

## SUPPLIER END USER LICENSE AGREEMENT AND WARRANTIES

Avaya, itself or through its Distributors, will provide the following Supplier End User License Agreement to Customers to whom it resells Supplier's Software. In the event Supplier would like Avaya and its Distributors to provide an updated version of the Supplier End User License Agreement to Customers, Supplier will provide such updated version to Avaya pursuant to **Section 14, Notices**, of this Agreement, and Avaya will replace the then-utilized End User License Agreement with the updated version within a reasonable period of time following receipt.

## END USER LICENSE AGREEMENT (COGNIGY PRODUCTS)

## 1 Definitions

**Product related:**

**"Cognigy.AI"** means the Cognigy conversational AI platform product.

**"Cognigy.AI Function(s)"** means blocks of code defined inside Cognigy.AI as a "Cognigy Function". They can be run inside the Cognigy Product to help with long-running asynchronous processes. Each Cognigy Product installation is limited to running 10 concurrent Cognigy.AI Functions and within a Cognigy.AI Function to the execution length as defined in the documentation unless agreed otherwise in writing by Licensor and specified in an Order Form.

**"Cognigy Product(s)"** means Cognigy.AI, Cognigy Voice Gateway, Cognigy Live Agent, Cognigy Insights, Knowledge AI, xApps or any other Cognigy Product listed in an Order Form and further described in the documentation on <https://www.docs.cognigy.com>.

**"Cognigy Voice Gateway"** means the Cognigy Voice Gateway product, used to connect Cognigy.AI with phone lines and contact center solutions. Use of the Cognigy Voice Gateway limited to the maximum number of Concurrent Sessions as agreed in an Order Form.

**"Release"** means a new version of a Cognigy Product.

**"Tenant"** means a logically isolated environment within a Cognigy Product also referred to in the documentation as an "organization".

**"Third Party Service(s)"** means services provided by a third party to which Licensee enables a Cognigy Product to connect to and which can be used together with the Cognigy Product.

**"Third Party AI Service"** means a Third Party Service offering for the provision of AI services as indicated on the Order Form.

**"User"** means a unique user, tracked by a user ID on the Cognigy Product.

**"User Input"** means a message (text and/or data) received by Cognigy.AI from a User or system.

**Deployment related:**

**"Cognigy.AI Dedicated"** means a Cognigy Product provided to Licensee, which may be installed and managed on a dedicated infrastructure, either provided by Licensee, Licensor or a third party including any future Releases, that Licensee may receive in accordance with the terms of the Agreement.

**"Cognigy.AI Dedicated Setup"** means installing Cognigy Products on a dedicated infrastructure, either provided by Licensee, Licensor or a third party, where the provision of the dedicated infrastructure is the responsibility of Licensee unless otherwise agreed to in an Order Form.

**"Cognigy.AI Private Cloud SaaS"** means a physically separated installation of a Cognigy Product, hosted and maintained by Licensor and dedicated to the exclusive use of Licensee.

**"Cognigy.AI Private Cloud SaaS Setup"** means provisioning an installation of and providing access to Cognigy.AI Private Cloud SaaS to Licensee.

**"Cognigy.AI SaaS"** means a single-Tenant access to a Cognigy Product within a multi-Tenant environment, hosted and maintained by Licensor.

**"Cognigy.AI SaaS Setup"** means provisioning a new Tenant within a public SaaS environment and providing access to Cognigy.AI SaaS for Licensee.

**"SaaS"** means the Cognigy Products managed by Licensor and provided to Licensee as "Software as a Service" including any future Releases, that Licensee may receive in accordance with the terms of the Agreement.

**Business model related:**

**"Billing Period"** means the period for which Conversations and/or LLM Credits have been pre-purchased and invoiced.

**"Committed Conversations"** means the number of Conversations which are included in the purchased license per Billing Period (e.g. 12 times the Committed Monthly Conversations for an annual license). Committed Conversations can be used freely within the Billing Period. Unused Conversations are not carried over to the subsequent Billing Period but expire. Once Licensee has exceeded 70% of the Committed Conversations for the Billing Period, Licensee will be required to move to the next pricing tier of Conversations for the remainder of the Billing Period as evidenced by the issuance of an additional Purchase Order no later than 30 days after having exceeded the 70% threshold. Licensor will provide Licensee or the Cognigy Partner (as applicable) with Committed Conversation consumption data no later than 10 business days after the end of the month.

**"Channel"** means a way of interacting with a virtual agent, represented in Cognigy.AI as an endpoint resource (e.g. Webchat, Facebook Messenger, REST or Voice Gateway, etc.).

**"Cognigy.AI Dedicated (Non-Production)"** means a license to operate 1 Cognigy Product on 1 cluster (Kubernetes) with all microservices required to run Cognigy.AI in unlimited scaling as Non-Production where Conversations are not counted.

**"Cognigy.AI Dedicated Package"** means a license to operate 1 Cognigy Product on 1 cluster (Kubernetes) with all microservices required to run Cognigy.AI in unlimited scaling and which includes an unlimited number of Users, projects and virtual agents, but within the scope of the parameters for use as agreed in an Order Form (e.g. Committed Conversations for Cognigy.AI).

**"Cognigy.AI Private Cloud SaaS Non-Production"** means an instance of a Cognigy Product, hosted and maintained by Licensor and dedicated to the exclusive use of Licensee within a multi-Tenant environment as Non-Production installation where Conversations are not counted. The service includes Standard Support.

**"Cognigy.AI Private Cloud SaaS Package"** means access for the Licensee to Cognigy Private Cloud SaaS, which includes an unlimited number of Users, projects and virtual agents, but within the scope of the parameters for use as agreed to in an Order Form (e.g. Committed Conversations for Cognigy.AI).

**"Cognigy.AI SaaS Package"** means access for the Licensee to 1 Tenant on Cognigy SaaS, which includes an unlimited number of Users, projects and virtual agents, but within the scope of the parameters for use as agreed to in an Order Form (e.g. Committed Conversations for Cognigy.AI).

**"Committed Monthly Conversations"** means the number of Conversations which are included in the purchased license per month.

**"Concurrent Voice Gateway Sessions"** means the number of simultaneous Sessions (i.e. which take place at the same time) during the use of Cognigy Voice Gateway also referred to in the documentation as Voice Gateway "lines".

**"Conversation"** means 1 Sessions with 1 User on a Channel during 1 calendar a 24 hour period with a maximum of 50 User Inputs per Conversation.

**"Fees"** means the fees determined in an Order Form in connection with e.g. the number of Conversations carried out per Billing Period or other measurement units.

**"Included Concurrent Voice Gateway Sessions"** means the number of simultaneous Sessions (i.e. which take place at the same time) during the use of Cognigy Voice Gateway that are included in the Cognigy Voice Gateway under this Agreement. Once Licensee has exceeded 70% of the Included Concurrent Voice Gateway Sessions for the Billing Period, Licensee will be required to increase the number of

Included Concurrent Voice Gateway Sessions such that the prior month's actual Concurrent Voice Gateway Sessions is at or below 50% of the newly calculated Included Concurrent Voice Gateway Sessions total as evidenced by the issuance of an additional Purchase Order no later than 45 business days after having exceeded the 70% threshold. Licensor will provide Licensee with Voice Gateway Sessions consumption data no later than 10 business days after the end of the month.

**"Included Speech-to-Text (STT) Minutes"** means the number of minutes for which the Cognigy Voice Gateway can convert speech audio to text via the described Third Party Service (e.g. provided by cloud service providers Microsoft Azure or Google Cloud). If the number of Included Speech-to-Text (STT) Minutes is exceeded in a given calendar month, additional and corresponding quantities of Included Speech-to-Text (STT) Minutes in units of sixty thousand (60,000) Included Speech-to-Text (STT) Minutes are payable by Licensee. Licensor will provide Licensee or the Cognigy Partner (as applicable) with Speech-to-Text (STT) Minutes consumption data no later than 10 business days after the end of the month.

**"Included Text-to-Speech (TTS) Characters"** means the number of characters for which the Cognigy Voice Gateway can convert text to speech audio via the described Third Party Service (e.g. provided by cloud service providers Microsoft Azure or Google Cloud). If the number of Included Text-to-Speech (TTS) Characters is exceeded in a given calendar month, additional and corresponding quantities of Included Text-to-Speech (TTS) Characters in units of ten million (10,000,000) Included Text-to-Speech (TTS) Characters are payable by Licensee. Licensor will provide Licensee or the Cognigy Partner (as applicable) with Text-to-Speech (TTS) Characters consumption data no later than 10 business days after the end of the month.

**"Knowledge AI Chunk"** means a paragraph of text with limited length (e.g., 1000 characters) stored in the Cognigy Knowledge AI database.

**"Knowledge AI Query"** means a search request performed against Cognigy Knowledge AI.

**"LLM Credits"** means the credits purchased by Licensee for the use of large language models on a Third Party AI Service. An LLM Credit can be used for the equivalent of 1 USD spend on the Third Party AI Service. LLM Credits can be used freely within the Billing Period. Unused LLM Credits are not carried over to the subsequent Billing Period but expire.

**"Maximum Concurrent Voice Gateway Sessions Capacity"** means the maximum number of simultaneous calls the Cognigy Voice Gateway licensed under this Agreement can process.

**"Non-Production"** means Licensee non-production environments solely used for internal testing and development purposes.

**"Order Form"** means a written or electronic order form for Cognigy Products between the Cognigy Partner and Licensee, which explicitly references and incorporates this EULA, including special terms for ordering Cognigy Products. Only those terms included in the Order Form that are legally binding between Licensee and the Cognigy Partner through which Licensee purchased the Cognigy Products shall be considered part of the Order Form (e.g., pre-printed terms on a Licensee order form not expressly agreed upon by the Cognigy Partner are of no force or effect). This EULA applies to Licensee's use of the Cognigy Products.

**"Permitted Use"** means the use of the Cognigy Products listed in an Order Form for the Licensee's direct business for internal or external customer service and contact center solutions. Use of the Cognigy Products by third parties is expressly prohibited.

**"Platform Fee"** means the fee for the provision of Cognigy.AI and related support, if any.

**"Session"** means 1 or more User Inputs tracked by a common session ID on a Cognigy Product (e.g., a call or webchat conversation).

#### General:

**"Agreement"** means an Order Form, this EULA and any Exhibit, schedule, addendum or amendment to the foregoing agreed between the parties to the Order Form or this EULA (as applicable), whether attached or incorporated by reference, are part of the Agreement. In the event of any conflict between the Order Form and this EULA, the legally binding terms in the Order Form will control.

**"Cognigy Partner"** means an entity with which Licensor has a valid Reseller Agreement in place for promoting or reselling Cognigy Products to Licensees.

**"EULA"** means this End User License Agreement.

**"Derivate Works"** means any software program (whether in source code or object code), and all copies thereof, developed by or on behalf of Licensee based on or derived from any part of Cognigy Products,

including without limitation any revision, modification, enhancement, translation (including compilation or recapitulation by computer), abridgment, condensation, expansion, or any other form in which Cognigy Products may be recast, transformed or adapted, and that, if prepared without Licensor's authorization, would constitute a patent, copyright or trade secret infringement of Cognigy Products, or would otherwise constitute an unauthorized use of Licensor's Intellectual Property.

**"Intellectual Property"** means any and all patents, copyrights, trademarks, service marks and trade names (registered and unregistered), trade secrets, know-how, inventions, licenses and all other proprietary rights throughout the world related to the authorship, origin, design, utility, process, manufacture, programming, functionality and operation of Cognigy Products and Derivative Works.

**"Licensor"** means Cognigy Inc. San Francisco, CA, USA.

**"Licensee"** means the entity identified in the signature field of the Order Form.

**"Term"** has the meaning as defined in Section 10.1.

## 2 SaaS Provision and License Grant:

Subject to the terms of the Agreement including Licensee's payment of applicable fees to the Cognigy Partner, Licensor

(i) provides Licensee access to Cognigy SaaS, Cognigy Private Cloud SaaS or Cognigy Voice Gateway or any other Cognigy Product; and/or (ii) grants Licensee a non-exclusive, non-transferable, non-sub-licensable license

to use the Cognigy Product as described in an Order Form and related documentation solely for the Permitted Use.

Licensee will be provided with a license key for Cognigy.AI Dedicated or login details for SaaS which give Licensee access to Cognigy Products.

Except as expressly authorized by the Agreement, no other entity or person, including any other present or future subsidiary or affiliate of Licensee or any entity or person owning any interest in Licensee at present or in the future, shall have any right to use the Cognigy Product under the Agreement.

## 3 Ownership of Data and Intellectual Property Rights

Licensee shall own all right, title and interest in and to data provided by Licensee and/or created with the help of Cognigy Products (e.g., virtual agent definitions, intent collections, functions definitions).

Ownership of Cognigy Products, and all worldwide rights, title and interest in and to the Intellectual Property associated with Cognigy Products shall remain solely and exclusively with Licensor or if applicable with third parties that license modules included with any Cognigy Products.

All rights, title, and interest in Cognigy Products not expressly granted to Licensee in the Agreement are reserved by Licensor.

By submitting any ideas, recommendations or other feedback ("Feedback") related to Cognigy Products, Licensee acknowledges and agrees that Licensor shall be free to exploit and use Feedback for any purpose without restriction or compensation.

Licensee shall retain intact all applicable Licensor copyright, patent and/or trademark notices on and in all copies of Cognigy Products.

## 4 Restrictions on Use

Except as expressly authorized by Licensor under this EULA, Licensee shall not (i) use the Cognigy Products or documentation beyond the restrictions or limitations in the Agreement, (ii) copy, in whole or in part, Cognigy Products or documentation, or modify, disassemble, decompress, reverse compile, reverse assemble, reverse engineer, access Cognigy.AI containers or translate any portion of Cognigy Products, or attempt to obtain the source code of Cognigy Products, or otherwise reduce the Cognigy Products to human-readable form except to the extent any foregoing restrictions is prohibited by applicable law, (iii) rent, lease, lend, sell, distribute, assign or license Cognigy Products, or (iv) create Derivative Works of Cognigy Products. Further, Licensee shall not use or access the Cognigy Products to process (a) PCI (i.e. Payment Card Industry) relevant data or (b) data within the scope of the Health Insurance Portability and Accountability Act (HIPAA), unless Licensee has licensed the Cognigy Products specifically designated for such purpose.

## 5 Third Party Use and Rights

Licensee may authorize third parties to assist Licensee in the management, editing, and hosting of content created by use of Cognigy Products, provided that: (i) such activities are within the scope of the activities Licensee is itself authorized to perform under the Agreement; (ii) such third party's acts are primarily for the direct or indirect benefit of Licensee; and (iii) such third parties are not charged a fee by Licensee for such activities; and (iv) Licensee shall be responsible for such third parties' compliance with the terms and conditions of the Agreement to the same extent as its own compliance.

Licensee shall not use Cognigy Products as an application software provider or in any time-sharing or other commercial arrangement of any kind that makes Cognigy Products available to third parties primarily for the third party's own uses.

Except as expressly stated herein, no rights are granted to a third party under the Agreement. Licensee shall be responsible for any unauthorized use of Cognigy Products by third parties caused by any acts or omissions of Licensee and shall indemnify Licensor in accordance with Section 6.2.

## 6 Warranties

### 6.1 Warranty of Licensor

Licensor warrants that Cognigy Products as provided to Licensee will comply in all material aspects according to the description of functions provided in the documentation listed at <https://www.docs.cognigy.com> during the Term. In the event any such Cognigy Products do not comply with this warranty, Licensee will provide written notice of such defects or non-conformities through incident reports without delay, and as Licensee's sole and exclusive remedy for breach of this warranty, Licensor shall resolve the defect or provide a workaround within a commercially reasonable period of time. If Licensor is unable to do so, Licensee may terminate the respective Agreement for the applicable Cognigy Product for cause as provided in Section 10 (Term and Termination).

Licensee shall, at no extra charge, assist Licensor to a reasonable extent in the detection and correction of non-conformities of Cognigy Products by e.g. providing Licensor with a description of the reported non-conformity and describe the respective circumstances under which the reported non-conformity arose.

### 6.2 Warranty of Licensee

Licensee warrants that Licensee will use Cognigy Products only in compliance with this EULA and the Agreement and all applicable laws and regulations, including but not limited to export control and trade compliance laws and regulations. Licensee shall indemnify, defend and hold harmless Licensor from and against any damages, losses, liabilities, settlements, judgments, and expenses (including without limitation costs and reasonable attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Licensee's use of the Cognigy Products. Although Licensor has no obligation to monitor Licensee's use of Cognigy Products, Licensor may do so and may prohibit any use of Cognigy Products it believes may be (or is alleged to be) in violation of the foregoing.

When using Cognigy Products, Licensee shall be responsible for (i) obtaining and maintaining any equipment, software and ancillary services needed to connect to, access or otherwise use Cognigy Products, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"), (ii) for complying with applicable third party terms and conditions for the use of Equipment, and (iii) for maintaining the security of the Equipment, Licensee account, passwords (including but not limited to administrative and User passwords) and files, and for all uses of Licensee's account or the Equipment with or without Licensee's knowledge or consent.

Further, if Licensee uses Third Party Services, the terms and conditions of the Third Party Services providers apply and Licensee is responsible for complying with such terms. Third Party Services may include speech (TTS/STT), translator services, large language models (LLMs) or other services. For the avoidance of doubt, Licensor shall not be responsible for Third Party Services or the use by Licensee thereof.

### 6.3 Virus/Malicious Code

Licensor and Licensee warrant that they will use generally accepted virus and malicious code detection software programs to test any electronic files, including electronic communications, prior to any delivery or upon receiving such communications and that the parties will continue to take such steps with respect to exchanging electronic files and communications pursuant to the Agreement. In the event either party detects any computer virus or malicious code it shall immediately notify the other party and where possible shall promptly provide revised replacement files.

### 6.4 No Other Warranties

EXCEPT FOR THE WARRANTIES EXPRESSLY SET OUT IN THIS EULA, THE COGNIGY PRODUCTS AND ALL OTHER COGNIGY SERVICES AND DELIVERABLES PROVIDED BY COGNIGY UNDER THIS EULA AND THE AGREEMENT ARE PROVIDED WITHOUT WARRANTY OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED, AND LICENSEE'S USE OF THE COGNIGY PRODUCTS IS AT LICENSEE'S OWN RISK. EXCEPT AS EXPRESSLY SET OUT IN THIS EULA, ALL EXPRESS, STATUTORY, OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SATISFACTORY QUALITY, NON-INTERFERENCE, OR ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE OR TRADE PRACTICE, ARE HEREBY EXCLUDED, TO THE EXTENT ALLOWED BY APPLICABLE LAW. COGNIGY DOES NOT WARRANT THAT THE COGNIGY PRODUCTS WILL BE ERROR FREE OR THAT THEIR USE WILL BE UNINTERRUPTED, ERROR FREE OR COMPLETELY SECURE.

## 7 Intellectual Property Rights Indemnity

7.1 If any third-party claim based upon alleged infringement of an Intellectual Property right is asserted against Licensee by virtue of Licensee's use of Cognigy Products, Licensor will indemnify Licensee and defend Licensee from and against such claims and in defense of such claims or in settlement thereof, by paying the amounts finally awarded by the relevant court or agreed upon in settlement, provided that Licensor shall (i) have received from Licensee prompt notice of the claim after the assertion thereof; (ii) have the exclusive right, if it so chooses, to control and direct the investigation and the defense or the settlement of such claim; and (iii) have received, at no charge to Licensor, reasonable cooperation and assistance from Licensee at Licensor's expense in defending or settling the claim.

7.2 Notwithstanding the foregoing, Licensor shall have no obligation or liability for any claim of infringement arising out of or in connection with: (i) use of a superseded version of Cognigy Products or related documentation if the infringement would have been avoided by the use of a current Release of such Cognigy Products or documentation; (ii) the combination, operation, or use of Cognigy Products with any software, hardware or other materials not furnished by Licensor if the infringement would have been avoided by not combining, operating or using such Cognigy Products with such other software, hardware or other materials; (iii) any modification of Cognigy Products not expressly authorized or instructed by Licensor in writing; or (iv) any breach by Licensee of the Agreement, if the infringement would have been avoided by Licensee not breaching the Agreement.

7.3 Licensee may participate at its own expense using counsel of its choice in the defense or settlement of claims that Licensor is obligated to defend or settle hereunder.

7.4 In the event a Cognigy Product is held by a court of competent jurisdiction to be, or is reasonably believed by Licensor to be, infringing, Licensor will have the option, at its expense, to: (i) modify such Cognigy Product to be non-infringing; (ii) obtain for Licensee a license to continue using such Cognigy Product; or (iii) if Licensor determines in its reasonable discretion that such Cognigy Product may neither be so modified using reasonable efforts nor so licensed on reasonable terms, terminate Licensee's license for the infringing Cognigy Product and refund any Fees pre-paid by Licensee, pro-rated for the remainder of the Term of Licensee's license to the impacted Cognigy Product.

**7.5** THIS SECTION 7 STATES LICENSOR'S ENTIRE LIABILITY, AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIMS OF INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

## **8 Limitation of Liability**

**8.1** SUBJECT TO SECTION 8.3, IN NO EVENT WILL EITHER PARTY AND ITS AFFILIATES, OR THEIR OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, SUPPLIERS OR LICENSORS BE LIABLE, REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OR INABILITY TO USE COGNIGY PRODUCTS, OR OTHERWISE, FOR: (A) ANY INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, STATUTORY, INDIRECT OR CONSEQUENTIAL DAMAGES; (B) LOSS OR CORRUPTION OF DATA OR INTERRUPTED OR LOSS OF BUSINESS; OR (C) TOLL FRAUD, ANY LOSS OF PROFITS, REVENUE, REPUTATION, GOODWILL, OR ANTICIPATED SALES OR SAVINGS, OR COST OF COVER, SUBSTITUTE GOODS, OR PERFORMANCE, EVEN IF SAID PARTY OR ITS AFFILIATES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES ARE FORESEEABLE.

**8.2** EXCEPT AS PROVIDED IN SECTION 8.3, ALL LIABILITY OF EITHER PARTY, ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SUPPLIERS, AND LICENSORS COLLECTIVELY FOR ALL CLAIMS ARISING OUT OF THIS EULA AND THE AGREEMENT, OR THE COGNIGY PRODUCTS SHALL NOT EXCEED THE FEES PAID OR PAYABLE TO LICENSOR FOR THE COGNIGY PRODUCTS DURING THE TWELVE (12) MONTHS BEFORE THE LAST EVENT THAT GAVE RISE TO THE CLAIM. THIS LIMIT IS IN THE AGGREGATE AND NOT PER INCIDENT.

**8.3** THE LIMITATIONS SET FORTH IN SECTIONS 8.1 AND 8.2 ABOVE DO NOT APPLY TO: (I) VIOLATIONS OF LICENSOR'S OR ITS SUPPLIERS' OR LICENSORS' INTELLECTUAL PROPERTY RIGHTS, INCLUDING WITHOUT LIMITATION, VIOLATION OF THE LICENSE TERMS AND RESTRICTIONS SET FORTH IN THIS EULA AND THE AGREEMENT; AND/OR TO (II) LIABILITY WHICH, BY LAW, CANNOT BE LIMITED OR EXCLUDED, SUCH AS FOR FRAUD OR WILFULL MISCONDUCT. THE LIMITATIONS SET FORTH IN THIS SECTION 8.3 DO NOT APPLY TO LICENSEE'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.

**8.4** THE PROVISIONS OF THIS EULA ALLOCATE THE RISKS BETWEEN LICENSOR AND LICENSEE. THE FEES PAYABLE BY LICENSEE REFLECT THIS ALLOCATION OF RISK. EXCEPT AS EXPRESSLY STATED IN THIS EULA AND THE AGREEMENT, LICENSEE AGREES THAT IT HAS NOT RELIED ON ANY INDUCEMENT, REPRESENTATION, WARRANTY OR STATEMENT MADE BY OR ON BEHALF OF LICENSOR IN RELATION TO THE SUBJECT MATTER OF THIS EULA AND THE AGREEMENT. EACH OF THE PARTIES HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS EULA AND THE AGREEMENT. IN THE EVENT OF LITIGATION, THIS EULA AND THE AGREEMENT MAY BE FILED AS WRITTEN CONSENT TO A TRIAL BY COURT.

## **9 New Releases of Cognigy Products**

**9.1** Licensor may from time to time provide new Releases of Cognigy Products. Installation of such Releases is recommended but the choice and responsibility of Licensee.

**9.2** Notwithstanding the foregoing, Licensee expressly acknowledges that new Releases may change functionality of Cognigy Products and integration with other systems and may not work with some or all of Cognigy Products modules or be backward compatible with earlier Releases of Cognigy Products.

For new Releases of SaaS, which are not backward compatible, Licensor shall provide Licensee parallel access to the new Release installation and Licensee may migrate their virtual agents.

For new Releases of Cognigy Dedicated, which are not backward compatible, Licensor shall provide Licensee a second Cognigy Dedicated license for the new Release and Licensee may set up a parallel installation for migration purposes. Alternatively, Licensee may use Licensor's SaaS environment for migration.

Licensor shall support minor Releases of Cognigy Products for 18 months after the publication of a new Release. A minor Release is backward compatible and defined by Licensor by a change of version number right of decimal point (e.g. x.1 to x.2 or x.1.1 to x.1.2). For clarity, a major Release is defined by a version number change left of decimal point (e.g. 4.x to 5.x)

**9.3** To the extent that operation of Cognigy.AI Dedicated is affected by issues in standard third-party software, including, but not limited to, Node.JS, MongoDB, RabbitMQ and ReactJS, then Licensee shall install updates to such standard third-party software as they become available and solely per Licensor's specifications in order to resolve these issues. Licensor has no control over such standard third-party software and cannot warrant that issues with such standard third-party software will be corrected or that such corrections will be made in a timely manner. For the avoidance of doubt, the then-current standard third-party software required for use of Cognigy.AI Dedicated Products as set forth in the documentation is generally not affected by new Releases and to the extent it is affected, the instructions for the installation of the applicable new Release will note such changes.

## **10 Term and Termination**

### **10.1 Term**

The Agreement commences on first day of the period agreed in the Order Form and remains in effect for the period agreed in the Order Form ("Term").

### **10.2 Effect Upon Termination**

Upon termination of the Agreement, for any reason, the license granted under the Agreement will also terminate and Licensee shall immediately cease all use of Cognigy Products provided to Licensee under the Agreement and delete all copies of Cognigy Products including related documentation in its possession or control. Upon Licensor's request Licensee shall then certify that such use has ceased all use of the Cognigy Products and that Cognigy Products have been erased, destroyed or otherwise made inoperable by any user in the future.

### **10.3 Survival**

Further, upon termination of the Agreement, those provisions of the EULA which by their nature are intended to survive, including without limitation Sections 3 (Ownership of Data and Intellectual Property Rights) and 10 (Term and Termination), will survive termination of the Agreement.

## **11 Severability**

If any provision of the Agreement, is adjudicated to be unenforceable, such provision shall be deemed changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions shall continue in full force and effect.

## **12 Waiver**

The failure of either party to enforce any rights granted under this EULA or the Agreement or to take action against the other party in the event of a breach or default under this EULA or the Agreement will not constitute a waiver by that party as to subsequent enforcement rights or subsequent actions in the event of future breaches.

## **13 Export Laws**

Licensee understands that the Cognigy Products are subject to export control laws and regulations. Licensee may not download or otherwise export or re-export the Cognigy Products or any underlying information or technology except in full compliance with all applicable laws and regulations, including United States export control laws. None of the Cognigy Products or any underlying information or technology may be downloaded or otherwise exported or re-exported: (i) into (or to a national or resident of) any country to which the United States has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities. Licensee hereby agrees to the foregoing and represents and warrants that Licensee is not located in, under control of, or a national or resident of any such country or on any such list and shall not permit Users to access or use the Cognigy Products in violation of

any U.S., United Nations, or other applicable export embargo, prohibition, or restriction.

Convention on Contracts for the International Sale of Goods are hereby made expressly inapplicable.

#### **14 Anti-Bribery and Anti-Corruption Laws and Corporate Social Responsibility**

In carrying out activities pursuant to this EULA and the Agreement, each party agrees that it will (i) comply with and will not commit, authorize, or permit any action by its personnel which would violate any anti-bribery or anti-corruption laws, (such as the United States Foreign Corrupt Practices Act) and (ii) comply with the UN Global Compact principles on human rights, labour standards, environment and anti-corruption and the 4 fundamental principles of the International Labour Organization (ILO).

#### **16 Assignment**

Licensee shall not be entitled to assign the Agreement. Licensor may assign the Agreement to a successor (whether by merger, a sale of all or a significant portion of its assets, a sale of a controlling interest of its capital stock, or otherwise) or affiliate that agrees to assume Licensor's obligations thereunder. Any assignment or transfer in violation of this Section 16 shall be void and of no force or effect.

#### **17 Entire Agreement**

This EULA and the Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements, understandings and communications, whether written or oral, and furthermore may be amended only by a written document signed by both parties. Any term or condition not specifically authorized in this EULA and the Agreement, which is included in any Licensee invoice, purchase order or order form or other document rendered pursuant to the Agreement is of no force or effect unless the specific term or condition has been previously agreed to by the parties in writing in a separate agreement. No action by Licensor (including, without limitation, receipt of payment related to any such invoice, or acceptance of any purchase order, in whole or in part) shall be construed as making any such term or condition binding on Licensor.

#### **18 Personal Data and Data Protection**

Both parties shall ensure compliance with all applicable laws on data protection and privacy, including the European Union General Data Protection Regulation (Regulation (EU) 2016/679), the California Consumer Privacy Act of 2018 ("CCPA") as amended by the California Privacy Rights Act of 2020 ("CPRA") and all other applicable national laws, in each case as amended from time to time and including succeeding legal instruments.

#### **19 Remedies**

The parties agree in the event of an actual or threatened material breach of this EULA or the Agreement, the non-breaching party will be entitled to seek immediate injunctive relief, in addition to whatever remedies it might have at law or under this EULA or the Agreement. Except as otherwise expressly provided herein, all rights and remedies hereunder are cumulative, may be exercised singularly or concurrently and will not be deemed exclusive. If any legal action is brought to enforce any obligations hereunder, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs and other collection expenses, in addition to any other relief it may receive.

#### **20 Force Majeure**

Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control.

#### **21 Independent Contractors**

The parties are independent contractors for all purposes under this EULA and the Agreement, and neither party will be deemed an employee, partner, or agent of the other. Each party will be solely responsible for any and all obligations and payments due with respect to their personnel, including any wages, salaries and amount due or payable to its personnel in connection with this EULA and the Agreement. This EULA and the Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between the parties.

#### **22 Governing Law**

This EULA and the Agreement shall be governed by and interpreted in accordance with the laws of the State of California, without reference to or application of choice of law rules or principles. The U.N.

#### **23 Place of Jurisdiction**

The sole and exclusive jurisdiction and venue for actions arising under this EULA and the Agreement will be the State and Federal courts in San Francisco, California. Licensee and Licensor hereby consent to personal jurisdiction of such courts and waive all defenses of *forum non conveniens*.

