

Cognillo Software License Terms  
Version Date: March 15, 2025

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**SOFTWARE LICENSE AND SERVICE AGREEMENT**

Please review this license, maintenance, and support agreement (the "Agreement") thoroughly. This Agreement is by and between Tendero Inc., a business corporation duly incorporated under the law of the state of New Jersey, doing business as Cognillo (hereinafter referred to as "Cognillo" or "we"), and the client (hereinafter referred to as the "Client" or "you"), a natural person or legal entity, with its name and address provided by the Client through Cognillo system or otherwise in writing.

The effective date of this Agreement (the "Effective Date") is the date this Agreement is executed by the Client, whether by means of signing the forms through Cognillo's Website or Cognillo's Software, as defined herein, or by any other means. In the unlikely event the Services, as defined herein, are commenced prior to execution of this Agreement by the Client, the Effective Date of this Agreement shall be the date of commencement of the Services.

**RECITALS**

**WHEREAS**, Cognillo is in the business of providing software and technical solutions in the field of automation, machine learning, streamline reporting, data management and content analysis. This includes but is not limited to software process automation, permissions management, content migration and reporting, integrity of digital links and mending of broken digital links;

**WHEREAS**, Client wishes to subscribe to the Services, as defined herein;

**NOW, THEREFORE**, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the parties hereto and for the mutual covenants contained herein, the parties hereby agree as follows:

**1. Definitions**

For the purposes of this Agreement, the following terms shall have the following meanings:

"Activation," whether capitalized or not, means a consumption of a license key by the Client by inserting said license key through the interface of the Software or otherwise, thereby commencing the use of the Software in accordance with the purchased key.

"Business Day" means such day when the banks in the United States of America, the State of New York, are open for active operations. Any terms measured in "days" herein shall be measured in Business days for the purposes of this Agreement, unless stated otherwise herein.

"Bug-fixes" means a change to the Software designed to handle a programming bug/incident/glitch or likewise. Bug-fixing is performed by Cognillo at no extra cost to the Client, unless specifically provided herein.

"Confidential Information" means information disclosed by a Party (the "Disclosing Party") to the other Party (the "Receiving Party") that is not generally known to the public at the time of disclosure and is at the time of disclosure identified by the Disclosing Party as, or would reasonably be understood by the Receiving Party to be, proprietary or confidential with or without a restrictive notation such as "Confidential," provided that such information, in any event, excludes information that is not confidential pursuant to the United States Law or to the Law of the State of New York.

“Client’s Content” means any information or data sent by Client to be processed by the Software in any manner.

“Internal Use” means use of the Software for your Client’s internal operations and solely for Client’s own business. Internal Use explicitly excludes any use of the Software for the benefit of a third party, in the context of providing services to such third party, and explicitly excludes any and all manner of use of the Software that is directly or indirectly competitive with Cognillo’s business.

“Intellectual property” means all (a) patents, patent applications, patent disclosures and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names, URLs, and registrations and applications for the registration thereof, together with all of the goodwill associated therewith, (c) copyrights and copyrightable works (including computer programs) and registrations and applications therefor, (d) semiconductor chip “mask” works, and registrations and applications for registration thereof, (e) trade secrets, know-how and other confidential information, (f) unregistered and registered design rights and any applications for registration thereof, (g) database rights, and (h) all other forms of intellectual property, including waivable or assignable rights of publicity or moral rights, and any right to bring suit or collect damages for the infringement, misappropriation or violation of the foregoing, anywhere in the world, whether the terms are or are not capitalized herein.

“Payment Plan” whether capitalized or not, shall mean any of the plans available on the Website or provided to the Client in writing specifying the Software, its functionality, and the extent of the Services for the payment provided therein.

“Cognillo” means Cognillo, its agents and affiliates.

“Services” means services to be provided by Cognillo under this Agreement.

“Software” referenced in this Agreement is the “SharePoint Essentials Toolkit Enterprise Suite,” subject to all updates and upgrades.

“Trial Version” means a version of the Software, to be used only to review, test, and evaluate the Software for a limited time period. The Trial Version may have limited features and will cease operating after a predetermined amount of time due to an internal mechanism built into the Trial Version.

“Updates” means bug fixes, patches, and improvements to the Software, and new versions of the Software under this Agreement. Updates in all cases include (a) any standard element of the Software, including any successor product or service offered by Cognillo; (b) all changes made or obtained by Cognillo that are necessary to support changes in the Software, operating systems, or third party software employed by the Software; (c) changes that provide or support additional features or functions that are offered generally by Cognillo to other users of the Software; (d) any division, combination or replacement by Cognillo of existing features or functions or related Software or technology for use on or with the system elements; (e) changes made or obtained by Cognillo that are necessary to comply with applicable laws; and (f) foreign language or currency additions or updates to the extent applicable to the data processing services employed by Cognillo. Cognillo is not obligated to give any advance notices for Updates. Updates shall not mean or include any release, option, functionality, or future software or software component that Cognillo licenses separately.

“Website” means the website with the domain name(s) related to <https://www.cognillo.com> and all the other and further websites referenced through the Website.

## 2. License

### 2.1. License and Services for Trial Version.

2.1.1. If the Software is downloaded and/or used as a Trial Version, this Section of this Agreement shall apply to the Term, Services, and the scope of license under this Agreement for the Trial Version.

2.1.2. Cognillo hereby grants the Client a limited, revocable, non-exclusive, non-transferable, temporal object code license solely to review, test, and evaluate the Software for Client's Internal Use for the duration specified (i) in the Trial Version of the Software; (ii) on the Website; or (iii) in writing between the Client and Cognillo (the "Trial License").

2.1.3. Trial License may be granted through different ways and may be called "Not for Resale" or "NFR" license, may be granted in connection with Cognillo Membership, or on any other terms Cognillo decides to grant a Trial License.

2.1.4. Services, Software functions, support, and Trial License itself, may be limited or unavailable during the Trial License to the extent Cognillo finds it applicable to Trial License at its sole discretion.

2.1.5. Trial License may be revoked at any time with or without reason by Cognillo at its sole and absolute discretion.

2.1.6. Trial Version's Functionality and Features. If the Client is registered for the Trial Version of the Software, Client may decide to proceed with the License under this Agreement. Any and all Client's Content shall not be available to the Client upon termination of the Trial License for whatever reason. More particularly, if the Client elects not to proceed with the License upon expiration of the Trial License, Client will not be able to access or retrieve any of Client's Content, added or created with the Software.

### 2.2. Fee License.

2.2.1. If the Software is purchased pursuant to this Agreement and/or the price list and/or plan on the Website, the Software and Services are provided pursuant to this Agreement, except Section 2.1. of this Agreement.

2.2.2. Subject to the terms and conditions of this Agreement, Cognillo hereby grants the Client a revocable, non-perpetual, non-exclusive, non-transferable (except as specified in Section 3) object code license to use the Software for its Internal Use for the term, as committed by the Client through its payment (hereinafter referred to as the "License"). All rights not specifically granted to you by the present Agreement are reserved by Cognillo.

2.2.3. The License is a per-activation license. Client may only utilize the number of activations it has purchased and is responsible for coordinating the activation and deactivation of the license key(s) to permit itself, its agents or employees, to use the Software in accordance therewith. For the avoidance of doubt, (a) Clients may provide a license key from employee to another or from one of its internal users to another at no additional charge (s) so long as the Client is in compliance with the total number of available activations, and (b) mere installation of the Software does not count toward the number of activations.

2.2.4. Software under the License may consist of all programs, including any options or supported add-ons (e.g. SharePoint Essentials Toolkit & SharePoint Broken Link Manager), and (ii) programs that share the same source code (e.g. SharePoint Essentials Toolkit Scheduler). The actual Software and its functionality may vary as per the payment plan.

2.3. Non-Transferability. Client shall not assign, convey, or transfer its rights, obligations, or licenses under this Agreement, in whole or in part. Any purported assignment, conveyance, or transfer shall be null and void. Notwithstanding the foregoing, the Client may allow its agents, employees, or wholly-owned subsidiaries utilize activation of keys for the Software, provided, however, that it will be Client's responsibility to subject each and every of said users to comply with the terms and conditions of this Agreement.

2.4. Beta Features. From time to time, Cognillo may, at its sole discretion, include new and/or updated beta features ("Beta Features") in the Software. Any use of the Beta Features is voluntary and Cognillo is not obligated to provide any Beta Features. Consent to use Beta Features, may prevent to reverting back to the earlier non-beta version of the Software. Additionally, if such reversion is possible, Client's Content may not be recoverable. The Beta Features are provided on an "as is" basis and may contain bugs, errors or inaccuracies that could cause failures, corruption or loss of data and/or information.

### **3. Support and Maintenance Services**

3.1. Services. Subject to the terms and conditions of this Agreement, support and maintenance services are included in the Services under this Agreement for the Software under the License. The Services may be provided in whole or in part under Trial Version upon Cognillo's sole discretion, which shall in no event constitute Cognillo's obligation to provide the Services together with the Trial Version.

3.2. Commencement of Services. The Services shall be provided to Clients in accordance with then-existing pre-paid or post-paid Payment Plans. The Services shall commence as of the Effective Date, if the payment in accordance with the Payment Plan is remitted as of the Effective Date. Otherwise, the Services shall commence as of the date Client's payment is acknowledged by Cognillo in writing in the form of Cognillo's choice.

3.3. Standard of Performance. The Services under this Agreement shall be provided:

- (i) as per the industry standard of the United States;
- (ii) with reasonable care and skill; and
- (iii) by means of appropriately qualified and skilled personnel.

3.4. Updates. Updates for the Software shall be provided by Cognillo from time to time without any advance notice. Updates are provided at no additional fees. It is the Client's responsibility to download, install, and run the Update of the Software. Cognillo may at its sole discretion require Client to install all applicable Updates and provide Services solely with regard to the Software with all necessary Updates installed.

3.5. Back-Ups and Information Integrity. Backup of all data and applications contained at Client's computing environment is Client's sole responsibility at all times.

3.6. Unsupported Software. Clients with unsupported software are not entitled to download or receive updates, maintenance releases, patches, telephone assistance, or any other technical support services for unsupported programs. CD/DVD packs or programs purchased or downloaded for trial use, use with other supported programs, or purchased or downloaded as replacement media may not be used to update any unsupported programs.

3.7. Technical Support Communication.

3.7.1. Any communication with regard to the technical support shall be rendered on behalf of the Client and not any other person. When submitting a service request, Client's technical contact shall have a baseline understanding of the problem encountered and an ability to describe and reproduce the problem in order to assist Cognillo in diagnosing and triaging the problem. To avoid interruptions in support services, the Client shall notify Cognillo whenever technical contact responsibilities are transferred to another individual. Each Client may designate one (1) primary and four (4) backup individuals ("technical contact") per License, to serve as liaisons with Cognillo.

3.7.2. Client's primary technical contact shall be responsible for (i) overseeing Client's service request activity, and (ii) developing and deploying troubleshooting processes within the Client. The backup technical contacts shall be responsible for resolving user issues.

3.7.3. Client may be charged an additional fee to designate additional technical contacts.

3.7.4. Cognillo may review service requests logged by your technical contacts and may recommend specific training to help avoid service requests that would be prevented by such training.

3.8. Remote Support. In order to provide the Services including but not limited to technical support, Cognillo may need to remotely access Client's computing environment. Client shall have a choice to permit Cognillo's access for the purpose of providing the Services. Cognillo shall not access Client's computing environment or network without explicit permission to do so.

3.9. De-support. It may become necessary, at Cognillo's sole discretion, as a part of Cognillo's product lifecycle to de-support certain program releases and, therefore, Cognillo reserves that right to de-support any and all of the Software Components. Cognillo shall provide 6 months advance notice to Client prior to de-support of any element of the Software, provided however, that shall the element of the Software or its support become illegal in the United States, Cognillo's notice of de-support shall be provided as practicable to comply with respective laws or regulations.

3.10. Levels of Technical Support.

3.10.1. Premium Technical Support. License under Cognillo's Premium Support Payment Plan shall receive the following Services:

- All Major and Minor program fixes, new features, enhancements and patch updates;
- Major product and technology releases, which includes general maintenance releases, selected functionality releases, and documentation updates;
- Assistance with technical service requests Monday to Friday 8AM to 6PM Eastern Standard Time via telephone and email (Please ask our [sales team](#) about after hours support);
- Unlimited number of annual incidents;
- Access to **My Cognillo Support** (24 x 7 web-based Client support system), including the ability to log service requests online, unless stated otherwise; and
- Non-technical Client service during normal business hours.

3.10.2. Basic Technical Support. Programs under Cognillo's Basic Support plan shall receive the following Services:

- All Minor program fixes, new features, enhancements and patch updates. Does not include Major releases;
- Assistance with technical service requests Monday to Friday 8AM to 6PM Eastern Standard Time via telephone and email;
- Up to 6 annual incidents;
- Access **My Cognillo Support** (24 x 7 web-based Client support system), including the ability to log service requests online, unless stated otherwise; and
- Non-technical Client service during normal business hours

3.10.3. Out of Support. Out of support status of the Client is effective after the Premium or Basic Support expires and is not renewed. When the product is Out of Support, you the Client shall have access to the following:

- Archived technical support related tickets (on My Cognillo Support) will be available to be viewed, new technical support tickets will not be supported; and
- Non-technical Client service during normal business hours.

#### 4. Fees

- 4.1. All fees under this Agreement are specified in the Payment Plan(s).
- 4.2. All fees under this Agreement are non-cancellable, non-refundable, and advance.
- 4.3. Failure to pay any fees under the Payment Plan(s) elected by Client timely and in accordance with the Payment Plan shall result in termination of any and all Services and License without any further notice.
- 4.4. Governmental Charges. The amounts of fees herein do not and will not include any taxes levied by or due to any duly authorized taxing authority. Client shall pay all applicable taxes and other government charges, if any, however designated, derived from or imposed on the transactions contemplated hereby, including without limitation sales, value-added, use, transfer, withholding, privilege, excise and other taxes and duties.

#### 5. Client's content. Compliance with GDPR

- 5.1. License to Provide Services. Client grants to Cognillo a worldwide, non-exclusive, royalty-free, revocable, non-transferable limited license to Client's Content solely to enable Cognillo, its agents, and employees, to perform its Services under this Agreement including without limitation the digital processing of all or part of Client's Content (and derivative works thereof).
- 5.2. Collection of Data. Client grants to Cognillo a license and permission may collect and use technical information gathered as part of the Technical Support Services provided to you, if any, related to the product to ensure proper authorization of all copies of the Software as well as to improve Cognillo's products or provide customized services or technologies to You. Cognillo will not disclose this information in a form that personally identifies you to any third parties.
- 5.3. Unrecoverable Content. Client shall be solely responsible for lost or unrecoverable Content.

5.4. Cognillo reserves its right to refuse to process the Client's Content or to remove the Client's Content from the Software, at its sole discretion, considers that such Client's Content is inappropriate or a breach of this Agreement. Cognillo shall promptly notify Client in writing of any such refusal or removal.

5.5. Client's Content and any content to which the Client's Content links, shall:

5.5.1. be free of viruses and/or other computer programming routines or any other items that may damage, interfere with or adversely affect or hinder the performance of any of the Services, or place an unreasonable or disproportionately large load on the Software (as Cognillo determines in its sole discretion);

5.5.2. comply at all times with all applicable laws, statutes, statutory instruments, contracts, or regulations, advertising, and marketing codes of practice (whether self-regulatory or otherwise) in any of the jurisdictions where any Client's Content is distributed or displayed; and

5.5.3. not at any time breach any duty toward, or rights of, any person or entity, including intellectual property rights, rights of publicity and/or privacy, or any consumer protection laws, and have not otherwise resulted in or are not likely to result in any claims relating to consumer fraud, product liability, tort, deceptive trade practices, breach of contract, or any other form of illegal practice, injury, damage or harm of any kind to any person or entity including the intellectual property rights of any third party.

5.6. Client represents and warrants that it:

5.6.1. has obtained all necessary permits, approvals, consents, authorizations, or licenses to lawfully operate its websites, to interact with third party websites and/or other Internet-connected devices and locations in the Internet, and to collect, process and use Client's Content; and

5.6.2. is using the Cognillo's Services, and otherwise using Client's Content in accordance with the scope of such permits, approvals, consents, authorizations, or licenses, as may be necessary.

5.7. General Data Protection Regulation. To the extent the European Union's General Data Protection Regulation ("GDPR") applies to Client's business operations or to Client's Content, the Client understands and acknowledges as follows:

5.7.1. Cognillo is a United States legal entity and does not intend to perform its services outside the territory of the United States.

5.7.2. Both Parties understand and acknowledge that by providing the Services under this Agreement Cognillo does not have resources to control whether the Client's Content contains "Personal Data," "Sensitive Personal Data," or whether Client and, as a result, Cognillo is involved in "Processing" in the meaning used in the same sense as in the GDPR.

5.7.3. Client is responsible for the compliance of Client's Content and the use of the Software in connection therewith with respect to the GDPR, and for ensuring that the processing of Personal Data as defined in Article 4 shall be in compliance with the GDPR with all consents and regulations required by the GDPR ensured by the Client. Such information shall be designated as "EU Confidential Personal Data" and afforded all of the applicable



protections granted by other protective orders in this action as well as the additional safeguards specified herein in order to ensure that any processing of EU Confidential Personal Data complies with the GDPR and other applicable laws.

- 5.7.4. Any processing of Personal Data that would be considered as “EU Sensitive Personal Data” under the GDPR shall be afforded all the protections of “EU Confidential Personal Data” under the GDPR as well as additional safeguards in order to ensure that any processing of EU Sensitive Personal Data complies with the GDPR and other applicable laws.
- 5.7.5. The Client represents and acknowledges that Client’s use of the Software or Services in connection with this Agreement together with the Client’s Content do not violate any applicable laws of any jurisdiction, including, without limitation, GDPR if it is subject to GDPR.
- 5.7.6. It is Client’s sole responsibility to determine whether or not any of Client’s Content are subject to the GDPR, and if so, to maintain compliance with GDPR for such Content.

## **6. Intellectual Property**

- 6.1. All Intellectual Property related to the Software and Services is the property of Cognillo and protected under applicable laws.
- 6.2. Client shall not use the Intellectual Property of Cognillo other than for the purposes specifically designated in this Agreement and/or agreed additionally by the Parties in writing.
- 6.3. Client shall not, and represents and warrants that it will not permit any third party to:
  - 6.3.1. decompile, disassemble, or otherwise reverse engineer any element of the Software or determine or attempt to determine any source code, algorithms, methods, or techniques embodied in any Software;
  - 6.3.2. distribute, disclose, or otherwise transfer or provide any element of the Software, in whole or in part, to any third party;
  - 6.3.3. create derivative works of or otherwise modify any element of the Software or otherwise develop or create any technology that incorporates, or is based on or derived from, the Software;
  - 6.3.4. use the Software or any element of the Software for any purpose other than the uses authorized under this Agreement;
  - 6.3.5. install, operate, or maintain, or otherwise use or exploit any element of the Software, except as expressly permitted by this Agreement.
  - 6.3.6. In case Client obtains access to the source code of the Software, the Client represents and warrants that the Client is in material breach of this Agreement and shall not to use it in other interests, other projects and agrees not to share it in full or in part with any other third parties or its employees. The Client agrees that Cognillo may specifically ask for injunctive relief in order to enforce this provision.

- 6.3.7. All modifications to the Software shall be authorized or acknowledged in writing by Cognillo. Client agrees to assign to Cognillo, or its designee, all his right, title and interest throughout the world in and to any and all modifications made to the Software immediately upon development (creation) of such modification.
- 6.3.8. Cognillo reserves the right to refuse to refund, perform Services, and grant access to the Software; and further claim damages, should the Client breach this Section.

## **7. Term and Termination**

- 7.1. The term of this Agreement, both initial and renewed, shall be determined by the Payment Plan.
- 7.2. Notwithstanding anything to the contrary in this Agreement, Cognillo may terminate this Agreement without any prior written notice to the other Party in the event of any act of gross misconduct or a material breach of the terms of this Agreement by the Client.

## **8. Representations and Warranties**

- 8.1. Cognillo represents and warrants to the Client that:
  - 8.1.1. it is a corporation duly incorporated and in good standing under the laws of the State of New Jersey;
  - 8.1.2. it has obtained any necessary license, approval, permit, and/or authorization required to enter into this Agreement including any intellectual property rights and/or technology licenses related to the Software; and
  - 8.1.3. prior to the Effective Date, Cognillo has provided to the Client and its representatives all information about the Software and Services requested by the Client.
- 8.2. Client represents and warrants to Cognillo that:
  - 8.2.1. it has obtained any necessary license, approval, permit, and/or authorization to enter into this Agreement;
  - 8.2.2. this Agreement constitutes a legally valid and binding obligation for the Client, and entering into this Agreement or the performance by the Client of its obligations hereunder does not conflict with any other agreement to which the Client or his assets are bound, or any law or regulation applicable to the Client, or any court ruling or arbitral award binding upon it;
  - 8.2.3. Client will ensure that any personal data it collects is collected, stored, processed and used in accordance with all applicable data protection and privacy laws; more particularly that the Client either complies with GDPR or ensures that the information is not subject to GDPR.
  - 8.2.4. Client is aware and agrees to abide by the rules, terms, and conditions which may be electronically published in future related to Software and the Services, provided that Cognillo notifies Client of the creation of such online terms and conditions through its publishing on the Website and new terms and conditions may not materially contradict the version of this Agreement as of the Effective Date. Such rules shall be a part of this

Agreement to the extent they are not materially in conflict this Agreement, and such rules are subject to change without any prior notice.

## **9. Disclaimers and Limitations of Liability**

9.1. COGNILLO EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT THE SOFTWARE AND SERVICES WILL BE ERROR-FREE, TIMELY, SECURE OR UNINTERRUPTED. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY COGNILLO, ITS EMPLOYEES, LICENSORS OR AGENTS WILL CREATE A WARRANTY, NOR MAY CLIENT RELY ON ANY SUCH INFORMATION OR ADVICE. THE SOFTWARE IS PROVIDED "AS IS" AND "AS AVAILABLE," WITH ALL DEFECTS AND ERRORS, IF ANY. THE SOFTWARE IS SUBJECT TO CHANGE WITHOUT NOTICE.

9.2. UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES THAT RESULT FROM THE USE OF OR INABILITY TO USE THE SOFTWARE AND THE SERVICES, INCLUDING BUT NOT LIMITED TO RELIANCE ON ANY INFORMATION OBTAINED ON THE SOFTWARE; OR THAT RESULT FROM MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES OR EMAIL, LOSS OF OR DAMAGE TO DATA, ERRORS, DEFECTS, VIRUSES, DELAYS IN OPERATION OR TRANSMISSION, OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT LIMITED TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, DESTRUCTION OR UNAUTHORIZED ACCESS TO EITHER PARTY'S RECORDS, PROGRAMS OR SERVICES. BOTH PARTY'S HEREBY ACKNOWLEDGE THAT THIS PROVISION WILL APPLY WHETHER OR NOT EITHER PARTY IS GIVEN NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND THAT THIS PROVISION WILL APPLY TO ALL SERVICES AVAILABLE FROM COGNILLO AND ITS AFFILIATES. UNDER NO CIRCUMSTANCES SHALL DAMAGES INCLUDE LOSS OF BUSINESS, OR LOSS OF PROFITS, WHETHER BASED ON BREACH OF AGREEMENT, BREACH OF WARRANTY, PRODUCT LIABILITY, OR OTHERWISE, TO ANY PARTY IN PRIVY TO THIS AGREEMENT, OR ANY THIRD PARTY NOT SO SITUATED.

9.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, CLIENT AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COGNILLO AGAINST ANY AND ALL CLAIMS, LOSSES, PENALTIES, CAUSES OF ACTION, DAMAGES, LIABILITY, COSTS, REASONABLE EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS' FEES AND COSTS) OR CLAIMS CAUSED BY OR RESULTING INDIRECTLY FROM CLIENT'S USE OF OR COGNILLO PROVISION OF THE SOFTWARE AND SERVICES, WITHOUT LIMITATION OR EXCEPTION, INCLUDING CLIENT'S VIOLATION OF ANY THIRD PARTY'S RIGHTS, (INCLUDING, WITHOUT LIMITATION, INFRINGEMENT OF ANY COPY RIGHT TRADEMARK, SERVICE MARK, TRADE SECRETS, RIGHT OF PRIVACY OR PUBLICITY OR ANY OTHER THIRD PARTY RIGHT), EXCEPT TO THE EXTENT CAUSED OR CONTRIBUTED TO BY COGNILLO. COGNILLO MUST (A) NOT SETTLE OR COMPROMISE ANY CLAIMS THE SUBJECT OF THE INDEMNITY WITHOUT CLIENT'S PRIOR WRITTEN CONSENT, NOT TO BE UNREASONABLY WITHHELD OR DELAYED AND (B) USE ALL REASONABLE ENDEAVOURS TO MITIGATE ANY LOSSES OR LIABILITIES THE SUBJECT OF THE INDEMNITY.

9.4. COGNILLO'S TOTAL LIABILITY UNDER THIS AGREEMENT AT ALL TIMES AND IN ALL CASES IS LIMITED AND IN THE AGGREGATE TO THE AMOUNT OF FEES ACTUALLY PAID BY CLIENT FOR THE CORRESPONDING SERVICE DURING THE TWELVE (12) MONTHS PRECEDING THE DATE OF THE EVENT THAT IS THE BASIS FOR THE FIRST CLAIM.

9.5. THE TERMS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT FOR WHATEVER REASON.

9.6. THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN THIS CLAUSE 9 DO NOT APPLY TO LIABILITY ARISING OUT OF OR IN CONNECTION WITH GROSS NEGLIGENCE, FRAUD, WILFUL MISCONDUCT OR UNLAWFUL CONDUCT.

## **10. Notices**

10.1. All communications pursuant to party's routine obligations under this Agreement shall be in writing, in English to contacts for the respective parties are as follows:

10.1.1. As to Client – e-mail address and physical address, provided by the Client in writing.

10.1.2. As to Cognillo:

244 5th Avenue, Suite C-160  
New York, NY, 10001 USA

E-mail:

## **11. Confidentiality**

11.1. Each Party has made and may continue to make available to the other Party Confidential Information of such Party. The definition of "Confidential Information" shall be as set forth in the Definitions section of this Agreement, for further clarity including (a) business plans, strategies, forecasts, projects and analyses; (b) financial information and fee structures; (c) business processes, methods and models; (d) employee and customer/subscriber information (e) hardware and system designs, architectures, structure and protocols; (f) product and service specifications; (g) purchasing, logistics, sales and marketing information; and (h) all other data, information and materials expressly identified as Confidential Information pursuant to this Section not explicitly outlined above, whether or not such items are identified as Confidential by either written or verbal identification. For avoidance of doubt, the Confidential Information of Cognillo shall include any data about the Software that is not available to general public including the information distributed to the Client during any training sessions.

11.2. The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than to exercise its rights or perform its obligations under this Agreement. Receiving Party will not disclose the other Party's Confidential Information except to its officers, directors, employees, contractors and consultants, legal representatives, accountants, tax advisors, and auditors who have a need to know such Confidential Information to exercise the Receiving Party's rights or to perform the Receiving Party's obligations under this Agreement and who are obligated to maintain the confidentiality of the Confidential Information upon terms (including terms relating to nonuse and non-disclosure) no less restrictive than those set forth in this Agreement. The Receiving Party will use the same care and discretion to avoid disclosure, publication or dissemination of any Confidential Information received from the Disclosing Party as the Receiving Party uses with its own similar information that it does not wish to disclose, publish or disseminate (but in no event less than a reasonable degree of care). The Receiving Party will be liable for any unauthorized disclosure or use of Confidential Information by any of its officers, directors, employees, contractors or consultants, legal representatives, accountants, and tax advisors and by any other Persons to which the Receiving Party discloses or permits the disclosure of the disclosing Party's Confidential Information. The Receiving Party will promptly report in writing to the Disclosing Party any disclosures of Disclosing Party's Confidential Information and will specify the corrective action to be taken, such corrective action to be approved by Disclosing Party prior to such action being taken.

11.3. The obligations set forth in this Section do not apply to (and “Confidential Information” does not include) any information that the Receiving Party can demonstrate:

- 11.3.1. the Receiving Party possessed prior to disclosure by the Disclosing Party, without an obligation of confidentiality owed with respect to such information;
- 11.3.2. is or becomes publicly available other than as a result of any wrongful action or inaction of the Receiving Party;
- 11.3.3. is or was independently developed by the Receiving Party without the use of or reference to any Confidential Information of the Disclosing Party; or
- 11.3.4. is or was received by the Receiving Party from a third party that does not have an obligation of confidentiality with respect to such information.

11.4. If the Receiving Party is legally required to disclose any Confidential Information of the Disclosing Party in connection with any legal or regulatory proceeding, the Receiving Party will, if lawfully permitted to do so, promptly notify the Disclosing Party within a reasonable time prior to disclosure and to allow the Disclosing Party a reasonable opportunity to seek appropriate protective measures or other remedies prior to disclosure and/or waive compliance with the terms of this Agreement. If these protective measures or other remedies are not obtained, or the Disclosing Party waives compliance with the terms of this Section, the Receiving Party may disclose only that portion of that Confidential Information that it is, according to the opinion of counsel, legally required to disclose and will exercise all reasonable efforts to obtain assurance that confidential treatment will be accorded to that Confidential Information.

## 12. Miscellaneous Provisions

12.1. Governing Law and Jurisdiction. This Agreement and any non-contractual rights or obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with the laws of the United States of America and the State of New York. The parties hereby consent to the concurrent exclusive jurisdiction of the courts of the State of New York and the United States courts located in New York County, New York in connection with any suit, action or proceeding arising out of or relating in any manner to this Agreement, and each of the Parties further irrevocably agrees to waive any objection to the venue of any such suit or proceeding in either court, or to *in personam* jurisdiction.

12.2. Waiver of Jury Trial. BOTH PARTIES AGREE TO WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN THE RESOLUTION OF ANY DISPUTE OR CLAIM, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN ANY OF THE PARTIES OR ANY OF THEIR RESPECTIVE AFFILIATES ARISING OUT OF, CONNECTED WITH, RELATED TO OR INCIDENTAL TO THIS AGREEMENT.

12.3. Entire Agreement. This Agreement, together with all addenda, attachments, and referred documents and links, contains all of the terms, promises, covenants, conditions and representations made or entered into by the parties and supersede all prior discussions and agreements whether written or oral between the parties with respect to all matters contained herein and constitute the sole and entire agreement between the Parties with respect thereto. This Agreement may not be modified or amended unless such amendment is set forth in writing and executed by both of the parties or such amendment is expressly allowed under this Agreement.

12.4. Collection and Legal Fees. If at any time, for any reason, the Client is unable to pay the fees herein when due, and in the event it becomes necessary for Cognillo to incur collection costs or institute suit to

collect any amount due under this agreement or any portion thereof, Client agrees to pay such additional collection costs, charges, and expenses. These costs may include reasonable attorney's fees. If either party brings a legal action to enforce its rights under this Agreement, the prevailing party shall be entitled to receive from the other party its reasonable attorneys' and litigation fees related to such action.

12.5. Force Majeure. If by reason of failures of telecommunications or Internet service providers, labor disputes, riots, inability to obtain labor or materials, earthquake, fire or other action of the elements, accidents, governmental restrictions or other causes beyond either party's control, either party is unable to perform in whole or in part its obligations as set forth in this agreement, then such party shall be relieved of those obligations to the extent it is so unable to perform and such inability to perform shall not make such party liable to the other party or other third parties only until such hindrances are removed or resolved.

12.6. Construction, Counterparts. Section headings in this Agreement are for convenience only and are not to be used in interpreting this Agreement. As used in this Agreement, "including" means "including but not limited to." The parties acknowledge and agree that no implied rights or licenses are conveyed by this Agreement. Except as expressly provided to the contrary, any provision for a party's consent or approval allows that Party to grant or withhold its consent or approval in its sole and absolute discretion. This Agreement may be executed in counterparts, each of which will be considered an original, but all of which together will constitute the same instrument. The execution by Client may additionally occur through its payment under the Payment Plan, commencement of use of the Software, commencement of availing itself of the Services, or any written notice or instrument from Client that so provides.

**Appendix A: Technical Support Comparison Chart**

<b>Support Services</b>	<b>Out of Support</b>	<b>Basic</b>	<b>Premium</b>
<b>Initial response time</b>	n/a	2 business days	4 business hours*
<b>Method of contact</b>	My Cognillo Support Portal (access to archived tickets only)	My Cognillo Support Portal (new & archived tickets), Phone Call back, email and Web Meeting (screen sharing)	My Cognillo Support Portal (new & archived tickets), Phone Call back, email and Web Meeting (screen sharing)
<b>Number of annual incidents</b>	n/a	6	Unlimited
<b>Support hours</b>	8am-6pm EST/EDT	8am-6pm EST/EDT	8am-6pm EST/EDT (Please ask our <a href="#">sales team</a> about after-hours support)
<b>Number of designated support contacts</b>	n/a	2	5
<b>Access to patch releases and bug fixes</b>	Yes	Yes	Yes
<b>Free major version upgrades</b>	No	No	Yes

\* 4 business hours response time applies to tickets flagged as “Emergency” or “Critical” in the **My Cognillo Support** Portal. “Normal” priority tickets will be responded to within 12 business hours. “Low” priority tickets will be responded to within 1 business day.