



If you are using Cognia products or services as a member of an educational institution or business that has a separate written agreement with COGNIA, that agreement will govern your use of the products or services and these terms and conditions as written below do not apply to you.

## COGNIA Terms of Use

(Last updated: August 2019)

These terms and conditions (the "Terms of Use") apply to all web sites (the "Sites") owned and operated by Cognia Inc. or Advance Education Inc. our affiliates or subsidiaries. By signing up or otherwise using any of our Sites or Services (as defined below), or accessing any content or material that we make available through the Services or Sites, you are entering into a binding contract with Cognia Inc. ("COGNIA") or Advance Education Inc. ("AdvancED") that consists of these Terms of Use and the Privacy Notice is hereby incorporated by reference (collectively, this "Agreement"). We reserve the right, at our discretion, to change any of these terms in the future.

If you do not agree to this Agreement, you may not access or otherwise use the Sites or the Services.

You may use the Services only if you have reached the age of majority or legal age in your jurisdiction (generally 18 or older) and can form legally binding contracts under applicable law or, if you are under the age of majority, your educational institution, parent or guardian agrees to these Terms of Use on your behalf.

### 1. PROPRIETARY SERVICES FOR REGISTERED USERS.

COGNIA operates electronic platforms/systems including mobile applications that enable students, instructors, and administrators of educational institutions to access and use certain online products and services offered by COGNIA (the "Services") through our Sites. The material on our Sites include general non-proprietary information available to all users of our Sites, but in order to access and use the Services you will be required to register on our Sites or through your educational institution. If you register to use the Services on behalf of your educational institution, you will be required to agree to additional terms and conditions in connection with the registration process (the "Terms of Service").

### 2. USER INFORMATION, COPPA.

During the course of your use of the Services, you may be asked to provide certain personal information to us in order to provide you with the Services. Our information collection and use policies with respect to the privacy of such personal information are set forth in our Privacy Notice. You acknowledge and agree that between you and COGNIA, you are solely responsible for the accuracy and content of your personal information, and you agree to keep it up to date.

In accordance with the Federal Children's Online Privacy Protection Act of 1998 (COPPA), we will never knowingly solicit, nor will we accept, personally identifiable information from users known to be under thirteen (13) years of age without the consent of their educational institution or the child's parent or guardian. If an educational institution with students that are under thirteen (13) years of age uses our Services, the educational institution may also provide us with personally identifiable information about its students. We use student information to provide the Services to the educational institution and its students, consistent with our Privacy Notice.



### 3. INTELLECTUAL PROPERTY.

Solely to the extent necessary for your own internal use of the Services for educational purposes during the term of your applicable license for Services, subject to the payment of any fees in any applicable subscription agreement and in accordance with the terms of such agreement or any other agreement governing your use of the Services and these Terms of Use, COGNIA grants you a limited, non-exclusive and non-transferable license to access and use the Services over the Internet via the Site provided for the Services. COGNIA is the owner and/or authorized user of all trademarks, logos, service marks and trade names (collectively the "Trademarks") on our Sites and is the owner or licensee of the content and/or information on our Sites. Except as otherwise expressly provided herein, or pursuant to the Terms of Service, your use of our Sites does not grant to you a license to any content or materials you may access on our Sites. Nothing contained on our Sites should be construed as granting any license or right to use any Trademark displayed on our Sites without our written permission or that of the third-party rights holder.

### 4. ACCESS TO COGNIA CONTENT.

We may provide you with access to content and information related to the Services (the "COGNIA Content"). All use of the COGNIA Content is subject to the terms herein as well as any additional terms agreed to by the parties in connection with such COGNIA Content and/or posted on the Site for such COGNIA Content, including, without limitation, any prohibitions on distribution of the COGNIA Content to students or third parties. You may not share or distribute to a third party any screen name or password for accessing the Services or the COGNIA Content. You may access and use materials from the Services and/or the COGNIA Content for your own research or study only. You agree that you will not otherwise copy, transmit, rent, forward, lend, sell, or modify any materials from the Services and/or the COGNIA Content or modify or remove any proprietary notices contained therein, or create or enable the creation of derivative works based thereon. You may not use any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Services or the COGNIA Content. You may not engage in systematic retrieval of content from the Services or the COGNIA Content to create or compile, directly or indirectly, a collection, compilation, database or directory. You may not disseminate any portion of the Services or the COGNIA Content through electronic means, including mail lists or electronic bulletin boards. Except for the limited access license granted you, all rights in the COGNIA Content are reserved by COGNIA, and you acquire no right, title or interest in any such content.

### 5. COMMUNICATIONS TO COGNIA.

Although we encourage you to e-mail us, you should not e-mail us anything that contains confidential information or personally identifiable information. Please refer to the Privacy Notice with regard to how we handle your personal information. By e-mailing us or otherwise providing content to us or posting content to the Sites or the Services including but not limited to feedback, questions, comments, suggestions, and the like ("User Content"), you agree to be bound by our User Content Submission Agreement and we shall be free to use any non-personally identifiable ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production and marketing of products and services that incorporate such information. You own the rights to anything you post to the Sites or the Services, including text and photographs. You do, however, grant us an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license to use,



modify, copy, distribute, publish, perform, sublicense, and create derivative works from all non-personally identifiable submissions you provide to us, in any media now known or hereafter devised.

If the Site or Services permit you to upload third-party content for use with the Service ("Service Uploads"), 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 your Service Uploads available to end users with active licenses to use the Services in the same manner and to the same extent as the COGNIA Content provided in the applicable Service, and that such Service Uploads will not infringe any intellectual, proprietary or other rights of third parties. Additional terms and options for Service Uploads may be presented through the applicable upload interface available on the Site offering the Service which shall be in addition to, and not in lieu of, these Terms of Use.

#### 6. COMMUNITY GUIDELINES.

In using the Sites or Services, you agree you will not: (a) submit material that is unlawful, obscene, lewd, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, excessively violent, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate or objectionable; (b) post advertisements or solicitations of business; (c) impersonate another person; (d) submit material that is copyrighted, protected by trade secret or otherwise subject to third party intellectual property or proprietary rights, including privacy and publicity right, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant COGNIA all of the license rights granted herein; or (e) submit material that is unsuitable for minors in any country. COGNIA does not and cannot review all User Content or Service Uploads and is not in any manner responsible for such content. COGNIA reserves the right, but not the obligation, to refuse to post, block or remove communications or materials for any reason in its sole discretion and to terminate your access to our Sites and/or the Services to prevent further posting or distribution of any such communications or materials, and COGNIA may, but is not obligated to, report any of your communications or materials to your educational institution.

#### 7. NO WARRANTIES.

WE AND OUR SERVICE PROVIDERS MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONTENTS OF OUR SITES, COGNIA CONTENT OR THE SERVICES. WE SHALL NOT BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF OUR SITES OR THE SERVICES FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SITES, THE COGNIA CONTENT, AND THE SERVICES AT YOUR OWN RISK. OUR SITES, COGNIA CONTENT AND THE SERVICES MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS OR OMISSIONS. COGNIA IS NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS. COGNIA RESERVES THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO OUR SITES, COGNIA CONTENT AND THE SERVICES AT ANY TIME WITHOUT NOTICE.

#### 8. EXTERNAL WEBSITES.

Our Sites may contain links to third-party applications or websites ("External Websites"). These links are provided solely as a convenience to you and not as an endorsement by us of the content on such External Websites. When you access an External Website, COGNIA has no control over its content, applications, or services. We do not make any representations regarding the accuracy or quality of such



content or the accessibility of such External Websites and the materials contained therein, and we disclaim all liability for any errors, omissions, violation of third-party rights or illegal conduct arising from such External Websites.

#### 9. INDEMNIFICATION.

You agree to defend, indemnify, and hold us and our officers, directors, employees, successors, licensees, service providers, and assignees harmless from and against any claims, actions, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable legal and accounting fees, arising from or relating to your breach of this Agreement or your access to, use, or misuse of the COGNIA Content, our Sites, or the Services. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or proceeding. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

#### 10. LIABILITY.

IN NO EVENT WILL COGNIA OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE COGNIA CONTENT, SITES, THE SERVICES, OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF USE AND IN NO EVENT SHALL THE LIABILITY OF COGNIA OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE COGNIA CONTENT, THE SITES, OR THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, COGNIA's liability in such case will be limited to the greatest extent permitted by law.

#### 11. INFRINGEMENT NOTIFICATION.

We respect the intellectual property rights of others and require that the people who use our Sites do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please send notifications of the claimed infringement to: Legal Department, Cognia Inc., 9115 Westside Parkway, Alpharetta GA 30024. Notices of the claimed infringement should include the following information: (a) your address, telephone number, and email address; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the alleged infringing material is located, with a link if possible; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.



## 12. COMPLIANCE WITH APPLICABLE LAWS.

We control and operate our Sites from our offices in the United States of America. We do not represent that materials on our Sites are appropriate or available for use in other locations. Persons who choose to access our Sites from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable. All parties to these terms and conditions waive their respective rights to a trial by jury.

## 13. TERMINATION OF THE AGREEMENT.

We reserve the right in our sole discretion, to restrict, suspend, or terminate the use or access to the Services and our Sites and/or discontinue any portion, feature, or content of the Services, COGNIA Content, our Sites, or this Agreement at any time and for any reason without prior notice or liability. If you violate these Terms of Use COGNIA may, but is not obligated to, report any such violation of these Terms of Use to your educational institution. When reasonably feasible, we will make reasonable efforts to provide notice of significant changes to the Services to end users with active licenses to use the Services.

## 14. MISCELLANEOUS.

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction or terminated in accordance with the "Termination of the Agreement" provision above, the invalidity or termination of such provision shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: "Intellectual Property," "Communications to COGNIA," "No Warranties," "Indemnification," "Liability," "Compliance With Applicable Laws," "Termination of the Agreement," and "Miscellaneous." Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

COGNIA Terms of Use for International Platforms

Last updated: August 2019

These terms and conditions (the "Terms of Use") apply to all web sites (the "Sites") owned and operated by Cognia Inc. or Advance Education Inc. our affiliates or subsidiaries. By signing up or otherwise using any of our Sites or Services (as defined below), or accessing any content or material that we make available through the Services or Sites, you are entering into a binding contract with Cognia Inc. ("COGNIA") or Advance Education Inc. ("AdvancED") that consists of these Terms of Use and the Privacy Notice is hereby incorporated by reference (collectively, this "Agreement"). We reserve the right, at our discretion, to change any of these terms in the future.

If you do not agree to this Agreement, you may not access or otherwise use the Sites or the Services.



You may use the Services only if you have reached the age of majority or legal age in your jurisdiction (generally 18 or older) and can form legally binding contracts under applicable law or, if you are under the age of majority, your educational institution, parent or guardian agrees to these Terms of Use on your behalf.

#### 1. PROPRIETARY SERVICES FOR REGISTERED USERS.

COGNIA operates electronic platforms/systems including mobile applications that enable students, instructors, and administrators of educational institutions to access and use certain online products and services offered by COGNIA (the "Services") through our Sites. The material on our Sites include general non-proprietary information available to all users of our Sites, but in order to access and use the Services you will be required to register on our Sites or through your educational institution. If you register to use the Services on behalf of your educational institution, you will be required to agree to additional terms and conditions in connection with the registration process (the "Terms of Service").

#### 2. USER INFORMATION.

During the course of your use of the Services, you may be asked to provide certain personal information to us in order to provide you with the Services. Our information collection and use policies with respect to the privacy of such personal information are set forth in our Privacy Notice. You acknowledge and agree that between you and COGNIA, you are solely responsible for the accuracy and content of your personal information, and you agree to keep it up to date.

In accordance with applicable law, we will never knowingly solicit, nor will we accept, personally identifiable information from users known to be minors without the consent of their educational institution or the child's parent or guardian. If an educational institution with students that are minors uses our Services, the educational institution may also provide us with personally identifiable information about its students. We use student information to provide the Services to the educational institution and its students, consistent with our Privacy Notice.

#### 3. INTELLECTUAL PROPERTY.

Solely to the extent necessary for your own internal use of the Services for educational purposes during the term of your applicable license for Services, subject to the payment of any fees in any applicable subscription agreement and in accordance with the terms of such agreement or any other agreement governing your use of the Services and these Terms of Use, COGNIA grants you a limited, non-exclusive and non-transferable license to access and use the Services over the Internet via the Site provided for the Services. COGNIA is the owner and/or authorized user of all trademarks, logos, service marks and trade names (collectively the "Trademarks") on our Sites and is the owner or licensee of the content and/or information on our Sites. Except as otherwise expressly provided herein, or pursuant to the Terms of Service, your use of our Sites does not grant to you a license to any content or materials you may access on our Sites. Nothing contained on our Sites should be construed as granting any license or right to use any Trademark displayed on our Sites without our written permission or that of the third-party rights holder.



#### 4. ACCESS TO COGNIA CONTENT.

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#### 5. COMMUNICATIONS TO COGNIA.

Although we encourage you to e-mail us, you should not e-mail us anything that contains confidential information or personally identifiable information. Please refer to the Privacy Notice with regard to how we handle your personal information. By e-mailing us or otherwise providing content to us or posting content to the Sites or the Services including but not limited to feedback, questions, comments, suggestions, and the like ("User Content"), you agree to be bound by our User Content Submissions Agreement and we shall be free to use any non-personally identifiable ideas, concepts, know-how, or techniques contained in your communications for any purpose whatsoever, including but not limited to, the development, production and marketing of products and services that incorporate such information. You own the rights to anything you post to the Sites or the Services, including text and photographs. You do, however, grant us an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license to use, modify, copy, distribute, publish, perform, sublicense, and create derivative works from all non-personally identifiable submissions you provide to us, in any media now known or hereafter devised.

If the Site or Services permit you to upload third-party content for use with the Service ("Service Uploads"), 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 your Service Uploads available to end users with active licenses to use the Services in the same manner and to the same extent as the COGNIA Content provided in the applicable Service, and that such Service Uploads will not infringe any intellectual, proprietary or other rights of third parties. Additional terms and options for Service Uploads may be presented through the applicable upload interface available on the Site offering the Service which shall be in addition to, and not in lieu of, these Terms of Use.





## 6. COMMUNITY GUIDELINES.

In using the Sites or Services, you agree you will not: (a) submit material that is unlawful, obscene, lewd, defamatory, libelous, threatening, pornographic, harassing, hateful, racially or ethnically offensive, excessively violent, or encourages conduct that would be considered a criminal offense, give rise to civil liability, violate any law, or is otherwise inappropriate or objectionable; (b) post advertisements or solicitations of business; (c) impersonate another person; (d) submit material that is copyrighted, protected by trade secret or otherwise subject to third party intellectual property or proprietary rights, including privacy and publicity right, unless you are the owner of such rights or have permission from their rightful owner to post the material and to grant COGNIA all of the license rights granted herein; or (e) submit material that is unsuitable for minors in any country. COGNIA does not and cannot review all User Content or Service Uploads and is not in any manner responsible for such content. COGNIA reserves the right, but not the obligation, to refuse to post, block or remove communications or materials for any reason in its sole discretion and to terminate your access to our Sites and/or the Services to prevent further posting or distribution of any such communications or materials, and COGNIA may, but is not obligated to, report any of your communications or materials to your educational institution.

## 7. NO WARRANTIES.

WE AND OUR SERVICE PROVIDERS MAKE NO WARRANTIES OR REPRESENTATIONS ABOUT THE CONTENTS OF OUR SITES, COGNIA CONTENT OR THE SERVICES. WE SHALL NOT BE SUBJECT TO LIABILITY FOR ANY DELAYS OR INTERRUPTIONS OF OUR SITES OR THE SERVICES FROM WHATEVER CAUSE. YOU AGREE THAT YOU USE THE SITES, THE COGNIA CONTENT, AND THE SERVICES AT YOUR OWN RISK. OUR SITES, COGNIA CONTENT AND THE SERVICES MAY CONTAIN TECHNICAL INACCURACIES OR TYPOGRAPHICAL ERRORS OR OMISSIONS. COGNIA IS NOT RESPONSIBLE FOR ANY SUCH TYPOGRAPHICAL OR TECHNICAL ERRORS. COGNIA RESERVES THE RIGHT TO MAKE CHANGES, CORRECTIONS, AND/OR IMPROVEMENTS TO OUR SITES, COGNIA CONTENT AND THE SERVICES AT ANY TIME WITHOUT NOTICE.

## 8. EXTERNAL WEBSITES.

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## 9. INDEMNIFICATION.

You agree to defend, indemnify, and hold us and our officers, directors, employees, successors, licensees, service providers, and assignees harmless from and against any claims, actions, demands, liabilities, losses, damages, costs and expenses including, without limitation, reasonable legal and accounting fees, arising from or relating to your breach of this Agreement or your access to, use, or misuse of the COGNIA Content, our Sites, or the Services. We shall provide notice to you of any such claim, suit, or proceeding and shall assist you, at your expense, in defending any such claim, suit, or





proceeding. We reserve the right to assume the exclusive defense and control of any matter that is subject to indemnification under this section. In such case, you agree to cooperate with any reasonable requests assisting our defense of such matter.

10. LIABILITY.

IN NO EVENT WILL COGNIA OR ITS LICENSORS OR SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE COGNIA CONTENT, SITES, THE SERVICES, OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF USE AND IN NO EVENT SHALL THE LIABILITY OF COGNIA OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE COGNIA CONTENT, THE SITES, OR THE SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, COGNIA's liability in such case will be limited to the greatest extent permitted by law.

11. INFRINGEMENT NOTIFICATION.

We respect the intellectual property rights of others and require that the people who use our Sites do the same. If you believe that your work has been copied in a way that constitutes copyright infringement, please send notifications of the claimed infringement to: Legal Department, Cognia Inc., 9115 Westside Parkway, Alpharetta GA 30024. Notices of the claimed infringement should include the following information: (a) your address, telephone number, and email address; (b) a description of the copyrighted work that you claim has been infringed; (c) a description of where the alleged infringing material is located, with a link if possible; (d) a statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; (e) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (f) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf.

12. COMPLIANCE WITH APPLICABLE LAWS.

We control and operate our Sites from our offices in the United States of America. Unless pursuant to a separate agreement with you, we do not represent that materials on our Sites are appropriate or available for use in other locations. Persons who choose to access our Sites from other locations do so on their own initiative, and are responsible for compliance with local laws, if and to the extent local laws are applicable. All parties to these terms and conditions waive their respective rights to a trial by jury.

13. TERMINATION OF THE AGREEMENT.

We reserve the right in our sole discretion, to restrict, suspend, or terminate the use or access to the Services and our Sites and/or discontinue any portion, feature, or content of the Services, COGNIA Content, our Sites, or this Agreement at any time and for any reason without prior notice or liability. If you violate these Terms of Use COGNIA may, but is not obligated to, report any such violation of these Terms of Use to your educational institution. When reasonably feasible, we will make reasonable efforts



to provide notice of significant changes to the Services to end users with active licenses to use the Services.

#### 14. MISCELLANEOUS.

If any provision of this Agreement is found to be invalid by any court having competent jurisdiction or terminated in accordance with the "Termination of the Agreement" provision above, the invalidity or termination of such provision shall not affect the validity of the following provisions of this Agreement, which shall remain in full force and effect: "Intellectual Property," "Communications to COGNIA," "No Warranties," "Indemnification," "Liability," "Compliance With Applicable Laws," "Termination of the Agreement," and "Miscellaneous." Our failure to act on or enforce any provision of this Agreement shall not be construed as a waiver of that provision or any other provision in this Agreement. No waiver shall be effective against us unless made in writing, and no such waiver shall be construed as a waiver in any other or subsequent instance. Except as expressly agreed by us and you in writing, this Agreement constitutes the entire Agreement between you and us with respect to the subject matter, and supersedes all previous or contemporaneous agreements, whether written or oral, between the parties with respect to the subject matter. The section headings are provided merely for convenience and shall not be given any legal import. This Agreement will inure to the benefit of our successors, assigns, licensees, and sublicensees.

#### Privacy Notice

##### Introduction

Please note that this notice applies to individuals who visit Cognia Inc. ("COGNIA") commercial web sites or otherwise interact with us as customers via our web sites, social media, or at events. As a customer, you may also be an end user. Please be sure to review our End User Privacy Notice regarding our privacy practices for end user PII. Our commercial web sites, such as Cogniaducation.com, are not intended for use by minors below the age of 13. Privacy information for users of our digital learning systems, including those under the age of 13, can be found under the appropriate tabs (End User and Parents).

Cognia Inc. is a global organization. We follow privacy laws and regulations that are applicable to our company and our services in the areas where we do business. By accessing our web sites or otherwise providing your personal information to Cognia Inc, you acknowledge that we will process your PII in accordance with this notice.

##### Questions? Contact us:

Any questions or complaints regarding this notice or the collection, use, disclosure, or transfer of PII (as defined below) covered by this notice should be directed to the [privacy@cognia.org](mailto:privacy@cognia.org).

##### What is Personally Identifiable Information (PII)?

Personally Identifiable Information, or PII, shall mean any information relating to an identified or identifiable natural person ("data subject") including personal data as defined under applicable local law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.



## What PII do we collect?

We collect PII, such as contact information, education details, or payment information, in order to provide you with the product and/or service requested.

We, or our service providers on our behalf, collect PII and other information when you access and/or submit PII on one of our web sites or interact with us at an event. You are not required to provide PII; however, in order to use certain services, we may need to collect certain PII for that service to function properly (e.g., to finalize your purchase) or for us to provide you with requested information.

Depending on the service or transaction, the PII we collect includes information from the following categories:

1. Name, initials or white page information
  - a. On our consumer web sites, we collect your name, initials or contact information when you create an account or purchase a product on our online store. We also collect your email address. We also collect this information if you connect with us via your social media account as an existing or potential customer.
2. Payment card industry data such as credit card number, billing address, etc.
  - a. If you make an online purchase from us, in addition to your name, we collect payment information through a third-party website, which includes billing and shipping addresses and credit card data to process your transaction.
3. Communications
  - a. If you choose to communicate with or receive communications from COGNIA via phone, text, chat, email, or any other platform for technical support, customer service, or other assistance, those interactions may be recorded and monitored to deliver the service or information requested by you.

We automatically collect computer metadata and content to provide, improve, and maintain our products and services.

When you visit or make transactions on our web sites, we automatically collect certain information from you through the use of cookies, web beacons or other tracking mechanisms. This includes information about your experience such as your IP address, operating systems, pages viewed, and time spent. This allows COGNIA to collect information about customer usage and online behavior to tailor marketing to areas that may be more appropriate for the customer.

Third parties also collect information automatically from you across websites and over time through the use of their own cookies, web beacons, and tracking mechanisms. This information is used to enable the functions of the site, as well as customize, maintain, and improve our web sites. You may disable cookies via your browser or third-party mechanisms. However, some features of our services may not function properly without them.

You can change your Web browser's Internet preferences to disable or delete cookies, although that may affect certain functions on this site. To learn how to manage your cookies, please follow the instructions for your specific browser. If you wish to opt out of the use of data collected on our site to



send you targeted advertising during your visits to other websites, you should adjust your browser preferences to not accept cookies. As an alternative, the following websites will allow you to opt out of the multi-site cookies <http://www.aboutads.info/choices> or <http://youronlinechoices.eu/>.

How do we use PII and on what legal basis?

We will use PII to provide the requested service or to process transactions such as information requests or purchases in order to meet our contractual obligations to you.

We will also process your PII to meet our legitimate interests, for example to personalize your experience and to deliver relevant content to you; to maintain and improve our services; to generate and analyze statistics about your use of the services; and to detect, prevent, or respond to fraud, intellectual property infringement, violations of law, violations of our rights or Terms of Use, or other misuse of the services.

Except as described in this notice, we limit the use, collection, and disclosure of your PII to deliver the service or information requested by you. We do not collect, use, or disclose PII that is not reasonably related to the purposes described within this notice without prior notification. Your information may be combined in an aggregate and de-identified manner in order to maintain and/or improve our services.

#### User Content Submission Agreement

Last modified August 2019

For the avoidance of doubt, these Terms do not apply to any data submitted to or collected by COGNIA in connection with the educational or instructional use of our products and services by customers, students, and/or educational institutions. By submitting your content to Cognia Inc. or Advance Education Inc. our affiliates or subsidiaries, including articles, comments, photos, videos, and all content, media, materials and information ("User Content") you publish through any social media platform, any of our applications, or directly to the entire COGNIA website ("Site") or services, you are representing that you accept and agree to these Terms and the terms of COGNIA's Terms of Use and Privacy Notice and that you will comply with all of the requirements of each policy, and that you are at least eighteen (18) years of age. In addition, to the extent your User Content is displayed on the Site or in connection with any of our services, you also will be subject to any additional terms of use, agreements, guidelines or rules provided by COGNIA applicable to such Site and services and you hereby agree to be bound by such other terms, agreement, guidelines or rules. If you do not agree to these Terms, you should not submit User Content.

You also agree to the following:

As between you and us, you represent that you own all User Content, or have the rights and permissions to give us the license described herein. You hereby grant us permission and an irrevocable, non-exclusive, worldwide, perpetual, royalty-free license to use, modify, reproduce, display, copy, distribute, publish, perform, sublicense, translate, create derivative works from, make available and otherwise exploit all User Content you provide to us, including but not limited to on our webpages and social media pages and in any and all other customer communications, marketing, promotional and advertising initiatives, including for commercial purposes, and in any media now known or hereafter devised. By submitting the User Content you agree to also allow us to feature personal information in



connection with any use of your User Content, such as your name, voice, likeness, photograph, username, social media handle, accompanying text, location and other identifying information; however, we have no obligation to attribute any authorship in the User Content to you. Information you submit with User Content is subject to our Privacy Notice. The foregoing licenses shall survive termination of these Terms for any reason. If you do not agree to the collection, use and disclosure of your personal information in this way, please do not provide us with personal information. These licenses will survive the termination of these Terms and your use of the Site.

You agree you will not submit any User Content that is not in accordance with the Community Guidelines in our Terms of Use. COGNIA reserves the right but not the obligation to remove, to not accept or to not transmit User Content that we deem to be in violation of our Terms. User Content does not reflect the views of COGNIA, and we are not responsible or liable for or in connection with any User Content. If you believe any content, including User Content, residing on the Site or services or displayed or used in connection with the services infringes any person's or entity's copyright rights, please refer to our Terms of Use.

We may display advertisements in connection with your User Content or on pages where your User Content may be viewed by you or others, and we may use your User Content to advertise and promote COGNIA. No payment, royalty or compensation of any kind, or permission, notification or attribution, is due to you or to anyone else for our use of your User Content. Any User Content submitted to us through a social media service must be submitted in accordance with all terms and conditions of the applicable social media service. You are responsible for your registration, use, and any costs related to your use, of any third-party service used to submit User Content, and COGNIA will not have any responsibility therefor.

You hereby release COGNIA from any and all claims of any rights, encumbrances, liens, claims, demands, actions or suits which you may or can have in connection with your User Content, including, without limitation, any and all liability for any permitted use or nonuse of the your User Content, claims for defamation, libel, slander, invasion of privacy, right of publicity, emotional distress or economic loss. You also forever waive and relinquish all moral rights now or hereafter recognized in connection with your User Content and the rights granted to COGNIA hereunder. You represent and warrant that your User Content does not infringe the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party. You agree to indemnify and hold us and our affiliates, and each of their respective employees and officers, harmless from any demands, loss, liability, claims or expenses (including reasonable attorneys' fees), made against us by any third party arising out of or in connection with our use and exploitation of your User Content.

#### COGNIA Terms of Service

THESE TERMS OF SERVICE, together with the Terms of Use and the Privacy Notice, form a legal agreement (the "Agreement") between Cognia Inc. or Advance Education Inc. our affiliates or subsidiaries, for the Services defined below and the educational institution, company, or organization ("You" or the "Subscriber") entering into this Agreement and identified on the registration page of Your subscription contract for the Services (the "Registration Page"), where applicable. This Agreement also governs Your use of the Solution (as defined below).



These Terms of Service apply after clicking “I accept” in any available checkbox, by placing an order and paying for the Solution, by registering to use and then using the Solution, and/or by executing the Registration Page, where applicable. By accepting these Terms of Service, You affirm that You are at least 18 years of age, that You agree to these Terms of Service, the Terms of Use, and Privacy Notice and You will comply with such terms in connection with Your use of the Solution. You agree that (i) You are an employee, director, or agent of Subscriber; (ii) You have confirmed that Subscriber has agreed to be bound to these Terms of Service, the Terms of Use, and Privacy Notice; and (iii) Subscriber has authorized You to use the Solution on its behalf.

#### 1. THE SOLUTION.

COGNIA has developed a web-based solution (the “Solution”) that enables users to access certain online products and services (“Services”) and related courses, content and information (together with the Services, the “COGNIA Content”) offered by COGNIA through our website (the “Website”) by purchasing a subscription. COGNIA hereby grants Subscriber a non-exclusive, non-transferable license to access and use the Solution, and allow each administrator, faculty member, and student enrolled by Subscriber (each a designated “End User”) to access and use the Solution, through the Website, solely for educational purposes. End Users may access the Solution and the COGNIA Content in accordance with an access method offered by COGNIA and selected by Subscriber. All End Users other than K-12 students will be required to agree to the Terms of Use in order to access the Solution and the COGNIA Content. Payments of applicable fees to COGNIA are due within thirty (30) days of the date of invoice unless otherwise agreed to in writing.

#### 2. ADDITIONAL TERMS.

All use of the Solution and COGNIA Content is subject to this Agreement and any additional terms agreed to by the parties in connection with the Solution and COGNIA Content, including, without limitation, any prohibitions on distribution of the COGNIA Content to students or third parties. Subscriber is responsible for its End Users' use of the Solution and the COGNIA Content.

#### 3. ADDITIONAL SERVICES.

COGNIA may enhance and/or expand the features of the Solution from time to time at no additional cost to Subscriber, or may provide additional content, performance or features that may, but are not required to, be added by Subscriber at additional cost to Subscriber. Any professional services to be provided by COGNIA to Subscriber in connection with the Solution shall be set forth in a separate Professional Services Agreement between COGNIA and Subscriber.

#### 4. APPLICABLE PRIVACY LAW.

Subscriber is familiar with and agrees to be responsible for compliance with the Children's Online Privacy Protection Act of 1998 (“COPPA”), the Family Educational Rights and Privacy Act and the US Department of Education's implementing regulations at 34 CFR Part 99 (collectively, “FERPA”); and all other applicable country and state laws, rules or regulations concerning the collection, use, and disclosure of Personally Identifiable Information about End Users accessing the Services that are the subject of this Agreement (collectively, “Applicable Privacy Law”). “Personally Identifiable Information”, or “PII”, shall mean any information relating to an identified or identifiable natural person (a “data subject”) including personal data as defined under applicable local law. An identifiable natural person is



one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person. COGNIA acknowledges that in the course of Subscriber's use of the Services, End Users' Personally Identifiable Information may be disclosed to COGNIA. COGNIA agrees that it will comply with the requirements of Applicable Privacy Law concerning the confidentiality and release of Personally Identifiable Information. COGNIA acknowledges that it will be considered a "School Official" (as that term is used in FERPA) and agrees that it will comply with the requirements in FERPA concerning the confidentiality and release of Personally Identifiable Information. Per such requirements, COGNIA agrees that under Applicable Privacy Law, officers, employees, and agents of COGNIA who access Personally Identifiable Information may use such data only for the purposes for which such data has been made available to COGNIA. COGNIA and its contractors, suppliers and licensors shall only use Personally Identifiable Information for the purpose of facilitating the performance, delivery or use of the Services. COGNIA shall enable Subscriber to maintain compliance with Applicable Privacy Law in connection with Subscriber's use of the Solution. For further information about COGNIA's data privacy and security practices, please read our Privacy Notice.

#### 5. SUBSCRIBER DATA.

All information concerning Subscriber ("Subscriber Data") and Personally Identifiable Information concerning End Users shall belong to Subscriber and shall be considered Confidential Information of Subscriber subject to the terms and conditions of this Agreement. Subscriber assumes sole responsibility for: (a) providing any notices and obtaining any consent needed to the extent required under COPPA or other Applicable Privacy Law in connection with the collection, use and/or disclosure of Personally Identifiable Information from End Users; (b) providing a reasonable means for End Users or End Users' parents, as applicable, to review Personally Identifiable Information provided by End Users to the extent required by COPPA or other Applicable Privacy Law; and (c) establishing and maintaining reasonable procedures to protect the confidentiality, security, and integrity of the Personally Identifiable Information.

#### 6. COGNIA USE OF SUBSCRIBER DATA.

As a service provider to Subscriber, COGNIA will establish and maintain reasonable procedures in accordance with its policies and practices and Applicable Privacy Law to protect the confidentiality, security, and integrity of Personally Identifiable Information and Subscriber Data received by COGNIA in connection with provision of the Solution to Subscriber. Subscriber acknowledges and agrees that COGNIA has the right to use the Personally Identifiable Information and Subscriber Data collected in connection with provision of the Solution for (a) purposes of performing its obligations under this Agreement, and (b) for research purposes in connection with quality control and the development of revised or new products or services ("Research Purposes"), provided that such Personally Identifiable Information and Subscriber Data will be used by COGNIA for Research Purposes only in the aggregate and so that the privacy of the individual's Personally Identifiable Information will be maintained.

#### 7. LOCATION OF SERVICES.

We own, control and operate the Solution from our offices in the United States. We do not represent that materials on the Solution or the Website are appropriate or available for use in other locations.





Subscribers who access the Solution from outside the U.S. are responsible for compliance with local laws, if and to the extent local laws are applicable.

#### 8. OWNERSHIP.

No intellectual property rights of any kind are assigned or transferred to Subscriber under this Agreement. Subscriber is permitted to access and use the Solution, COGNIA Content and any other materials provided hereunder only as expressly set forth in these Terms of Service. Subscriber is not permitted and shall have no right to use the Solution or COGNIA Content for any purpose other than as set forth herein. Subscriber shall not challenge, or assist any person or entity in challenging, COGNIA's right, title, and interest in the Solution and COGNIA Content.

A. Before using any content or materials in the Solution or COGNIA Content designated as "open", OER, or available for public use, you should review the governing licensing restrictions associated with such content or materials. No rights of any kind are granted by COGNIA to use such content or materials outside of the Solution.

B. If the Solution permits you to upload third-party content for use with your use of the Services granted herein, 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 End Users in the same manner and to the same extent as the COGNIA Content provided in the Solution, and that such third-party content will not infringe any intellectual, proprietary or other rights of third parties. Additional terms and options may be presented through the user upload interface available on the Solution which shall be in addition to, and not in lieu of, these Terms of Service.

#### 9. RESTRICTIONS ON USE.

Subscriber shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Solution or COGNIA Content; (b) decompiling, reverse engineering or disassembling the Solution or COGNIA Content, (c) distributing or disclosing the Solution or COGNIA Content to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Solution or COGNIA Content; or (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Solution or COGNIA Content.

#### 10. TERM AND TERMINATION.

This Agreement shall remain in full force and effect unless and until terminated earlier as provided in these Terms of Service. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations, for which COGNIA may terminate this Agreement immediately), COGNIA may terminate this Agreement on five (5) business days' prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. Subscriber may terminate this Agreement by (a) providing COGNIA with no less than sixty (60) days' prior written notice; No sooner than one (1) year after Subscriber's initial acceptance of these Terms of Service. COGNIA may terminate this Agreement with at least sixty (60) days prior written notice.

#### 11. EFFECT OF TERMINATION OR EXPIRATION.



Subscriber's permission to use the Solution and COGNIA Content shall end immediately upon any termination or expiration of this Agreement, and Subscriber shall immediately cease any use of the Solution or COGNIA Content upon such termination. The following provisions shall survive any termination or expiration of this Agreement: Section 8 ("Ownership"), Section 9 ("Restrictions on Use"), this Section 11 ("Effect of Termination or Expiration"), Section 12 ("Confidentiality"), Section 13 ("Representations and Warranties; Disclaimer"), Section 14 ("Liability"), 15 ("Indemnification") and Section 16 ("Miscellaneous").

## 12. CONFIDENTIALITY.

The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). Personally Identifiable Information of End Users is considered Confidential Information of Subscriber. At all times the Receiving Party shall: (i) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (ii) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (iii) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as expressly permitted below), and (iv) only disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know" basis; provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.

## 13. REPRESENTATIONS AND WARRANTIES; DISCLAIMER.

Each party represents and warrants that this Agreement constitutes its valid and binding obligation and is enforceable against it in accordance with its terms. COGNIA DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SOLUTION, THE COGNIA CONTENT OR ANY OTHER MATERIALS PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. COGNIA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, COGNIA MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF SUBSCRIBER, (ii) THE MATERIALS WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY COGNIA, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that COGNIA may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

## 14. LIABILITY.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY (OR TO ANY OTHER PERSON CLAIMING RIGHTS DERIVED FROM SUCH PARTY'S RIGHTS) FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL,



INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND INCLUDING BUT NOT LIMITED TO, LOST TIME, LOST MONEY, LOST DATA, LOST PROFITS OR GOOD WILL, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEN OR UNFORESEEN WITH RESPECT TO ANY USE OF THE MATERIALS OR OTHERWISE ARISING FROM OR RELATING TO THESE TERMS OF SERVICE AND IN NO EVENT SHALL THE LIABILITY OF COGNIA OR ITS LICENSORS FOR WHATEVER CAUSE EXCEED THE FEES PAID BY YOU IN CONNECTION WITH YOUR USE OF THE MATERIALS EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. To the extent the foregoing exclusion of liability is not permitted under applicable law, COGNIA's liability in such case will be limited to the greatest extent permitted by law.

#### 15. INDEMNIFICATION.

COGNIA shall indemnify, defend and hold harmless Subscriber from and against any and all liabilities, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of any claim by a third party that the technology platform underlying the Solution infringes or misappropriates the intellectual property rights of such third party. To the extent permitted by law, Subscriber shall indemnify, defend and hold harmless COGNIA and its parent, affiliates, successors and assigns and their respective officers, employees and agents from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of use of the Solution by Subscriber, except to the extent that such claim is subject to indemnification by COGNIA hereunder.

#### 16. MISCELLANEOUS.

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto; provided, however, that if Subscriber has entered into a separate written agreement with COGNIA regarding the subject matter hereof, that agreement will supersede this Agreement to the extent of any conflict. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties' intent. Subscriber may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of COGNIA, which consent COGNIA may grant or withhold in its sole and absolute discretion. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.



## COGNIA Solution Terms of Use

BY CLICKING THE "I ACCEPT" BUTTON DISPLAYED AS PART OF THE REGISTRATION PROCESS FOR THE SOLUTION, YOU AFFIRM THAT YOU ARE AT LEAST 18 YEARS OF AGE, THAT YOU AGREE TO THESE TERMS OF USE, THE TERMS OF USE AND YOU WILL COMPLY WITH SUCH TERMS OF USE IN CONNECTION WITH YOUR USE OF THE SOLUTION. IF "USER" IS A COMPANY, YOU AGREE THAT (i) YOU ARE AN EMPLOYEE, DIRECTOR, OR AGENT OF THE COMPANY; (ii) YOU HAVE CONFIRMED THAT COMPANY HAS AGREED TO BE BOUND TO THESE TERMS OF USE; AND (iii) THE COMPANY HAS AUTHORIZED YOU TO USE THE SOLUTION ON ITS BEHALF.

### 1. THE SOLUTION

COGNIA has developed a web-based service delivery environment that enables users to access certain online products and services offered by COGNIA (the "Solution"). COGNIA will provide the individual or company on whose behalf you are agreeing to these Terms of Use with the Solution in accordance with these Terms of Use. User hereby subscribes to use the Solution, which may include web services, personalized access to content, and integration with User's learning management system ("LMS") with prior written authorization. User may elect to have COGNIA provide professional services in connection with the Solution. Any Professional Services to be provided by COGNIA to User shall be set forth in a separate Professional Services Agreement between COGNIA and User.

### 2. LICENSE

Solely to the extent necessary to utilize the Solution during the term of this Agreement and in accordance with this Agreement, COGNIA grants the User a limited, non-exclusive, non-transferable, and non-sublicensable worldwide license to access and use the Solution over the Internet via the website provided for the Solution (the "Website") solely User's internal use (all of the foregoing rights, collectively, the "License").

### 3. RESTRICTIONS ON USE

User shall not, and shall cause its employees, officers, directors, members, managers, partners, agents, third party service providers, or other designated persons (its "Representatives") not to, take any of the following actions: (a) creating or enabling the creation of derivative works, modifications, or adaptations of the Solution; (b) decompiling, reverse engineering or disassembling the Solution, (c) distributing or disclosing the Solution to third parties; (d) removing or modifying any proprietary marking or restrictive legends placed on the Solution; or (e) using any robot, spider, other automatic device or program or manual process to monitor, copy or reproduce the Solution.

### 4. ACCESS TO THE COGNIA CONTENT

COGNIA may provide Users with access to content and services through the Solution (the "COGNIA Content"). All use of the COGNIA Content is subject to the terms herein as well as any additional terms agreed to by the parties in connection with such COGNIA Content and/or posted on the website for such COGNIA Content, including, without limitation, any prohibitions on distribution of the COGNIA Content to Students or third parties. The Solution is available to individuals enrolled in one or more courses or classes of User ("each, a "Student") through a link. User may disable the link to the Solution in any



course. No User may share or distribute to a third party any User screen name or password for accessing the COGNIA Content. Users may access and use materials from the COGNIA Content for their own research or study only. Users may not otherwise copy, transmit, rent, forward, lend, sell, or modify any materials from the COGNIA Content or modify or remove any proprietary notices contained therein, or create derivative works based thereon. Users may not engage in systematic retrieval of content from the COGNIA Content to create or compile, directly or indirectly, a collection, compilation, database or directory. Users may not disseminate any portion of the COGNIA Content through electronic means, including mail lists or electronic bulletin boards. Except for the limited access rights granted User, all rights in the COGNIA Content are reserved by COGNIA, and User acquires no right, title or interest in any such content

## 5. TERM AND TERMINATION

This Agreement shall remain in full force and effect unless and until terminated earlier as provided in these Terms of Service. In the event that Subscriber commits a material breach of this Agreement (other than breach of its payment obligations, for which COGNIA may terminate this Agreement immediately), COGNIA may terminate this Agreement on five (5) business days' prior written notice to Subscriber; provided that Subscriber fails to cure such breach within such five (5) business day period. Subscriber may terminate this Agreement by (a) providing COGNIA with no less than sixty (60) days' prior written notice; No sooner than one (1) year after Subscriber's initial acceptance of these Terms of Service. COGNIA may terminate this Agreement with at least sixty (60) days prior written notice.

## 6. EFFECT OF TERMINATION OR EXPIRATION

User's right to use the Solution shall end immediately upon any termination or expiration of this Agreement, and User shall immediately cease any use of the Solution upon such termination. The following provisions shall survive any termination or expiration of this Agreement: Section 3 ("Restrictions on Use"), this Section 6 ("Effect of Termination or Expiration"), Section 7 ("Intellectual Property Rights"), Section 8 ("Confidentiality"), Section 9 ("Disclaimer of Warranties"), Section 10 ("Indemnification") and Section 11 ("Miscellaneous").

## 7. INTELLECTUAL PROPERTY RIGHTS

No intellectual property rights of any kind are assigned or transferred to User under this Agreement. User's license with respect to the Solution and any other materials provided hereunder is only as expressly set forth in this Agreement. User shall have no right to use the Solution for any purpose other than as set forth herein. User shall not challenge, or assist any person or entity in challenging, COGNIA's right, title, and interest in the Solution.

## 8. CONFIDENTIALITY

The parties acknowledge and agree that, as a result of negotiating, entering into and performing this Agreement, each party (the "Receiving Party") has and will have access to certain confidential information ("Confidential Information") of the other party (the "Disclosing Party"). "Confidential Information" means all information provided by the Disclosing Party to the Receiving Party hereunder that is (i) proprietary and/or non-public information related to the past, present and future business activities of the Disclosing Party, its subsidiaries, and its affiliates; (ii) information relating to the Disclosing Party's business plans, pricing, financial information, methods, processes, code, data,



information technology, network designs, passwords, and sign-on codes; (iii) the terms of this Agreement; and/or (iv) any other information that is designated as confidential by the Disclosing Party. Confidential Information of COGNIA shall also include the Solution.

Any Student user IDs and/or personally identifiable information about a Student provided by User to COGNIA ("Student Information") is considered Confidential Information of User. COGNIA shall enable User to maintain compliance with the Family Educational Rights and Privacy Act ("FERPA") in connection with use of the Solution.

Confidential Information does not include information that is or was, at the time of the disclosure: (i) generally known or available to the public; (ii) received by Receiving Party from a third party; (iii) already in Receiving Party's possession prior to the date of receipt from Disclosing Party; or (iv) independently developed by the Receiving Party provided in each case that such information was not obtained by the Receiving Party as a result of any unauthorized or wrongful act or omission, or breach of this Agreement, or breach of any legal, ethical or fiduciary obligation owed to the Disclosing Party.

At all times the Receiving Party shall: (i) use the same standard of care to protect the Confidential Information as it uses to protect its own confidential information of a similar nature, but not less than a commercially reasonable standard of care, (ii) not use the Disclosing Party's Confidential Information other than as necessary to perform its obligations under this Agreement, (iii) not disclose, distribute, or disseminate the Confidential Information to any third party (except to Representatives, as expressly permitted below), and (iv) disclose the Disclosing Party's Confidential Information to its Representatives on a "need to know basis;" provided that each Representative is bound by confidentiality obligations at least as restrictive as those contained in this Agreement.

#### 9. DISCLAIMER OF WARRANTIES

COGNIA DOES NOT WARRANT THE COMPLETENESS, ADEQUACY, ACCURACY, OR USEFULNESS OF THE SOLUTION ANY OTHER MATERIALS OR SOLUTION PROVIDED HEREUNDER (COLLECTIVELY, THE "MATERIALS"). THE MATERIALS ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITH ALL DEFECTS. COGNIA EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, ERROR-FREE OR UNINTERRUPTED OPERATION AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE FOREGOING, COGNIA MAKES NO WARRANTY THAT (i) THE MATERIALS WILL MEET THE REQUIREMENTS OF USER, (ii) THE SOLUTION WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE MATERIALS WILL BE ACCURATE OR RELIABLE, OR (iv) ANY ERRORS IN THE MATERIALS WILL BE CORRECTED. NO ORAL OR WRITTEN INFORMATION OR COMMUNICATIONS GIVEN BY COGNIA, ITS EMPLOYEES, OR AGENTS WILL INCREASE THE SCOPE OF THE ABOVE WARRANTY OR CREATE ANY NEW OR ADDITIONAL WARRANTIES. To the extent that COGNIA may not as a matter of applicable law disclaim an implied warranty, the scope and duration of such warranty will be the minimum permitted under such law.

#### 10. INDEMNIFICATION

COGNIA shall indemnify, defend and hold harmless User from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or



arising out of any claim by a third party that the technology platform underlying the Solution infringes or misappropriates the intellectual property rights of such third party. User shall indemnify, defend and hold harmless COGNIA from and against any and all liabilities, claims, demands, losses, damages, costs and expenses, including reasonable attorneys' fees, related to or arising out of use of the Solution by User, except to the extent that such claim is subject to indemnification by COGNIA hereunder.

#### 11. MISCELLANEOUS

The Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral or written understandings, terms or conditions with respect to the subject matter of the Agreement, and neither party has relied upon any representation, express or implied, not contained in the Agreement. Neither party will be liable to the other party for any consequential, incidental, indirect, punitive or special damages arising from or relating to this Agreement. The rights and remedies of the parties are cumulative and not alternative. No waiver of any rights is to be charged against any party unless such waiver is in writing signed by an authorized representative of the party so charged. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. No modification of or amendment to the Agreement will be effective unless in writing signed by authorized representatives of both parties. If any provision of the Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of the Agreement will remain in full force and effect, and, if legally permitted, such offending provision will be replaced with an enforceable provision that as nearly as possible effects the parties' intent. User may not assign or otherwise transfer any of its rights or obligations under the Agreement without the prior written consent of COGNIA, which consent COGNIA may grant or withhold in its sole and absolute discretion. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. Any purported or attempted assignment or other transfer or delegation in violation of this Section shall be null and void.