist as set out in the Services Plan, in consideration for the use of the Cognassist Platform;

**"Special Terms"** means the terms set out in the Service Plan and described there as Special Terms;

**"Specification"** means the specification for the Services and the Cognassist Platform as set out on the Platform;

**"Subscription Term"** means the Initial Term together with any subsequent Renewal Periods;

**"Supplier Personnel"** all of our employees, workers, contractors, agency workers, consultants and directors;

**"Terms"** the terms and conditions set out in this document including any Special Terms set out in the Services Plan;

<b>"Services Producers Price Index"</b>	means the index published by the UK government which provides information on price changes for service industries;
<b>"UK GDPR"</b>	means the retained EU law version of the General Data Protection Regulation (EU) 2016/679 (GDPR) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);
<b>"VAT"</b>	value added tax chargeable under English law for the time being and any similar additional tax;
<b>"Website"</b>	our website at <a href="http://www.cognassist.com">www.cognassist.com</a> , or such other website as notified to Customer from time to time, through which the Cognassist Platform is to be provided; and
<b>"Year"</b>	means each successive period of twelve (12) months from the Commencement Date.
1.2	Condition headings shall not affect the interpretation of this Contract. References to conditions are to the of these Terms. References to clauses are to the conditions of these Terms.
1.3	A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
1.4	Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular, and a reference to a statute or statutory provision is a reference to it as amended, extended or re- enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
1.5	A reference to "writing" or "written" includes e-mail but not faxes.
1.6	Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 Services Plan and Contract**

- 2.1 Any Order constitutes an offer by Customer to purchase the Services in accordance with these Terms including any Special Terms. An Order shall only be deemed to be accepted and this Contract formed, when Cognassist send Customer a copy of the Services Plan signed by Cognassist in accordance with this clause.
- 2.2 The Services Plan shall be agreed in the following manner:
  - 2.2.1 Customer will request a Services Plan and provide Cognassist with all information that Cognassist may request in order to prepare a draft Services Plan.
  - 2.2.2 Cognassist will, as soon as possible, provide Customer with a draft Services Plan, setting out the Software and Services to be provided, and an estimate of its Charges, and any applicable estimated dates and timetable for providing the Services; and
  - 2.2.3 Cognassist will discuss the draft Services Plan with Customer, and when it has been agreed Cognassist will prepare a final version. Customer will sign the final version of the Services Plan and return it to Cognassist.
- 2.3 Any draft Services Plan does not constitute a contractual offer that is capable of acceptance, and this Contract will only come into existence when Cognassist countersign the Services Plan signed by Customer.
- 2.4 This Contract for Customer access of the Cognassist Platform will commence as at the Commencement Date, and Customer will be responsible for the Charges for the Cognassist Platform with effect from the Commencement Date.
- 2.5 This Contract shall commence on the Commencement Date and shall remain in force until it expires or is terminated in accordance with these Terms.
- 2.6 This Contract constitutes the entire agreement between Customer and Cognassist. Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Cognassist which is not set out in this Contract.
- 2.7 Any demonstrations, written materials or drawings, descriptive matter or advertising issued by Cognassist, and any descriptions or illustrations contained in our promotional materials or websites, or illustrations of

funding potential and return on investment, are issued or published for the sole purpose of giving an approximate idea of the Services. They shall not form part of this Contract or have any contractual force.

2.8 These Terms apply to this Contract to the exclusion of any other terms that Customer seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

### 3 Creation of Authorised Users and Access

3.1 Subject to the use restrictions and the other conditions of this Contract, Cognassist hereby grant Customer a non-exclusive, royalty free, non-transferable right to permit Customer's Authorised Users to Access the Cognassist Platform, and to allow Customer to make use of the Deliverables, during the Subscription Term, subject to the following:

3.1.1 **End User Reports:** Customer may keep these in perpetuity to the extent Customer are able to in accordance with Data Protection Laws and share these with:

3.1.1.1 relevant End Users as needed;

3.1.1.2 any relevant government department or other statutory organisations, where the Customer is legally required to do so; and

3.1.1.3 sector stakeholders which shall be detailed in the Services Plan, or other sector stakeholders with our prior written consent;

3.1.2 **Employee User training materials:** Customer is entitled to access these materials only during the Subscription Term; and;

3.1.3 **Management reports:** Customer is entitled to access, print and store these reports on Customer's own systems only during the Subscription Term.

3.2 In the event that Customer is deemed to be a Processor of any Personal Data comprised in the Deliverables, Customer shall comply with the following conditions, where references to "Cognassist" in those conditions shall be deemed to mean Customer, and references to "Customer" or "Customer's" in those clauses shall be deemed to mean Cognassist: condition 17.1, 17.2, 17.6, 17.7, 17.8, 17.9, 17.11, 17.12, 17.13 and clause 17.16. Customer shall provide to Cognassist in writing, before commencing any processing of that Personal Data, details of the subject matter, duration of the processing, nature and purpose of the processing, categories of data and data subjects.

3.3 All Authorised Users, apart from End Users, must complete the Neurodiversity Training provided by Cognassist before they are entitled to Access the Cognassist Platform. The content and requirements of the Neurodiversity Training are set out in the Services Plan. The Charges for Neurodiversity Training are set out in the Services Plan in respect of initial Users as at the Commencement Date, but for all future Authorised Users, the Charges will be our standard training charges as in force as at the date of delivery of the training.

3.4 The functionality, rights and limitations of Access, and process for creation and transfer of Authorised Users are set out in the Services Plan and are in each case based on the type of Authorised User. Customer is responsible for ensuring that each Authorised User complies with the rights and limitations of Access as set out in the Services Plan.

3.5 The Administrator will have the functionality to create, manage and delete the Accounts of each of Customer's Authorised Users and the Administrator must contact Cognassist directly if there are any queries, issues or errors in regard to that administration role. The restrictions on the number of Authorised Users that Customer's Administrator may create, and that may access the Cognassist Platform are set out in the Services Plan.

3.6 All End User accounts will be accessible by End Users until the End Date specified for that End User within the Cognassist Platform. In respect of all other Authorised Users, Customer shall ensure that these accounts are only accessed whilst the relevant individuals remain employed by or contracted to Customer.

3.7 Customer will take all reasonable steps to ensure that all Authorised Users keep their login details (including any Usernames and passwords) confidential, and Customer will immediately inform Cognassist should Customer become aware that any Usernames or passwords have been lost, stolen or accessed by a third party without consent. Customer will ensure that each Authorised User shall keep a secure password for the Cognassist Platform that is not used by that Authorised User elsewhere, and that such password shall be changed no less than monthly and that each User shall keep their password confidential.

### 4 Use of the Cognassist Platform

4.1 Customer shall, and shall procure that each of Customer's Authorised Users shall, refrain from carrying out any of the following activities, each of which constitutes a "**Prohibited Activity**":

4.1.1 transmit, install, upload or otherwise transfer any virus, advertisement, communication, or other item or process to the Cognassist Platform;

- 4.1.2 copy, modify or reverse engineer, disassemble, redistribute, republish, alter, create derivative works from, assign, licence, transfer or adapt any of the software, information, text, graphics, source code or HTML code or other content available on the Cognassist Platform;
- 4.1.3 transfer the content of the Cognassist Platform to another person; “frame”, “mirror”, “in-line link”, or employ similar navigational technology; or “deep link” to the Cognassist Platform;
- 4.1.4 violate or attempt to violate our security mechanisms, access any data or server Customer are not authorised to Access or otherwise breach the security of the Cognassist Platform or corrupt the Cognassist Platform in any way;
- 4.1.5 upload, download, display, publish, perform, create derivative works from, transmit, or otherwise distribute information or content in violation of a third party’s Intellectual Property Rights;
- 4.1.6 misrepresent Customer’s identity or personal information in any email so that the email appears to be generated by Cognassist;
- 4.1.7 post obscene, harassing, defamatory, filthy, violent, pornographic, abusive, discriminatory, racially or ethnically offensive, threatening, objectionable, infringing or illegal material on the website;
- 4.1.8 post a communication that advocates or encourages criminal conduct or conduct that may give rise to civil liability;
- 4.1.9 access all or any part of or use the Cognassist Platform, Services or Deliverables in order to build a product or service which competes with the Cognassist Platform or Services;
- 4.1.10 license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit the Cognassist Platform, Services or Deliverables except as explicitly set out in these Terms;
- 4.1.11 advertise or otherwise solicit funds, goods the Services, or any other services on the website; or
- 4.1.12 provide any commercial hosting service with Access to the website and/or the content on the website.

4.2 Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Cognassist Platform, the Services and/or the Deliverables and, in the event of any such unauthorised access or use, promptly notify Cognassist of this.

4.3 Customer agree to defend, indemnify and otherwise hold harmless Cognassist and its officers, directors, agents, employees, successors and assigns from and against any cause or action or claim, including all professional fees and other costs reasonably incurred by Cognassist, related to or arising from the User’s Prohibited Activity or other improper or illegal use of the Cognassist Platform, or breach of these Terms.

4.4 To ensure that End Users of the Site do not engage in Prohibited Activities, Cognassist reserve the right to monitor use of the Cognassist Platform and reserve the right to revoke or deny Access to the Services to any person or entity whose use of the Services suggests Prohibited Activity. Access of the information available on the website beyond that of normal patterns of use that suggests systematic copying of the materials constitutes abuse of the Services and will result in revocation or denial of Access to the Services. The terms “normal patterns” and “abuse” shall be determined solely by Cognassist.

## **5. Platform Availability**

5.1 Cognassist will use reasonable endeavours to provide an uptime service availability of 98% in respect of the availability of the Cognassist Platform. This service availability refers to an access point on our hosted provider’s network and excludes any availability issues caused by Customer’s own internet service provider and access to the internet. Availability does not include unavailability for maintenance referred to in conditions 5.3 or 5.4, save where this is unscheduled non-emergency maintenance in normal Business hours, and Customer or third party caused outages or disruptions (save for third parties sub- contracted by Cognassist), or outages or disruptions attributable to force majeure events.

5.2 All availability measurements will be carried out by Cognassist and will be calculated on a calendar month basis. Availability in a calendar month is based on the monthly average percentage availability, calculated at the end of each calendar month as the total actual uptime minutes divided by total possible uptime minutes in the month.

5.3 Cognassist may from time to time need to suspend Customer’s access to the Cognassist Platform to undertake essential updates and maintenance. Except for emergency maintenance, these shall not be performed during normal Business hours (being 9am to 5pm on Business Days).

5.4 Cognassist may carry out emergency maintenance or unscheduled maintenance at any time, provided that Cognassist will use reasonable endeavours to give Customer at least 24 hours' notice of unscheduled maintenance.

5.5 Customer must use the latest version of the Software and accept all updates to the Software. Cognassist do not customise the Software to specific Customers.

## **6. Our obligations**

6.1 Cognassist shall supply the Services to Customer in accordance with the Services Plan and the Specification in all material respects in accordance with the terms of this Contract.

6.2 Cognassist will use reasonable endeavours to provide the Services in accordance with the Specification, and within any performance dates specified in the Services Plan. Customer acknowledges that any performance dates for the Services are only estimates.

6.3 In the event that the Services do not comply with the provisions of condition 6.1, Cognassist will, at our expense, use reasonable commercial endeavours to correct any such non-conformance promptly or provide Customer with an alternative means of deriving performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of condition 6.1.

6.4 Notwithstanding condition 6.1, Cognassist do not warrant:

6.4.1 that the information within our Cognassist Platform, Services or Deliverables is accurate, complete or complies with any particular law or regulation;

6.4.2 that Customer's access to the Service will be uninterrupted, error- free, virus free or completely secure.

6.5 In the event of system outage Cognassist shall use reasonable commercial endeavours to restore the system and any lost or damaged Input Data within twelve (12) hours, from the latest back-up of such Input Data, maintained by Cognassist in accordance with our data security procedure. Customer acknowledges that this is Customer's sole and exclusive remedy against Cognassist for any loss or damage to Input Data and Customer also acknowledge that any back-ups of the system or Input Data that Cognassist carry out shall only be retained for seven (7) days from the date of such back-up.

6.6 Customer will not have any ability to cancel any Services set out in the Service Plan (save where this Contract is terminated in accordance with its terms).

6.7 Customer may use the Services, including the Software, to support Customer's own Business purposes and commercial objectives. Customer understands and accept that Cognassist can provide no advice in relation to the express purposes for which Customer intends to use the Services and the Software, and Cognassist do not warrant that any of the Services will meet any specific commercial or Business objectives. Cognassist shall not be liable for any reliance Customer may place upon the Cognassist Platform, Services or Deliverables for any particular commercial purpose or outcome, including any reliance upon the Cognassist Platform, Services or Deliverables being successful in enabling Customer to obtain any grant of financial support and/or funding from the government.

6.8 Cognassist provide no warranty that user hardware, software, telecommunications equipment and/or internet service is compatible or sufficient to access the Services, and Customer are responsible for ensuring that Customer's network and systems are sufficient for these purposes.

6.9 Cognassist have attempted to provide accurate information on the Cognassist Platform and through our Services, but Cognassist make no guarantee or warranty, express or implied, as to the reliability, accuracy, timeliness or completeness of that information and assume no responsibility for any errors or omissions therein.

6.10 Customer expressly acknowledges that the Services are only one of many types of assessments that together may be useful in obtaining potential financial support and/or funding for End Users. However, Cognassist shall not be responsible or liable in any way to Customer or any End User for any lack of or failure to obtain any potential financial support and/or funding for End Users or for any clawback by the Government of any financial support or funding provided to Customer or the End Users.

## **7. Customer's Obligations**

7.1 Customer shall:

7.1.1 ensure that the terms of the Order are complete and accurate;

- 7.1.2 co-operate with Cognassist in all matters relating to the Services;
- 7.1.3 provide, in a timely manner, such Input Data and other information as Cognassist may require, and ensure that it is accurate in all material respects;
- 7.1.4 provide Cognassist with such information and materials as Cognassist may reasonably require in order to supply the Services, and ensure that such information is accurate in all material respects;
- 7.1.5 if any of the information given to Cognassist by Customer when signing up for the Services changes, including changes to Customer's payment details, immediately inform Cognassist of all such changes;
- 7.2 Customer acknowledges that Cognassist may collect, store and collate any anonymised Input Data, End User Reports, any other Deliverables and any usage data of the Cognassist Platform or Software, and use the same to analyse the use of the Cognassist Platform, Software and Services to obtain results and/or improve the same.
- 7.3 Customer hereby grants Cognassist a non-exclusive, non-transferable, irrevocable, worldwide, royalty-free, perpetual licence to use any data provided to Cognassist or collected by Cognassist pursuant to condition 7.2 for the purposes of analysis of outcomes and/or performance of the Cognassist Platform, the Software and the Services and the impact on learners.
- 7.4 If the performance by Cognassist of any of our obligations under this Contract is prevented or delayed by any act or omission by Customer or failure by Customer to perform any relevant obligation (Customer default):
  - 7.4.1 Cognassist shall without limiting our other rights or remedies have the right to suspend Customer's Access to the Services until Customer remedy the Customer default, and to rely on the Customer default to relieve Cognassist from the performance of any of our obligations to the extent the Customer default prevents or delays the performance by Cognassist of any of our obligations;
  - 7.4.2 Cognassist shall not be liable for any costs or losses sustained or incurred by Customer arising directly or indirectly from the failure or delay of Cognassist to perform any of our obligations in accordance with this condition 7.4; and
  - 7.4.3 Customer shall reimburse Cognassist on written demand for any costs or losses sustained or incurred by Cognassist arising directly from the Customer default.

## **8. Not used.**

## **9. Access to Services/Modification of Content**

- 9.1 Cognassist reserve the right, in our sole discretion, to change, modify or discontinue any aspect or feature of the Cognassist Platform and our Service. Such changes, modifications, additions or deletions will be effective immediately upon notice thereof, which notice may be made by posting such changes on the website or inclusion within the Service. Any changes or modifications made by Cognassist pursuant to this condition 9.1 will have no material negative impact upon the functionality of the Cognassist Platform or Services as against the Specification.
- 9.2 Customer are responsible for ensuring that End Users have sufficient and compatible hardware, software, telecommunications equipment and internet service necessary for use of any of the Services.
- 9.3 Customer acknowledge and agree that Cognassist may be required to alter passwords or other access codes, access numbers or the technical specification associated with the Services for operational reasons.

## **10. Deliverables and Reports**

- 10.1 Cognassist hereby grants Customer a limited, non-exclusive, non-transferable licence to use the Software and the Deliverables during the Subscription Term, for use for internal purposes within Customer's organisation only. Except as stated in condition 3.1.1, nothing in this Contract shall give Customer any rights to use the Deliverables following termination or expiry of this Contract.
- 10.2 Customer shall ensure that all relevant trademarks and acknowledgments of our rights in and to the trademarks and any authorship of the Deliverables shall not be removed from any of the Deliverables.
- 10.3 Where Customer downloads copies of any of the Deliverables from the Cognassist Platform, Customer will ensure that all Deliverables, are stored safely and securely and accessed only by those individuals within Customer's organisation that require access for the purposes of assessment.

10.4 In respect of End User Reports, Cognassist will retain those reports for a period of six (6) months from the End Date which is attributed to that End User on the Cognassist Platform. With effect from expiry of this six (6) month period, Cognassist will irrevocably delete the End User Reports, save that Cognassist shall retain certain of the anonymised, background information from that report for our own purposes. To the extent that Customer require access to End User Reports beyond the expiry of this six (6) month period, then Customer are responsible for obtaining and retaining Customer's own copies.

## **11. Intellectual Property Rights**

11.1 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by Cognassist, including in the Cognassist Platform and the Deliverables, and all other outputs of the Services. Except as expressly set out herein, these Terms do not grant Customer any rights to, or in any Intellectual Property Rights including but not limited to patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights in relation to the Services, the Deliverables or the Cognassist Platform.

11.2 Customer acknowledge that, in respect of any third party Intellectual Property Rights, the use by Customer of any such Intellectual Property Rights is conditional on Cognassist obtaining a written licence from the relevant licensor on such terms as will entitle Cognassist to license such rights to Customer, and Cognassist hereby warrant that Cognassist have all such rights and licenses in place so as to allow Cognassist to licence the same to Customer.

11.3 Customer agrees that it will not copy, modify, reverse engineer, decompile or otherwise endeavour to obtain the source code of the Cognassist Platform, media, plain text or materials contained on the Cognassist Platform.

11.4 Customer grants to Cognassist a non-exclusive, non-transferable, worldwide, royalty-free, perpetual licence to use any of Customer's trademarks and/or logos on any of the Deliverables, in any joint marketing or advertising materials, and in any testimonials Customer provide to Cognassist.

11.5 Cognassist shall indemnify Customer against any claim that the Services, Deliverables or use of the Platform infringe any United Kingdom patent, copyright, trade mark, database right or right of confidentiality, provided that Customer give Cognassist prompt notice of any such claim, take reasonable steps to mitigate Customer's losses and provide Cognassist with reasonable co-operation in the defence and settlement of any such claim.

## **12. Our Liability**

12.1 Nothing in these Terms limit or exclude our liability for:

12.1.1 death or personal injury caused by our negligence;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or section 12 of the Sale of Goods Act 1979 (title and quiet possession).

12.2 Subject to condition 12.1, Cognassist will under no circumstances whatever be liable to Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Contract for any of the Excluded Losses.

12.3 Subject to condition 12.1, our total liability to Customer in respect of all other losses arising under or in connection with this Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed in relation to each claim, the amount of the charges paid by Customer to Cognassist for the provision of the Services in the twelve (12) months preceding the date on which the claim arose, and provided that our aggregate liability for all claims in any twelve (12) month period shall not exceed the charges paid by Customer to Cognassist for the provision of the Services in that twelve (12) month period.

12.4 Except as expressly stated in these Terms, Cognassist do not give any representation, warranties or undertakings in relation to the Services. Any representation, condition or warranty which might be implied or incorporated into these Terms by statute, common law or otherwise is excluded to the fullest extent permitted by law. In particular, Cognassist will not be responsible for ensuring that the Services are suitable for Customer's purposes.

12.5 If our performance of its obligations under this Contract is prevented or delayed by any act or omission of Customer, or Customer's agents, subcontractors, consultants or employees, then Cognassist shall not be liable for any costs, charges or losses sustained or incurred by Customer that arise directly or indirectly from such prevention or delay.

### **13. Third Party Content**

Customer acknowledges that the Services may enable or assist Customer or the Authorised Users to access the website, content of, correspond with, or purchase products and services from, third parties, and that Customer and any Authorised Users do so solely at Customer's/their own risk. Cognassist make no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by Customer or any Authorised Users, with any such third party. Any contract entered into and any transaction completed via any third-party website is between Customer and the relevant third party and not Cognassist.

### **14. Duration**

14.1 This Contract shall, unless otherwise terminated as provided in accordance with these Terms, commence on the Commencement Date and shall continue for the Initial Term, and thereafter this Contract shall be automatically renewed for successive periods of twelve (12) months (each a "Renewal Period"), unless either party notifies the other in writing of termination at least ninety (90) days before each anniversary of the date of the commencement date.

14.2 Without affecting any other right or remedy available to it, either of Customer or Cognassist may terminate this Contract with immediate effect by giving written notice to the other (the "Defaulting Party") if:

- 14.2.1 the Defaulting Party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than fourteen (14) days after being notified in writing to make such payment;
- 14.2.2 the Defaulting Party commits a material breach of any term of this Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen (14) days after being notified in writing to do so;
- 14.2.3 the Defaulting Party repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract;
- 14.2.4 the Defaulting Party suffers an Insolvency Event

14.3 Cognassist will be entitled to terminate this Contract if Customer suffer a change of control (within the meaning of section 1124 of the Corporation Tax Act 2010).

14.4 Customer's obligation to pay any outstanding invoices shall remain, post termination of this Contract, and Cognassist shall be entitled to raise an invoice as at termination (payable immediately) for any incurred but non-invoiced sums.

### **15. Consequences of Termination**

15.1 On termination or expiry of this Contract:

- 15.1.1 subject to any terms to the contrary elsewhere in these Terms, Customer's and any Authorised Users' access to the Cognassist Platform and the Services (including the licence granted) shall be terminated with immediate effect;
- 15.1.2 Customer will delete all copies held by it of any training materials provided to Customer as part of the Deliverables;
- 15.1.3 Cognassist will be entitled to remove, archive, anonymise and, in some circumstances, erase all information and prevent any further access to the same, and Cognassist are under no obligation to grant Customer any access to or copies of any backup of such information, and if Customer wish to retain copies of Deliverables that Customer are entitled to retain following termination pursuant to express permission set out in these conditions, Customer must export such data prior to termination;
- 15.1.4 Cognassist will irrevocably prevent access to and delete all User Accounts with effect from termination, provided that End Users may, at our discretion, be granted access up to their pre-defined End Date in accordance with condition 3.6;

- 15.1.5 Cognassist shall retain any advance payments that Customer may have made in relation to the Charges; and
- 15.1.6 the following conditions shall continue in force: 1, 3, 8, 10.4, 11, 12, 14, 15, 16, 17, 18, 19.
- 15.2 Termination or expiry of this Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination or expiry.

## **16. Confidentiality**

- 16.1 Each party undertakes that it shall not at any time disclose to any person the Confidential Information of the other party, that has been disclosed to it, its employees, agents, consultants or subcontractors or of any member of the group of companies to which it belongs and any other Confidential Information concerning the other party's Business, services or its products which it may obtain, except as permitted by condition 16.3.
- 16.2 Either party may disclose the other party's Confidential Information:
  - 16.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's Confidential Information comply with this condition 16; and
  - 16.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 16.3 Each party shall not use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

## **17. Data Protection**

- 17.1 In this condition 17:
  - 17.1.1 the terms "Controller", "Data Subject", "international organisation", "Personal Data", "Personal Data Breach", "Processor" and "processing" shall have the respective meanings given to them in applicable Data Protection Laws from time to time (and related expressions, including process, processed, processing, and processes shall be construed accordingly);
  - 17.1.2 "Protected Data" means Personal Data received from or on behalf of the Customer in connection with the performance of our obligations under this Contract, including any Personal Data relating to Employee Users and End Users; and
  - 17.1.3 "Sub-Processor" means any agent, subcontractor or other third party (including its employees) engaged by Cognassist for carrying out any processing activities on behalf of the Customer in respect of the Protected Data.
- 17.2 The parties agree that the Customer is the Controller and that Cognassist are the Processor for the purposes of processing Protected Data pursuant to this Contract. The Customer shall at all times comply with all Data Protection Laws in connection with the processing of Protected Data. The Customer shall ensure all instructions given by it to Cognassist in respect of Protected Data (including the terms of this Contract) shall at all times be in accordance with Data Protection Laws.
- 17.3 To the extent that Cognassist are a Controller of any Protected Data or any personal data contained in any of the Deliverables, Cognassist shall process such personal data in accordance with the Data Protection Laws and our privacy policy which can be viewed at [www.cognassist.com/privacy-policy/](http://www.cognassist.com/privacy-policy/)
- 17.4 Cognassist shall process Protected Data in compliance with the obligations placed on Cognassist under Data Protection Laws as a Processor and the terms of this Contract.
- 17.5 Customer shall indemnify and keep Cognassist indemnified against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this condition 17.
- 17.6 Cognassist shall:

- 17.6.1 only process (and shall ensure Supplier Personnel only process) the Protected Data in accordance with this Contract (and not otherwise unless alternative processing instructions are agreed between the parties in writing) except where otherwise required by applicable law (and shall inform Customer of that legal requirement before processing, unless applicable law prevents it doing so on important grounds of public interest); and
- 17.6.2 if Cognassist believe that any instruction received by Cognassist from Customer is likely to infringe the Data Protection Laws Cognassist shall promptly inform Customer and be entitled to cease to provide the relevant Services until the parties have agreed appropriate amended instructions which do not infringe the Data Protection Laws.
- 17.7 In accordance with the Data Protection Laws, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing of the Personal Data to be carried out in accordance with the Services, as well as the risks of varying likelihood and severity for the rights and freedoms of natural persons and the risks that are presented by the processing, especially from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to the Protected Data transmitted, stored or otherwise processed, Cognassist have implemented appropriate technical and organisational security measures appropriate to the risk.
- 17.8 Cognassist shall (at Customer's cost):
  - 17.8.1 assist Customer in ensuring compliance with Customer's obligations pursuant to Articles 32 to 36 of the UK GDPR (and any similar obligations under applicable Data Protection Laws) taking into account the nature of the processing and the information available to Cognassist; and
  - 17.8.2 taking into account the nature of the processing, assist Customer (by appropriate technical and organisational measures), insofar as this is possible, for the fulfilment of the Customer's obligations to respond to requests for exercising the Data Subjects' rights under Chapter III of the UK GDPR (and any similar obligations under applicable Data Protection Laws) in respect of any Protected Data.
- 17.9 All Protected Data will at all times be stored on servers located within the UK. Customer acknowledges that Cognassist may transfer Protected Data outside the UK to the third-party suppliers set out in the Service Plan and Customer give Customer's consent for Cognassist to do so by agreeing to these Terms. Other than as set out above, Cognassist shall not process and/or transfer, or otherwise directly or indirectly disclose, any Protected Data in or to Supplier Personnel or third parties located in countries outside the UK without Customer's prior written consent or as outlined in the Supplier's Privacy Policy. Cognassist shall only transfer Protected Data outside the UK in accordance with the Data Protection Laws.
- 17.10 For the purposes of condition 17.9 Customer accept that the Services, at times, are accessible and may be delivered in areas outside of the UK. Customer consent to Supplier Personnel or Sub-Processors accessing the Protected Data outside the UK to help deliver the Services. All Supplier Personnel (whether within or outside the UK) shall comply with Cognassist data protection privacy standards (which may be amended from time to time).
- 17.11 In the event that Cognassist engage any Sub-Processor, Cognassist shall notify Customer of that Sub-Processor and Customer shall have the opportunity to object to the engagement of such Sub- Processor (but Cognassist are still entitled to use such Sub- Processor, despite Customer's objections [provided that Cognassist have reasonable and objective grounds for doing so]). Cognassist shall ensure that Cognassist enter into a written contract with any Sub- Processors which contains provisions equivalent to those set out in this condition 17.
- 17.12 Cognassist shall, in accordance with Data Protection Laws, make available to the Customer such information that is in our possession or control as is necessary to demonstrate our compliance with the obligations placed on Cognassist under this condition 17 and to demonstrate compliance with the obligations on each party imposed by Article 28 of the UK GDPR (and under any equivalent Data Protection Laws equivalent to that Article 28), and allow for and contribute to audits, including inspections, by the Customer (or another auditor mandated by the Customer) for this purpose (subject to a maximum of one audit request in any twelve (12) month period under this condition 17.12).
- 17.13 Cognassist shall notify Customer without undue delay and in writing on becoming aware of any Personal Data Breach in respect of any Protected Data.
- 17.14 Details of the subject matter, duration of the processing, nature and purpose of the processing, categories of data and data subjects relating to this Contract are set out in the Services Plan.

- 17.15 Cognassist currently comply with ISO27001 data protection standards and Cognassist are committed to compliance with Data Protection Laws.
- 17.16 Cognassist shall retain Protected Data in accordance with the Cognassist Data Retention Policy. At the end of the provision of the Services relating to the processing of Protected Data, at Customer's cost and at Customer's option, Cognassist shall either return all of the Protected Data to Customer or securely dispose of the Protected Data (and thereafter promptly delete all existing copies of it) except to the extent that any applicable law requires Cognassist to store such Protected Data.

## 18. Notices

Any notice required to be given under this Contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or by email, to the addresses in each case, as set out in the Services Plan. A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in Business hours (9am to 5pm), then at 9am on the Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by email shall be deemed to have been received at 9am on the next Business Day following its transmission.

## 19. General

- 19.1 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THE CONTRACT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, COGNASSIST: (A) DOES NOT MAKE ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, ACCURACY, OR ERROR-FREE OR UNINTERRUPTED USE OF THE SERVICES OR SOFTWARE; (B) MAKES NO REPRESENTATION ABOUT CONTENT OR INFORMATION ACCESSIBLE THROUGH THE SERVICES; (C) WILL ONLY BE REQUIRED TO PROVIDE THE REMEDIES EXPRESSLY STATED IN THE CONTRACT FOR FAILURE TO PROVIDE THE SERVICES. CUSTOMER MUST EXERCISE INDEPENDENT JUDGMENT WHEN USING THE SERVICES TO ENSURE THAT SERVICE AND DELIVERABLES ARE SUITABLE FOR THE CUSTOMER AND END USER; AND (D) UNDER NO CIRCUMSTANCES BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY, INCLUDING BUT NOT EXCLUSIVELY IN RELATION TO FUNDING OR FINANCE AGREEMENTS TO WHICH COGNASSIST IS NOT A PARTY.
- 19.2 **Assignment.** Cognassist may transfer, sub-contract or deal in any manner with our rights and obligations under a Contract to another organisation, but this will not affect Customer's rights or our obligations under these Terms. The licence to use the Software and the Cognassist Platform set out in this Contract is for use by Customer with Customer's own employees only. Customer may not transfer, sub-contract or sub-lodge Customer's rights or Customer's obligations under these Terms to another person.
- 19.3 **Announcements.** Subject to condition 16, each of Customer and Cognassist shall be able to refer to this Contract and the nature of the Services in press releases, promotional material, social media activity and portfolios of work (including advertising and marketing documentation, with the prior written consent of the other party).
- 19.4 **Third party rights.** This Contract is between Customer and Cognassist. No other person shall have any rights to enforce any of its terms, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 19.5 **Severance.** If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 19.6 **Variation.** Cognassist may, from time to time and without notice, change the Services in order to comply with any applicable safety or statutory requirements, provided that such changes do not materially affect the nature, scope of, or the charges for the Services. If Cognassist request a change to the scope of the Services for any other reason, the Customer shall not unreasonably withhold or delay consent to it. Cognassist shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services.

19.7 **Waiver.** If Cognassist fail to insist that Customer performs any of Customer's obligations under these Terms, or if Cognassist do not enforce its rights against the Customer, or if Cognassist delay in doing so, that will not mean that Cognassist have waived its rights against Customer and will not mean that Customer do not have to comply with those obligations. If Cognassist do waive a default by Customer, Cognassist will only do so in writing, and that will not mean that Cognassist will automatically waive any later default by Customer.

19.8 **Law and jurisdiction.** This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by English law. Cognassist both irrevocably agree that any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims) will be subject to the exclusive jurisdiction of the courts of England and Wales.

19.9 **No Agency.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Contract. Neither party is an agent of the other party nor authorized to obligate it.

19.10 **Variation.** Cognassist reserve the right to make changes to the Terms from time to time, for example to address changes to the law or regulatory changes or changes to functionality offered through the Services. No variation to the contract between Cognassist, formed pursuant to the Terms, shall be binding unless agreed in writing between authorised representatives of both Customer and Cognassist.

19.10 **Events outside of our control.** Cognassist will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under a Contract that is caused by an Event Outside Our Control. If an Event Outside Our Control takes place that affects the performance of our obligations under a Contract our obligations under a Contract will be suspended and the time for performance of our obligations will be extended for the duration of the Event Outside Our Control.

19.11 **Entire Agreement.** This Contract constitutes the entire agreement between Cognassist and supersedes any previous arrangement, understanding or agreement between Cognassist relating to the subject matter it covers. Cognassist both acknowledge and agree that in entering into this Contract, neither of Cognassist relies on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person.

Specification      The Cognassist Services

of Software

Including

Deliverables:

Neurodiversity      Implementation and Adoption

Training      Materials to support uploading of learners to Cognassist Platform and ongoing learner management  
 Training of Administrator in the Cognassist Platform and provision of materials that enable best practice in supporting learners with cognitive needs to be adopted within Customer frameworks  
 Training materials for Employee Users to enable better understanding of cognition and neuropsychology including how differences impact thinking and learning and what reasonable adjustments can be deployed throughout a learning journey

Support Policy Supported Product  
Cognassist Platform

Support Hours  
Monday to Friday  
Business hours 9am – 5pm GMT  
(Excluding UK Bank Holidays)

Support Contact  
Tel: 0330 1243779  
Email: [support@cognassist.com](mailto:support@cognassist.com)

Target Response Times  
Cognassist will use all reasonable  
endeavours to respond to Customer's  
query within 4 hours.

Escalation  
Escalation can be made to Customer's  
CSM.

Exclusion  
Cognassist has no Technical Support  
obligations with respect to the issues  
relating from: (a) Customer's equipment,  
network connections or other  
infrastructure; (b) use of Cognassist  
platform by Customer in violation of the  
License Agreement

Details of data processing Subject matter  
Employee, Users and End User's personal data

Nature and Purpose  
To deliver the Customer the Deliverables  
including access to the software and to  
enable End Users to access the software.

Categories of Data  
Personally Identifiable Information  
Special Category Health Data