

**Cognoa**  
**Canvas Dx Healthcare Provider Terms and Conditions**

*Last Updated: September 20, 2022*

These Terms and Conditions are a legally binding contract between you, the Healthcare Provider (defined below) and Cognoa, Inc. ("**Cognoa**," "**we**," or "**us**") regarding Canvas Dx, our prescription-only software as a medical device, including any and all of its components, inputs, and questionnaires, software outputs, and related services or materials provided by us within the scope of the software as a medical device either directly to you or via or through the HCP Portal (defined below) or related webpages (collectively, the "**Device**").

**PLEASE READ THE FOLLOWING TERMS CAREFULLY:**

**BY CHECKING THE BOX NEXT TO THE STATEMENT THAT SAYS "I agree to the Terms of Service and Privacy Policy," OR BY OTHERWISE ACCESSING OR USING THE DEVICE OR THE HCP PORTAL (defined below), YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OR INTERACTION WITH THE HCP PORTAL OR THE DEVICE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING COGNOA'S [PRIVACY POLICY](#) TOGETHER, THESE "TERMS".** IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE OR INTERACT WITH THE HCP PORTAL OR THE DEVICE. YOUR ACCESS OR USE OF THE DEVICE OR HCP PORTAL, AND COGNOA'S PROVISION OF THE OUTPUT OF THE DEVICE EITHER VIA THE HCP PORTAL OR OTHERWISE TO YOU, CONSTITUTES AN AGREEMENT BY COGNOA AND BY YOU TO BE BOUND BY THESE TERMS.

**ARBITRATION NOTICE.** Except for certain kinds of disputes described in Section 17, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND COGNOA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 17.)

1. **Canvas Dx Overview.** Canvas Dx is a pediatric Autism Spectrum Disorder ("**ASD**") diagnosis aid that was granted marketing authorization by the U.S. Food and Drug Administration ("**FDA**"). It is a software as a medical device that uses a machine learning algorithm to receive inputs, or responses to questionnaires, from: (a) legally recognized caregivers, including parents and legal guardians, who have legal authority to make medical decisions for a minor patient (each such caregiver, a "**Caregiver**"); (b) video analysts ("**Analysts**"); and (c) healthcare providers ("**HCPs**") for the intended use by the patients' treating physicians, other qualified healthcare professionals, or care team (collectively, "**Physicians**") as an aid in the diagnosis of ASD for patients of ages 18 months through 72 months ("**Patients**"), who are at risk for developmental delay based on concerns of the Caregiver or Physician and for whom their Physician has prescribed the Device. The Device, including any output or result generated by the Device, is NOT intended for use as a stand-alone diagnostic device, but as an adjunct to a Physician's diagnostic process and should be used in conjunction with clinical presentation of the Patient. The device is for prescription use only (Rx only). For clarity, the

term “Physician” is used with respect to the Physician who prescribes the Device. For clarity, Caregiver’s specific use or interaction with the Device is via the Caregiver App, which can only be accessed by the Caregiver after the submission and receipt of a valid Prescription (defined below). The Device Output (defined below) generated by the Device is provided to the Physician for use by the Physician in his/her medical care for the Patient, pursuant to his/her independent medical judgment. The Patient’s Physician (and not Cognoa) is responsible for the diagnosis, care and treatment of the Patient.

ASD is a clinical diagnosis based upon defined clinical characteristics outlined in the DSM-5 (American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition). See <https://www.cdc.gov/ncbddd/autism/hcp-dsm.html>. See American Academy of Pediatrics: Identification, Evaluation, and Management of Children with Autism Spectrum Disorder (January 2020) for generally accepted guidelines.

Canvas Dx has three main user-facing components: (1) a mobile app for Caregivers to answer questions about certain behaviors in the Patient and to upload videos of the Patient (“**Caregiver App**”); (2) a video analysis portal that allows Cognoa-trained and certified specialists to view and analyze uploaded videos of Patients; and (3) an HCP portal that is intended for HCP to enter answers to preloaded questions about behavior problems, track the information provided by Caregivers and review a report of the results (“**HCP Portal**”). After processing the information provided by each of Caregiver, Analyst, and HCP, which constitute three independent inputs into the Device, the Device generates an output (“**Device Output**”) for use by the prescribing Physician. For clarity, Caregiver does not have access to and is not permitted to use all components of the Device. Caregiver’s direct interface with the Device is via the Caregiver App only.

Depending on the inputs and software analysis of the Device, the Device may provide an output consisting of a “positive ASD” result, “negative ASD” result, or “no result”. A “positive ASD” result indicates there is a high probability that the Patient has autism and should be used in conjunction with the Patient’s clinical presentation and other clinical evidence as the Patient’s Physician may deem necessary to determine if the DSM-5 diagnostic criteria for ASD are met. A “negative ASD” result indicates there is a high probability that the Patient does NOT have autism and should be used in conjunction with the Patient’s clinical presentation and other clinical evidence as the Patient’s Physician may deem necessary to determine if the DSM-5 diagnostic criteria for ASD are NOT met. There is a chance that the software may not be able to generate a determinate result. As with any diagnostic aid or support software tool, software algorithms and machine-learning capabilities have limitations. A “no result” or indeterminate Device Output does not mean that the Patient does not have ASD or is not at risk for ASD. As stated above, the Device, including any output or result generated by the Device, is NOT intended for use as a stand-alone diagnostic device, but as an adjunct to a Physician’s diagnostic process and should be used in conjunction with the Patient’s clinical presentation and other clinical evidence as the Physician may determine necessary in the Physician’s independent medical judgment. Medical decision making, including the interpretation or the use of the Device Output, is at the sole discretion and responsibility of the Physician.

See Device labeling, including [Canvas Dx HCP User Guide](#) for additional information. If you have any technical questions regarding the Device or the HCP Portal, please contact Cognoa technical support at [support@cognoa.com](mailto:support@cognoa.com).

2. **Eligibility.** In order to prescribe Canvas Dx, you must have appropriate prescribing rights according to the locality in which you reside. In order to use the HCP Portal, you must (i) be at least 18 years old; and (ii) be a Physician who has prescribed the Device for a patient in a valid prescription for the Device ("**Prescription**"). By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you are a Physician with valid prescribing rights who has prescribed the Device for a patient and that you have authority to enter into this agreement; (c) you have not previously been suspended or removed from the HCP Portal; and (d) your registration on the HCP Portal and your interaction with the Device is done pursuant to the Prescription and in compliance with any and all applicable laws and regulations.
3. **Accounts.** To access and use the HCP Portal, you must have an account. You will receive an email which will contain your password to access the HCP Portal via 2 factor authentication. You agree that any information you provide to us is accurate and that you will keep it accurate and up to date at all times. When you set up your account, you will be asked to provide a new password. You are solely responsible for maintaining the confidentiality of your account and password, and you accept responsibility for all activities that occur under your account. If you believe that your account is no longer secure, then you must immediately notify us at [support@cognoa.com](mailto:support@cognoa.com).
4. **Prescription and Payment.** The Device is a prescription-only medical device. The Patient will pay for the Device as the Patient would any other prescription medical product.

## 5. Licenses

- 5.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, Cognoa grants you, solely for your personal, non-commercial use, a limited, non-exclusive, nontransferable, non-sublicensable, revocable license to access and use the Device and to access and use the HCP Portal on a computer operating system and internet browser that you own or control, as instructed by the [Canvas Dx HCP User Guide](#). For clarity, you are solely responsible for obtaining and maintaining any software, hardware, equipment, or internet connection necessary to access and use the features and functionality of the HCP Portal, as described in the [Canvas Dx HCP User Guide](#).
- 5.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the HCP Portal or the Device; (b) make modifications to the HCP Portal or the Device; or (c) interfere with or circumvent any feature of the HCP Portal or the Device, including any security or access control mechanism. If you are prohibited under applicable law from using the Device, or if the Prescription has been revoked or terminated, then you may not use it.
- 5.3 **Feedback.** If you choose to provide feedback and suggestions regarding problems with or proposed modifications or improvements to the Device ("**Feedback**"), then you hereby grant Cognoa an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Device and create other products and services.

6. **Ownership; Proprietary Rights.** As between you and Cognoa, Cognoa owns and retains all right, title, and interest (including all intellectual property rights) in and to: (a) the Device and the HCP Portal,

and all technology, software, algorithms, models, user interfaces, trade secrets, techniques, designs, inventions, data, related to or underlying or created or developed in connection with the Device, and any improvements, enhancements, modifications, or derivatives of the Device; (b) the Device Output (subject to your rights in any User Content Submitted by you to us), and any data derived or resulting from processing User Content or any other data provided by you; and (c) any statistics, analyses, calibrations, models, improvements, algorithms, technologies, and other information derived or refined (e.g. analytics) resulting from processing User Content or any other data provided by you, or as a result of your use of the Device or the HCP Portal. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Device ("**Materials**") made available through the HCP Portal are protected by intellectual property and other laws. All Materials are the property of Cognoa or its third-party licensors. Except as expressly authorized by Cognoa, you may not make use of the Materials. Cognoa reserves all rights to the Materials not granted expressly in these Terms.

## 7. Third-Party Terms

**7.1 Third-Party Services and Linked Websites.** Cognoa may provide tools to you through the HCP Portal or otherwise that enable you to export information, including User Content (defined below), to third-party services. By using one of these tools, you agree that Cognoa may transfer that information to the applicable third-party service. Third-party services are not under Cognoa's control, and, to the fullest extent permitted by law, Cognoa is not responsible for any third-party service's use of your exported information. The HCP Portal or our other communications with you may also contain links to third-party websites. Linked websites are not under Cognoa's control, and Cognoa is not responsible for their content. Certain components of the Device may involve services provided by third parties. Your use of any third-party services and interaction with any such third party may be subject to that third party's own terms and conditions.

**7.2 Third-Party Software.** The Device and the HCP Portal may include or incorporate third-party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third-Party Components**"). Although the Device and the HCP Portal is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third-Party Components under the applicable third-party licenses or to limit your use of Third-Party Components under those third-party licenses.

## 8. User Content and Patient Information

**8.1 User Content Generally.** Certain features of the Device and the HCP Portal may permit users to submit, upload, or otherwise transmit ("**Submit**") content, information, and data using the Device or the HCP Portal, including your responses to the HCP questionnaire, video and/or audio (including sound or voice recordings and musical recordings embodied in the video or audio), images, data, text, and any other works of authorship or other works ("**User Content**"). You retain any copyright and other proprietary rights that you may hold in the User Content that you Submit to the Device or the HCP Portal.

**8.2 Patient Information.** User Content may include protected health information regarding the Patient (“**Patient Information**”). HCPs are permitted to share and disclose Patient Information to third parties like Cognoa for treatment purposes. In addition, pursuant to the Prescription form, you have obtained the Patient’s authorization to share Patient Information about the Patient with Cognoa for other authorized purposes. Any Patient Information that you Submit to the Device or the HCP Portal may be used and/or released in the same manner as other User Content in accordance with this Section 8, our [Privacy Policy](#) and applicable law.

**8.2 Limited License Grant to Cognoa.** By Submitting User Content, including Patient Information, using the Device or the HCP Portal, you grant Cognoa a worldwide, non-exclusive, perpetual, irrevocable, royalty-free, fully paid right and license (with the right to sublicense through multiple tiers) to: (a) host, store, transfer, reproduce, display and perform (in connection with the provision of the Device), and modify (for the purpose of formatting for display), your User Content; (b) create derivative works of and combine the User Content or results of processing the User Content with other information and data provided as input into the Device, including to generate the Device Output; (c) transfer and distribute your User Content and Device Output to third parties as set forth in our [Privacy Policy](#), such as the Patient, the Caregiver, Physicians, Analysts, or third-party telemedicine platforms and other third-party service providers; and (d) otherwise use your User Content and Device Output, in each case (a) – (d), in whole or in part, in any media formats and through any media channels now known or hereafter developed, including to provide, improve, and maintain the Device and Cognoa’s other products and services, and for other business purposes, as contemplated by these Terms (including the [Privacy Policy](#)) and the features and functionality of the Device. You agree to pay all monies owing to any person resulting from Submitting your User Content, including from Cognoa’s exercise of the license set forth in this Section.

**8.3 You Must Have Rights to the Content You Submit; User Content Representations and Warranties.** You must not Submit User Content, including Patient Information, if you are not the owner of or are not fully authorized to grant rights in all of the applicable elements of that User Content. Cognoa disclaims any and all liability in connection with User Content. You are solely responsible for your User Content and the consequences of providing User Content using the Device or the HCP Portal. By providing User Content, including Patient Information, via the Device or the HCP Portal, you affirm, represent, and warrant to us that:

- a. you are the creator and owner of the User Content, or have the necessary licenses, rights, consents, and permissions to authorize Cognoa and users of the Device to use and distribute your User Content as necessary to exercise the licenses granted by you in this Section, in the manner contemplated by Cognoa, the Device, and these Terms;
- b. your User Content, and the Submitting or other use of your User Content as contemplated by these Terms, does not and will not: (i) infringe, violate, misappropriate, or otherwise breach any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property, contract, or proprietary right; (ii) slander, defame, libel, or invade the right of privacy, publicity or other property rights of any other person; or (iii) cause Cognoa to violate any law or regulation;

- c. your User Content could not be deemed by a reasonable person to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate; and
- d. you will only provide responses to questionnaire about the Patient for whom you prescribed the Device. In other words, you will not upload any information about anyone other than the Patient named in the Prescription.

**8.4 User Content Disclaimer.** We are under no obligation to edit or control User Content that you or other users Submit and will not be in any way responsible or liable for User Content. Cognoa may, however, at any time and without prior notice, screen, remove, edit, or block any User Content that in our sole judgment violates these Terms or is otherwise objectionable. You agree to waive, and do waive, any legal or equitable right or remedy you have or may have against Cognoa with respect to User Content. If notified by a user or content owner that User Content allegedly does not conform to these Terms, we may investigate the allegation and determine in our sole discretion whether to remove the User Content, which we reserve the right to do at any time and without notice. For clarity, Cognoa does not permit infringing or unlawful activities on the HCP Portal.

**8.5 Monitoring Content.** Except as part of the Device's software functions and intended use as authorized by the FDA, Cognoa does not control and does not have any obligation to monitor or verify: (a) User Content; (b) any content made available by third parties; or (c) the use of the HCP Portal by its users. You acknowledge and agree that Cognoa reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Device or the HCP Portal for operational and other purposes. If at any time Cognoa chooses to monitor the content, then Cognoa still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our [Privacy Policy](#) (defined below).

## 9. Communications.

**9.1 Email.** We may send you emails concerning our products and services, as well as those of third parties. You may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself.

**9.2 SMS Text Messaging.** Cognoa offers an SMS text messaging program for its Canvas Dx product. When you log into the HCP Portal, you will have the option to agree to receive text messages from us. These text messages are intended to support your use of the HCP Portal, and include verification codes for two-factor authentication.

If you agree to receive text messages from Cognoa, you are agreeing that Cognoa may send you two-factor authentication codes via SMS text messages at the number provided via an autodialer service. Consent to texting is not a condition for receipt/purchase/use of Canvas Dx. Message and data rates may apply. If you have any questions about your text plan or data plan, it is best to contact your wireless provider. Carriers are not liable for delayed or undelivered messages. Message frequency varies.

If you are experiencing issues with the SMS text messaging program or would like to cancel the SMS text messaging program, you may contact Cognoa Connect via email ([connect@cognoa.com](mailto:connect@cognoa.com)) or telephone (1-866-426-4662) at any time. You may also reply directly to the SMS text with "HELP" for help or "STOP" to cancel. After you send "STOP" to us, we will send you a text message to confirm that you have been unsubscribed. After this, you will no longer receive text messages from us unless you choose to opt into the program again in the future.

For more information on how data obtained through the SMS text messaging program will be used, please review our [Privacy Policy](#).

**10. Prohibited Conduct.** YOU AGREE NOT TO:

- a. use the HCP Portal or interact with the Device for any illegal purpose or in violation of any local, state, national, or international law;
- b. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;
- c. access, search, or otherwise use any portion of the Device or HCP Portal through the use of any engine, software, tool, agent, device, or mechanism (including spiders, robots, crawlers, and data mining tools) other than the software or search agents provided by Cognoa;
- d. interfere with security-related features of the Device or HCP Portal, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Device or HCP Portal except to the extent that the activity is expressly permitted by applicable law;
- e. interfere with the operation of the Device or HCP Portal or any user's enjoyment of the Device or HCP Portal, including by: (i) uploading or otherwise disseminating any virus, adware, spyware, worm, or other malicious code; (ii) collecting personal information about another user or third party without consent; or (iii) interfering with or disrupting any network, equipment, or server connected to or used to provide the Device or HCP Portal;
- f. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, accessing any other HCP Portal account without permission, or falsifying your age or date of birth;
- g. sell or otherwise transfer the access granted under these Terms or any Materials (as defined in Section 6) or any right or ability to view, access, or use any Materials; or
- h. attempt to do any of the acts described in this Section 10 or assist or permit any person in engaging in any of the acts described in this Section 10.

## 11. Intellectual Property Rights Protection

**11.1 Respect of Third Party Rights.** Cognoa respects the intellectual property rights of others, takes the protection of intellectual property rights very seriously, and asks users of the Device and HCP Portal to do the same. Infringing activity will not be tolerated on or through the HCP Portal or when using the Device.

**11.2 DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to Internet service providers (17 U.S.C. § 512, as amended). If you have an intellectual property rights-related complaint about any material on the HCP Portal or used in the Device, you may contact our Designated Agent at the following address:

Cognoa, Inc.  
Attn: Legal Department (IP Notification)  
Cognoa, Inc., 2185 Park Blvd., Palo Alto, CA 94306, United States  
Email: legal@cognoa.com

**11.3 Procedure for Reporting Claimed Infringement.** If you believe that any content made available on or through the HCP Portal has been used or exploited in a manner that infringes an intellectual property right you own or control, then please promptly send a “**Notification of Claimed Infringement**” to the Designated Agent identified above containing the following information:

- a. an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
- b. a description of the copyrighted work or other intellectual property right that you claim has been infringed;
- c. a description of the material that you claim is infringing and where it is located on the HCP Portal;
- d. your address, telephone number, and email address;
- e. a statement by you that you have a good faith belief that the use of the materials on the HCP Portal of which you are complaining is not authorized by the copyright or other intellectual property right owner, its agent, or the law; and
- f. a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or other intellectual property right owner or authorized to act on the copyright or intellectual property owner’s behalf.

Your Notification of Claimed Infringement may be shared by Cognoa with the user alleged to have infringed a right you own or control, and you consent to Cognoa making such disclosure. You should consult with your own lawyer or see 17 U.S.C. § 512 to confirm your obligations to provide a valid notice of claimed infringement.

**11.4 Repeat Infringers.** Cognoa’s policy is to: (a) remove or disable access to material that Cognoa believes in good faith, upon notice from an intellectual property rights owner or authorized agent, is infringing the intellectual property rights of a third party by being made available through the HCP Portal; and (b) remove any User Content uploaded to the HCP Portal by “repeat infringers.” Cognoa reserves the right, however, to suspend or terminate accounts of users in our sole discretion.

**11.5 Counter Notification.** If you receive a notification from Cognoa that material made available by you on or through the HCP Portal has been the subject of a Notification of Claimed Infringement, then you will have the right to provide Cognoa with what is called a “**Counter Notification**.” To be effective, a Counter Notification must be in writing, provided to Cognoa’s Designated Agent through one of the methods identified in Section 11.2, and include substantially the following information:

- a. your physical or electronic signature;
- b. identification of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled;
- c. a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled; and
- d. your name, address, and telephone number, and a statement that you consent to the jurisdiction of Federal District Court for the judicial district in which the address is located, or if you are residing outside of the United States, then for any judicial district in which Cognoa may be found, and that you will accept service of process from the person who provided notification under Section 11.2 above or an agent of that person.

A party submitting a Counter Notification should consult a lawyer or see 17 U.S.C. § 512 to confirm the party’s obligations to provide a valid counter notification under the Copyright Act.

**11.6 Reposting of Content Subject to a Counter Notification.** If you submit a Counter Notification to Cognoa in response to a Notification of Claimed Infringement, then Cognoa will promptly provide the person who provided the Notification of Claimed Infringement with a copy of your Counter Notification and inform that person that Cognoa will replace the removed User Content or cease disabling access to it in 10 business days, and Cognoa will replace the removed User Content and cease disabling access to it not less than 10, nor more than 14, business days following receipt of the Counter Notification, unless Cognoa’s Designated Agent receives notice from the party that submitted the Notification of Claimed Infringement that such person has filed an action seeking a court order to restrain the user from engaging in infringing activity relating to the material on Cognoa’s system or network.

**11.7 False Notifications of Claimed Infringement or Counter Notifications.** The Copyright Act provides at 17 U.S.C. § 512(f) that: “[a]ny person who knowingly materially misrepresents under [Section 512 of the Copyright Act (17 U.S.C. § 512)] (1) that material or activity is infringing, or (2) that material or activity was removed or disabled by mistake or misidentification, will be

liable for any damages, including costs and attorneys' fees, incurred by the alleged infringer, by any copyright owner or copyright owner's authorized licensee, or by a service provider, who is injured by such misrepresentation, as the result of [Cognoa] relying upon such misrepresentation in removing or disabling access to the material or activity claimed to be infringing, or in replacing the removed material or ceasing to disable access to it." Cognoa reserves the right to seek damages from any party that submits a Notification of Claimed Infringement or Counter Notification in violation of the law.

**12. Modification of Terms.** We reserve the right to change these terms on a going-forward basis. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the HCP Portal and interact with the Device. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 12, these Terms may be amended only by a written agreement signed by authorized representatives of the parties. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

### **13. Term, Termination, and Modification of the Device**

**13.1 Term.** These Terms are effective beginning when you accept the Terms or first access or use the Device or HCP Portal, and ending when terminated as described in Section 13.2.

**13.2 Termination.** If you violate any provision of these Terms, or if the Prescription is invalid, terminated or revoked, then your authorization to access the Device or HCP Portal and these Terms automatically terminate. To the extent permitted or required by law or any governmental or regulatory authority, such as the FDA, we may terminate these Terms or your account on the HCP Portal, or suspend or terminate your access to the Device and HCP Portal, at any time with or without prior notice. You may terminate your account and these Terms at any time by contacting customer service at [support@cognoa.com](mailto:support@cognoa.com). If you decide to terminate these Terms, Cognoa is not responsible for and will not be liable for any delay or other issue caused by your decision to stop using the Device.

**13.3 Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Device and HCP Portal; (b) you will no longer be authorized to access the Device or to access your account or the HCP Portal; and (c) Sections 5.3, 6, 8, 13.3, 14, 15, 16, 17, and 18 will survive.

**13.4 Modification of the Device.** Cognoa reserves the right to modify or discontinue the Device at any time (including by limiting or discontinuing certain features of the Device), temporarily or permanently, as permitted or required by law.

**14. Indemnity.** To the fullest extent permitted by law, you are responsible for your use of or other interaction with the Device, and you will defend and indemnify Cognoa, its affiliates and their respective shareholders, directors, managers, members, officers, employees, consultants, and agents (together, the "**Cognoa Entities**") from and against every claim brought by a third party, including any Patient or Caregiver, and any related liability, damage, loss, and expense, including

attorneys' fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Device; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party, including a Patient and/or Caregiver. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

## **15. Additional Disclaimers; No Warranties by Cognoa**

15.1 THE DEVICE AND ALL MATERIALS AND CONTENT AVAILABLE TO YOU THROUGH THE DEVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. COGNOA DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE DEVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE DEVICE, INCLUDING: (a) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (b) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. COGNOA DOES NOT WARRANT THAT THE DEVICE OR ANY PORTION OF THE DEVICE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE DEVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND COGNOA DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

15.2 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE DEVICE OR COGNOA ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE DEVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE COGNOA ENTITIES OR THE DEVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE DEVICE AND YOUR DEALING WITH ANY OTHER DEVICE USER. YOU UNDERSTAND AND AGREE THAT YOU USE AND INTERACT WITH ANY PORTION OF THE DEVICE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE DEVICE) OR ANY LOSS OF DATA, INCLUDING USER CONTENT. YOU UNDERSTAND AND ACKNOWLEDGE THAT CAREGIVERS, ANALYSTS AND HCPS EACH PROVIDE THEIR RESPECTIVE INPUTS INDEPENDENTLY, AND COGNOA IS NOT RESPONSIBLE FOR AND DOES NOT VERIFY OR CONTROL THE INFORMATION INPUTTED BY ANY CAREGIVER, ANALYST OR HCP INTO THE DEVICE.

15.3 WE DO NOT PROVIDE MEDICAL ADVICE. USE OF OUR DEVICE OR HCP PORTAL OR INTERACTION WITH OUR DEVICE DOES NOT CREATE A DOCTOR-PATIENT RELATIONSHIP BETWEEN COGNOA AND THE PATIENT/CAREGIVER. YOU, AS THE PATIENT'S PRESCRIBING PHYSICIAN (AND NOT COGNOA), ARE RESPONSIBLE FOR THE DIAGNOSIS, CARE AND TREATMENT OF THE PATIENT WITHIN YOUR INDEPENDENT MEDICAL JUDGMENT. THE DEVICE IS NOT INTENDED FOR USE IN A MEDICAL EMERGENCY. IN CASE OF A MEDICAL EMERGENCY, IMMEDIATE ASSISTANCE SHOULD BE SOUGHT FROM A QUALIFIED MEDICAL PROFESSIONAL. THE DEVICE, INCLUDING ANY OUTPUT OR RESULT GENERATED BY THE DEVICE, IS NOT INTENDED FOR USE AS A STAND-ALONE DIAGNOSTIC DEVICE, BUT AS AN ADJUNCT TO A PHYSICIAN'S DIAGNOSTIC PROCESS AND

SHOULD BE USED IN CONJUNCTION WITH CLINICAL PRESENTATION OF THE PATIENT. THE DEVICE IS INTENDED FOR USE BY PHYSICIANS AS AN AID IN THE DIAGNOSIS OF AUTISM SPECTRUM DISORDER FOR PATIENTS AGES 18 MONTHS THROUGH 72 MONTHS WHO ARE AT RISK FOR DEVELOPMENTAL DELAY BASED ON CONCERNS OF A CAREGIVER OR HEALTHCARE PROVIDER. THE DEVICE IS FOR PRESCRIPTION USE ONLY (RX ONLY). WE ARE NOT RESPONSIBLE FOR THE INDEPENDENT MEDICAL JUDGMENT, PROFESSIONAL ADVICE, OR OPINIONS OF ANY PHYSICIANS, HCPS, OR ANY OTHER PROFESSIONALS PROVIDING SERVICES TO PATIENTS AND/OR CAREGIVERS OUTSIDE OF THE DEVICE OR AS PART OF AN INPUT IN THE DEVICE VIA THE HCP PORTAL. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION 15 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. COGNOA DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT COGNOA IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

## **16. Limitation of Liability**

16.1 TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE COGNOA ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE DEVICE OR ANY MATERIALS OR CONTENT ON THE DEVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY COGNOA ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE. THE COGNOA ENTITIES WILL NOT HAVE ANY LIABILITY TO YOU FOR ANY DISPUTE THAT YOU MAY HAVE WITH ANY THIRD PARTY IN CONNECTION WITH THE DEVICE, INCLUDING WITH PATIENTS AND/OR CAREGIVERS.

16.2 EXCEPT AS PROVIDED IN SECTIONS 17.5 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE COGNOA ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE DEVICE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO US\$50.

16.3 EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 16 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

## **17. Dispute Resolution and Arbitration**

17.1 **Generally.** In the interest of resolving disputes between you and Cognoa in the most expedient and cost effective manner, and except as described in Section 17.2 and 17.3, you and Cognoa agree that every dispute arising in connection with these Terms, the Device, and communications from us will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts.

Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, the Device, or any communications to or from us, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND COGNOA ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- 17.2 **Exceptions.** Despite the provisions of Section 17.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 17.3 **Opt-Out.** If you do not wish to resolve disputes by binding arbitration, you may opt out of the provisions of this Section 17 within 30 days after the date that you agree to these Terms by sending a letter to Cognoa, Inc., Attention: Legal Department – Arbitration Opt-Out, Cognoa, Inc., 2185 Park Blvd., Palo Alto, CA 94306, United States, that specifies: your full legal name, the email address associated with your account on the HCP Portal, and a statement that you wish to opt out of arbitration (“**Opt-Out Notice**”). Once Cognoa receives your Opt-Out Notice, this Section 17 will be void and any action arising out of these Terms will be resolved as set forth in Section 18.2. The remaining provisions of these Terms will not be affected by your Opt-Out Notice.
- 17.4 **Arbitrator.** Any arbitration between you and Cognoa will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at +1-800-7787879, or by contacting Cognoa. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 17.5 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). Cognoa’s address for Notice is: Cognoa, Inc., 2185 Park Blvd., Palo Alto, CA 94306, United States. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or Cognoa may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or Cognoa must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by Cognoa in settlement of the

dispute prior to the award, Cognoa will pay to you the higher of: (a) the amount awarded by the arbitrator and (b) US\$10,000.

**17.6 Fees.** If you commence arbitration in accordance with these Terms, Cognoa will reimburse you for your payment of the filing fee, unless your claim is for more than US\$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in the county and state of your residence, but if the claim is for US\$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your residence. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Cognoa for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

**17.7 No Class Actions.** YOU AND COGNOA AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Cognoa agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

**17.8 Modifications to this Arbitration Provision.** If Cognoa makes any future change to this arbitration provision, other than a change to Cognoa's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to Cognoa's address for Notice of Arbitration, in which case your account with Cognoa will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.

**17.9 Enforceability.** If Section 17.7 or the entirety of this Section 17 is found to be unenforceable, or if Cognoa receives an Opt-Out Notice from you, then the entirety of this Section 17 will be null and void and, in that case, the exclusive jurisdiction and venue described in Section 18.2 will govern any action arising out of or related to these Terms.

## **18. Miscellaneous**

**18.1 General Terms.** These Terms, including the [Privacy Policy](#) and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and Cognoa regarding the Device (including the HCP Portal). You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at

any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of Section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word “including” means “including but not limited to.” If any part of these Terms is held to be invalid or unenforceable, then the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.

**18.2 Governing Law.** These Terms are governed by the laws of the State of California without regard to conflict of law principles. You and Cognoa submit to the personal and exclusive jurisdiction of the state courts and federal courts located within San Francisco, California for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the HCP Portal and provide the Device from our offices in California, and we make no representation that Materials included in the Device are appropriate or available for use in other locations.

**18.3 Privacy Policy.** Please read the [Cognoa Privacy Policy](#) (the “**Privacy Policy**”) carefully for information relating to our collection, use, storage, and disclosure of personal information. The Cognoa Privacy Policy is incorporated by this reference into, and made a part of, these Terms.

**18.4 Additional Terms.** Your use of the HCP Portal and interaction with the Device is subject to all additional terms, policies, rules, or guidelines applicable to the Device or certain features or components of the Device that we may post on or link to from the HCP Portal or otherwise make available to you (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.

**18.5 Consent to Electronic Communications.** By using the HCP Portal or interacting with the Device, you consent to receiving certain electronic communications from us as further described in our [Privacy Policy](#). Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.

**18.6 Contact Information.** Cognoa, Inc. is located at Cognoa, Inc., 2185 Park Blvd., Palo Alto, CA 94306, United States. You may contact us by sending correspondence to that address or by emailing us at [support@cognoa.com](mailto:support@cognoa.com).

**18.7 Notice to California Residents.** If you are a California resident, then under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at +1-800-952-5210 in order to resolve a complaint regarding the Device or to receive further information regarding use of the Device.

**18.8 No Support.** We are under no obligation to provide support in connection with the Device. In instances where we may offer support, the support will be subject to published policies.

**18.9 International Use.** The Device is intended for individuals located within the United States. We make no representation that the Device is appropriate or available for use outside of the United States. All use from outside of the United States is prohibited.

LBL-019 Rev. B

LBL-019 Rev. C