

9G BACKUP™ WEBSITE TERMS OF USE

Last Revised: April 19, 2012

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We may amend these Terms of Use at any time by posting a revised version on our Website. If you are a current customer, we will provide you with notification by electronic mail (“E-mail”) to the E-mail address(es) in your customer settings prior to the revision becoming effective.

These Terms of Use apply exclusively to your access to, and use of, this Website and do not alter in any way the End User License Agreement (“EULA”) or any other agreement(s) you may have with Cogitate. These Terms of Use apply generally to all Websites operated by Cogitate.

1. HOW TO CONTACT US. Please address any technical questions or comments about this Website by contacting us using one of the methods indicated below.

If you have any questions or comments about these Terms of Use or for all other communication, please contact us by: **(1)** Emailing us at: president@cogitateinc.com; **(2)** Calling us at: 1-866-634-9991; or **(3) Writing us at:** Cogitate Inc., Attn: Legal, P. O. Box 980685, Ypsilanti, Michigan 48198.

You may not use contact information provided on the Website for unauthorized purposes, including solicitations and marketing.

2. ADDITIONAL POLICIES. Please review the additional terms and policies listed below, which may also govern your relationship with us:

- Cogitate Privacy Statement – [privacy.aspx](#)
- Cogitate Policy on Payment and Refunds - [paymentpolicy.aspx](#)
- 9G BACKUP™ Data Storage Software End User License Agreement - [eula.aspx](#)
- *If you registered for an Account and indicated that you are an entity that is required to comply with the Health Insurance Portability and Accountability Act (“HIPAA”)* - Cogitate Business Associate Agreement (“Cogitate BAA”) - [hipaa-baa.aspx](#)

3. USE OF MATERIALS ON THIS WEBSITE AND INTELLECTUAL PROPERTY RIGHTS. The phrase 9G BACKUP™, Cogitate, and the products and services described in this

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4. SUBMISSIONS AND POSTINGS. To the extent that we allow submissions on our Website, you acknowledge that you are responsible for any material you may submit via the Website, including the copyright, legality, reliability, appropriateness, and originality of any such material.

You represent and warrant (and Cogitate expressly relies on your warranty) that you (i) own or otherwise control all the rights to the content you post or that such items are known to you to be in the public domain; (ii) that the content is accurate; (iii) that use of the content you supply does not violate any provision herein and will not cause injury to any person or entity; (iv) that the content is not defamatory or otherwise trade libelous; (v) does not violate any law, statute, ordinance or regulation; and (vi) that you will indemnify Cogitate harmless for all claims resulting from content you supply, including arising from an action alleging infringement of copyright or other proprietary rights in such work.

We undertake no duty to determine the validity of any claim of copyright or trademark infringement. Upon receiving written notice to Cogitate that any item posted on this Website is believed to infringe a copyright or other proprietary right, we will remove said work.

We make no warranty as to the currency, operability, or fitness for any particular purpose of any information posted to this Website, and we will assume no liability for any losses or damages alleged to arise from use of or reliance on such information.

If you do submit material, you grant Cogitate and its affiliates an unrestricted, nonexclusive, royalty-free, perpetual, irrevocable and fully sublicensable right to use, reproduce, modify, adapt, publish, translate, create derivative works from, distribute and display such material throughout the world in any media. You further agree that Cogitate is free to use without limitation and without any compensation to you any ideas, concepts, or know-how that you or individuals acting on your behalf provide to Cogitate. You grant us the right to use the name you submit in connection with such material. Cogitate retains any and all rights granted in these Terms of Use in and to any user submitted content or materials after termination.

We are under no obligation to post, forward, transmit, distribute or otherwise provide any material available on this Website, including material you provide to us. We have an absolute right to remove any material from the Website in our sole discretion at any time.

5. CONDUCT ON THE WEBSITE.

5.1 Registering for an Account. You must register for an Account (“Account”) to use the 9G BACKUP™ data storage software and related services. By registering at and in consideration of your use of our Website, you agree to provide true, accurate, current, and complete information about yourself and to keep the information up to date.

5.2 Password Security and Keeping Your Email and Address Current. Your Account requires use of a password. You are solely responsible for maintaining adequate security and control of any and all IDs, passwords, personal identification numbers, or any other codes that you use to access your Account. You agree that you will be responsible for any and all statements made, and acts or omissions that occur, through the use of your password. If you have any reason to believe or become aware of any loss, theft or unauthorized use of your password, notify us immediately. You agree that Cogitate may assume that any communication it receives under your password was made by you unless Cogitate receives notice otherwise. You are also responsible for keeping your mailing address and email address up to date in your customer settings.

5.3 Restricted Activities. In connection with your use of our Website, your Account, the Cogitate Services, or in the course of your interactions with us, you will not:

(a) Breach these Terms of Use, the 9G BACKUP™ Data Storage Software End User License Agreement, the Cogitate Business Associate Agreement, to the extent the Cogitate BAA applies to you, or any other agreement or policy that you have agreed to with Cogitate;

(b) Violate any law, statute, ordinance, or regulation (for example, those governing protected health information);

(c) Infringe Cogitate’s or any third party’s copyright, patent, trademark, trade secret or other intellectual property rights, or rights of publicity or privacy,

including but not limited to using Cogitate's name or trademarks and service marks of Cogitate as meta tags, or any other "hidden text" techniques or technologies without our express prior written permission or otherwise act inconsistent with Section 3 of these Terms of Use;

(d) Act in a manner that is defamatory, trade libelous, threatening or harassing;

(e) Provide false, inaccurate or misleading information;

(f) Take any action that imposes an unreasonable or disproportionately large load on our infrastructure; facilitate any viruses, Trojan horses, worms or other computer programming routines that may damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information; use an anonymizing proxy; use any robot, spider, other automatic device, or manual process to monitor or copy our Website without our prior written permission; or use any device, software or routine to interfere or attempt to interfere with our Website or the Cogitate Services; use any device or other means to harvest information about other users;

(g) Take any action that may cause us to lose any of the services from our Internet service providers, payment processors, or other suppliers; or

(h) Use frames or framing techniques to enclose any portion of this Website without express prior written consent of Cogitate.

5.4 Prohibited Content. You hereby agree to not upload, distribute, or otherwise publish through this Website any content that (i) is unlawful, libelous, defamatory, obscene, pornographic, harassing, threatening, invasive of privacy or publicity rights, fraudulent, defamatory, abusive, inflammatory, or otherwise objectionable; (ii) is confidential, proprietary, incorrect, infringing on intellectual property rights; (iii) may constitute or encourage a criminal offense, violate the rights of any party or otherwise give rise to liability or violate any law; or (iv) may contain software viruses, chain letters, mass mailings, or any form of "spam." You may not use a false email address or other identifying information, impersonate any person or entity or otherwise mislead as to the origin of any content.

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7. INFRINGEMENT NOTICE. We respect the intellectual property rights of others and request that you do the same. If you believe your copyright or the copyright of a person on whose behalf you are authorized to act has been infringed, you may notify our legal department:

Cogitate Inc.
Attn: Legal - Infringement Claim
P. O. Box 980685
Ypsilanti, Michigan 48198
president@cogitateinc.com

To be effective, your notification must be in writing, include your contact information, and include: (a) signature of a person authorized to act; (b) identification of the copyrighted work claimed to have been infringed; and (c) identification of the material that is claimed to be infringing including references to the location of the material on this Website.

8. STORING HEALTH RELATED INFORMATION. You shall notify Cogitate if you are using the 9G BACKUP™ data storage software and related services to store information that is subject to compliance with the Health Information Portability and Accountability Act (“HIPAA”) of 1996 and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and their implementing regulations, either during the Account creation process or by the means listed in Section 1 should you begin storing HIPAA covered information at any time after Account creation. You bear sole responsibility for notifying Cogitate that your data must be stored in compliance with HIPAA and the HITECH Act. By using our Website and the 9G BACKUP™ data storage software and related services to store data covered by HIPAA and the HITECH Act, you agree to comply with the Cogitate Business Associate Agreement [hipaa-baa.aspx](#). If at any time you do not agree to the Cogitate Business Associate Agreement, you must close your Account with Cogitate immediately.

9. DISCLAIMERS

9.1 Warranties.

9.1.1 YOUR USE OF THIS WEBSITE IS AT YOUR SOLE RISK. THE WEBSITE IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. WE RESERVE THE RIGHT TO RESTRICT OR TERMINATE YOUR ACCESS TO THE WEBSITE OR ANY FEATURE OR PART THEREOF AT ANY TIME, SUBJECT TO THE EULA.

9.1.2 COGITATE EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES THAT MATERIALS ON THE WEBSITE ARE NON-INFRINGEMENT, AS WELL AS WARRANTIES IMPLIED FROM A COURSE OF PERFORMANCE OR COURSE OF DEALING; THAT ACCESS TO THE WEBSITE WILL BE UNINTERRUPTED OR ERROR-FREE; THAT, SUBJECT TO THE EULA, THE WEBSITE WILL BE SECURE; OR THAT INFORMATION ON THE WEBSITE WILL BE COMPLETE, ACCURATE OR TIMELY.

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9.1.5 In certain jurisdictions, the law may not permit the disclaimer of warranties, so the above disclaimer may not apply to you.

9.2 Limitation of Liability.

9.2.1 YOU ACKNOWLEDGE AND AGREE THAT YOU ASSUME FULL RESPONSIBILITY FOR YOUR USE OF THE WEBSITE. YOU ACKNOWLEDGE AND AGREE THAT ANY INFORMATION YOU SEND OR RECEIVE DURING YOUR USE OF THE WEBSITE MAY NOT BE SECURE AND MAY BE INTERCEPTED BY UNAUTHORIZED PARTIES. YOU ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE WEBSITE IS AT YOUR OWN RISK AND THAT THE WEBSITE IS MADE AVAILABLE TO YOU AT NO CHARGE.

9.2.2 YOU ACKNOWLEDGE AND AGREE THAT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, NEITHER COGITATE NOR ITS AFFILIATES, SUPPLIERS OR THIRD PARTY CONTENT PROVIDERS WILL BE LIABLE FOR ANY DIRECT, SPECIAL, INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR OTHER DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE WEBSITE, OR ANY OTHER WEBSITE YOU ACCESS THROUGH A LINK FROM THIS WEBSITE OR FROM ANY ACTIONS WE TAKE OR FAIL TO TAKE AS A RESULT OF COMMUNICATIONS YOU SEND TO US, OR THE DELAY OR INABILITY TO USE THE WEBSITE, OR FOR ANY INFORMATION, PRODUCTS OR SERVICES ADVERTISED IN OR OBTAINED THROUGH THE WEBSITE, OR REMOVAL OR DELETION OF ANY MATERIALS SUBMITTED OR POSTED ON THE WEBSITE, OR OTHERWISE ARISING OUT OF THE USE OF WEBSITE, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, EVEN IF COGITATE, ITS AFFILIATES OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. Some states do not allow the exclusion or limitation of incidental or consequential damages so the above limitation or exclusion may not apply to you.

9.2.3 THIS DISCLAIMER APPLIES, WITHOUT LIMITATION, TO ANY DAMAGES OR INJURY ARISING FROM ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DELETION, DEFECTS, DELAY IN OPERATION OR TRANSMISSION, COMPUTER VIRUSES, FILE CORRUPTION, COMMUNICATION-LINE

FAILURE, NETWORK OR SYSTEM OUTAGE, YOUR LOSS OF PROFITS, OR THEFT, DESTRUCTION, UNAUTHORIZED ACCESS TO, ALTERATION OF, LOSS OR USE OF ANY RECORD OR DATA, AND ANY OTHER TANGIBLE OR INTANGIBLE LOSS.

10. INDEMNIFICATION. You agree to indemnify, defend and hold harmless Cogitate and its affiliates and their officers, directors, employees, contractors, agents, licensors, service providers, subcontractors and suppliers from and against any and all losses, liabilities, expenses, damages and costs, including reasonable attorneys' fees and court costs, arising or resulting from your use of the Website and any violation of these Terms of Use. If you cause a technical disruption of the Website, you agree to be responsible for any and all losses, liabilities, expenses, damages, and costs, including reasonable attorneys' fees and court costs, arising or resulting from that disruption. Cogitate reserves the right, at its own expense, to assume exclusive defense and control of any matter otherwise subject to indemnification by you and, in such case, you agree to cooperate with Cogitate in the defense of such matter.

11. JURISDICTION AND APPLICABLE LAW. The laws of the State of Michigan shall govern the construction and interpretation of these Terms of Use and the rights of the parties hereunder. By accessing, using, or purchasing 9G BACKUP™ data storage software services through this Website, you acknowledge that you have read, understood, and agreed to be bound by these Terms of Use and by all applicable laws and regulations, including U.S. Export control laws and regulations.

Visitors who do not agree with these Terms of Use should not access, use, post or purchase services on or through this Website. By using this Website, you irrevocably agree that any controversy or claim arising out of or relating to your use of this Website or any services provided hereunder shall be settled by the District Court for the Eastern District based in Detroit Michigan; *provided, however*, that to the extent that you have entered into the EULA or have otherwise used the 9G BACKUP™ data storage software and associated data storage services, you understand and agree that you are subject to the binding arbitration provision set forth in Section 13 of the EULA (*Governing Law and Arbitration*).

While we recognize that it is possible for you to obtain access to this Website from any jurisdiction in the world, and we have no practical ability to prevent such access, this Website has been designed to comply with the laws of the State of Michigan of the United States. If any material on this Website, or your use of the Website, is contrary to the laws of the place where you are when you access it, the Website is not intended for you, and we ask you not to use the Website. You are responsible for informing yourself of the laws of your jurisdiction and complying with them.

12. SEVERABILITY. If any provision of these Terms of Use is unlawful, void, or unenforceable, the remaining provisions of these Terms of Use will remain in force to the fullest extent of the law.

13. WAIVER. No waiver by Cogitate of any right under or term or provision of these Terms of Use will be deemed a waiver of any other right, term or provision of these Terms of Use at that time or a waiver of that or any other right, term or provision of these Terms of Use at any other time.