

STANDARD PROFESSIONAL DEVELOPMENT TERMS (US 2025:1)

1 INTRODUCTION

These agreement terms (the “**Standard Terms**”) apply to the provisioning by Kognity of certain professional development services to the Subscriber.

2 DEFINITIONS

2.1 In this document:

“**Agreement**” means the Order Forms and these Standard Terms, and any supplementary documents referred to in those documents;

“**Confidential Information**” means any information that regardless of its form (written or oral) or explicit designation as confidential, by its nature, or the circumstances of its disclosure, makes it reasonably likely that it is confidential;

“**Intellectual Property Rights**” means all copyright and related rights, design rights, registered designs, patents, trade and service marks, database rights, semi-conductor topography rights, know-how, trade secrets, rights in confidential information and all other intellectual property rights, whether registered or unregistered, throughout the world for the full term of the rights concerned;

“**Kognity**” means Kognity USA, Inc., a Delaware corporation with address 263 Shuman Blvd. Suite 145, Naperville, IL 60563, USA, and its affiliates;

“**Order Form**” means the written order form entered into by Kognity and Subscriber setting out, among other things, the PD Services and pricing;

“**PD Services**” means the professional development services set out in the Order Form;

“**School**” means an independent school, an organizational unit of a School District or other organization providing education to students, but not including School Districts;

“**School District**” means a local education agency, school network, other regional educational system or cooperative of such entities, responsible for education;

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

3 PD SERVICES

3.1 **Service provisioning.** Kognity shall provide the PD Services to the Subscriber. The PD Services may be carried out by any person appointed by Kognity with adequate experience and knowledge to be able to provide the PD Services in accordance with this Agreement.

3.2 **Additional services.** At Subscriber’s request, Kognity may provide Subscriber with a quote for additional services, which will be deemed part of the PD Services upon written acceptance of the quote.

3.3 **Independent contractor.** Kognity is an independent contractor and nothing in this Agreement will be construed to create an employee relationship between Subscriber and Kognity or any Kognity employee or agent.

3.4 **Rescheduling.** Subscriber may reschedule any PD Services with at least 72 hours prior notice to Kognity.

4 KOGNITY WARRANTIES

4.1 **Kognity warranties.** Kognity warrants to Subscriber that the PD Services, and their performance, will (i) comply with applicable laws and regulations, and (ii) be carried out in a good and workmanlike manner consistent with industry standards for high quality services. Subscriber’s sole and exclusive remedy for any breach of these warranties is to require Kognity to exercise commercially reasonable efforts to re-perform any non-conforming PD Services as soon as reasonably possible.

4.2 **Disclaimer.** EXCEPT FOR THE WARRANTIES IN SECTION 4.1, THE PD SERVICES ARE PROVIDED STRICTLY “AS IS” AND KOGNITY MAKES NO ADDITIONAL WARRANTIES, WHETHER EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY PD SERVICES PROVIDED UNDER THIS AGREEMENT, OR ANY MATTER WHATSOEVER. IN PARTICULAR, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, ACCURACY, TITLE, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY KOGNITY AND EXCLUDED BY THE PARTIES.

5 SUBSCRIBER OBLIGATIONS

5.1 **Resources etc.** Subscriber will in a timely manner provide any information, resources, facilities and personnel and any other cooperation reasonably required by Kognity to provide the PD Services. Kognity will not be responsible for any information, resources or personnel provided by Subscriber.

5.2 **Deadlines.** Subscriber agrees that Kognity meeting any deadlines in relation to the PD Services may be contingent on completion of reasonably expected cooperation and activities by Subscriber. Without affecting Subscriber’s payment obligations and subject to Subscriber being responsible for any additional costs and expenses required to complete the PD Services, any deadline will be reasonably adjusted by the parties in the event of any delay caused by Subscriber (whether due to failure in performing its obligations or as a result of change requests).

6 FEES AND PAYMENT

6.1 **Pricing.** The pricing and conditions for the PD Services are set out in the Order Form.

6.2 **Invoicing.** Unless otherwise agreed in the Order Form, Kognity will invoice Subscriber in full upon Subscriber signing the Order Form. All amounts paid are non-refundable, including if not all PD Services are provided through no fault of Kognity.

6.3 **Payment terms.** All invoices are payable within 30 calendar days from the relevant invoice date. All amounts not paid when due will be subject to penalty interest at a rate of six per cent annually, calculated and compounded daily on the amount overdue, as well as compensation for costs for recovery of late payment.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 **Intellectual Property Rights.** Kognity and its affiliates and licensors will own all Intellectual Property Rights in and to any materials prepared or developed in connection with the PD Services. Kognity hereby grants to Subscriber a non-exclusive, non-assignable license to use such materials for its internal professional development and educational purposes.

7.2 **Kognity Intellectual Property Rights.** Kognity’s trademarks, service marks, trade names, logos, domain names and any other features of the PD Services are the sole property of Kognity or its licensors.

8 CONFIDENTIALITY AND PRIVACY

8.1 **Use and disclosure restrictions.** Confidential Information exchanged between Kognity and Subscriber must be kept confidential and may not be disclosed to any third party without the prior written consent of the disclosing party. Confidential Information must be treated and stored carefully so that the Confidential Information is not disclosed in breach of the Agreement.

8.2 **Permitted disclosures.** Notwithstanding Section 9.1, these Standard Terms will not prohibit the disclosure of Confidential Information as permitted or required by law, regulation or order of a court or other governmental authority. Furthermore, Kognity may, subject to appropriate confidentiality undertakings, disclose Confidential Information on a need-to-know basis to its advisors, contractors and other service providers.

8.3 **Data privacy.** Subscriber will retain ownership of any personal data of staff shared with Kognity in connection with the PD Services, which personal data will be regarded as Confidential Information. Subscriber may not share any personal data attributable to its students, including student records.

9 KOGNITY SOFTWARE

In connection with the provision of the PD Services, Kognity may, at its discretion, grant Subscriber or its personnel access to Kognity’s digital teaching and learning platform service (or parts thereof). If the parties have not entered into a separate subscription agreement concerning access to the Kognity platform, https://kognity.com/wp-content/uploads/2025/01/US_Standard-Subscription-Agreement-Terms_2025-1.pdf, as the same may be updated or amended from time to time and including any documents referenced therein, will govern such access and use.

10 LIMITATION OF LIABILITY

10.1 **Exclusion of damages.** KOGNITY WILL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY OR INDIRECT DAMAGES, OR ANY ECONOMIC OR CONSEQUENTIAL DAMAGES, OR LOST PROFITS, BUSINESS VALUE, REVENUE, GOODWILL, LOSS OF DATA OR ANTICIPATED SAVINGS (REGARDLESS OF THE BASIS OF THE CLAIM).

10.2 **Limitation of liability.** KOGNITY’S ENTIRE LIABILITY IN THE AGGREGATE FOR ALL CLAIMS RELATED TO THE AGREEMENT (REGARDLESS OF THE BASIS OF THE CLAIM) WILL NOT EXCEED ANY ACTUAL DIRECT DAMAGES INCURRED BY THE SUBSCRIBER UP TO THE TOTAL AMOUNT PAID BY SUBSCRIBER UNDER THE AGREEMENT IN THE TWELVE MONTHS PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO THE LIABILITY, EXCEPT WHERE THE LOSS OR DAMAGE IS DUE TO KOGNITY’S WILLFUL VIOLATION OF THE TERMS OF THE AGREEMENT OR CANNOT BE LIMITED UNDER APPLICABLE LAW.

11 TERM AND TERMINATION

- 11.1 **Term.** This Agreement shall remain in force until the PD Services have been performed, provided that all provisions of this Agreement which can reasonably be interpreted as surviving the full performance, expiry, termination, cancellation or voidance of the Agreement (in particular provisions on IPR, confidentiality and payment) shall survive the performance, expiry, termination, cancellation or voidance.
- 11.2 **Termination.** Notwithstanding Section 11.1, each party shall be entitled to terminate the Agreement if the other party has not cured a material breach of this Agreement within 30 days of receiving written notice of the asserted breach, provided, however, that both parties continue to perform obligations under this Agreement up until the termination date. Subscriber will not be relieved of any obligation to pay Kognity for any PD Services rendered merely as a result of the termination of this Agreement.

12 MISCELLANEOUS

- 12.1 **Publicity.** Unless otherwise notified by Subscriber to Kognity, Subscriber agrees to Kognity using Subscriber's name and logo in its marketing materials, including on its website, and as a reference in communications with potential customers to identify Subscriber as a user of the PD Services.
- 12.2 **Notices.** Any notice or other communication to be given or served under or in connection with the Agreement must be in writing and must be sent by e-mail to the other party's contact person set forth in the Order Form.
- 12.3 **Assignment.** Subscriber may not assign, mortgage, charge any of its rights or sub-contract or otherwise delegate any of its obligations under the Agreement, except with the written consent of Kognity.
- 12.4 **Entire agreement.** The Agreement constitutes the entire agreement between the parties and supersedes any previous agreement and, subject to Section 3.2, no modification of the Agreement will be effective unless it is made in writing and executed by or on behalf of the parties.
- 12.5 **Conflicting terms and precedence.** Issuance by Kognity of an Order Form, and Subscriber's acceptance of any Order Form, quotation or proposal by Kognity, is expressly limited to and conditioned upon these Standard Terms and the Agreement. The terms of the Agreement will prevail over any additional, conflicting or inconsistent terms, whether appearing on any purchase order or any other document or agreement furnished by Subscriber, and any such terms will have no force and effect, notwithstanding Kognity's acceptance or execution thereof, and under all circumstances any limitations of liability under these Standard Terms will expressly extend to any such other document.
- 12.6 **Waivers.** No failure or delay by any party in exercising any of its rights under the Agreement will be deemed to be a waiver of that right, or otherwise prejudice, affect or restrict the rights or remedies of that party in relation to the other party, and no waiver by any party of a breach of any provision of the Agreement will be deemed to be a waiver of any subsequent breach of the same or any other provision of the Agreement.
- 12.7 **Surviving provisions.** All provisions of the Agreement that can be reasonably interpreted as surviving upon the full performance, expiry, termination, cancellation or voidance of the Agreement (in particular provisions on Intellectual Property Rights and confidentiality) will survive said performance, expiry, termination, cancellation or voidance.
- 12.8 **Force majeure.** Kognity will not be liable for damages for any delay or default in performance of its undertakings or obligations under the Agreement if such delay or default is caused by force majeure, including wars, insurrections, fires, pandemics, acts of government, passing of laws or any governmental order, regulation or ruling, or any other acts or circumstances beyond the reasonable control of Kognity, and Subscriber will not have the right to terminate the Agreement unless such delay or default in performance is caused by force majeure for a period of more than six months. During the force majeure event, Kognity will use all reasonable efforts to avoid, reduce or eliminate the force majeure event's prevention, restriction or delay of the performance of its obligations under the Agreement.

13 APPLICABLE LAW AND DISPUTE RESOLUTION

- 13.1 **Governing law and dispute resolution.** The Agreement shall be governed by the substantive laws of the State of Delaware without regard to conflict of laws and all disputes arising under or relating to the Agreement shall be brought and resolved solely and exclusively in the state or federal courts in the state of Delaware. Should any legal proceedings be commenced in connection with the Agreement, the prevailing party in such action will be entitled to recover, in addition to court costs, such amount as the court may adjudge as reasonable attorney's fees. THE PARTIES IRREVOCABLY WAIVE ALL RIGHTS UNDER APPLICABLE LAW TO A TRIAL BY JURY.

