



2019 Site License Pricing— Healthcare

Select	Quantity	Price	Product Code	Total
	1	\$1000	0150021674 Base Price	
		\$750	0150021682 Additional Coaches	
Order Total				

Unlimited Cogmed ID's per practice valid for 12 months from purchase. Prices valid through 12/31/2019 and subject to change without notice.

Account Information

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Payment

☐ Purchase Order #

☐ **Credit Card:** *Please provide the best contact number to reach you between the hours of 7:00 a.m. and 6:00 p.m. Central Time.

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*Pearson can only accept credit card payments through the e-commerce portal, call center, or remote call centers at select events. Credit card information is not accepted via paper orders to protect your personal information.

Bill To

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COGMED SALES AGREEMENT

This Sales Agreement ("Agreement") is by and between NCS Pearson, Inc., d/b/a as Cogmed ("Pearson") with corporate headquarters located at 5601 Green Valley Drive, Bloomington, MN 55437 and ("Licensee").

Business Name:
Contact Name:
Address:
City/State/Zip:
Email:
Telephone:
Fax:

The parties desire to enter into this Agreement to memorialize terms and conditions for the application and use of Product, and the related Pearson Tests and Reports by Licensee. The parties agree as follows:

I. Product. The Cogmed Working Training Memory is a computer based program comprised of the Cogmed License (set out in Exhibit A), proprietary training modules, support systems, and all related training modules, reports, and documentation, (the "Product"). Tests and Reports are administered and delivered using a computer based proprietary system which collects information from a trainee while accessing training modules delivered via the Product. Reports provide analysis of the trainee's performance of a training module. For the Subscription fee, the Licensee will receive access to the Product.

Licensee must provide the appropriate computer, internet connection, electrical source and location for testing required to operate the Product satisfactory based on Cogmed's documentation. It shall be Licensee's sole responsibility to (i) implement adequate firewall, password, virus scanning and detection software measures to protect the data and applications from unwanted access, control, copying and intrusion; and (ii) meet the minimum standards of the National Board of Fire Underwriters for the protection of electronic systems. Except for the rights expressly granted under this Agreement, Pearson retains all right, title right, title and interest in and to the Product.

II. System. Licensee accepts the License Agreement attached hereto as Exhibit A (the "License") and Schedules (if any), without the right to sublicense, and to use the Product solely for Licensee's own purposes without the right to redistribute. The Product and any and all materials, programs, systems and processes whether developed, designed or prepared by Pearson for Licensee, its subsidiaries, affiliates or clients, pursuant to this Agreement and/or in connection with the Product, shall be the sole and exclusive property of Pearson. For all purposes, Pearson shall be considered the owner of all copyright, trade secret, patent, trademark and other intellectual property rights therein. Any changes or modification to the License Agreement shall be in writing, and approved and accepted by Pearson prior to the sale and use of the Product.

Licensee may not copy, modify, enhance or otherwise change or supplement the Product. The source code for the Product will not be disclosed to Licensee, and Licensee may not disassemble, decompile or reverse engineer the Product. Licensee agrees to hold in confidence the Product, and shall not disclose or make the Product available in any form, to any third party, without the prior, written consent of Pearson. Notwithstanding anything herein to the contrary, Pearson will be entitled to terminate the License and, in its sole discretion, this Agreement, if Licensee fails to comply with any term or condition in this Section 2.

Upon termination of the License, Licensee agrees to immediately cease use of the Product.

III. Term and Termination. This Agreement will begin on the Effective Date, which shall be the date the services are first provided. The Agreement may be terminated by Pearson before the end of any term if: (a) Pearson provides Licensee with written notice that Licensee has failed to perform any of its obligations under the Agreement and Licensee does not cure such default within thirty (30) days of its receipt of such written notice; (b) Licensee becomes insolvent or bankrupt or (c) Licensee notifies Pearson with 30 days written notice the intent to terminate. Licensee shall remain liable for any unpaid License Fees accrued through the date of Termination. Upon termination of this Agreement, Licensee's right to use the Product shall immediately and absolutely cease. Section II of this Agreement, and the License Agreement shall survive termination.

IV. Maintenance. Pearson shall provide, (i) all software upgrades made generally available by Pearson to its Licensees, and (ii) required maintenance and service for the Product. Licensee is responsible for keeping their equipment in good condition and working order, including any maintenance or software updates specified by Cogmed. Licensee shall not alter or modify the Product and shall not permit others to effect modifications, changes, or adjustments to the Product. Pearson shall be in no way responsible to Licensee for loss of the use of the Product occasioned by modifications, adjustments and changes made by persons other than Pearson or its approved representatives. Licensee shall be responsible for all costs to make repairs, replacements or corrections to the Product, which result, in whole or in part, from (i) catastrophe, fault or negligence of Licensee or any representative, affiliate or permitted user of Licensee, (ii) improper or unauthorized use of the Product, (iii) use of the Product in a manner for which it was not designed, (iv) external causes such as, but not limited to, power failure or electric power surges, (v) use in combination with units or devices not made or provided by Pearson, or (vi) the introduction and proliferation of any software, code, program, or sub-program whose known or intended purpose is to damage or interfere with the operation of the Product, or to halt, disable or interfere with the operation of any software, code, program, or sub-program ("Malicious Code") due to Licensee's failure to use commercially reasonable efforts to implement adequate security measures to prevent unauthorized intrusion and/or the introduction or proliferation of Malicious Code.

V. Subscription Fee and other Costs. See Cogmed Order Form attached to and incorporated by reference into this Agreement.

VI. Compliance with Law. Pearson warrants that in furnishing the Products, Pearson and the Products will comply with all applicable Federal, State and local laws and regulations relating thereto. Licensee agrees to comply with all applicable governmental laws, ordinances, codes, rules, regulations, orders and professional licensing boards in its performance hereunder, and shall obtain all permits or licenses required in connection with use of the Product. Without limiting the generality of the foregoing, Licensee shall not make any claims, representations or statements about the Product that are inaccurate, misleading, deceptive or otherwise impermissible. Licensee represents that it is aware of its obligation to report discounts to the appropriate federal and/or state agencies and authorities and will meet any and all applicable requirements for reporting of the discounts provided hereunder.

VII. General. This Agreement shall be governed by and interpreted, construed and enforced as a sealed instrument in accordance with the laws of the State of Minnesota, excluding its conflicts of law provisions. In the event that any provision in this Agreement is different than in the License, the License shall be controlling. In the event that any provision contained herein is held invalid or unenforceable, the remaining provisions shall not be affected or impaired thereby. Licensee shall not assign the Agreement or any rights or obligations hereunder. Pearson shall have the right to assign this Agreement (i) to any entity which acquires a majority of Pearson's assets or a controlling equity interest in Pearson, (ii) to any subsidiary or affiliate of Pearson, or (iii) in the event Pearson is merged or reorganized, to the surviving entity of any such merger or reorganization. The Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and (to the extent specified in any permitted assignment) assigns. The Agreement contains the entire understanding and all of the terms and conditions agreed upon by the parties hereto regarding the subject matter of the Agreement and the terms and conditions of the Agreement supersede those of all previous

agreements between the parties, both written and oral, with respect to the subject matter hereof. Pearson’s failure to enforce, or waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. Any notice or communication hereunder shall be in writing and shall be deemed received when personally delivered or three days after being sent via delivery service (such as Federal Express) or first-class mail, postage prepaid, to a party at the address specified herein or such other address as either party may from time to time designate to the other in accordance with this sentence. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by both parties. The Agreement may be signed in one or more counterparts, all of which together shall constitute one original.

VIII. Incorporation of Attachments. The parties hereby acknowledge and agree to all of the Attachments incorporated herein and made a part hereof as if fully set out herein.

NCS Pearson, Inc. through its Clinical Assessment Division

Signed:
Name:
Title:
Date:

Licensee

Signed:
Name:
Title:
Date:

EXHIBIT A

COGMED WORKING MEMORY TRAINING LICENSE AGREEMENT

THIS IS A LEGAL AGREEMENT BETWEEN _____ (“LICENSEE”) AND NCS PEARSON, INC., THROUGH ITS COGMED BUSINESS UNIT (“PEARSON”). THIS AGREEMENT SETS OUT THE TERMS AND CONDITIONS RELATED TO YOUR USE OF THE COGMED TRAINING SYSTEM. PLEASE READ THIS AGREEMENT CAREFULLY AND COMPLETELY. BY ACCEPTING, INSTALLING, OR USING THE PRODUCT, YOU AGREE TO BE BOUND BY THIS AGREEMENT.

1 DEFINITIONS

- 1.1 **“Agreement”** means the Cogmed Sales Agreement and the Cogmed Working Memory Training License Agreement, together with **Pearson’s Terms and Conditions of Sale and Use of Pearson Products** located at <http://www.pearsonassessments.com/product-terms-and-conditions.html>, and the **Pearson’s Cogmed Qualifications Practices** located at <http://www.cogmed.com/cogmed-qualified-practice>, together with all information included at the links referenced in this Agreement.
- 1.2 **“Cogmed Content”** means any material(s) (whether in electronic or hard-copy format) made available by Pearson under license and intended for use with Cogmed Working Memory Training, including but not limited to forms, checklists, and user documentation.
- 1.3 **“Cogmed Product Marks”** means any trademarks, trade names, service marks, logos and other commercial symbols associated at any time with Cogmed Working Memory Training, whether registered or unregistered, including but not limited to those used on the CWMT Collateral Materials.
- 1.4 **“Cogmed Professional Training”** means the training provided to an individual by Pearson or its designee, through which such individual may become a Cogmed Qualified Coach. **The Cogmed Professional Training** may be revised from time to time; a current description can be found at <http://www.cogmed.com/cogmed-professional-training-definition>
- 1.5 **“Cogmed Qualified Coach”** means an individual who has successfully completed the Cogmed Professional Training and whose qualification is current and in good standing.
- 1.6 **“Cogmed Quality Assurance Person”** means the individual having an appropriate level of professional qualifications, as described in **Pearson’s Cogmed Qualifications Policies** located at <http://www.cogmed.com/cogmed-qualified-practice>, as revised from time to time, and who is responsible for all aspects of Licensee’s appropriate use of Cogmed Working Memory Training.
- 1.7 **“Cogmed Training System”** means the on-line training method and system that includes the computerized program(s) currently referred to as “Cogmed RM / Cogmed QM / Cogmed JM” and the Cogmed Training Web; all utilized to enable the Cogmed Working Memory Training educational intervention.
- 1.8 **“Cogmed UserID”** means a unique identifier provided by Pearson to Licensee pursuant to this Agreement that enables access by a single, unique Trainee to the Cogmed Training System.
- 1.9 **“Cogmed Working Memory Training”** means Pearson’s educational intervention for improving working memory, utilizing the Cogmed Training System.

- 1.10 “Confidential Information”** of a party means all information pertaining to that party’s business and management, including without limitation any of its proprietary or trade secrets, technology, or business records, excluding information:
- i. that is or becomes publicly available through no fault of the other party;
 - ii. that is disclosed with the prior written consent of such party;
 - iii. that is disclosed pursuant to a court order or other legal compulsion, and as a result becomes public record; or
 - iv. that is independently developed without use of the other party’s Confidential Information.
- 1.11 “CWMT Collateral Materials”** means brochures, descriptions, presentation material, manuals and other documentation that describes the Cogmed Working Memory Training and/or the Cogmed Training System, made available by Pearson and/or appearing on a Pearson-authorized Cogmed website(s).
- 1.12 “Pearson Intellectual Property”** means and includes the Cogmed Training System and Cogmed Content, as well as all Confidential Information, copyrights, database rights, patent rights, product mark rights, trademark rights, and other proprietary rights and interests of Pearson, its affiliates, or licensors related to any aspect of the Cogmed Working Memory Training; and all causes of action heretofore and hereafter accrued in favor of the owner of such intellectual property rights for infringement of any one or all of the aforesaid intellectual property rights.
- 1.13 “Team Member(s)”** means any and all third parties retained, commissioned, hired or employed by Licensee, including, without limitation, Licensee’s employees, consultants, independent contractors, Cogmed Quality Assurance Person(s), and Cogmed Qualified Coach(s), who contribute to or take part in any activity(ies) licensed to Licensee under this Agreement, including providing Trainee(s) with access to the Cogmed Training System on behalf of Licensee.
- 1.14 “Term”** means, subject to the early termination provisions contained in this License Agreement, the period of time commencing when Licensee indicates its acceptance of this Agreement and continuing until the earlier of (i) such time as Licensee no longer has Cogmed UserID(s) acquired under this Agreement that can be used by a Trainee(s); and (ii) twelve (12) calendar months after Licensee’s acceptance of this Agreement.
- 1.15 “Trainee”** means an individual student or staff member of Licensee to whom Licensee provides access to the Cogmed Training System.
- 1.16 “Training Data”** means Trainee demographics and Trainee input into the Cogmed Training System. Training Data does not contain any personally identifiable information.

2 LICENSE

During the Term of and subject to the terms and conditions of this License Agreement, including payment of all applicable fees, Pearson hereby grants to Licensee, and Licensee hereby accepts, a limited, non-exclusive, non-transferable license, without right of sublicense, to access and use the Cogmed Training System and the Cogmed UserID(s), solely for the purpose of providing Cogmed Working Memory Training to Trainees within the United States.

3 TERMS OF USE

- 3.1** For the full duration of their access to the Cogmed Training System, all Trainees must be supervised by a Cogmed Qualified Coach.

- 3.2** (a) Cogmed UserID(s) acquired under this Agreement are activated on the date this Agreement is accepted by Licensee. Each Cogmed UserID may be used by only a single Trainee. A Cogmed UserID is not transferable after initial Trainee log-in.
- (b) Once a given Cogmed UserID has been used to complete a full series of the training sessions of the Cogmed Training System that specific Cogmed UserID will be de-activated and shall no longer be used to access the Cogmed Training System. All use of Cogmed UserID(s) acquired under this Agreement must be STARTED before end of the Term of this License and COMPLETED not later than 60 days after the expiration of the License. Upon termination of the Agreement or expiration of this License, all still-active Cogmed UserID(s) acquired under this Agreement will terminate and will not be refunded or replaced.
- 3.3** Licensee is solely responsible for maintaining the confidentiality and security of any Cogmed UserID(s), password(s), or other access information provided by Pearson to Licensee and/or created by Licensee for use in conjunction with the Cogmed Training System. If Licensee reasonably believes there has been any breach of security (e.g. disclosure, theft, or unauthorized use of any Cogmed UserID and/or password) or other unauthorized access to the Cogmed Training System, Licensee shall notify Pearson immediately.
- 3.4** Licensee is authorized to permit Trainee(s) to access the Cogmed Training System only while such Trainee(s) are (i) under the supervision of a Cogmed Qualified Coach, and (ii) using computer hardware and internal network, which conforms to Pearson's then-current published System Requirements.
- 3.5** Licensee may not rent, lease, sell, sublicense, assign, share, or transfer Cogmed UserID(s) or any rights granted by this Agreement nor exploit the Cogmed Training System other than as may be expressly permitted by this Agreement. Licensee may not make visible on any publicly-accessible website information regarding the fees that Licensee charges (if any) for the provision of Cogmed Working Memory Training.
- 3.6** All Cogmed Content remains the property of Pearson and is licensed to Licensee during the Term of this Agreement solely for use with the Cogmed Training System. Certain Cogmed Content materials may be accompanied by and subject to additional terms of use. Licensee will not post electronic copies of any Cogmed Content on any website or intranet. Upon termination or expiration of this Agreement, Licensee will cease use of all hard copies of and delete from all storage media all electronic copies of Cogmed Content, except that Licensee may retain the minimum number of copies of Cogmed Content reasonably required for archival and student record retention purposes.
- 3.7** Licensee acknowledges and agrees that the Pearson Intellectual Property is, and will remain, the sole and exclusive property of Pearson, its affiliates, or licensors, and Licensee acquires no right, title, or interest therein other than the limited license granted by this Agreement. All rights not expressly granted to Licensee by this Agreement are reserved to Pearson.
- 3.8** Licensee will not work around any technical limitations in and/or perform any actions that could interfere with the proper working of or modify or alter in any manner the Cogmed Training System.

4 LICENSEE'S OBLIGATIONS

- 4.1** Licensee will be solely responsible for identifying potential Trainees and when evaluating potential Trainees will comply with all applicable Cogmed training methods and guidelines. Licensee shall seek Trainees who are exhibiting a desire to improve their focus by improving their working memory capacity and who are otherwise eligible consistent with the remainder of this Section (each, a "Potential User"). If, in Licensee's professional judgment, a Potential User will benefit from the Cogmed Training System, Licensee may present the Cogmed Training System to such Potential User. Licensee shall exclude from the category of Potential Users Persons who: (i) exhibit at the time of observation by Licensee, any psychological disorder that would put the User at risk of harming himself/herself or Third Parties during

Training, including without limitation, severe mental retardation, a severe emotional or severe behavioral disorder, severe depression, or severe anxiety; (ii) appear to Licensee to be so oppositional or defiant that such Person is unlikely to complete the Training; (iii) have been diagnosed with, or might have a tendency to develop, any condition associated with computer usage, including without limitation, photosensitive epilepsy. Licensee covenants that, as part of its initial screening protocol, Licensee shall inquire of each Potential User (and their parent or guardian, if applicable) whether such Potential User is contemplating harming himself or herself or Third Parties.

- 4.2** Before the commencement of Training with each Trainee, the Qualified Coach will conduct an introductory meeting with the Trainee, and his/her respective parent or guardian, if applicable. This meeting should be conducted in person. Such Qualified Coach shall regularly communicate with the Trainee throughout Training. At the completion of each Training Session, each Trainee will electronically submit his individual training results in a manner that protects the identity of such Trainee ("Training Data") to Cogmed or to an Affiliate of Cogmed, as directed by Cogmed. Prior to permitting any Trainee to participate in the Cogmed Working Memory Training, Licensee will obtain from each Trainee or, if applicable, his/her parent or guardian, all consents required by law (including, but not limited to acceptance of any end user license agreement. Licensee is solely responsible for ensuring that Licensee's exercise of its rights granted under this Agreement is in accordance with all applicable data protection and privacy laws and regulations. Licensee will remain solely liable for all obligations to Trainee and his/her parent or guardian.
- 4.3** Licensee understands, acknowledges, and agrees that Training Data is automatically and electronically transmitted to Pearson or its designee in a manner that does not disclose to Pearson (or its designee) the identity of the Trainee, and Licensee must and hereby agrees to inform each Trainee of this fact before permitting the Trainee to participate in the Cogmed Working Memory Training. Pearson collects, retains, and analyzes non-identifying Training Data and may use it during and after the Term of this Agreement for research or normative purposes and for further product development.
- 4.4** Licensee will have access to its Trainees' Training Data stored in the Cogmed Training System data base for a period of twelve (12) months following the date of initial Trainee log-in under any given Cogmed User ID, and Licensee may use its Trainees' Training Data to produce reports and as otherwise appropriate in providing Cogmed Working Memory Training. Pearson will regularly back up the Training Data stored in the Cogmed Training System data base. Licensee remains solely responsible, however, for making backups of its Trainees' Training Data adequate for Licensee's own purposes. Licensee releases Pearson from any and all liability for any damages, loss, or other injury related to or resulting from errors or failure in the Cogmed Training System data base and/or Pearson's backup systems.
- 4.5** Licensee shall select and assign to each Trainee, in accordance with then-current Cogmed guidelines, a Cogmed Qualified Coach to communicate with and supervise such Trainee's access to the Cogmed Training System. Licensee will not permit any Trainee to access the Cogmed Training System except at the direction of a Cogmed Qualified Coach. Licensee shall ensure that each Trainee's assigned Cogmed Qualified Coach performs his/her responsibilities in accordance with then-current Cogmed coaching guidelines.
- 4.6** Licensee's designated Cogmed Quality Assurance Person is responsible for (a) evaluating the suitability of individuals for participation in Cogmed Working Memory Training; (b) monitoring quality of Cogmed Working Memory Training offered by Licensee to Trainees; (c) monitoring the compliance of Licensee with Licensee's obligations under this Agreement; and (d) serving as the contact person and liaison between Pearson and Licensee in matters related to the quality of Cogmed Working Memory Training. Licensee's Cogmed Quality Assurance Person shall not evaluate any individual for participation in Cogmed Working Memory Training or permit any Trainee to access the Cogmed Training System until after successfully completing the Cogmed Professional Training.

- 4.7** Licensee is responsible for any and all costs related to or resulting from Licensee's exercise of its rights under this Agreement.
- 4.8** If Licensee maintains or uses an Internet Home Page identifying or containing information about Training, the Software, or the Cogmed Training System, Licensee shall establish within thirty (30) days after the Effective Date or within thirty (30) days after the establishment of such Internet Home Page, as the case may be, a conspicuous hyperlink designed by **Cogmed** to www.COGMED.com or to such other Internet site as Cogmed may direct.

5 PROMOTION; OWNERSHIP OF TRADEMARKS

- 5.1** Neither Licensee nor any Team Member(s) shall: (a) make any warranty, representation, or statement regarding the Cogmed Working Memory Training that is in conflict with the CWMT Collateral Materials; or (b) represent or suggest that Cogmed Working Memory Training is, or purports to be, a medical device, a substitute for medication, or a cure or treatment for any disorder or condition.
- 5.2** Pearson grants to Licensee a limited, non-exclusive, nontransferable, royalty-free license to use the Cogmed Product Marks during the Term of this Agreement, solely for the purpose(s) of exercising Licensee's rights under this Agreement and describing Cogmed Working Memory Training to potential Trainees and their parents and/or guardians. Licensee is not permitted to alter the CWMT Collateral Materials or create any new or additional marketing materials containing any of the Cogmed Product Marks. Licensee shall acquire no right, title or interest in the Cogmed Product Marks other than the limited license stated herein. Licensee will not by act or omission depreciate the value of the goodwill attaching to the Cogmed Product Marks.
- 5.3** Licensee shall comply with Cogmed's policies and guidelines governing use of the Trademarks as such policies and guidelines are provided to Licensee from time to time by Cogmed. Licensee shall also, at all times, use the standard Software, or other product, descriptions supplied to Licensee by Cogmed and shall not alter or amend such descriptions without the prior written approval of Cogmed. Licensee acknowledges and agrees that Cogmed shall have the right to: (i) control the quality of all authorized goods/services offered under the Trademarks; and (ii) approve in writing or disapprove in advance the contents, appearance and presentation of any and all advertising, promotional, or communications materials (collectively, "Communications") that incorporate the Trademarks or that make reference in any way to Cogmed. Licensee will not produce, publish or in any manner distribute any Communications which have not been approved in advance by Cogmed or which are, at any time, disapproved by Cogmed in accordance with the provisions of this Agreement. Before producing, publishing or distributing any Communications hereunder, Licensee shall submit to Cogmed for its examination and approval or disapproval, a sample thereof together with text, coloring and copy of any photograph proposed to be used. Failure of Cogmed to approve such proposed Communications within fifteen (15) Business Days after receipt hereof will be deemed disapproval. In the event Licensee makes any material change to an approved Communication, Licensee shall again submit materials to Cogmed for its approval as set forth above. The Parties acknowledge that the Marketing Materials are approved for use by Licensee in accordance with the terms of this Agreement. The parties acknowledge that no such new material is expected from Licensee.
- 5.4** Licensee acknowledges and agrees that Cogmed may use Licensee's trademark and trade name in customer listings or as part of Cogmed's marketing efforts, including on www.COGMED.com or such other Internet site as Cogmed may use from time to time to promote the Cogmed Training System. Such use shall be consistent with Licensee's applicable branding guidelines, to the extent such branding guidelines are made available to Cogmed.

6 TECHNICAL SUPPORT SERVICES; HARDWARE REQUIREMENTS

- 6.1** The Cogmed Training System is an on-line application that must be used with a “Supported Web Browser”. Pearson reserves the right to revise from time to time the Supported Web Browser(s). Provided that Licensee is using a then-Supported Web Browser to access the Cogmed Training System, Pearson or its designee shall during the Term of this Agreement provide to Licensee the “Cogmed Technical Support Services”. Pearson has no obligation to provide Cogmed Technical Support Services if Licensee is not using a Supported Web Browser to access the Cogmed Training System.
- 6.2** Pearson may from time to time perform scheduled maintenance and upgrades on the Cogmed Training System, and during such periods the Cogmed Training System will not be accessible. Pearson will make reasonable efforts to communicate to Licensee information regarding such scheduled maintenance and upgrades. Licensee acknowledges that the availability of an on-line service is at times dependent on factors beyond Pearson’s control and that there may be non-scheduled periods of unavailability, and Licensee releases Pearson from any and all liability related to or resulting from any scheduled or non-scheduled periods of unavailability.

7 PEARSON’S WARRANTY; LIMITATION OF LIABILITY

- 7.1** Pearson warrants to Licensee that the content of the Cogmed Training System does not infringe on any valid copyrights of any third party enforceable in the United States.
- 7.2** Pearson represents and warrants to Licensee that: (a) it has the right to grant the license(s) specified herein; (b) its execution of this Agreement has been duly authorized; and (c) this Agreement is fully binding on Pearson and enforceable in accordance with its terms. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, THE RIGHTS AND LICENSES PROVIDED HEREIN ARE PROVIDED “AS IS”, AND PEARSON AND ITS AFFILIATES AND LICENSORS HEREBY DISCLAIM ANY AND ALL WARRANTIES OF MERCHANTABILITY, ACCURACY, PERFORMANCE, EFFORT, NONINFRINGEMENT, SATISFACTORY QUALITY, OR FITNESS FOR A PARTICULAR PURPOSE. PEARSON DOES NOT WARRANT THAT LICENSEE’S USE OF THE COGMED TRAINING SYSTEM OR ANY OTHER PRODUCT OR SERVICES FURNISHED BY PEARSON, OR EXERCISE OF THE RIGHTS GRANTED HEREIN WILL BE UNINTERRUPTED OR ERROR FREE, AND PEARSON DOES NOT WARRANT AS TO ANY RESULTS THAT MAY BE OBTAINED BY LICENSEE’S EXERCISE OF THE RIGHTS GRANTED HEREIN. PEARSON AND ITS LICENSORS DISCLAIM ANY OTHER EXPRESS OR IMPLIED WARRANTY. PEARSON DOES NOT WARRANT THAT THE COGMED TRAINING SYSTEM WILL ALWAYS BE ACCESSIBLE OR OPERATE WITHOUT ERROR NOR THAT USE OF THE COGMED TRAINING SYSTEM WILL BE UNINTERRUPTED OR SECURE.
- 7.3** PEARSON’S LIABILITY FOR LOSS OR DAMAGE RELATING TO THIS AGREEMENT AND/OR LICENSEE’S USE OR INABILITY TO USE THE COGMED TRAINING SYSTEM, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE AMOUNT PAID BY OR DUE FROM LICENSEE TO PEARSON FOR ACCESS TO THE COGMED TRAINING SYSTEM AS EVIDENCED BY THE COGMED USER ID(S) IDENTIFIED TO LICENSEE AND ACQUIRED UNDER THIS AGREEMENT. THIS IS YOUR EXCLUSIVE REMEDY. IN NO EVENT SHALL PEARSON OR ITS AFFILIATES OR LICENSORS BE LIABLE TO LICENSEE FOR ANY CLAIM MADE AGAINST LICENSEE BY ANY THIRD PARTY (INCLUDING ANY TRAINEE) OR FOR ANY CLAIM MADE BY LICENSEE FOR LOST BUSINESS OR PROFITS OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF PEARSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGES.

8 LICENSEE'S REPRESENTATIONS AND WARRANTIES

LICENSEE REPRESENTS AND WARRANTS THAT: (a) IT MEETS OR EXCEEDS PEARSON'S RELEVANT COGMED QUALIFICATION REQUIREMENTS; (b) IT HAS ALL REQUISITE POWER AND AUTHORITY TO ENTER INTO THIS AGREEMENT, TO MAKE ALL GRANTS OF PERMISSIONS CONTAINED IN THIS AGREEMENT, TO PERFORM ALL OF ITS OBLIGATIONS UNDER THIS AGREEMENT, AND THAT THIS AGREEMENT IS FULLY ENFORCEABLE AGAINST IT IN ACCORDANCE WITH THE TERMS HEREOF; (c) LICENSEE IS AN ORGANIZATION OR INSTITUTION WHOSE PRIMARY ACTIVITY IS THE OFFERING OF CURRICULUM-BASED EDUCATION; AND (d) ALL USE OF THE COGMED TRAINING SYSTEM BY LICENSEE, TEAM MEMBER(S), AND TRAINEES SHALL BE CONDUCTED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT AND ALL THEN-CURRENT COGMED AND PEARSON GUIDELINES.

9 INDEMNITY

Licensee shall indemnify, defend, and hold Pearson harmless from and against any third party claims, actions, suits, damages, costs, and reasonable attorneys' fees arising out of (i) any breach of Licensee's obligations hereunder; (ii) Licensee's dealings with Trainees, including but not limited to data protection and privacy issues; (iii) Licensee's exercise of its rights granted under this Agreement, including any Trainee access to the Cogmed Training System; (iv) acts or omissions of Licensee or any Team Member(s), including the death of, or injury to, any person or damage to any property which resulted or is alleged to have resulted from any acts or omissions of Licensee and/ or a Team Member(s); (v) the personal injury or death of a Trainee or any third party or damage to any property arising from the acts or omissions of Licensee and/or any Team Member(s) and/or any Trainee; (vi) any warranty, representation, or statement made by Licensee and/or a Team Member(s) regarding the Cogmed Working Memory Training that is in conflict with the CWMT Collateral Materials; and/or (vii) any representation or suggestion made by Licensee and/or a Team Member(s) that Cogmed Working Memory Training is, or purports to be, a medical device, a substitute for medication, or a cure or treatment for any disorder or condition (in violation of §5.1). Licensee is responsible for ensuring compliance with the terms and conditions of this Agreement by all Team Member(s) and by any party (including any Trainee(s)) that gains access to the Cogmed Training System as licensed to Licensee under this Agreement and/or that uses any Cogmed UserID issued to Licensee.

10 TERM AND TERMINATION

- 10.1** Either Party may terminate this Agreement in the event the other party breaches this Agreement and fails to remedy such breach, if capable of remedy, within thirty (30) days after receipt of written notice thereof.
- 10.2** Notwithstanding the foregoing, Licensee acknowledges and agrees that any breach or threatened breach of Sections 2 (License), 3 (Terms of Use), 4 (Licensee's Obligations), 5 (Promotion, Ownership of Trademarks), 8 (Licensee's Representations and Warranties), 11 (Confidentiality), or 12.3 (Assignment) of this Agreement by Licensee or any Team Member(s) will cause Pearson, its affiliates and/or licensor(s) irreparable damage. Licensee acknowledges and agrees that money damages would not be a sufficient remedy for the breach of such Sections and that Pearson, its affiliates and/or licensor(s) shall be entitled (i) to suspend Licensee's use of the Cogmed Training System and deny access from Licensee's Cogmed ID(s) and/or (ii) specific performance and injunctive or other equitable relief as a remedy for any such breach without the necessity of posting bond. Such remedies shall not be deemed to be the exclusive remedy for such breaches, but shall be in addition to all other remedies that may be available at law or equity.
- 10.3** A breach of Licensee's obligations under Sections 2 (License), 3 (Terms of Use), 4 (Licensee's Obligations), 5 (Promotion; Ownership of Trademarks), 8 (Licensee's Representations and Warranties), 11 (Confidentiality), and 12.3 (Assignment), shall not require a cure period and shall result in an immediate and automatic termination of this Agreement without further notice.

- 10.4** Without limitation, the following events shall constitute material breaches of this Agreement: (i) failure by Licensee to comply promptly with any obligation, duty or undertaking to Pearson pursuant to this Agreement, including any payment obligation related to the Cogmed Training System; (ii) filing by or against Licensee of a petition in bankruptcy or any other insolvency proceeding or the failure of Licensees to meet its financial obligations to Pearson or to third parties as such financial obligations become due, which shall automatically and without notice constitute a termination of this Agreement effective immediately prior to such petition or proceeding; (iii) Licensee's misrepresentation of or loss of its qualifications to offer Cogmed Working Memory Training, including but not limited to Licensee's representation made at Section 8(c) above; and (iv) the commission of any act by Licensee in violation of federal, state or local law that, in the sole discretion of Pearson, adversely affects the goodwill and reputation of Pearson, Pearson Intellectual Property, and/or the Cogmed Working Memory Training. Any such material breach shall immediately and automatically cause the termination of this Agreement without further notice.
- 10.5** Upon the termination of this Agreement, Licensee shall immediately cease all use of the Cogmed Training System, Cogmed Content, and Pearson Intellectual Property, except to the extent permitted in Sections 3.6 and 4.4 above. Termination of this Agreement for any reason shall not affect the rights and obligations of the parties accrued prior to the effective date of termination.

11 CONFIDENTIALITY

Confidential Information or trade secrets may be (but are not required to be) marked as Confidential Information or trade secrets by the disclosing party. Each party will keep in confidence the other party's Confidential Information to which such party obtains access as a consequence of entering into this Agreement. Each party will use the other party's Confidential Information only as may be necessary in the course of performing duties or exercising rights under this Agreement. Each party will take all reasonable precautions to protect the other party's Confidential Information from any use or disclosure except as expressly authorized by this Agreement. Each party will implement reasonable procedures to maintain the security of the other party's Confidential Information in its possession.

12 OTHER PROVISIONS

- 12.1 Conflicting Terms; Amendment.** To the extent any term of this Agreement conflicts with Cogmed's Sales Agreement, these license terms prevail, but only as regards the use of the Cogmed Training System and Cogmed UserID(s) licensed to Licensee under this Agreement. This Agreement shall not be modified or amended except by a written document signed by a duly authorized officer of each of the parties.
- 12.2 Headings.** Section headings are used for convenience only and shall not affect the scope, meaning, or intent of this Agreement or any provisions herein.
- 12.3 Assignment.** This Agreement or any of the rights granted by this Agreement may not be assigned, in whole or in part, or otherwise delegated, conveyed, pledged or transferred by Licensee to any third party without the prior written consent of Pearson. Any attempted assignment in violation of this Agreement shall be null and void and shall constitute a material breach of this Agreement. No permitted assignment shall relieve Licensee of its obligations to perform and remain responsible under this Agreement.
- 12.4 Waiver.** Any waiver of, or consent to depart from, the requirements of any provision of this Agreement will be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No delay or failure on the part of a party to exercise any right under this Agreement will operate as a waiver of such right. No single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.

- 12.5 Independent Contractor.** Licensee is an independent contractor and not an employee, agent, affiliate, partner, or joint venturer with or of Pearson, its affiliates or licensors. Neither Licensee nor Pearson will have any right to enter into any contracts or commitments in the name of, or on behalf of the other or to bind the other in any respect whatsoever.
- 12.6 Survival.** All definitions and the provisions of Sections 3.6, 3.7, 3.8, 4.3, 4.4, 4.7, 5.1, 7, 8, 9, 10.2, 10.5, 11, and 12.10 shall survive the termination or expiration of this Agreement.
- 12.7 Severability.** If any provision of this Agreement is found to be invalid, illegal or unenforceable by a court of competent jurisdiction, then that provision is to be construed either by modifying it to the minimum extent necessary to make it enforceable (if permitted by law) or disregarding it (if not); the remaining provisions' validity, legality and enforceability will not be affected or impaired thereby, and this Agreement will be enforced to the maximum extent possible.
- 12.8 Binding Agreement and No Third Party Beneficiaries to Licensee.** This Agreement shall be binding upon and shall inure to the benefit of the respective parties hereto and their permitted successors and assignees. There shall be no third-party beneficiaries to Licensee under this Agreement.
- 12.9 Further Assurances.** The Parties hereto shall execute, acknowledge, and deliver all such further instruments, and to do all such other acts, as may be necessary and appropriate in order to carry out the intent and purposes of this Agreement.
- 12.10 Governing Law.** This Agreement and any claims arising from or relating to this Agreement will be governed by, construed, and interpreted in accordance with the laws of the State of Minnesota without reference to its choice of law, and the federal laws of The United States of America applicable therein, and will be treated, in all respects, as a Minnesota contract. The State and Federal courts in Minnesota will have exclusive jurisdiction over any controversy relating to this Agreement, and the parties hereby irrevocably submit to the exclusive jurisdiction of the State and Federal courts of the State of Minnesota and consent to service of process by mail. All issues involving Copyright, Trademark, and Patent will be construed in accordance with the laws of the United States and the decisions of the Federal Courts of the District of Minnesota and the 8th Circuit Court of Appeals, with exclusive forum in the U.S. 8th Circuit. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- 12.11 Force Majeure.** Neither party shall be liable to the other party for delay or failure of performance of this Agreement if the delay or failure is caused by acts of God, war, terrorism, fire, embargo, strikes or other labor trouble, governmental regulations or actions, shortage of or inability to obtain material, equipment or transport, or any cause beyond the reasonable control of such party.