



Optical Internet

NETWORK SERVICES TERMS & CONDITIONS EUROPE

1. SERVICES AND TERM.

1.1. Pursuant to the CSA, Cogent will provide the Services to Customer for the Service charges. Customer's signature on the Order Form or use of the Service or COGENT Network constitutes its acknowledgement and agreement to be bound by the CSA. Capitalized terms are defined at the end of these Terms.

1.2. Each Service's Initial Term is indicated on the applicable Order Form and begins as of the Service Date. The Initial Term will begin on the Service Date. At the end of the Initial Term, the CSA will renew for successive Renewal Terms equal in length to the Initial Term unless and until terminated as provided herein.

1.3. Customer may order additional Services or locations through additional Order Forms, which will be governed by this CSA. Customer's account must be current in order to make changes to Services or order additional Services.

2. SERVICE CHARGES AND BILLING.

2.1. Service charges are on the Order Form and do not include applicable Taxes unless so indicated. New services or upgrades/relocations will result in additional fees/charges. If a Service is relocated, COGENT shall maintain the Service at the prior location and Customer shall be responsible for Service charges for such location until such time as the Customer has terminated the Service at such prior location.

2.2. Usage independent charges are invoiced monthly in advance, usage-dependent charges are invoiced monthly in arrears. All COGENT invoices are payable within 30 days of the date of the invoice. Customer agrees to pay all charges and applicable Taxes (such as Value Added Tax) for the Service upon receipt of the invoice without counterclaim, set-off or deduction. A late charge shall be added to Customer's past due balance of the lesser of 1.5% per month or the maximum legal rate. COGENT may change the specifications, Terms or charges for the Service for any upcoming Renewal Term by providing Customer at sixty (60) days advance notice. Customer agrees that its obligation to pay service charges and Taxes under this CSA for Services rendered prior to the termination of the CSA shall survive the termination of the CSA.

2.3 Customers claiming tax exemption must provide COGENT with a properly executed exemption form or other satisfactory evidence of exemption from taxes.

3. SERVICE USE AND INTERRUPTION.

3.1. Customer's use of COGENT's Services or Network may only be for lawful purposes and must comply with COGENT's AUP. Transmission of any material in violation of any law, regulation or the AUP is strictly prohibited. Access to other networks connected to COGENT's Network must comply with such other networks' rules. Resale of COGENT's Services is not allowed for corporate customers (designated as such in the order form).

3.2. COGENT's obligations and Customer's exclusive remedies for failure of COGENT's Network or any Service are stated in the COGENT SLA.

4. TERMINATION, RESTRICTION OR SUSPENSION.

4.1. Prior to the Service Date, COGENT may terminate the CSA if not approved by COGENT corporate management (including credit check). COGENT also may restrict, suspend or terminate the CSA, Customer's use of or access to any Service, or both, at any time if (a) Customer is in material breach of the CSA (including but not limited to the AUP) and, in COGENT's sole judgment, an immediate restriction or suspension is necessary to protect the COGENT Network or COGENT's ability to provide services to other customers; or (b) Customer fails to pay any

invoice within thirty (30) days of its due date; or (c) COGENT's facilities at Customer's location are unavailable, due to a reason within Customer's sphere of responsibility or force majeure (i.e. no connectivity within Customer's location or no building access).

4.2. Either Party may terminate the CSA: (a) at the end of an Initial Term or Renewal Term by providing the other Party with at least thirty (30) days written notice (if an Initial Term or Renewal Term is equal to one (1) month, then notices provided during the Initial Term or Renewal Term will not be effective until the end of the month after the month in which the notice was given (i.e., notice received April 20th is effective at the end of May 31st)); or (b) except as otherwise stated herein, during an Initial Term or Renewal Term if the other Party breaches any material term or condition of this CSA and fails to cure such breach within thirty (30) days after receipt of written notice of the same.

4.3. If a Service is terminated prior to the Service Date, Customer shall pay COGENT for all Initial Costs for such Service. If the Service is terminated after the Service Date, Customer shall pay COGENT (a) for the Service up through the date of termination; and (b) except in the case of termination by Customer as provided in Section 4.2 above, or by COGENT due to failure to deliver at the agreed location under Section 4.1(c) above, the Initial Costs (unless already paid) and the Termination Charge. Customer acknowledges that because actual damages to COGENT caused by early termination of a Service order are uncertain and would be difficult to determine, the Termination Charge is a reasonable liquidated damage and is not a penalty. Any reconnections of the Service shall result in additional reconnection charges to Customer at COGENT's then-prevailing rates.

4.4. If Customer defaults in any of its payment obligations under the CSA, Customer agrees to pay COGENT's reasonable expenses, including but not limited to legal and collection agency fees, incurred by COGENT in enforcing its rights. All termination notices by Customer must be sent separately for each Service (including terminating one Service location after a Service is switched to a new Service location) and must be sent to termseu@cogentco.com.

5. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY.

5.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, THE SERVICES ARE PROVIDED "AS IS," AND NEITHER COGENT NOR ANY OF ITS PROVIDERS, LICENSORS, OFFICERS, EMPLOYEES, OR AGENTS MAKES ANY WARRANTY, CONDITION OR GUARANTEE WITH RESPECT TO THE SERVICES OR AS TO THE RESULTS TO BE OBTAINED FROM THE USE OF THE SERVICES, UNDER THIS CSA OR OTHERWISE. THE SERVICES ARE PURCHASED WITH KNOWLEDGE OF THIS WARRANTY LIMITATION. COGENT EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, CONDITIONS OR GUARANTEES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND/OR FITNESS FOR A PARTICULAR PURPOSE TO THE MAXIMUM EXTENT PERMITTED BY THE LAW. COGENT DOES NOT MONITOR, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR, THE CONTENT OF ANY COMMUNICATION TRANSMITTED BY CUSTOMER OR OTHERS, AND DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR UNAUTHORIZED USE OR MISUSE OF THE SERVICES.

5.2. WITHOUT PREJUDICE TO OR LIMITING OF COGENT'S RIGHT TO RECEIVE PAYMENT FOR SERVICES, COGENT'S ENTIRE LIABILITY FOR ALL CLAIMS OF WHATEVER NATURE (INCLUDING CLAIMS BASED ON NEGLIGENCE) ARISING OUT OF THIS CSA, AND THE PROVISION BY COGENT OF FACILITIES, TRANSMISSION, DATA, SERVICES OR EQUIPMENT INCLUDING, BUT NOT LIMITED TO, DAMAGE TO REAL/PERSONAL PROPERTY, SHALL NOT EXCEED THE LESSER OF (A) THE AMOUNT PAID BY CUSTOMER FOR THE SERVICE AT ISSUE IN THE PRIOR SIX (6) MONTHS TO THE ACTION GIVING RISE TO THE

CLAIM, OR (B) ONE HUNDRED THOUSAND EUROS (€100,000.00) IN TOTAL; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAWS AND SHALL NOT APPLY FOR DEATH OR PERSONAL INJURY CAUSED BY COGENT, OR FOR ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

5.3. CUSTOMER RECOGNIZES THAT THE INTERNET CONSISTS OF MULTIPLE PARTICIPATING NETWORKS THAT ARE SEPARATELY OWNED AND NOT SUBJECT TO COGENT'S CONTROL. CUSTOMER AGREES THAT COGENT SHALL NOT BE LIABLE FOR DAMAGES INCURRED OR SUMS PAID WHEN THE SERVICES ARE TEMPORARILY OR PERMANENTLY UNAVAILABLE DUE TO MALFUNCTION OF, OR CESSATION OF, INTERNET SERVICES BY NETWORK(S) OR INTERNET SERVICE PROVIDERS NOT SUBJECT TO COGENT'S CONTROL, OR FOR TRANSMISSION ERRORS IN, CORRUPTION OF, OR THE SECURITY OF CUSTOMER INFORMATION CARRIED ON SUCH NETWORKS OR INTERNET SERVICE PROVIDERS. COGENT SHALL HAVE NO LIABILITY HEREUNDER FOR DAMAGES INCURRED OR SUMS PAID DUE TO ANY FAULT OF CUSTOMER OR ANY THIRD PARTY, OR BY ANY HARMFUL COMPONENTS (SUCH AS COMPUTER VIRUSES, WORMS, COMPUTER SABOTAGE, AND 'DENIAL OF SERVICE' ATTACKS). COGENT IS NOT LIABLE FOR ANY BREACH OF SECURITY ON THE CUSTOMER'S NETWORK, REGARDLESS OF WHETHER ANY REMEDY PROVIDED IN THIS CSA FAILS OF ITS ESSENTIAL PURPOSE. CUSTOMER AGREES THAT IT WILL NOT HOLD COGENT RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, THIRD PARTIES IN CONNECTION WITH THE SERVICES, OR HOLD A THIRD PARTY RESPONSIBLE FOR ANY SELECTION OR RETENTION OF, OR THE ACTS OR OMISSIONS OF, COGENT IN CONNECTION WITH THE SERVICES. WITHOUT LIMITING THE FOREGOING, CUSTOMER AGREES THAT IT WILL NOT HOLD COGENT RESPONSIBLE FOR (A) THIRD PARTY CLAIMS AGAINST CUSTOMER FOR DAMAGES, (B) LOSS OF OR DAMAGE TO CUSTOMER'S RECORDS OR DATA OR THOSE OF ANY THIRD PARTY, OR (C) LOSS OR DAMAGE TO CUSTOMER ASSOCIATED WITH THE INOPERABILITY OF CUSTOMER'S EQUIPMENT OR APPLICATIONS WITH ANY COMPONENT OF THE SERVICES OR THE COGENT NETWORK. CUSTOMER AGREES TO MAKE ALL CLAIMS RELATED TO THE SERVICES DIRECTLY AGAINST COGENT, AND WAIVES ANY RIGHT TO RECOVER DAMAGES (DIRECTLY OR BY INDEMNITY) RELATED TO THE SERVICES BY CLAIMING AGAINST OR THROUGH A THIRD PARTY TO THIS CSA.

5.4. NEITHER COGENT NOR ANYONE ELSE INVOLVED IN CREATING, PRODUCING, DELIVERING (INCLUDING SUSPENDING OR DISCONTINUING SERVICES) OR SUPPORTING THE SERVICES SHALL BE LIABLE TO CUSTOMER, ANY REPRESENTATIVE, OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SERVICES OR INABILITY TO USE THE SERVICES, INCLUDING, WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, RIGHTS OR SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF CONTRACT OR TORT (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE).

6. INDEMNITY.

6.1. Customer will indemnify, defend and hold harmless COGENT and its directors, officers, employees, affiliates, and its agents and subcontractors from and against any claims, suits, actions, and proceedings from any and all third parties, and for payment of any Losses, to the extent such Losses arise (a) as a result of non-compliance by Customer with its obligations under the CSA; (b) from any and all claims by any of Customer's customers or other third party end users in connection with a Service (including, without limitation, any claims regarding content transmitted

using a Service or violation of data protection legislation), regardless of the form of action; provided, however, that Customer will have no obligation to indemnify and defend COGENT against claims for damages for bodily injury or death caused by COGENT's gross negligence or willful misconduct; or (c) from claims of copyright infringement and all manner of intellectual property claims, defamation claims, claims of publication of obscene, indecent, offensive, racist, unreasonably violent, threatening, intimidating or harassing material, and claims of infringement of data protection legislation, to the extent such Losses are based upon (i) the content of any information transmitted by Customer or by any of Customer's customers or authorized end users, (ii) the use and/or publication of any and all communications or information transmitted by Customer or by any of Customer's customers or authorized end users, or (iii) the use of Service(s) by Customer in any manner inconsistent with the terms of this CSA, including without limitation the AUP.

7. ADDITIONAL PROVISIONS.

7.1. Except as to payment obligations of Customer, neither Party shall have any claim or right against the other Party for any failure of performance due to Force Majeure.

7.2. Neither Party is the agent or legal representative of the other Party, and this CSA does not create a partnership, joint venture or fiduciary relationship between COGENT and Customer. Neither Party shall have any authority to agree for or bind the other Party in any manner whatsoever. This CSA confers no rights, remedies, or claims of any kind upon any third party, including, without limitation, Customer's subscribers or end-users.

7.3. Notices, if required, must be sent in writing by e-mail, courier or first class mail (postage prepaid) to the appropriate contact point listed on the Order Form, and are considered made when received at that address; provided, that termination notices to COGENT must be sent in accordance with Section 4.4 above. In the event of an emergency, COGENT may only be able to provide verbal notice first; such verbal notice will be followed by written notice. Customer is responsible for accuracy of its information on the Order Form, including points of contact.

7.4. Customer may not assign this CSA without COGENT's prior written consent, which consent shall not unreasonably be withheld. Any such assignment without COGENT's prior written consent shall be void.

7.5. Without limiting any other obligation which expressly survives the expiration or prior termination of the term of the CSA, the expiration or prior termination of the term of the CSA shall relieve both Parties of any further obligations hereunder, except with respect to the Sections 2, 3, 4.3, 4.4 and 5 through 7, which shall survive any expiration or termination of these Terms

7.6. The COGENT Network is owned by COGENT, or its licensors, and is protected by copyright and other intellectual property laws. Customer agrees that title to and ownership of the Services, in any form, shall at all times and in any event be held exclusively by COGENT. Customer shall be entitled to only such rights with respect to the Services as are specifically granted herein.

7.7. This CSA and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Customer and COGENT and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated into this CSA.

7.8. This CSA and any Addendum thereto may be executed in one or more counterparts all of which taken together shall constitute one and the same instrument.

DEFINITIONS

AUP	COGENT's Acceptable Use Policy as posted by COGENT (currently at www.cogentco.com/us/AcceptableUsePolicy.php) COGENT reserves the right to amend its AUP at any time, effective upon posting on the COGENT website.
COGENT	The subsidiary or affiliate of Cogent Communications, Inc. identified in the applicable Order Form
COGENT Network	The telecommunications network and network components owned, operated or controlled by COGENT, including COGENT's fiber backbone, metropolitan fiber networks, any equipment connected to such fiber, and the software, data and know-how used by COGENT to provide the Services. Where COGENT services a building through its own facilities, the COGENT Network includes those facilities. The COGENT Network does not include customer premises equipment, customer-ordered telephony circuits, and any networks or network equipment not operated and controlled by COGENT.
CSA	The entire Customer Subscriber Agreement between COGENT and Customer for provision of the Service, consisting of the Order Form, the Terms the SLA and any Riders or Addendums attached.
Customer	Customer identified in the applicable Order Form.
Equipment	Customer's equipment, if any.
Force Majeure	Causes beyond a Party's control, including but not limited to: acts of God; fire; explosion; vandalism; cable cut; storm; flood or other similar occurrences; any law, order, regulation, direction, action or request of any government, including federal, state, provincial, municipal and local governments claiming jurisdiction over a Party or the Service, or of any department, agency, commission, bureau, corporation, or other instrumentality of any such government, or of any civil or military authority; national emergencies; unavailability of materials or rights-of-way; insurrections; riots, terrorist acts or wars (declared/undeclared); or strikes, lock-outs, work stoppages, or other labor difficulties, supplier failures, shortages, breaches or delays.
Initial Costs	Greater of (a) installation fees (if not paid); or (b) all third-party costs and charges incurred by or charged to COGENT on behalf of Customer for the Service, including but not limited to local loop fees, cross-connect charges, and wiring fees.
Initial Term	Initial length of term for the Services as indicated on the Order Form.
Losses	Costs, fees, liabilities, losses, damages or penalties, including reasonable legal fees.
Order Form	Cover form to which these Terms are attached, identifying the specific Service(s) to be delivered.
Party or Parties	COGENT and/or Customer.
Renewal Term	Subsequent length of term for the Services after completion of the Initial Term.
Service(s)	Services provided by COGENT under the Customer Subscriber Agreement.
Service Date	Earlier of date on which (a) COGENT deems that the Service is available for Customer's use at either the COGENT-defined demarcation point or last-available test point; or (b) Customer first uses the Service or the COGENT Network. Services provided by COGENT under the Customer Subscriber Agreement.
SLA	The Service Level Agreement as posted by COGENT (currently at www.cogentco.com/files/ps_internet/SLA_on_internet.pdf) for Customer's specific Service(s). COGENT reserves the right to amend the Service SLAs at any time, effective upon posting on the COGENT website.
Tax or Taxes	All taxes arising in any jurisdiction, including without limitation all: sales, use, excise, gross receipts, value added, access, bypass, franchise, telecommunications, property (for co-location customers), consumption, or other taxes, fees, duties, charges or surcharges (however designated) which are imposed on or based on the provision, sale or use of the Service(s), including such taxes imposed directly on COGENT or for which COGENT is permitted to invoice Customer in connection with COGENT's performance under the CSA. Taxes do not include COGENT's income taxes.
Termination Charge	Single payment equal to any third-party cancellation charges and the total remaining dollar value of the applicable Service order through the Initial Term or Renewal Term, as applicable.
Terms	Terms and conditions that apply to the Services COGENT provides to Customer.