

# Coginiti Premium™

## END USER LICENSE AGREEMENT

Last Updated April 2022

**PLEASE READ THESE LICENSE TERMS CAREFULLY.**

**ELECTRONIC ACCEPTANCE OF END USER LICENSE AGREEMENT. THIS EULA SUPERSEDES ANY PRIOR AGREEMENT WITH RESPECT TO LICENSEE’S USE OF THE LICENSED PRODUCT. BY CLICKING THROUGH AND ACCEPTING THIS EULA, THE UNDERSIGNED LICENSEE DOES HEREBY ACCEPT ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN AND DOES HEREBY AGREE TO BE LEGALLY BOUND BY THE TERMS OF THIS EULA.**

This **END-USER LICENSE AGREEMENT (“EULA”)** is a binding agreement between the undersigned Licensee (and as applicable, its Authorized Users) of the Licensed Product (“**Licensee**”), and Coginiti Corp, a Delaware corporation (“**Coginiti**”). This EULA governs all of the terms and conditions for Licensee’s use of the Coginiti Premium™, including any accompanying Freeware Products and Freeware Bundles incorporated therein and referenced in the Documentation (collectively, the “**Licensed Product**”). Any reference to “**you**” or “**your**” shall mean Licensee, and as context requires, Licensee’s Authorized Users. Any reference to “**we**,” “**us**,” or “**our**” means Coginiti.

**Intent; General Conditions.** This EULA is intended to govern the terms and conditions for your installation, access and use of the Licensed Product, including any associated Documentation. As a condition of installing, accessing, copying, downloading, or otherwise using the Licensed Product, Licensee shall abide by the terms and conditions of this EULA and shall cause all of its Authorized Users to comply with all of this EULA’s terms and conditions in connection with downloading and using the Licensed Product. This EULA also incorporates by reference the license terms of certain Freeware Products and/or Freeware Bundles incorporated within the Licensed Product. Such applicable Freeware Product/ Freeware Bundle components are identified in the Documentation, and the applicable licenses for such Freeware Products(s)/Freeware Bundle(s) are set forth in the Documentation.

### **Certain Other Defined Terms.**

“**Coginiti Premium™**” means the tools and products accompanying this EULA, including any related Documentation. It also includes any updates, version upgrades, configuration upgrades, add-on components, web services and supplements made available to Licensee and its Authorized Users during the License Term.

“**Authorized User**” means all of your users (whether employee, consultant, contractor or otherwise) so long as you (and each of your users) abide by the terms of this EULA.

“**Documentation**” means instructions, media, printed materials, descriptions, summaries, terms of usage, licenses, end user and technical documentation or electronic documentation accompanying the Licensed Product.

“**Effective Date**” means the date of Licensee’s acceptance of this EULA.

“**Freeware Product**” means any freeware product accompanying this EULA, including any related Documentation. Such Freeware Product also includes any freeware updates, version upgrades, configuration upgrades, add-on components, web services and/or supplements made available to Licensee and its Authorized Users by Coginiti after the date on which Licensee obtains an initial copy of the Freeware Product.

“**Freeware Bundle**” refers to those circumstances when two or more Freeware Products are supplied together as an inclusive package, in which case, such Freeware Bundle shall be deemed a single Freeware Product in terms of their usage and transfer.

“**Intellectual Property Rights**” means all patent rights, copyrights, trade secret rights, moral rights, all rights in relation to registered and unregistered trademarks (including service marks), technical advantages, methods of production, general research and development, protectable ideas, processes, designs, systems, manufacturing, methods, suppliers, customers, and certain other trade secrets, proprietary information and know-how and all other intellectual property rights of any kind anywhere in the world, together with all applications to register or renew, extend or otherwise improve any of the foregoing.

“**License**” shall have the meaning set forth below.

“**Licensee**” means the undersigned legal entity or organization (whether corporation, limited liability company or otherwise) accepting the terms and condition of this EULA, including agreeing to timely and fully pay for the License granted under this EULA, as well as the context requires, its Authorized Users who, as a condition of this grant of a License, agree to abide by all of the terms and conditions of the EULA.

“**Licensed Product**” means Coginiti Premium, together with, as may be applicable, any Freeware Product and Freeware Bundle, and the Documentation related thereto.

“**Licensee Fee**” shall have the meaning set forth below.

“**License Term**” shall initially refer to the initial one-year period immediately following the Effective Date. Each one-year period following the initial License Term shall be referred to as a “**Renewal Term**”.

“**Maintenance**” means maintenance updates, bug fixes and patches, which Licensee may, during the License Term, obtain by executing the steps in the Documentation set forth at Coginiti’s website.

**Ownership and Grant of License.** The Licensed Product is hereby licensed, not sold, to Licensee (inclusive of any of its Authorized Users) by Coginiti for use subject to the terms of this EULA (the “**License**”). The Licensed Product contains material that is protected by United States and international copyright law and trade secret law and by international treaty provisions. Any use of the Licensed Product in violation of this License shall constitute a breach of the EULA, and a violation of such applicable copyright laws may subject an offender to civil and criminal penalties, including fine or imprisonment. Except as provided herein, the License is non-transferrable, non-sub-licensable and non-exclusive. Nothing contained in this EULA transfers any right, title or interest in the Licensed Product to Licensee or any of its Authorized Users, it being understood that Coginiti retains and reserves, to the extent legally permissible, ownership of (or has licensed from third parties) all Intellectual Property Rights inherent in or relating to the Licensed Product. Nothing herein shall limit Coginiti’s right to use or market the Licensed Product to third parties or restrict its ability to use the Intellectual Property Rights inherent therein.

**Maintenance and Support.** During the License Term, Licensee shall be entitled to receive Maintenance. Such Maintenance may be modified from time to time within Coginiti’s sole discretion.

**Scope of Use; Restrictions on Use; Prohibited Actions.** Use of the Licensed Product is limited to Licensee, who shall use the Licensed Product in furtherance of Licensee’s internal business purpose and shall not redistribute the Licensed Product for commercial gain or otherwise. Licensee shall not (and shall take all commercially reasonable measures to ensure that neither its Authorized Users (including any of its employees or agents or any third parties acting on its behalf, such as employees of vendors servicing the Licensed Product) do not), directly or indirectly: (i) copy (except for the purposes expressly permitted hereunder), rent, lease, timeshare, resell, transfer, publish, sublicense, or distribute the Licensed Product, or use the Licensed Product to operate a service bureau or application service provider, or otherwise transfer rights to the Licensed Product or allow third parties access to or use of the Licensed Product (except as expressly permitted hereunder), (ii) remove any

proprietary notices or labels on the Licensed Product or any related documentation provided hereunder, (iii) decompile, disassemble, reverse engineer, reverse assemble, translate, convert, or apply any procedure or process to the Licensed Product in order to ascertain, derive, and/or appropriate for any reason or purpose, the source code, source listings, design, architecture, logic or algorithms for the Licensed Product, (iv) disclose the results of any system performance metrics of the Licensed Product or use such results for its own competing Licensed Product development activities, without the express prior permission of Coginiti, and/or (v) attempt to circumvent any user limitations or use restrictions built into the Licensed Product. Licensee shall not remove any proprietary notices or labels on the Licensed Product and any related Documentation. Coginiti does not undertake any liability for losses of Licensee's data, and Licensee hereby acknowledges that it is solely responsible for its own data back-up. Licensee is solely responsible for all hardware requirements associated with installing and operating the Licensed Product. Licensee is responsible for complying with any applicable terms and conditions (set forth in the Documentation) of Freeware Product(s)/Freeware Bundle(s) incorporated within the Licensed Product.

**Registration Information; Data Privacy.** As part of the registration process, Coginiti may request registration-related information and/or collect personal information, including Licensee's and/or Authorized Users' name, e-mail address, company, company address, role, telephone number and IP address. The collection of such information is necessary in order to ensure our compliance with applicable law and fulfill the terms of this Agreement, and as such, is required as a condition of this EULA. This is consistent with our Privacy Policy, which is published on our website at [www.coginiti.co/privacy-policy](http://www.coginiti.co/privacy-policy).

**Usage Statistics; Customer Identity.** Licensee consents to Coginiti's use of a tool which collects feature usage statistics and sends such information to Coginiti via HTTP. Collection of usage statistics enables us to better understand which features are used most frequently and allows us to improve the Licensed Product by extending existing features or adding related features. Such transmitted information contains no personal information. We compile and publish lists of our corporate users of the Licensed Product from time to time. Such list may provide basic information about usage, such as the number of active users of the Licensed Product per corporate entity licensee. Licensee does hereby consent to Coginiti's reference to Licensee's organization name and logo in such publications distributed to existing and prospective users of the Licensed Product.

**Feedback.** Licensee and its Authorized Users hereby grant Coginiti a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Licensed Product any suggestion, enhancement request, recommendation, correction or other feedback provided by Licensee or its Authorized Users with respect to the Licensed Product.

**License Fee.** Licensee shall be invoiced for its usage of the Licensed Product by way of an online purchase, purchase order, quote, rider addendum, or other written instrument (which upon acceptance, shall be deemed a part of this EULA). In such case, you shall be entitled to License the Licensed Product for a period of one-year commencing upon the Effective Date (provided that you timely make your payment of such invoice as provided below), and as applicable, renew your License into a Renewal Term as contemplated below. In each such case, you shall be invoiced via email or other correspondence addressed at your registration information hereto, which amount shall be paid on or prior to the commencement of the term set forth in such invoice.

**Term.** As of the Effective Date, your License shall continue for a period of one-year (referred to as the “**License Term**”) so long as you make timely payment of the invoice for the License Term, and thereafter, shall renew automatically for successive one-year term(s) upon the anniversary of your Effective Date (the “**Renewal Term**”); *provided however*, the Licensee may opt out of any Renewal Term by providing Coginiti with advance written notice of its termination 30 or more days prior to the end of any applicable license term. Initially, the renewal date is the anniversary of your Effective Date, and in the case of any subsequent Renewal Term, the one-year anniversary of the day and month corresponding to the commencement date of the prior Renewal Term. If you do not pay the invoice for your initial License Term on or before the Effective Date, your License shall be terminated by us and your right of usage to the Licensed Product shall be deemed null and void.

**Termination.** If Licensee is out of compliance with the terms and conditions of this EULA, the License granted hereunder shall immediately terminate and Coginiti shall provide Licensee with notice of such termination via email

or other correspondence to Licensee's address on file with its registration for this License; *provided however*, such termination shall not nullify Licensee's obligation to pay License Fees, if any, due for the applicable License Term. Upon termination of this EULA, (i) any provision which, by its nature, should survive termination of the EULA, shall survive termination hereof, and (ii) Licensee shall immediately cease using the Licensed Product and Documentation and destroy all copies thereof in its possession, custody or control, including all accompanying Documentation and upon Coginiti's request, shall certify such destruction.

**Disclaimer.** COGINITI DOES NOT GUARANTEE ANY SPECIFIC RESULTS, INCLUDING THAT THE OPERATION OF THE LICENSED PRODUCT PROVIDED UNDER THIS LICENSE WILL BE UNINTERRUPTED OR ERROR-FREE. COGINITI DOES NOT GUARANTEE OR PROVIDE ANY WARRANTY CONCERNING THE RESULTS OF ANY OF ITS RECOMMENDATIONS, AND COGINITI DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, OR UTILITY OF ANY REPORTS GENERATED BY LICENSEE'S USE OF THE LICENSED PRODUCT PROVIDED HEREUNDER. COGINITI MAKES NO WARRANTY WITH RESPECT TO ANY THIRD-PARTY PRODUCTS, SOFTWARE OR SERVICES. ANY WARRANTY ON A THIRD-PARTY PRODUCT IS PROVIDED BY THE PUBLISHER, PROVIDER, OR ORIGINAL MANUFACTURER; ALL THIRD-PARTY PRODUCTS PROVIDED HEREUNDER ARE DELIVERED ON AN "AS-IS" AND "AS AVAILABLE" BASIS.

COGINITI DOES NOT MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

**Limitation of Liability.** COGINITI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE LICENSE PROVIDED HEREUNDER SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY LICENSEE HEREUNDER (AND IF NO CONSIDERATION IS PAID HEREUNDER BY LICENSEE, \$100), IT BEING AGREED THAT SUCH LIMITATION OF LIABILITY IS AN AGREED UPON ALLOCATION OF RISK CONSTITUTING PART OF THE MATERIAL CONSIDERATION EXCHANGED HEREUNDER, AND SUCH LIMITATIONS OF LIABILITY SHALL APPLY REGARDLESS OF WHETHER AN ACTION IS IN CONTRACT, TORT, WARRANTY, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY OR RECOVERY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

TO THE MAXIMUM EXTENT PERMITTED UNDER LAW, COGINITI (AND ANY COPYRIGHT HOLDERS OF ANY FREWARE PRODUCT OR FREWARE BUNDLE INCORPORATED IN THE LICENSED PRODUCT) SHALL NOT BE LIABLE TO LICENSEE, OR ANY AUTHORIZED USER, FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, OR BUSINESS INTERRUPTION, COST OF SUBSTITUTE SERVICES, LOSS OF PROFITS, USE, DATA, GOODWILL OR OTHER ECONOMIC ADVANTAGE, HOWEVER CAUSED, AND REGARDLESS OF THE THEORY OF RECOVERY (WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHER LEGAL THEORY), ARISING OUT OF THE USE OF THE LICENSED PRODUCT (OR ANY FREWARE PRODUCT/FREWARE BUNDLE COMPONENTS CONTAINED

**THEREIN), EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

**Miscellaneous.** This EULA, together with the Documentation (and as applicable, any accepted purchase order, quote, rider addendum or other written instrument relating hereto executed hereafter) constitutes the entire agreement between Coginiti and Licensee pertaining to the subject matter hereof and merges all prior agreements and discussions of the parties with regard to the subject matter hereof and does constitute the terms and conditions under which Licensee may install, access and use the Licensed Product. From time to time, this EULA may be amended by way of an electronic clickthrough page; your acceptance of any such amendment shall be deemed given upon your click-through acknowledgment and acceptance thereto. Licensee represents and warrants that it has the requisite power and authority to execute and deliver and perform its obligations hereunder, and upon its execution, this EULA shall be enforceable in accordance with its terms. In the event of a violation of the EULA by Licensee, Coginiti may seek equitable relief, including injunctive relief, in order to prevent any breach or threatened breach hereof, without posting any bond or other security, in addition to any other remedy available. Licensee agrees to comply with any applicable laws, rules and regulations with respect to its use of the Licensed Product. The Licensed Product may be subject to export laws and regulations of the United States and other jurisdictions. Licensee represents that it and its Authorized Users are not named on an U.S. government denied-party list (i.e., a special designated national or blocked person list). Licensee will not permit any Authorized User to access or use the Licensed Product in a U.S.-embargoed country or region (currently, Cuba, Iran, North Korea, Sudan, Syria or Crimea) or in violation of any U.S. export law or regulation. Failure by either party to partially or fully exercise its rights hereunder shall not prevent the subsequent exercise of any such right. Waiver of any breach shall not be deemed a waiver of any subsequent breach of the same or any other term of this EULA. Whenever possible, each provision of this EULA will be interpreted in such manner as to be effective and valid under applicable law, but if any provision is held invalid or prohibited by law, such provision shall be ineffective only to the extent of such prohibition or invalidity without invalidating the remainder of the provisions of this EULA. This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns. Your signature delivered electronically hereunder shall be deemed an original signature and a binding and enforceable acceptance of the terms and conditions set forth in this EULA.

**Governing Law.** If you acquired the Licensed Product in the United States, all questions concerning the construction, validity, interpretation and enforcement of this Agreement shall be governed by the internal law of the State of Delaware without giving effect to any choice of law or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Delaware. Any proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in New Castle County, Delaware, and the parties hereby irrevocably consent to personal jurisdiction and venue therein. If you acquired the Licensed Product in any other country, then the laws of that country shall, to extent of any conflict with the internal law of the State of Delaware, apply to this EULA.

**BY CLICKING THROUGH AND ACCEPTING THIS EULA, LICENSEE DOES HEREBY AGREE TO ACCEPT ALL OF THE TERMS & CONDITIONS SET FORTH HEREIN AND DOES HEREBY AGREE TO BE LEGALLY BOUND BY THIS EULA.**