

REMOTE MONITORING TERMS AND CONDITIONS

1. DEFINITIONS. “Company” means Cogent, Inc., including any of Company’s applicable trade names associated with the specific Proposal or specific Agreement. “Customer” means Company’s customer for the specific Proposal or Agreement. “Proposal” means Company’s proposal, estimate, quotation or sales form, including any terms expressly incorporated by reference, and these Terms and Conditions. “Agreement” means the terms of the final agreement entered into by and between Company and Customer relating to the purchase or rental of specific goods, equipment or services, and these Terms and Conditions.
2. CONFLICT OF TERMS AND INTEGRATION. Company’s Proposal is expressly conditioned upon Customer’s acceptance of these Terms and Conditions. Any additional or different terms and conditions included in Customer’s purchase order, or other documents or communications, shall have no application or effect on the Agreement, unless specifically agreed to by Company in writing. Company’s commencement of performance or delivery of goods and/or equipment shall not be deemed or construed as an acceptance of Customer’s additional or different terms and conditions. The terms set forth in the Agreement supersede all prior negotiations, representations or agreements, either written or oral between the parties, and can only be modified or amended with the express written consent of Company.
3. PROPOSAL, WITHDRAWAL AND EXPIRATION. If the price is included in a Proposal, the price is firm for receipt of an order within 15 days of the date shown on the Proposal. Company reserves the right to cancel a Proposal at any time prior to receiving the acceptance in writing of the Proposal by Customer.
4. PRICING. The final price in the Agreement must be accepted by Company in writing. Unless expressly agreed to by Company in writing, the price does not include: (i) any freight charges; or (ii) any applicable duties or sales tax, use tax, excise tax, value-added or other similar taxes that may apply to the goods, equipment, services and/or project.
5. PAYMENT TERMS. Payment is due upon receipt of the invoice. An interest charge of 1-1/2% per month will be added to past due balances, starting on the sixteenth (16) day after the invoice date. Retainage of any invoiced amount is unacceptable unless specifically agreed to by Company in writing at the time of the Agreement, and shall in no case exceed a period of 120 days. Payment of “commercial transaction” invoices by credit card will be charged a fee based upon Company’s average discount rate for credit card transactions. Company reserves the right to require Customer make payment in advance, or C.O.D., or otherwise modify Company’s credit terms if Customer’s credit standing or scores are found to be not acceptable to Company. If payments are not timely received by Company, and this account is turned over to an attorney for collections, Customer agrees to pay all reasonable costs and attorney fees incurred in collection of the past due amounts.
6. FINANCIAL INSECURITY ISSUES. If at any time prior to receipt of payment in full by Company of the Agreement, Company receives information on Customer’s financial responsibility or condition that causes Company to become insecure of Customer’s ability to perform under the terms of the Agreement, including but not limited to Customer’s failure to fulfill any other contractual obligations to Company, Company may take the following actions: (a) request further financial assurances, or collateral, from Customer; (b) suspend Company’s performance under the Agreement; (c) defer or decline to deliver any goods or equipment, or services, under the Agreement; (d) stop delivery of goods or equipment in transit, and/or stop rendering services under the Agreement; and/or (e) terminate the Agreement as allowed under the Terms and Conditions. If Customer provides satisfactory financial assurances to Company as requested, including but not limited to payments in advance or other security acceptable to Company, then Company

shall continue with its performance under the Agreement. Customer grants to Company a continuing security interest in and a lien upon the goods and/or equipment supplied by or through Company under the Agreement and the proceeds thereof (including insurance proceeds), as security for the payment in full and the performance by Customer of all of its obligations to Company under the Agreement, as well as any other Agreement between the parties. Customer shall execute a financing statement and any other documents needed by Company to enforce this security interest and lien, upon request by Company. For goods and/or equipment purchased by Customer for Customer's own use, Customer shall have no right to sell, encumber or otherwise dispose of those goods and/or equipment until Company has received payment in full of all amounts owed by Customer under the express terms of the Agreement.

7. TITLE, DELIVERY AND RISK OF LOSS. Unless other terms are expressly agreed to in writing by Company, for goods and/or equipment that are shipped from a Company facility or warehouse, those shipments are FOB Company's shipping point, at which point title transfers to Customer. For goods and/or equipment that are shipped from a manufacturer or distributor, those shipments are FOB manufacturer's or distributor's warehouse or factory shipping point as applicable, at which point title transfers to Customer. Delivery dates are estimates, and time is not of the essence.

8. EXPORT OF GOODS AND/OR EQUIPMENT. Goods and/or equipment sold by Company to Customer may be subject to applicable export laws and regulations, including the United States Export Administration Regulations. If any goods and/or equipment acquired by Customer is or are exported, Customer agrees to comply with all such applicable laws and regulations. In particular, Customer shall not, and will not permit any third parties to, directly or indirectly, export, re-export or release any goods and/or equipment to any country or jurisdiction to which, or to any party to whom, the export or release of any goods and/or equipment is prohibited by applicable law, regulation or rule. As between Company and Customer, Customer shall be responsible for any breach of any export law, regulation or rule. For export shipments from the United States, delivery to Customer of the goods and/or equipment will pass from Company to Customer, as well as title to the goods and/or equipment, absolutely no later than when the goods and/or equipment are delivered to the shipping port, so that Customer shall be the exporter of the goods and/or equipment.

9. CUSTOMER DELAY OF DELIVERY. If Customer requests Company to delay delivery of any goods and/or equipment included in the Agreement, the requested delay, if agreed to by Company in writing, shall solely effect the delivery date of the goods and/or equipment. Company reserves the right to issue an invoice for the goods and/or equipment as of the originally scheduled, or the first available, delivery date. If Company is required to store or warehouse any goods and/or equipment on behalf of Customer due to the delayed delivery date, any storage and/or warehouse costs and fees will be charged to Customer and payable by Customer to Company upon receipt of an invoice, as well as the costs of any required maintenance of the goods and equipment throughout the period of delay.

10. CUSTOMER CANCELLATION. Customer possesses no right to cancel special or made-to-order goods and/or equipment, unless first requested by Customer in writing to Company, and accepted by Company in a written response to Customer. If any request to cancel is made by Customer, and accepted by Company, Company may issue an invoice to Customer which will include all costs and expenses incurred by Company prior to accepting the cancellation request, including any labor costs and overhead incurred or expended by Company. Goods and/or equipment from a cancelled Agreement, returned to a manufacturer or other source of the goods and/or equipment, shall be returned at Customer's costs, including any delivery and/or restocking charges.

11. INSPECTION OBLIGATIONS. Customer shall inspect the goods and/or equipment upon receipt. When delivery of the goods and/or equipment are to a project site, Customer will notify Company in writing within three (3) days of delivery of the goods and/or equipment, of any apparent shipment shortages, or damages or nonconformity of the goods and/or equipment. For all other deliveries of goods and/or equipment, Customer shall notify Company in writing within ten (10) days of delivery of the goods and/or equipment, of any apparent shipment shortages, or damages or nonconformity of the goods and/or equipment. Failure of Customer to timely deliver the written notice to Company shall constitute a waiver by Customer to claim any shortages in the goods and/or equipment delivered, and to claim any damages to, or nonconformity of the goods and/or equipment delivered to Customer. Customer shall make any claim for loss of or damage to goods and/or equipment while in transit, to the carrier, unless different terms are expressly set forth in the Agreement of the parties.

12. NEW GOODS WARRANTY. For all new goods and/or equipment, Company will pass through to Customer any warranty provided by the manufacturer of any goods and/or equipment supplied by Company. None of the warranties received by Customer shall become effective until such time that Customer has paid Company in full for the goods and/or equipment.

13. SECURITY. Customer shall be responsible for acquiring and maintaining technology and procedures for the security of Customer's link to the Internet. Company shall implement reasonable and adequate security procedures consistent with prevailing industry standards to protect data from unauthorized access by either physical or electronic intrusion. Company shall promptly report to Customer any information received or discovered by Company of any unauthorized access to Customer's data, and Company will work diligently to promptly remedy any breach of security that permitted the unauthorized access.

14. WARRANTY DISCLAIMERS. Unless other terms are expressly agreed to in writing by Company, Company disclaims, to the fullest extent provided by law, any and all warranties express or implied related to the services provided, and access to the licensed platform for those services, including but not limited to implied warranties of merchantability or fitness for a particular service. Company and its licensors do not represent nor warrant the services and the licensed services will be secure, free from all errors or viruses, or other harmful data. Company does not warrant the accuracy of the diagnostic services provided, nor the ability to detect any or all potential operating conditions that may require repair or other inspections or interventions. Company does not warrant or guaranty that the user platform and associated software cannot be compromised or hacked, will be error free, and monitoring services will never be interrupted. Company does not warrant or guaranty that customer's data cannot be unlawfully accessed by others, removed or stolen by others, or compromised in any manner. If any of these disclaimed warranties cannot be disclaimed pursuant to applicable law, then those specific warranty disclaimers shall be limited to the least possible respect, in order to be enforceable under the applicable law.

15. USE LICENSE. Company grants Customer a limited, non-exclusive, use license for access to the platform and associated software, for the monitoring services provided by and through Company during the term of the Agreement. Customer's limited, non-exclusive use license shall be terminated on the date that the Agreement is terminated. Customer is not authorized to resell or transfer this limited, non-exclusive use license, nor modify or copy any of the platform's software and/or other data.

16. MONITORING. Company reserves the right to monitor Customer's access and use of the software and/or platform used for the monitoring services, without notification to Customer, for purposes of monitoring Customer's compliance with the terms of the Agreement.

17. OWNERSHIP OF SOFTWARE AND PLATFORM. The software, platform and materials Customer will have access to during the term of the Agreement are protected by law, including but not limited to United States copyright laws. Except for the limited, non-exclusive use license granted to Customer in this Agreement, Customer has no other rights to this software, platform and other materials.

18. RIGHTS TO DATA. Customer shall own all data generated by Customer's monitoring equipment and recorded under this Agreement with Company. Company shall own all analyses of Customer's data. Company grants Customer a fully paid, royalty free, nonexclusive, perpetual and irrevocable license to use all of Customer's reports based upon the data collected by Company while performing services under the Agreement. Customer grants Company a fully paid, royalty free, nonexclusive, perpetual and irrevocable license to access and otherwise use Customer's collected data in aggregated and anonymized form.

19. USED GOODS AND EQUIPMENT. Used goods or equipment sold by Company are sold in an as-is and where is condition. Unless stated in the Agreement by Company, Company makes no representations or warranties of any kind, express or implied, as to the nature, quality or condition of the used goods or equipment, or its suitability for any use, including without limitation any warranty of merchantability or fitness for a particular purpose, unless expressly agreed to in writing between Company and Customer. Company shall have no liability to Customer in connection with the sale of the used goods and equipment, including without limitation, for loss of profit, loss of income, loss of production, loss of opportunity, or indirect, consequential, incidental, punitive or exemplary damages arising out of or related to Company's sale of used goods or equipment to Customer.

20. INSTALLATION AND STARTUP. Unless otherwise agreed to in writing by Company, installation of the purchased goods and/or equipment shall be the responsibility of Customer. Where start up service is required, it must be performed by Company's authorized personnel or agents. If the startup is performed by persons other than Company's authorized personnel or agents, then any warranty on the goods and/or equipment is voided.

21. SAFETY ON SITE. If Company needs to enter onto Customer's property, or any other property that Customer has an interest in, for installation or any other reason related to the remote monitoring services covered in the Agreement, Customer shall provide Company with a safe work environment. If Customer has standard safety type protocols, policies or procedures governing the conduct of persons while on the relevant property, Customer shall provide copies of such protocols, policies or procedures to Company at least seven (7) calendar days before Company is scheduled to arrive at the relevant property. If Customer has any recommended or mandatory safety training that Customer provides to persons before they enter the relevant property, Customer agrees it shall provide that training to Company's personnel who need to enter the relevant property for purposes related to the Agreement. For any Customer related property that constitutes a "hazardous location" as described in 29 C.F.R. § 1910.307, or similar state law, Customer warrants to Company that Customer maintains and operates the relevant property and/or space, and all activities in or on the property and/or space, in compliance with all federal, state and local safety requirements and regulations.

22. BANKRUPTCY, RECEIVERSHIP, ASSIGNMENT FOR BENEFIT OF CREDITORS, DEFAULT. If voluntary or involuntary Bankruptcy proceedings are commenced against Customer, or similar proceedings such as a receivership or any other insolvency proceedings, or if Customer makes an assignment for the benefit of its creditors, Company may provide written notice to Customer of Company's immediate termination and cancellation of the Agreement. Company can also provide written notice to

Customer of the immediate termination of this Agreement for cause upon occurrence of any of the following events: (i) any unauthorized use of the software or platform used for the monitoring services; or (ii) failure to comply with export laws or regulations; or Customer's failure to protect Confidential Information. If Customer is in any other material default of the Agreement, including but not limited to Customer's failure to make any payment when due to Company, then Company can deliver a written notice to Customer of such default and provide notice of a five (5) day right to cure the default. If Customer fails to cure the default within the five (5) day period, or begin commencement of the cure and continue to work diligently on the cure within the five (5) day period, Company has the right to terminate any further performance of its obligations under the Agreement, without prejudice to any other rights and remedies the Company might have under the Agreement and applicable law. If the Agreement is terminated, the rights, obligations and liabilities of the parties that accrued prior to the termination of the Agreement shall survive the termination.

23. LIMITATION OF LIABILITIES. Except as otherwise provided by applicable law, in no event will Company's liability exceed the amount paid by Customer to Company under the Agreement, limited, where applicable, for the value of the equipment and/or services provided by Company to Customer over the last twelve (12) month period immediately preceding the event giving rise to a claim. In no event shall Company's obligations and liabilities under this Agreement include any indirect, punitive, special, incidental or consequential damages or losses that Customer may suffer or incur in connection with this sale, service or rental, including, but not limited to, loss of revenue or profits, damages or losses as a result of Customer's inability to operate, perform its obligations to third persons or injuries to goodwill. Nor shall Company's liability extend to damages or losses Customer may suffer or incur as a result of such claims, suits or other proceedings made or instituted against Customer by third parties. Customer remises, releases and discharges Company from any and all liability or damages which might be caused by failure to deliver any equipment within the agreed time by Company.

24. INDEMNIFICATION. Customer covenants and agrees to defend, indemnify and hold Company harmless from any claims, damages or liability arising out of the use, maintenance or delivery of the goods and/or equipment purchased or rented from Company. Customer shall further defend, indemnify and hold Company harmless from any and all damages to third persons or to property caused by Customer's use or possession of the goods and/or equipment, to the fullest extent allowable by law.

25. COMPANY DRAWINGS. Any drawings that Company prepares and delivers to Customer shall remain Company's property. If Company provides drawings related to the installation of the goods and/or equipment in Company's Proposal, those drawings depict the general type, arrangement and approximate dimensions of the goods and/or equipment to be furnished by Company, are for Customer's information only, and Company makes no representation or warranty regarding the drawings' accuracy. Unless expressly stated to the contrary in the Proposal, all drawings, illustrations or diagrams form no part of the Agreement.

26. CONFIDENTIAL INFORMATION. Company may provide designs, illustrations, processing equipment, repair specifications, manufacturing information, intellectual property and other non-public information ("Confidential Information") to Customer in either the Proposal, or the Agreement, or in the performance of the Agreement. Other than for the performance of the Agreement, Customer agrees to not disclose, use or reproduce any Confidential Information without Company's prior written consent. Customer's agreement to not disclose, use or reproduce Confidential Information shall survive completion of Company's obligations under the Agreement, or termination of the Agreement.

27. CUSTOMER WARRANTY. Customer warrants the accuracy of any and all information provided to Company, relating to the details of the relevant operating conditions, including but not limited to influent

data, temperatures, pressures and where applicable, the nature of all hazardous materials. Company may justifiably rely upon the accuracy of Customer's information in preparing both the Proposal and the Agreement. If Customer's information is later found to be not accurate, Company shall have no liability to Customer, and/or Customer's customer if any, for any losses, liabilities, damages and expenses of any kind, that arise out of, or relate in any respect, to the inaccurate information provided by Customer to Company, and shall defend and indemnify Company for any claims made against Company based upon such inaccurate information.

28. FORCE MAJEURE. Company may cancel, terminate or suspend its Proposal or the Agreement, and Company shall have no liability to Customer for Company's failure to deliver any goods and/or equipment, or to provide any services to Customer, due to force majeure. Force majeure means any event or circumstances beyond Company's reasonable control, including but not limited to natural disasters, wars, strikes, riots, epidemics, criminal actions, changes in applicable laws and failures of suppliers or transportation. In these situations, Company's time for performance shall be extended in an amount equal to the period of time for Company to recover from the causal event, and shall notify Customer within a reasonable period of time of the expected delay. If the force majeure event impacts the pricing specified in the Proposal or the Agreement, Company shall notify Customer of the revised pricing. If Customer rejects the revised pricing in the Agreement, the parties will resolve the cancellation pursuant to the Customer Cancellation clause.

29. LAW AND VENUE. The Agreement shall be governed by the laws of the state where the Company's branch office is located from which the goods and/or equipment is rented or purchased, or services were ordered from Company (without reference to principles of conflicts of laws). Customer further agrees that venue and jurisdiction shall be appropriate in the county and/or federal court venue in which Company's branch office is located from which the goods and/or equipment was rented or purchased, or services were ordered from Company. This paragraph shall survive any termination, cancellation or expiration of the Agreement. If any dispute between Company and Customer ends up in litigation or arbitration, the prevailing party is entitled to an award of reasonable attorney's fees and costs.

30. MISCELLANEOUS. The captions or titles in these Terms and Conditions are for reference only, and shall have no role nor effect in the interpretation or construction of the Proposal or the Agreement, as applicable. Company's failure to insist, on any one or more instances, upon Customer's performance of the Agreement, or to exercise any rights conferred in the Agreement, will not constitute a waiver or relinquishment of such right, or the right to insist upon Customer's performance in any other respect. The partial or complete invalidity of any one or more provisions in these Terms and Conditions, or any other part of the Agreement, shall not affect the validity or continuing force and effect of any other provision. Unless specifically stated otherwise in these Terms and Conditions, Company possesses all other legal and equitable rights that may be found in the applicable law.