

## Cignition Terms of Service

These Terms of Service (these “**Terms of Service**”) are between [Cignition] (“**Cignition**”, “**Our**”, “**We**” or “**Us**”) and the parent or guardian enrolling a student in the Services (“**You**,” or “**Your**”).

BY ENROLLING IN THE SERVICES THAT REFERENCE THESE TERMS OF SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTOOD THESE TERMS OF SERVICE AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY AND BE A PARTY TO THESE TERMS OF SERVICE. YOUR ENROLLMENT OF A STUDENT OF THE SERVICES IS EXPRESSLY CONDITIONED UPON YOUR ACCEPTANCE OF ALL OF THESE TERMS OF SERVICE.

**ARBITRATION NOTICE: THESE TERMS OF SERVICE INCLUDE AN ARBITRATION PROVISION, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT DISPUTES BETWEEN YOU AND US WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION AND YOU WAIVE YOUR RIGHT TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR CLASS-WIDE ARBITRATION.**

### **1. Introduction**

Welcome to Cignition! These Terms of Service aim to clearly outline and define Cignition’s guidelines and requirements for the successful procurement of our virtual tutoring service. Before procuring and submitting payment for any Services, you are required to review and agree to these Terms of Service.

### **2. Definitions**

The following capitalized terms as used herein, shall have the meanings specified in this section.

- **Parent Account:** A parent account created upon signup allows You to have ongoing access to Your student’s information for progress monitoring, attendance, and overall engagement in tutoring sessions.
- **Service:** Our virtual tutoring service that is provided either in a one-to-one format (one tutor and one student individually) or small group instruction (one tutor and more than one student) in mathematics and English language arts for grades kindergarten through twelfth.
- **Student Account:** A student account allows student Users access to our dashboard, session links, and other relevant information using login credentials.
- **User:** Either You or the student utilizing the Services under these Terms of Service.

### **3. Account Terms**

- **Eligibility:** To begin procuring the Services from Cognition, You must review and agree to these Terms of Service before any student or child under the age of 18 can begin using our Services.
- **Registration:** The process for creating a Parent Account and Student Account (together, an “**Account**”) will be outlined upon signup. You and the student must provide accurate and complete information when creating an Account. You and the student shall not: (i) select or use as a username a name of another person with the intent to impersonate that person; (ii) use as a username a name subject to any rights of a person other than you without appropriate authorization; or (iii) use, as a username, a name that is otherwise offensive, vulgar or obscene or do anything illegal in the creation or use of an Account.
- **Account Security:** Users (parents or students) are responsible for protecting their login credentials after generating an Account. You are solely responsible for the activity that occurs on your Parent Account, including any incurred payment obligations, and for keeping your Parent Account password secure. You may never use another person’s user account or registration information for the Services without permission. You shall not publish, distribute or post your or a student’s log-in information of any Account. Cognition support staff and the family plans provider or program manager will have access to account login information solely for resetting passwords or adjusting a student’s schedule.

### **4. Service Terms**

- **Services:** Cognition, through its tutors, will provide the Services to enrolled students through the sessions made available via the [portal / virtual classrooms / online video] identified upon signup. Cognition does business within the United States only and is unable to offer tutoring services to anyone outside of the United States. For clarity, the Services cannot be offered to residents of Puerto Rico or any United States territory. If the Services are rendered to an individual or users outside of the United States, it is grounds for immediate termination of the Services with no refund provided.
- **Usage Rights:** Users are strictly prohibited from recording sessions on their end and Users shall not share or distribute any Materials (as defined below) to any third party, including other virtual tutoring services and personal social media platforms. Any such actions will be considered a violation of these Terms of Service and Cognition may immediately terminate the Users access to their Account and the Services without a refund.
- **Prohibited Activities:** Users must refrain from any behavior that Cognition may deem, in its sole discretion, detrimental in physical, emotional, or intellectual capacity during the Services. Such behavior includes but is not limited to, harassment, bullying, and any form of discrimination. Violations are grounds for immediate removal from a tutoring session and termination of the Services without a refund.

- **Modifications:** Cignition reserves the right to change or modify the Services and Materials from time to time, in its sole discretion, without notice or liability.

## **5. Intellectual Property**

- **Ownership:** The Services reflect the knowledge, know-how and works prepared by Cignition and its tutors. Cignition is the exclusive owner of all right, title and interest in and to all intellectual property rights, including copyrights, trademarks, know-how and other proprietary rights in and to the Services, the content and documentation provided to You and the enrolled student (the “**Materials**”). Users are granted a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the Materials for personal, non-commercial purposes only. Except as expressly permitted in these Terms of Service, you have no rights in or to the Materials.
- **Usage Rights:** Users may not modify, reproduce, adapt, translate, distribute, create derivative works of, publicly display, or in any way exploit any of the Materials, in whole or in part, except as expressly authorized in writing by Cignition.
- **Feedback:** You may choose to provide feedback to Cignition with respect to the Services and Materials, which may include the identification of errors or suggestions (“**Feedback**”). You acknowledge that all Feedback is the exclusive property of Cignition, and You hereby assign all rights in and to any Feedback to Cignition and agree to take any actions as reasonably requested by Cignition to effectuate Cignition’s sole ownership of the Feedback.
- **Likeness.** Users’ likeness may be captured in video recordings made by Cignition. You grant Cignition the exclusive, sublicensable, perpetual, irrevocable, royalty-free, worldwide right to record, reproduce, distribute, transmit, adapt, publicly perform, publish, republish, and otherwise use any and all video recordings (the “**Recordings**”) taken of Users’ likeness for use in connection with providing our Services and marketing our Services. You agree that Cignition may exploit, edit, or otherwise modify the Recordings and may combine the Recordings with materials furnished or created by others without your approval. Cignition has the sole discretion to decide whether, when and how to publish or post the Recordings, or any portion thereof. You further hereby expressly release and discharge Cignition from any and all claims and demands arising out of the permitted use of the Recordings as provided hereunder, including, but not limited to, claims for libel, invasion of privacy, violation of the right of publicity, or copyright infringement. You understand that nothing herein will constitute any obligation of the Cignition to make any use of any of the rights set forth herein.

## **6. Payments and Fees**

- **Payment Terms:** You must pay upfront and in full for the Services before any User can access the Services. Accepted payment methods and detailed instructions will be provided during the signup process.

## **7. Termination**

- **Termination by Cignition:** Cignition reserves the right to terminate any Account or access to the Services without prior notice if You or another User violate these Terms of Service. In this event, Users will not be entitled to a refund and You must, and cause any other Users, to immediately cease all access to and use of the Services.
- **Termination by User:** Users may terminate their Account by contacting the family tutoring program manager. Cignition shall issue refunds only if a User cancels less than two weeks after initially receiving the Service. No other termination entitles the User to a refund. Users shall send all termination notices in writing to a Cignition tutoring program manager. No other termination notices shall be binding upon Cignition.

## **8. Disclaimers: Limitation of Liability**

- **Disclaimer:** THE SERVICES AND MATERIALS ARE PROVIDED “AS IS” AND CIGNITION MAKES NO WARRANTIES, WHETHER EXPRESSED OR IMPLIED, WITH RESPECT TO ANY SERVICES OR MATERIALS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY ORAL OR WRITTEN REPRESENTATIONS, PROPOSALS OR STATEMENTS MADE BY CIGNITION, ITS TUTORS, EMPLOYEES OR AGENTS PRIOR TO OR DURING THE PERFORMANCE OF SERVICES UNDER THESE TERMS OF SERVICE, AND CIGNITION HEREBY DISCLAIMS ALL SUCH WARRANTIES AND REPRESENTATIONS.
- **Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY LAW, CIGNITION SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OR ANY LOSS OF PROFITS OR REVENUES, WHETHER INCURRED DIRECTLY OR INDIRECTLY, ARISING FROM THE USE OF THE SERVICES. IN NO EVENT SHALL CIGNITION’S LIABILITY IN CONNECTION WITH THESE TERMS OF SERVICE OR ANY SERVICES PROVIDED HEREUNDER, WHETHER CAUSED BY BREACH OF CONTRACT, TORT, NONPERFORMANCE OR OTHERWISE, EXCEED ONE HUNDRED DOLLARS (\$100).

## **9. Confidentiality**

The term “**Confidential Information**” means all confidential or proprietary information and materials belonging to or in the possession of Cignition (including, without limitation, such information or materials of a third party that are in the possession of Cignition) which are provided or made available to You, whether in tangible or intangible form and on any physical or electronic medium, that (a) are clearly marked as “Confidential” or “Proprietary”, or (b) are otherwise reasonably identifiable as the confidential or proprietary information. You shall not, and You shall cause the student not to, (i) disclose the Confidential Information to any third party or (ii) use the Confidential Information for any purpose other than the use of the Services. Upon written request of Cignition or upon any expiration or termination of these Terms of Service, You will return or destroy all documents and other materials in Your control that contain or relate to Confidential Information.

## **10. Governing Law**

- **Jurisdiction:** These Terms of Service are governed by the laws of the State of California, without reference to conflict of laws principles.
- **Jurisdiction:** You hereby irrevocably consent to the jurisdiction of the state and federal courts of the State of California for any dispute arising out of or relating to these Terms of Service or the Services hereunder.

## **11. ARBITRATION CLAUSE & CLASS ACTION WAIVER – IMPORTANT – PLEASE REVIEW AS THIS AFFECTS YOUR LEGAL RIGHTS**

- **Arbitration:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU AGREE THAT ALL DISPUTES BETWEEN YOU AND US (WHETHER OR NOT SUCH DISPUTE INVOLVES A THIRD PARTY) WITH REGARD TO YOUR RELATIONSHIP WITH US, INCLUDING WITHOUT LIMITATION DISPUTES RELATED TO THESE TERMS OF SERVICE, YOUR USE OF THE SERVICES, AND/OR RIGHTS OF PRIVACY AND/OR PUBLICITY, WILL BE RESOLVED BY BINDING, INDIVIDUAL ARBITRATION UNDER THE AMERICAN ARBITRATION ASSOCIATION'S RULES FOR ARBITRATION OF CONSUMER-RELATED DISPUTES AND YOU AND WE HEREBY EXPRESSLY WAIVE TRIAL BY JURY; PROVIDED, HOWEVER, THAT TO THE EXTENT THAT YOU HAVE IN ANY MANNER VIOLATED OR THREATENED TO VIOLATE OUR INTELLECTUAL PROPERTY RIGHTS, WE MAY SEEK INJUNCTIVE OR OTHER APPROPRIATE RELIEF IN ANY STATE OR FEDERAL COURT IN THE STATE OF CALIFORNIA. DISCOVERY AND RIGHTS TO APPEAL IN ARBITRATION ARE GENERALLY MORE LIMITED THAN IN A LAWSUIT, AND OTHER RIGHTS THAT YOU AND WE WOULD HAVE IN COURT MAY NOT BE AVAILABLE IN ARBITRATION. As an alternative, you may bring your claim in your local "small claims" court, if permitted by that small claims court's rules and if within such court's jurisdiction, unless such action is transferred, removed or appealed to a different court. You may bring claims only on Your own behalf. Neither You nor We will participate in a class action or class-wide arbitration for any claims covered by this agreement to arbitrate. YOU ARE GIVING UP YOUR RIGHT TO PARTICIPATE AS A CLASS REPRESENTATIVE OR CLASS MEMBER ON ANY CLASS CLAIM YOU MAY HAVE AGAINST US INCLUDING ANY RIGHT TO CLASS ARBITRATION OR ANY CONSOLIDATION OF INDIVIDUAL ARBITRATIONS. You also agree not to participate in claims brought in a private attorney general or representative capacity, or consolidated claims involving another person's account, if We are a party to the proceeding. This dispute resolution provision will be governed by the Federal Arbitration Act and not by any state law concerning arbitration. In the event the American Arbitration Association is unwilling or unable to set a hearing date within one hundred and sixty (160) days of filing the case, then either We or You can elect to have the arbitration administered instead by the Judicial Arbitration and Mediation Services. Judgment on the award rendered by the arbitrator may be entered in any court having competent jurisdiction. Any provision of applicable law notwithstanding, the arbitrator will

not have authority to award damages, remedies or awards that conflict with these Terms of Service.

- **Arbitration Opt-Out:** If You do not wish to be bound by the arbitration and class-action waiver provisions in this section, You must notify Us in writing within 30 days of the date that you first accept these Terms of Service (unless a longer period is required by applicable law). Your written notification must be mailed to Us at the following address: **[Address]**. Such notification must include: (i) Your name; (ii) Your mailing address and (iv) a statement that You do not wish to resolve disputes with Us through arbitration. If We make any changes to the Arbitration and Class Action Waiver section of these Terms of Service (other than a change to the address at which We will receive notices of dispute, opt-out notices, or rejections of future changes to the Arbitration and Clause Action Waiver section), You may reject any such change by sending Us written notice within 30 days of the change to the address set forth in this section. It is not necessary to send Us a rejection of a future change to the Arbitration and Class Action Waiver section of these Terms of Service if you had previously opted out of the arbitration and class-action waiver provisions in this section within the first 30 days after You first accepted these Terms of Service.

## **12. Miscellaneous**

- **Comprehensiveness:** These Terms of Service constitute the entire agreement between You and Cognition and supersede any prior agreements and prior or contemporaneous communications (whether oral, written or electronic) between You and Cognition with respect to the Services.
- **Clause Validity:** If any part of these Terms of Service is found invalid or unenforceable, that provision will be limited or eliminated to the minimum extent necessary so that these Terms of Service will otherwise remain in full force and effect and enforceable.
- **Data Collection and Usage:** For information about our privacy policy, please see the following link: <https://www.cognition.com/privacy-policy>.
- **Support:** Users can contact Cognition support ([support@cognition.atlassian.net](mailto:support@cognition.atlassian.net)) or the Family Plan Program Manager ([familytutoring@cognition.com](mailto:familytutoring@cognition.com)) for any questions or issues related to these Terms of Service.
- **Amendments:** Cognition reserves the right, in its sole discretion, to modify, amend, or otherwise change these Terms of Service or the Services, in whole or in part, at any time. Cognition will provide You with no less than thirty (30) days' prior written notice of any material change in advance of the effective date of such change. Change notices may be communicated to You through the Services or by electronic mail. Your continued use of the Service constitutes Your acceptance of the new terms.
- **No Waiver:** Our failure to enforce any part of these Terms of Service shall not constitute a waiver of our right to later enforce that or any other part of these Terms of Service. Waiver of compliance in any particular instance does not mean that We will waive compliance in the future. In order for any waiver of compliance with these Terms of Service to be binding, We must provide You with written notice of such waiver through one of our authorized representatives.

- **Assignment:** These Terms of Service are personal to You, and are not assignable, transferable or sub-licensable by You except with our prior written consent. We may assign, transfer or delegate any of our rights and obligations hereunder without consent.