

Cogent Global Performance Solutions, Inc.

SUBSCRIPTION AGREEMENT

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND THAT ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “YOU” OR “YOUR” WILL REFER TO THE ENTITY. IF YOU DO NOT HAVE THIS AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE OUR SERVICES.

1. DEFINITIONS

“**Agreement**” means this Subscription Agreement and one or more executed Order Forms.

“**Beta Service**” means a service of Ours that is not generally available to customers.

“**Confidential Information**” has the meaning stated in Section 8.1.

“**Disclosing Party**” has the meaning stated in Section 8.1.

“**Documentation**” means Our online user guides, documentation, and help and training materials, as updated from time to time, relating to the Service.

“**Feedback**” has the meaning stated in Section 7.1.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Order Form**” means an ordering document specifying the Service to be provided that is entered into between You and Us, including any supplements to that document.

“**Recipient**” has the meaning stated in Section 8.1.

“**Service**” means the products that are ordered by You and made available online by Us, including any associated offline components, as described in the Documentation and Order Form. The “Service” does not include the Support Services.

“**Support Services**” means the help desk support services described in Section 4.

“**Transaction Taxes**” has the meaning stated in Section 5.6.

“**User**” means an individual who is authorized by You to use a Service, for whom You have ordered the Service, and to whom You (or We at Your request) have supplied a user

identification and password. Users may include, for example, Your employees, consultants, contractors and agents, and third parties with which You transact business.

“We,” “Us” or “Our” means Cogent Global Performance Solutions, Inc. a Texas corporation.

“Your Data” means electronic data and information submitted by or for You through the Service or collected and processed by or for You using the Service.

2. OUR RESPONSIBILITIES

2.1 Provision of Service. We shall make the Service available to You pursuant to this Agreement including the applicable Order Forms. We make no guarantees as to the continuous availability of the Service or of any specific feature of the Service since: (a) it is hosted by third-parties; and (b) it interoperates with products from third parties, including web browsers.

2.2 Our Personnel. We shall be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement.

2.3 Beta Service. From time to time, We may invite You to try a Beta Service at no charge. You may accept or decline any such Beta Service in Your sole discretion. A Beta Service will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. A Beta Service is for evaluation purposes only and not for production use, is not considered a “Service” under this Agreement, is not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Service trial period will expire upon the earlier of 3 months from the trial start date or the date that a version of the Beta Service becomes generally available. We may discontinue a Beta Service at any time in Our sole discretion and may never make them generally available. We will have no liability for any harm or damage related to use of a Beta Service.

2.4 Privacy. We will receive, process, store, use, and transmit Your Data in accordance with Our privacy policy posted at www.cogentgps.com/privacy or such other location as We may notify You in writing. The privacy policy may be amended from time to time, and it is Your responsibility to regularly review such privacy policy. Your continued use of the Service following any change to the privacy policy will constitute Your agreement to be bound by the revised terms of the privacy policy.

3. USE OF THE SERVICE

3.1 Your Responsibilities. You shall: (a) be responsible for Users’ compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Your Data and the means by which You acquired Your Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Service, and notify Us promptly of any unauthorized access or use; and (d) use the Service only in accordance with the Documentation and applicable laws and government regulations.

3.2 Usage Restrictions. You shall not: (a) make the Service available to anyone other than Your Users, or use the Service for the benefit of any party other than You; (b) sell, resell, license,

sublicense, distribute, rent or lease the Service, or include the Service in a service bureau or outsourcing offering; (c) use the Service to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use the Service to store or transmit Malicious Code; (e) interfere with or disrupt the integrity or performance of the Service or third-party data contained in the Service; (f) attempt to gain unauthorized access to the Service or its related systems or networks; (g) permit direct or indirect access to or use of the Service in a way that circumvents a contractual usage limit; (h) copy the Service or any part, feature, function, software code or user interface thereof; (i) copy the Documentation other than as reasonably needed in connection with Your permitted use of the Service; (j) frame or mirror any part of the Service, other than framing on Your own intranets or otherwise for Your own internal business purposes or as permitted in the Documentation; (k) access the Service in order to build a competitive product or service; (l) reverse engineer the Service (to the extent this restriction is permitted by law); or (m) download, read, display, copy, modify or transmit any program code or documentation comprising an internal part of the Service.

3.3 Audit Rights. On Our written request, You shall provide a signed certification: (a) verifying that the Service is being used in accordance with the terms of this Agreement; and (b) listing the locations where the Service is accessed. We may audit Your use of the Service and compliance with the terms of this Agreement. Any audit will be conducted during business hours and will not unreasonably interfere with Your business activities. You shall provide all reasonable assistance and information reasonably requested to determine whether You are in compliance with the rights granted under this Agreement. If an audit reveals that You have underpaid under this Agreement, You shall be invoiced for the underpaid amounts based upon the generally available price list at the time the amounts would have otherwise been incurred, together with interest at a rate of one and one-half percent (1.5%) per month or partial month or the highest rate allowed by law, whichever is less, compounded, during which any amounts were owed and unpaid. If an audit reveals that You have underpaid amounts totaling ten percent (10%) or more of the amounts due in any year, You shall reimburse all reasonable costs, fees, and expenses associated with the audit.

4. HELP DESK SUPPORT SERVICES

4.1 Scope of Support. We will provide general help desk support services during our normal business hours between 8:00 am and 5:00 pm CT, Monday through Friday, excluding Our holidays specified below. You may request support by contacting Us by telephone or email. We are not obligated to provide any on-site services. You are limited to 20 hours of Support Services per month during the subscription period, unless otherwise agreed in writing.

4.2 Our Holidays. We do not provide Support Services on Our company holidays, which are New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the day after, Christmas Eve and Christmas Day. If any of these holidays fall on a Saturday, the Saturday and the Friday before will be considered holidays. If any of these holidays fall on a Sunday, the Sunday and the Monday after will be considered holidays.

5. FEES AND PAYMENT

5.1 Fees. You shall pay all fees as specified in the Order Forms. Except as otherwise specified in an Order Form: (a) fees are based on the Service purchased and not actual usage; (b) payment obligations are non-cancelable and fees paid are non-refundable; and (c) quantities purchased cannot be decreased during the relevant subscription term.

5.2 Purchase Order Terms. Any terms or conditions on any purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and both parties hereby reject all such terms and conditions.

5.3 Overdue Charges. If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies: (a) those charges may accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower; and (b) We may condition future subscription renewals and Order Forms on payment terms shorter than those specified in your current Order Form.

5.4 Suspension of Service and Acceleration. If any amount owing by You under this or any other agreement for Our services is 30 or more days overdue, We may, without limiting Our other rights and remedies, do one or both of the following: (a) accelerate Your unpaid fee obligations so that they all become immediately due and payable; and (b) suspend Our services to You until the unpaid amounts are paid in full. We shall give You at least 10 days' prior notice that Your account is overdue, in accordance with Section 11.3 (Notice), before suspending services to You.

5.5 Payment Disputes. We shall not exercise Our rights under Section 5.3 (Overdue Charges) or 5.4 (Suspension of Service and Acceleration) above if You are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

5.6 Taxes. Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction related to our services (collectively, "**Transaction Taxes**"). You are responsible for paying all Transaction Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Transaction Taxes for which You are responsible, We shall invoice You and You shall pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are responsible for taxes assessable against Us based on Our income, property and employees.

5.7 Future Functionality. You agree that Your purchases are not contingent on the delivery of any future functionality or features, or dependent on any verbal or written public comments made by Us regarding future functionality or features.

6. TERM AND TERMINATION

6.1 Term. This Agreement commences on the effective date of the first Order Form (or upon online acceptance of this Subscription Agreement, whichever is earlier) and continues until all

subscriptions have expired or have been terminated. The term of each purchased subscription is specified in the applicable Order Form.

6.2 Termination. A party may terminate this Agreement for cause: (a) if the other party is in material breach of this Agreement and the breach remains uncured after receipt of at least 30 days' written notice; or (b) if the other party becomes the subject of any bankruptcy or insolvency proceeding.

6.3 Your Data. Upon request by You made within 30 days after the termination of this Agreement and full payment of your obligations under this Agreement, We shall make Your Data available to You for export or download as provided in the Documentation. After that 30-day period, We will have no obligation to maintain or provide Your Data, and will thereafter delete or destroy all copies of Your Data in Our systems, unless legally prohibited.

6.4 Surviving Provisions. Sections 5 (Fees and Payment), 6 (Term and Termination), 7 (Proprietary Rights and Licenses), 8 (Confidentiality), 9.4 (Disclaimers), 10 (Limitation of Liability), and 11 (General Provisions) will survive any termination of this Agreement.

7. PROPRIETARY RIGHTS AND LICENSES

7.1 Our Ownership. Subject to the limited usage rights expressly granted in this Agreement, We and Our licensors reserve all right, title and interest in and to the Service, including all related patent, copyright, trade secret, trademark, and other intellectual property rights. Our ownership includes any suggestions, ideas, enhancement requests, feedback, or recommendations You may provide relating to the Service (“**Feedback**”), and you hereby assign to Us all right, title and interest in Your Feedback and all intellectual property rights therein. You are not getting a license to any software programs, but only the right to access and use the Service in accordance with this Agreement. No rights are granted to You other than as expressly set forth in this Agreement.

7.2 License by You to Host Your Data. You grant Us a worldwide, limited-term license to host, copy, transmit and display Your Data as necessary for Us to provide the Service in accordance with this Agreement. We acquire no other right, title or interest under this Agreement in or to Your Data.

7.3 Federal Government End Use Provisions. We provide the Service, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Us to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement.

8. CONFIDENTIALITY

8.1 Definition of Confidential Information. “**Confidential Information**” means all information disclosed by a party (the “**Disclosing Party**”) to the other party (the “**Recipient**”), whether verbally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes Your Data; Our Confidential Information includes the Service; and Confidential Information of each party includes the terms and conditions of this Agreement and all Order Forms (including pricing), as well as business and marketing plans, technology and technical information, product plans and designs, and business processes of a Disclosing Party.

8.2 Protection of Confidential Information. The Recipient shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care): (a) not to use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (b) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Recipient containing protections no less stringent than those herein. Neither party shall disclose the terms of this Agreement or any Order Form to any third party other than its legal counsel and accountants without the other party’s prior written consent, provided that a party that makes a disclosure to its legal counsel or accountants will remain responsible for the legal counsel’s or accountant’s compliance with this Section 8.2.

8.3 Exceptions. The Recipient will not be obligated under Section 8.2 for any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Recipient prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) is received from a third party without breach of any obligation owed to the Disclosing Party; or (d) was independently developed by the Recipient.

8.4 Compelled Disclosure. The Recipient may disclose Confidential Information to the extent compelled by law to do so, provided the Recipient gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Recipient is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party shall reimburse the Recipient for its reasonable cost of compiling and providing secure access to that Confidential Information.

9. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

9.1 Representations. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

9.2 Service Warranty. We warrant that the Service will perform substantially in accordance with the applicable Documentation and this Agreement.

9.3 Other Warranties. We warrant that the the Support Services will be performed in a professional and workmanlike manner. For any breach of this warranty, We shall exercise commercially reasonable efforts to re-perform any non-conforming services that were performed within the 30 day period immediately preceding the date of Your written notice to Us specifying in reasonable detail the non-conformance. If We conclude that conformance is impracticable, then We shall refund all fees paid by You to Us, if any, allocable to the nonconforming services.

9.4 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER US NOR OUR LICENSORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY DISCLAIMS ALL RESPONSIBILITY OR LIABILITY FOR ANY FUNCTIONALITY ISSUES OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS OR BY ANY THIRD PARTY PRODUCTS.

10. LIMITATION OF LIABILITY

10.1 Limitation of Liability. NEITHER PARTY'S AGGREGATE LIABILITY RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY YOU HEREUNDER IN THE 12 MONTHS PRECEDING THE FIRST INCIDENT GIVING RISE TO LIABILITY. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT).

10.2 Exclusion of Consequential and Related Damages. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO ANY PARTY FOR ANY LOST PROFITS, SAVINGS, OR REVENUES, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES.

11. GENERAL PROVISIONS

11.1 Export Compliance. The Service, other technology We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Users to access or use the Service in a U.S.-embargoed country or in violation of any applicable export or import law or regulation.

11.2 Legal Expenses. In the event legal action is taken by Us to enforce Our rights under this Agreement, You shall reimburse Us for all costs and expenses incurred by Us, including reasonable attorneys' fees and court costs.

11.3 Notice. All notices under this Agreement, including notices of address change, must be in writing and will be deemed given when sent by: (a) registered mail, return receipt requested; or (b) a nationally recognized overnight delivery service (such as Federal Express), to the appropriate party at the relevant address stated in the Order Form, unless either party notifies the other of a new address in writing, in which case the new address will be used.

11.4 Severability. If any provision of this Agreement is held by a court to be illegal, unenforceable, or in conflict with any law of a federal, state, or local government, the validity of the remaining provisions will remain in full force and effect.

11.5 Governing Law and Dispute Resolution. This Agreement is governed by the laws of the State of Texas, without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The parties shall in good faith attempt to resolve any dispute related to this Agreement within a reasonable period among themselves. If this attempt fails, the dispute will be settled by arbitration in San Antonio, Texas, administered by the American Arbitration Association under its Commercial Arbitration Rules. If you are a company headquartered outside the United States of America, then the arbitration will be administered in the English language in San Antonio, Texas, by the International Centre for Dispute Resolution under its International Dispute Resolution Procedures. Judgment on an arbitral award may be entered in any court having jurisdiction. Neither Party will be obligated under this Section for breaches of Sections 7 or 8, or for any other breach for which injunctive relief is sought.

11.6 Waiver. The waiver by either party of any breach of this Agreement will not constitute a waiver of any other or subsequent breach.

11.7 Assignment. You may not transfer, by operation of law or otherwise, this Agreement or any right or duty arising hereunder to a third party without Our prior written consent. We may transfer this Agreement, together with all of Our rights and duties under this Agreement, to a successor entity if We are acquired, whether by equity or asset purchase, merger, corporate restructuring or reorganization, or the like. Any purported transfer in violation of this section is void.

11.8 Relationship of the Parties. The relationship of the parties is that of independent contractors. No party is the agent of the other, and neither party is authorized to act on behalf of the other party.

11.9 No Third-Party Beneficiaries. There are no third party beneficiaries of this Agreement.

11.10 Force Majeure. Except with regard to any obligation to pay money hereunder, neither party will be held responsible for any delay or failure in performance hereunder caused by fire, strike, flood, embargo, labor dispute, delay or failure of any subcontract, act of sabotage, riot, accident, delay of carrier or supplier, limitations or delays inherent in the use of the internet, voluntary or mandatory compliance with any governmental act, regulation or request, act of God or by public enemy, or any other cause beyond the party's reasonable control. If one of these events does occur, the time to perform an affected obligation will be extended by the length of time the event continues.

11.11 Entire Agreement. This Agreement and all Order Forms, which are incorporated by this reference, contain all the agreements, representations, and understandings of the parties and supersede any previous understandings, commitments, or agreements, verbal or written, with respect to the subject matter of this Agreement. This Agreement may not be modified or amended except in a writing signed by a duly authorized representative of each party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement.

Revision Date: February 21, 2017

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