

## **TERMS OF SERVICE AND ACCEPTABLE USE**

Cogency Solutions, LLC ("Cogency") Acceptable Use Policy ("AUP") describes the proper kinds of conduct and prohibited uses of Cogency's Hosting Services. This AUP is not all inclusive and Cogency Solutions, LLC reserves the right to modify these statements at any time without prior notice, effective upon posting of the modified policy statements on our hosting account signup form, at [www.cogency.com](http://www.cogency.com), or [www.cogency.co.uk](http://www.cogency.co.uk). By registering for and using Cogency Services, you are thereby accepting the terms and conditions of this TOS/AUP and you agree to abide by these conditions as modified from time to time. Any violation of the TOS/AUP may result in the suspension or termination of your account or such other action as Cogency deems appropriate.

### **Server Abuse**

Any attempt to undermine or cause harm to a server or customer of Cogency Solutions, LLC is strictly prohibited.

Any Unauthorized use of other people's accounts or computers: Cogency will take swift and appropriate legal action to any unauthorized use or attempted use of an Internet account or computer without the owner's authorization. Such attempts include "Internet scamming" (tricking other people into releasing their passwords), password robbery, security hole scanning, etc.

Any unauthorized use of accounts or computers by a Cogency customer, whether or not the attacked account or computer belongs to Cogency, will result in swift and appropriate action against the attacker. Possible actions include warnings, account suspension or cancellation, and civil or criminal legal action, depending on the seriousness of the attack.

**IMPORTANT NOTE** - Cogency has the right to discontinue service, or deny access to anyone who violates our Policies or the Terms and Conditions of Service **WITHOUT WARNING OR PRIOR NOTICE**. No refunds of fees paid will be made if account termination is due to violation of the terms outlined herein. In the event of such violation, all files on the offending account will be deleted/permanently removed from our systems and none of those files will be retrievable by the offender. In the event of such a violation, Cogency Solutions, LLC is fully indemnified from any losses or damages incurred as a result of actions taken by Cogency Solutions, LLC.

Customers are not allowed to run IRC, Bots or Clients on Cogency Shared Hosting Accounts/Servers. Unacceptable uses include, but are NOT limited to: Bulk emailing, unsolicited emailing's, newsgroup spamming, illegal content, copyright infringement, trademark infringement, Warez, cracks, software serial numbers, and/or anything else determined by Cogency to be unacceptable use of Cogency's services including the abuse of server resources.

A Cogency Hosting account **WILL BE TERMINATED** if it includes any of the following content or has links to the following types of content:

- \* Material that is grossly offensive to the Web community including but not limited to blatant expressions of bigotry, racism or hatred.
- \* Pornography and escort related websites. **NO PORN – PERIOD!**
- " Promoting or providing instructional information about illegal activities, or promoting physical harm or injury against any group or individual.
- " Displaying material that exploits children under 18 years of age. (Site will be deleted and authorities will be notified)
- " Acts of copyright infringement including offering pirated computer programs or links to such programs, information used to circumvent manufacturer-installed copy-protect devices including serial or registration numbers for software programs, any type of cracker utilities, illegally downloaded music or software (Cogency reserves the right to require proof of ownership or license).

## **Bandwidth Traffic**

Each plan with Cognecy comes with a pre determined bandwidth usage amount. In the event that your account exceeds the bandwidth limitations included with your account you will be billed at the amount specified in the account details

You will receive a notice from our system once you utilize 90% of your bandwidth allocation. You can either choose to upgrade your account to the next highest plan or let the system bill you at a rate of \$2.50/GB of overage. All overages are billed automatically to your account.

NOTE: If a customer has an account with requirements greater then what is available at 100% usage in Cognecy's Top Level Plans, Cognecy will require account to be moved onto a Virtual Private Server ("VPS") or Dedicated Server platform (additional costs may be incurred). Please contact our sales department for more information.

## **Excessive Use/Overages**

You will not exceed the bandwidth, storage and E-mail usage limits outlined by your particular web hosting package. If you use any bandwidth or storage space in excess of the agreed upon number of megabytes per month Cognecy will assess you with additional charges based on pre-set plan overage fees. If Cognecy elects to take any corrective action, Cognecy will not refund any unused pre-paid fees. Your use of your account and access to it is your responsibility. You are responsible for any unauthorized access to your account resulting in bandwidth, storage and/or E-mail usage exceeding the limits outlined in your particular web hosting package specifications and resultant charges. Bandwidth overages are currently billed at \$2.50/GB/month. Disk space overages are currently billed at \$0.15/MB/month disk space.

NOTE: If a customer has an account with requirements greater then what is available at 100% usage in Cognecy's Top Level Plans, Cognecy will require account to be moved onto a Virtual Private Server ("VPS") or Dedicated Server platform (additional costs may be incurred). Please contact our sales department for more information.

## **Shared Hosting Server Resource Utilization**

Cognecy Hosting has designed our plans so that users can typically utilize all of the resources they have purchased without hitting any server resource limitations. This is especially true with utilization towards any of the scripts advertised on our site (including phpBB, Zen Cart, VB, Joomla, WordPress, etc). Having said this, there may be occasions where a clients script is simply poorly written (and this can include custom coding or 3rd party modules) where a user is utilizing far too many server resources for the tasks they are performing. Although there are no fixed numbers with respect to what is too much, we do go by a reasonable use model. We do not assign hard limits as we like to allow our clients the ability to burst and utilize more than "their fair share" for short periods of time. However, poor coding will result in unnecessary dramatic spikes in server resource utilization. If this were to occur, we will take every possible action required to minimize the negative impact on our environment. In most cases, the client will be contacted and informed of the issue and given the opportunity to correct their coding. There will however be some instances where the coding is so poor, that we will be required to suspend the offensive domain until such time that the client is able to correct the issue. This sort of drastic action will only be taken when absolutely necessary so as to maintain the stability of our environment.

## **Shared Hosting Uptime Service Level Agreement (“SLA”)**

Cognecy Hosting offers a 99.5 % uptime guarantee. A service will be generally available to the internet - Isolated ISP (Internet Service Provider), NSP (Network Service Provider), or Transit outages are out of our control and WILL NOT be covered by this SLA. This SLA includes unscheduled maintenance windows within our networks and data center. Cognecy Hosting will credit 50% of your monthly fee if we are responsible for an outage resulting in an uptime less than 99.5% for a calendar month. Cognecy Hosting will credit 100% of your monthly fee if we are responsible for an outage resulting in an uptime less than 99% for a calendar month. Please note - Scheduled Maintenance Windows and Control Panel Service are EXEMPT from any uptime SLA's. In the event of Scheduled Maintenance, all customers will have a minimum of 24 hours notice of said down time and therefore not covered under our SLA. In the event of Control Panel servicing, our hosting Control Panel is isolated from our other services and we typically take the Control Panel offline while performing major system upgrades (however, other core services will not be affected) and therefore not included in our SLA.

## **Managed Dedicated Server and Virtual Private Server Uptime SLA**

Cognecy Hosting offers a 99.7% uptime guarantee. A service will be generally available to the internet - Isolated ISP (Internet Service Provider), NSP (Network Service Provider), or Transit outages are out of our control and WILL NOT be covered by this SLA. This SLA includes unscheduled maintenance windows within our networks and data center. Cognecy Hosting will credit 50% of your monthly fee if we are responsible for an outage resulting in an uptime less than 99.5% for a calendar month. Cognecy Hosting will credit 100% of your monthly fee if we are responsible for an outage resulting in an uptime less than 99% for a calendar month. Please note - Scheduled Maintenance Windows and Control Panel Service are EXEMPT from any uptime SLA's. In the event of Scheduled Maintenance, all customers will have a minimum of 24 hours notice of said down time and therefore not covered under our SLA. In the event of Control Panel servicing, our hosting Control Panel is isolated from our other services and we typically take the Control Panel offline while performing major system upgrades (however, other core services will not be affected) and therefore not included in our SLA.

## **Chat Rooms**

We do not allow clients to install their own chat rooms within a Shared Hosting Account without approving it with the Cognecy Support Team. Most chat rooms tend to be large system resource hogs and we cannot allow it this as an account option. However, we do provide a choice of Java chat rooms for a small extra charge that will more than fill your needs and run without hindering the performance of the machine for others. Note: Parachat chat rooms do not apply to this rule. They are perfectly fine to install.

## **Abuse of SMTP Mail Server**

We do not allow clients to send more than 2000 pieces of e-mail per day from a Shared Hosting Account. If you do send more than 2000 pieces of e-mail per day, your account will be placed on hold for Network Abuse. If you are sending legitimate e-mails and they total more than 2000 per day, please contact Cognecy Hosting Support as we can help you implement an alternative e-mail system (additional fee may be incurred).

## **Background Running Programs**

We may allow programs to run continually in the background. These are considered on a one-to-one basis and an extra charge may be incurred based on system resources used and operational maintenance needed (this section does not apply to managed dedicated servers).

## **IRC**

We currently do not allow IRC clients or IRC Bots to be operated on any of our servers or hosting plans. In addition, IRC Servers are not permitted on our network. Anyone found to be in violation of this policy risks IMMEDIATE account termination.

## **Intellectual Property Rights**

Material accessible to you through Cognecy's services may be subject to protection under the United States, Canada, or other International copyright laws, laws protecting trademarks, trade secrets or proprietary information. Except when expressly permitted by the owner of such rights, you must not use Cognecy or its servers and network in a manner that would infringe, violate, dilute or misappropriate any such rights, with respect to any material, which you access or receive through the Cognecy network. If you use a domain name in connection with Cognecy or similar service, you must not use that domain name in violation of any trademark, service mark, or similar rights of any third party.

## **Network Security**

Customers may not use the Cognecy network with an attempt to circumvent user authentication or security of any host, network, or account. This includes, but is not limited to, accessing data not intended for the customer, logging into a server or account the customer is not expressly authorized to access, password cracking, probing the security of other networks in search of weakness, or violation of any other organization's security policy. Customers may not attempt to interfere or deny service to any user, host, or network. This includes, but is not limited to, flooding, mail bombing, or other deliberate attempts to overload or crash a host or network. Cognecy will cooperate fully with investigations of violations of systems or network security at other sites, including cooperating with law enforcement authorities in the investigation of suspected criminal violations. Users who violate system or network security may incur criminal or civil liability. You are solely responsible for any security breaches affecting servers or accounts under your control. If your server or website is responsible for or involved in an attack on or unauthorized access into another server or system, Cognecy will shut it down immediately. You will be liable for all legal fees and any charges resulting from the cost to correct security breaches affecting Cognecy or any of its other customers.

## **Electronic Commerce**

You will be solely responsible for the development, operation and maintenance of your online store and products and all contents and materials appearing online or on your products, including without limitation (a) the accuracy and appropriateness of content and materials appearing within the store or related to your products, (b) ensuring that the content and materials appearing within the store or related to your products do not violate or infringe upon the rights of any third party, and (c) ensuring that the content and materials appearing within the store or related to your products are not libelous or otherwise illegal. You will be solely responsible for the final calculation and application of shipping and sales tax. You will also be solely responsible for accepting, processing, and filling any customer orders, and for handling any customer inquiries or complaints arising there from.

You are also responsible for the security of any customer credit card numbers and related customer information you may access as a result of conducting electronic commerce transactions through your Web Site. You will keep all such information confidential and will use the same degree of care and security as you use with your own confidential information.

## **Static / Dynamic Content Caching**

You expressly (i) grant to Cognecy a license to cache the entirety of your Web Site, including content supplied by third parties, hosted by Cognecy under this Agreement and (ii) agree that such caching is not an infringement of any of your intellectual property rights or any third party's intellectual property rights.

## **IP Address Ownership and Usage**

Cognecy shall maintain and control ownership of all IP numbers and addresses that may be assigned to you by Cognecy and Cognecy reserves, in its sole discretion, the right to change or remove any and all such IP numbers and addresses.

IP Address usage must be justifiable, as per ARIN guidelines. Justifiable uses are listed below:  
SSL Encryption - Service Domain - Virtual FTP server - Anonymous FTP server.

## **Shared, Dedicated and VPS Data Back Up Policy**

Cognecy Hosting offers backups of all data including web files, data bases and emails. These back ups are available as a courtesy to our clients. It is always recommended that clients maintain their own backups of any and all data. Cognecy Hosting is not responsible for any data loss or potential revenue or financial losses accrued from loss of data. Back Up data may become corrupted or otherwise unusable. We do not guarantee data can be recovered if lost, and in case of data loss, we will recover data from the latest back up snapshot available.

## **Dedicated Backup Server Policy**

Cognecy Hosting offers a managed dedicated backup solution as part of our offerings. This service is designed for customers to backup off-network (off-network to Cognecy Hosting) appliances for day to day file and data base backup/recovery as well as an offsite disaster recovery solution. Cognecy Hosting will provide the dedicated server hardware along with the software required to perform these tasks. However, Cognecy Hosting is not responsible for supporting the end user appliances being backed up. Furthermore, Cognecy Hosting cannot guarantee the integrity of the backups on the servers. The dedicated backup server offering is a single dedicated server with redundant hard drives in a RAID1 array. This sort of hardware can fail. Cognecy Hosting will maintain the hardware and software versions running on the dedicated backup server. We will replace any hardware which fails. If a recoverable backup is not available for a customer when required from their backup server, Cognecy Hosting will refund the current months service payment for the backup service. No other warranty or guarantee is implied or offered with the Dedicated Backup Server offering by Cognecy Hosting.

## **Cancellation and Refund Policy**

Upon receiving a cancellation request, all data will be immediately removed from our servers and your account will be cancelled. If the cancellation occurs within the first 30 days of service, a full money back request can be requested and will be issued. Dedicated Server and VPS are not eligible for the 30 day money back guarantee (exceptions to this may be made, however, a special request must be made in writing and will be determined on a case by case basis). After the 30 day money back guarantee period, Cognecy Hosting does not provide partial monthly credits.

Cognecy Professional Remote IT Services (Database Migration, Website Design/Modification) are billed on a 'per-hour-worked' basis and are not eligible for refund of any kind.

## **Delinquent Accounts**

Cognecy will make every effort to work with customers' whose accounts are delinquent and in arrears. Although our overall company policy is to keep sites running, there does come a time when we have to make these tough decisions. Each case is unique and therefore must be handled on a case-by-case basis. The general guideline we follow is an account that will be suspended after 15 days of arrears and if the account balance is not brought current within 30 days of suspension, the account will be closed and all data will be removed from our servers. Once data has been removed, it will not be retrievable. Depending on circumstance and at Cognecy's sole discretion, we may also report delinquency to credit reporting authorities and/or a debt collection agency.

## **Copyright Infringement**

### DIGITAL MILLENNIUM COPYRIGHT ACT

#### Notice and Procedure for Making Claims of Copyright Infringement

Pursuant to Title 17, United States Code, Section 512(c)(2), all notifications of claimed copyright infringement on the Interactive-Hosting system or Web site should be sent ONLY to our Designated Agent.

NOTE: THE FOLLOWING INFORMATION IS PROVIDED SOLELY FOR NOTIFYING COGNECY THAT YOUR COPYRIGHTED MATERIAL MAY HAVE BEEN INFRINGED.

WE CAUTION YOU THAT UNDER FEDERAL LAW, IF YOU KNOWINGLY MISREPRESENT THAT ONLINE MATERIAL IS INFRINGING, YOU MAY BE SUBJECT TO HEAVY CIVIL PENALTIES. THESE INCLUDE MONETARY DAMAGES, COURT COSTS, AND ATTORNEYS FEES INCURRED BY US, BY ANY COPYRIGHT OWNER, OR BY ANY COPYRIGHT OWNER'S LICENSEE THAT IS INJURED AS A RESULT OF OUR RELYING UPON YOUR MISREPRESENTATION. YOU MAY ALSO BE SUBJECT TO CRIMINAL PROSECUTION FOR PERJURY.

DO NOT SEND ANY INQUIRIES UNRELATED TO COPYRIGHT INFRINGEMENT (e.g. REQUESTS FOR TECHNICAL ASSISTANCE OR CUSTOMER SERVICE, REPORTS OF E-MAIL ABUSE, etc.) TO THE CONTACT LISTED BELOW. YOU WILL NOT RECEIVE A RESPONSE IF SENT TO THAT CONTACT.

Written notification must be submitted to the following Designated Agent:

Cognecy Solutions, LLC  
cc: Copyright  
5100 Eldorado Pkwy., Ste.102-PMB716  
McKinney, TX 75070  
United States  
abuse@Cognecy.com

Under Title 17, United States Code, Section 512(c)(3)(A), the Notification of Claimed Infringement must include the following:

1. Physical or electronic signature of a person authorized to act on behalf of the copyright owner.
2. Identification of the copyrighted work claimed to have been infringed or a representative list if multiple works are involved.

3. Identification of the material that is claimed to be infringing that should be removed or access to disabled and information reasonably sufficient to enable the online service provider to locate the material (usually a URL to the relevant page).
4. Information reasonably sufficient to allow the online service provider to contact the complaining party (address, phone number, e-mail address).
5. Statement that the complaining party has "a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law."
6. Statement that the information in the notice is accurate, and under penalty of perjury, that the complaining party is authorized to act on behalf of the copyright owner.

### **Lawful Purpose**

Cogency reserves the right to refuse service to anyone. Customers may only use Cogency hosting services and servers for lawful purpose. Transmission of any material in violation of any Federal, State, Provincial or Local regulation is prohibited. This includes, but is not limited to copyrighted material, material legally judged to be threatening or obscene, and material protected by trade secrets. The designation of any materials as such described above is left entirely to the discretion of Cogency management. Regardless of the place of signing this agreement, the client agrees that for purposes of venue and jurisdiction this contract was entered into and performed in McKinney, TX (Collin County) and any dispute will be litigated or arbitrated in McKinney, TX (Collin County). Customer further waives all objections to venue or jurisdiction and acknowledges that venue and jurisdiction in any such litigation will be held in Collin County Courts. IN NO EVENT SHALL COGNECY'S MAXIMUM LIABILITY EXCEED FIVE HUNDRED (\$500.00) DOLLARS.

### **Indemnification**

CUSTOMER AGREES THAT IT SHALL DEFEND, INDEMNIFY, SAVE AND HOLD COGNECY HARMLESS FROM ANY AND ALL DEMANDS, LIABILITIES, LOSSES, COSTS AND CLAIMS, INCLUDING REASONABLE ATTORNEY'S FEES ASSERTED AGAINST COGNECY, ITS AGENTS, ITS CUSTOMERS, OFFICERS AND EMPLOYEES, THAT MAY ARISE OR RESULT FROM ANY SERVICE PROVIDED OR PERFORMED OR AGREED TO BE PERFORMED OR ANY PRODUCT SOLD BY CUSTOMER, IT'S AGENTS, EMPLOYEES OR ASSIGNS. CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS COGNECY AGAINST LIABILITIES ARISING OUT OF; (1) ANY INJURY TO PERSON OR PROPERTY CAUSED BY ANY PRODUCTS SOLD OR OTHERWISE DISTRIBUTED IN CONNECTION WITH COGNECY 'S SERVICES, PRODUCTS, OR SERVERS; (2) ANY MATERIAL SUPPLIED BY CUSTOMER INFRINGING OR ALLEGEDLY INFRINGING ON THE PROPRIETARY RIGHTS OF A THIRD PARTY; ( 3) COPYRIGHT INFRINGEMENT AND (4) ANY DEFECTIVE PRODUCTS SOLD TO CUSTOMER FROM COGNECY 'S HOSTING ENVIRONMENT OR SERVERS.

### **Disclaimer**

COGNECY WILL NOT BE RESPONSIBLE FOR ANY DAMAGES YOUR BUSINESS MAY SUFFER. COGNECY MAKES NO WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED FOR SERVICES WE PROVIDE. COGNECY DISCLAIMS ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS INCLUDES LOSS OF DATA RESULTING FROM DELAYS, NON-DELIVERIES, WRONG DELIVERY, AND ANY AND ALL SERVICE INTERRUPTIONS CAUSED BY COGNECY AND ITS EMPLOYEES. COGNECY RESERVES THE RIGHT TO REVISE ITS POLICIES AT ANY TIME.

FAILURE TO FOLLOW ANY TERM OR CONDITION WILL BE GROUNDS FOR IMMEDIATE ACCOUNT DEACTIVATION.

THREATS/ABUSE AGAINST THE NAME, SERVERS, AND ALL THEREIN, OF COGNECY SHALL BE DEALT WITH TO THE FULL EXTENT OF THE LAW, THIS INCLUDES PACKAGE CLONING, NAME CLONING, WRONGFUL SUGGESTED AFFILIATION, MISLEADING MENTION OF AFFILIATION, IMAGE CLONING/STEALING, HTML CODE CLONING/STEALING.

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## PRIVACY POLICY

Cognecy Solutions, LLC is 100% committed to our customers' privacy. All customer information is, at all times, kept confidential. We will never rent, sell, or release any customer information to third parties except as required by governing laws or legal and binding court order.

Cognecy may request to use your website or previous patronage as a testimonial to facilitate future sales but will not disclose this information (you, your business, your website) as a client/customer of Cognecy without your prior consent.

### Financial and Personal Transmission of Data

Cognecy takes personal information transmission very serious. When you submit an inquiry via web form or order Web Hosting Service from us, all of your personal information (name, address, credit card numbers) is encrypted using Secure Sockets Layer (SSL). Credit Card numbers are never fully displayed and only reveal the last four digits for identification purposes.

### Policy Changes

Cognecy reserves the right to change its any of its policies at any time to meet the needs of our customers, changing laws, and new technology new technology offering though our business.

### Cookie Policy Statement

Cognecy uses cookies to help us improve our website and web hosting services. Cookies do not tell us who you are, your name, email address, or Passwords. Cognecy uses cookies to monitor traffic from our website and traffic generated from advertisement banners and logos. Finally as part of our web hosting offerings, Cognecy provides SSL encrypted and password-protected web-based management tools through our Hosting Control Panel. Our Hosting Control Panel stores the customer's Username in a cookie (cookies do not store Passwords) so customers do not have to keep filling out form fields when they desire to manage their account.