Term License and Support Services Agreement

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Governed under Cognitus Consulting Software Term License and Support Services Agreement, dated **[DATE]** between **Cognitus Consulting** ("Cognitus") and **[NAME]** (“Customer”).

1.0 Agreement

This Cognitus Consulting Software Term License and Support Services Agreement is made on [DATE], between Cognitus Consulting LLC (Cognitus), 16600 Dallas Parkway, Suite 200, Dallas, TX 75248, as licensor, and [NAME] (Customer), [ADDRESS], as licensee

2.0 Recitals

a. Cognitus proposes to supply Software and Support Services to Customer.
b. Customer agrees to acquire Software and Support Services from Cognitus on the following terms and conditions.

3.0 Operative Part

A. Definitions

In this Agreement, unless inconsistent with the context:

a) Agreement means the recitals and provisions of this license and services agreement, any attachments to this agreement including the Schedules and any Statement of Work (whether or not attached to this agreement).
b) Agreement End Date means the agreement end date set forth in the Order Form.
c) Agreement Start Date means the agreement start date set forth in the Order Form.
d) Agreement Term means the Initial Term and any Renewal Term.
e) Confidential Information means all information of a confidential nature relating to the business or affairs of a Party which the Party has identified or marked as confidential, or which the other Party knows or ought to know is confidential.
f) Fees means the Software Term License Fee, Support Services Fee, Training Services Fees and any other fees or charges payable by the Customer to Cognitus under this Agreement.
g) Initial Term means the term that commences on the Agreement Start Date and ends on the Agreement End Date.
h) Intellectual Property Rights means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
i) License Metrics means the unit of measure that determines actual Customer license entitlement and use rights of the Software and when used hereunder, also refers to the specific numerical values set forth under “License Metrics” in the Order Form.
j) Order Form means the order form attached hereto as Schedule A.
k) Party refers to a party to this Agreement and Parties refers to all of the parties to this Agreement.

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l) Personal Information means any information or opinion about an identified or reasonably identifiable individual whether the information is recorded in a material form or not.
m) Privacy Laws means any privacy legislation applicable to any Personal Information collected, used, disclosed, stored or otherwise handled by Cognitus on behalf of the Customer.
n) Remaining Term means the remaining period of the Agreement Term or extension of such Agreement Term pursuant to Section 3(K)(b), had the Agreement not been terminated.
o) Renewal Term has the meaning given to it in Section 3(B)(i).
p) Schedule means a schedule to this Agreement including but not limited to the Order Form.
q) Software means the software to be supplied to the Customer as described in the Order Form including, without limitation, updates, new releases and corrective releases for the software.
r) Software Term License Fee means the fee(s) specified in the Order Form for the supply of the Software.
s) Support Services means any support services to be provided to the Customer as described in Attachment 1.
t) Support Services Fee means the fee specified in the Order Form for Support Services.
u) Statement of Work or SOW means any statement of work agreed between the Parties which describes any additional services to be provided to the Customer by Cognitus under this Agreement.
v) Taxes means any taxes, duties, government charges, fees, levies or withholding taxes including, without limitation, any related penalty or liability.
w) Training Services means any training services to be provided to the Customer as described in a Schedule or any Statement of Work.
x) Training Services Fee means the fee specified in the Order Form, a Schedule or any Statement of Work for the supply of any Training Services.
y) Updates means any minor releases, bug fixes, patches, error corrections, or other modifications to the Software that Cognitus makes generally available at no additional charge to its customers who have purchased Support Services. For avoidance of doubt, “Updates” do not include major releases or new products that Cognitus may license separately, in its sole discretion.

z) Warranty Period means a period of [ninety (90)] days from the commencement of the Initial Term.

B. Agreement Term

a. This Agreement begins on the Agreement Start Date and continues for the Agreement Term unless earlier terminated in accordance with its provisions. This Agreement may berenewed for up to four (4) additional successive [one]-year terms (each, a “Renewal Term”)by executing a written order for the successive Renewal Term.

C. Supply of Software and Support Services

a. The Customer engages Cognitus solely as its contractor to supply the Software and Support Services to the Customer as set out in a Schedule or any Statement of Work.
b. Cognitus warrants that during the Warranty Period, the Software shall comply in all material respects with the specifications provided in writing by Cognitus to Customer. The limited warranties set forth in this section apply only if Customer: (a) notifies

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Cognitus in writing of the warranty breach before the expiration of the Warranty Period and (b) as of the date of notification, is in compliance with all terms and conditions of this Agreement (including the payment of all Fees then due and owing).

c. Customer shall not at any time, directly or indirectly, and shall not permit any of Customer's users to:
   i. copy, modify, or create derivative works of the Software, in whole or in part;
   ii. rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Software;
   iii. reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Software, in whole or in part;
   iv. remove any proprietary notices from the Software; or
   v. use the Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other right of any person, or that violates any applicable law.
d. Cognitus shall perform all services with a professional degree of care, skill and diligence according to any applicable industry standard using skilled and qualified personnel.
e. When performing any services Cognitus shall comply with all of the Customer's occupational health and safety requirements advised to Cognitus in writing.
f. Subject to Customer's payment of all applicable Fees (including Support Services Fees) and compliance with this Agreement, Cognitus will provide Customer with any Updates to the Software that Cognitus generally makes available to its customers. Cognitus will use commercially reasonable efforts to notify Customer of the availability of such Updates. Customer is responsible for promptly installing or implementing any Updates in accordance with Cognitus's instructions. Major releases or upgrades that introduce significant new functionality may be offered separately and may require an additional fee or separate Order Form, as determined by Cognitus.

D. Customer's Software and Support Service Obligations

a. The Customer agrees to follow any published user documentation, guidelines or procedures notified by Cognitus from time to time in connection with the Customer's receipt or use of the Software or any Support Services.
b. The Customer agrees not to do anything in connection with the Customer's receipt or use of the Software or any Support Services that adversely affects, or may adversely affect, Cognitus' reputation or goodwill.
c. Customer is solely responsible for procuring, configuring, and maintaining all required hardware, software, network, and connectivity resources to meet the minimum system requirements set forth in the Documentation. Cognitus will not be liable for performance issues or outages attributable to Customer's failure to maintain an environment that complies with such requirements.
d. Unless expressly specified otherwise in a Schedule or any Statement of Work, the Customer is solely responsible for ensuring that all of its data and code is adequately backed up at all times, and the procurement and operation of all necessary third-party software, telecommunications and equipment.

E. Intellectual Property Rights

a. The Customer acknowledges and agrees that Cognitus remains the sole owner of all of the Intellectual Property Rights in the Software, Support Services and any other

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services delivered to Customer by Cognitus pursuant to this Agreement, including, without limitation, all Intellectual Property Rights arising from, or in relation to, any future Software or Support Services.

b. The Customer shall, subject to full compliance at all times with this Agreement (including, without limitation, payment of all Fees in accordance with this Agreement), enjoy an irrevocable (subject to clause 3(C) non-exclusive and non-transferable license to use the Software and Support Services for the applicable purpose set out in a Schedule or any Statement of Work.
c. Cognitus agrees to indemnify the Customer against all costs, attorney fees, damages and judgments awarded against Customer in a final non-appealable decision by a court of competent jurisdiction as a result of a third party claim that the Customer's use of the Software or any Support Services infringes any Intellectual Property Rights of a third party provided that the Customer:
    i. immediately notifies Cognitus of any such third-party claim and provides Cognitus with full assistance in resolving any such third-party claim.
    ii. gives Cognitus sole control of the defense of the claim and has not admitted, and does not admit, liability for the alleged infringement of Intellectual Property Rights or otherwise prejudiced the ability of Cognitus to defend the claim; and
    iii. permits Cognitus at its option to modify or replace the infringing part of the Software or Support Services to avoid any continuing infringement or procure for the Customer the right to continue using such infringing part.
    iv. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.

F. Privacy Compliance

a. Each Party agrees to comply with all Privacy Laws that apply to its handling of any Personal Information disclosed to the Party by the other Party.
b. The Customer acknowledges and agrees that Cognitus will handle all Personal Information disclosed to Cognitus in accordance with Cognitus' Privacy Policy as amended from time to time to comply with its obligations under any applicable Privacy Laws.
c. Each Party agrees to do anything reasonably requested by the other Party for the purpose of the other Party complying with its obligations under any applicable Privacy Laws.

G. Fees

a. The Customer shall pay to Cognitus or its authorized reseller as applicable the Fees without withholding, deduction or offset of any amounts for any purpose on the date of the signing of this contract. Customer shall pay all Cognitus invoices in accordance with the invoicing schedule set forth in Schedule A and in no event later than thirty (30) days after the invoice receipt date.
b. If Customer's use of the Software exceeds the License Metrics or otherwise requires the payment of additional Fees (per the terms of this Agreement), Customer shall be billed for such usage and Customer agrees to pay the increase in Fees in the manner provided herein. Otherwise, unless expressly mutually agreed to in writing, Cognitus will not increase any Fees during the Agreement Term. Customer may request a decrease to the License Metrics, which request shall be reviewed by Cognitus, which may in its sole discretion, conduct an audit pursuant to Section 3 (G)(d.) to verify such decrease. Customer may request such a decrease no more than one (1) time per each

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twelve-month period of the Initial Term commencing on the Agreement Start Date and must request such decrease no later than [forty-five (45)] days in advance of the next annual invoice date as specified in the Order Form. If Cognitus determines in its reasonable discretion that the License Metrics have decreased, Cognitus will adjust the Software Term License Fees for Customer based on the License Metrics beginning with the next annual invoice, and for the avoidance of doubt, Customer shall not be entitled to any rebate or refund for any period prior to the date of such invoice.

c. The Customer shall pay Cognitus interest in accordance with the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.
d. Cognitus or its nominee (including its accountants and auditors) may, on fifteen (15) days' notice, inspect and audit Customer's use of the Software under this Agreement at any time during the Initial Term and any subsequent Renewal Term. All audits will be conducted during regular business hours, are subject to Government security requirements, and no more frequently than once in any 12-month period except if requested by Customer pursuant to Section 3(G). Customer shall make available all such books, records, equipment, information, and personnel, and provide all such cooperation and assistance, as may reasonably be requested by or on behalf of Cognitus with respect to such audit. Cognitus shall only examine information directly related to Customer's use of the Software and the License Metrics. If the audit determines that Customer's use of the Software exceeded the usage permitted by this Agreement, Customer shall pay to Cognitus all amounts due for such excess use of the Software, plus interest on such amounts, as calculated pursuant to Section 3(G)(c). Customer shall make all payments required under this Section 3(G)(d) within 30 days of the date of written notification of the audit results.

H. Taxes, Duties and Government Charges

a. Cognitus shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).
b. Reserved.

I. Confidential Information

a. Each Party agrees not to disclose to any third party any of the other Party's Confidential Information, without the other Party's prior written consent, except to the extent the disclosure is made for the purpose of:
    i. exercising its rights or performing its obligations under this Agreement.
    ii. complying with applicable law but only to the extent such Party is legally required to make such disclosure of the other Party's Confidential Information, Cognitus recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as "confidential" by the vendor; or
    iii. obtaining advice from its attorneys, auditors, insurers, accountants, consultants, or other professional advisors in connection with this Agreement.
b. This clause 3(I) will survive the termination of this Agreement only for a period of 3 years.

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J. Liability

a. Cognitus warrants that the Software will, for a period of sixty (60) days from the date of your receipt, perform substantially in accordance with Software written materials accompanying it. except as expressly set forth in the foregoing, to the extent permitted by law and except as expressly provided to the contrary in this agreement, all warranties including but not limited to implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and conditions whether express, implied, statutory or otherwise, relating in any way to the subject matter of this agreement are excluded. Without limiting the foregoing, Cognitus makes no warranty of any kind that the software or support services, or any products or results of the use thereof, will meet customer's or any other person's requirements, operate without interruption, achieve any intended result, be compatible or work with any software, system, or other services, or be secure, accurate, complete, free of harmful code, or error free. All third-party materials are provided "as is" and any representation or warranty of or concerning any third-party materials is strictly between customer and the third-party owner or distributor of the third-party materials.
b. The foregoing disclaimer shall not apply to the extent prohibited by law.
c. Except with respect to Section 3 (G) (c) of this Agreement, the aggregate liability of Cognitus to the Customer for all liability arising out of, or in connection with, this Agreement will be limited to the total of the Fees received by Cognitus from the Customer during the previous 12-month period.
d. To the extent permitted by law, Cognitus shall not be under any liability (contractual, tortious, or otherwise) to the customer in respect of any and all:
    i. Loss of profit, opportunity, revenue, income, anticipated savings, production or data, or loss of, or damage to, reputation or goodwill; and
    ii. Losses, damages, costs, charges, expenses or liabilities of any kind or nature whatsoever not directly, or naturally in the usual course of things, arising out of, or in connection with, this agreement (including, without limitation, consequential, special, incidental, indirect, exemplary, enhanced, special or punitive damages, costs, charges, expenses or liabilities of any kind or nature whatsoever), regardless of whether such damage was foreseeable and whether either party has been advised of the possibility of such damages.
    iii. The foregoing limitation of liability shall not apply to (1) personal injury or death resulting from Licensor’s negligence; (2) for fraud; or (3) for any other matter for which liability cannot be excluded by law.

K. Termination and Suspension

a. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Cognitus shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
    i. reservedor
b. reservedUpon termination or expiration of this Agreement for any reason, the Customer’s license to the Software and right to be provided with any Support Services shall immediately terminate, and the Customer shall remove the Software from all equipment of the Customer and supply Cognitus evidence of such removal, provided that in the absence of evidence of removal, Cognitus may charge the Customer the

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Fees as if this Agreement was not terminated or did not expire. In the event the term of this Agreement continues after the Agreement Term pursuant to this clause, either Party may terminate this Agreement without cause on giving no less than 3 months' written notice to the other Party.

c. The termination, expiration or suspension of this Agreement for any reason does not affect any accrued rights or remedies of either Party under this Agreement including, without limitation, the right to payment of any monies due under this Agreement for the Remaining Term. Notwithstanding the foregoing, in the event this Agreement is terminated by Customer pursuant to Section 3(K)(a), Customer shall be relieved of any obligation to pay any amounts or fees for services or goods not delivered prior to the date of such termination.

L. Survival

Subject to the other provisions of this Agreement, this clause 3 (B) and clauses 3 (C), 3(D), 3 (E), 3(F), 3(G), 3(H), 3(I), 3(J) ,3(K) and any other provisions of this Agreement which are capable of having effect after the termination of this Agreement shall remain in full force and effect following the termination of this Agreement.

M. Notices

A notice given under this Agreement must be given in writing or electronic (via email) by a person duly authorized by the sender and hand-delivered, or sent by prepaid post or electronically, to the recipient's address for notices appearing at the beginning of this Agreement (as varied by any written notice given by the recipient to the sender).

N. General

a. **Force Majeure**
In accordance with GSAR Clause 552.212-4(f), Cognitus shall not be liable for any delay or failure to perform its obligations under this Agreement if such a failure or delay is due to any act, omission or circumstance over which Cognitus could not have reasonably exercised control including, without limitation, telecommunications and power failures, third party supplier failures, natural disasters, epidemics, public health emergencies, acts or orders of government, labor action, riots, insurrection and acts of war.

b. **Assignment, Novation and Subcontracts**
The Customer shall not sub-license, assign or novate, in whole or part, any entitlement or obligation under this Agreement without the prior written consent of Cognitus.

c. **Waiver and Estoppel**
No right of either Party under this Agreement shall be deemed to be waived or estopped except by notice in writing signed by such Party.

d. **Governing Law**
This Agreement will be governed by the Federal laws of the United States.

e. **Counterparts**
This Agreement may be executed in counterparts and all executed counterparts will be deemed to constitute one agreement.

f. **Entire Agreement**
This Agreement, by and between Cognitus and Customer, and any Statements of Work, constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior arrangements, agreements, representations and understandings, whether verbal or in writing.

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g. **Relationship**
This Agreement is not to be construed as creating a joint venture, partnership or agency situation between the Parties and no Party may bind another Party to any agreements, arrangements, contracts or understanding or represent that they have such authority.

h. **Variation**
No variation, modification, or alteration of any provision of this Agreement shall be valid except in writing signed by each Party.

i. **Further acts**
Each Party agrees to do, at its own cost, everything reasonably necessary (including, without limitation, executing documents) to give full effect to this Agreement.

j. **Use of Licensee mark**
Licensee agrees that Licensor may use Licensee name and logo on marketing and promotional materials acknowledging Licensee as customer of Licensor.

O. Interpretation

In this Agreement, unless inconsistent with the context:

a. Words denoting a person include corporations, statutory corporations, partnerships, joint ventures, associations, boards, governments or semi-government agencies or authorities.
b. Words denoting the singular number shall include the plural number and vice versa.
c. Words denoting any gender shall include all other genders.
d. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
e. A reference to a clause is to a clause of this Agreement.
f. A reference to a month is to a calendar month.
g. Headings are for convenience only and do not affect the interpretation of this Agreement.
h. If any provision or part of a provision of this Agreement is held invalid, unenforceable, or illegal for any reason, this Agreement shall remain otherwise in full force apart from such provision or part of a provision which shall be deemed deleted.
i. The recitals and provisions of this Agreement, any attachments to this Agreement including the Schedules and any Statement of Work form part of this Agreement and in the event of any inconsistency shall be read in the following order of precedence: the recitals and provisions of this Agreement, the Schedules, and any other attachments and thereafter any Statement of Work.

4.0 Execution

Executed as an Agreement

Cognitus Consulting	Customer
Authorized Person:	Authorized Person:
Title:	Title:
Date:	Date:
Sign	Sign

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