



## Free Trial Subscription Agreement

PLEASE READ THIS FREE TRIAL SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) CAREFULLY BEFORE PROCEEDING. LOGICMONITOR, INC. (“**LM**”) MAKES THE LM-HOSTED DATA CENTER MONITORING SERVICE (THE “**SERVICE**”) AVAILABLE TO YOU ON A TRIAL BASIS ONLY SUBJECT TO YOUR ACCEPTANCE AND AGREEMENT WITH THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. BY CLICKING “**ACCEPT**,” “**SIGN UP**” OR A SIMILAR BUTTON OR CHECKBOX REFERENCING THE AGREEMENT BELOW AND/OR BY DOWNLOADING THE ENABLING SOFTWARE, YOU AGREE TO BECOME A PARTY TO, AND BOUND BY, THE TERMS OF THIS AGREEMENT AND CREATE A LEGALLY BINDING CONTRACT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD THE ENABLING SOFTWARE.

If Prospect and LogicMonitor are parties to a signed agreement governing free trial access to the Service which remains active, such signed agreement supersedes this Agreement.

This Free-Trial Subscription Agreement is made between LM and you, a prospective customer of LM (“**Prospect**”). If you are using the Service on behalf of an entity or organization, then (a) you are agreeing to these terms on behalf of such entity, (b) “**Prospect**” shall refer to you and such entity, and (c) you represent and warrant that you have the right, power and authority to enter into this Agreement on behalf of such entity.

**Background:** LogicMonitor provides a Software as a Service (SaaS) service that is utilized by a Prospect installing a “**collector**” software program (the “**Enabling Software**”) on its network to enable use of such SaaS service and thereafter the service is accessed remotely through the Internet (together with the Enabling Software, the “**Service**”). Prospect is interested in evaluating the Service, and LogicMonitor is willing to provide use of and access to the Service to Prospect for evaluation purposes only, pursuant to the terms and conditions herein.

**Agreement:** As a condition of the test and evaluation of the Service by Prospect, LM and Prospect hereby agree as follows:

1. **License.** Subject to terms and conditions of this Agreement, LogicMonitor hereby grants to Prospect a royalty-free, non-exclusive, internal use only pre-subscription license to access and use the Service during the Free Trial Term for the sole and limited purpose of Prospect’s pre-subscription testing and evaluation of certain of its non-production network resources (i.e., outside of Prospect’s regular production environment) in order to determine if Prospect wishes to become a subscriber of LogicMonitor by entering into a paid subscription agreement with LogicMonitor (“**Subscription Agreement**”).
2. **Content.** Any data provided or submitted by or on behalf of Prospect (collectively, “**Customer Content**”) shall remain the property, Confidential Information and responsibility of Prospect. Prospect hereby grants to LogicMonitor a nonexclusive, royalty-

free, non-transferable license to host, cache, record, copy, and display Customer Content, solely for the purpose of providing the Service during the Free Trial Term.

3. **Restrictions on Use.** The Service, all software comprising the Service (including, without limitation, the Enabling Software), and all intellectual property rights therein shall remain the property and Confidential Information of LogicMonitor. Prospect may not: (a) attempt to reverse engineer, decompile, disassemble, or attempt to derive the source code for the Enabling Software, the Service or any portion thereof; (b) modify, port, translate, localize or create derivative works of the Enabling Software, the Service or any portion thereof; (c) remove any of LogicMonitor's, or its licensors' or vendors', copyright notices and proprietary legends; or (d) use the Service in an illegal or unlicensed manner.
4. **Term; Termination.** The term of this Agreement will continue in effect from the earlier of (a) the date that you click "**Accept**" to or execute this Agreement or (b) Prospect's use of the Service, and will continue for a period of fifteen (15) calendar days, or such other bespoke period of time as LogicMonitor and Prospect have agreed to in writing (the "**Free Trial Term**"). LogicMonitor may terminate this Agreement and the Free Trial Term at any time in its sole discretion. Upon expiration of the Free Trial Term or any earlier termination of this Agreement, LogicMonitor shall have no obligation to provide the Service to Prospect and Prospect shall promptly remove and return or destroy any Enabling Software that may have been installed on its computer systems in connection with the Service (and, if requested by LogicMonitor, certify as to the return or destruction of such Enabling Software).
5. **No Performance Warranty.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY OR GUARANTEE OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL WARRANTIES, WHETHER IMPLIED, EXPRESS, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, SATISFACTORY, QUALITY OR FITNESS FOR A PARTICULAR SERVICE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.
6. **Indemnification by LogicMonitor.** LogicMonitor agrees to defend, protect, indemnify and hold Prospect and its affiliates and its and their respective officers, directors, employees, agents and representatives harmless from and against all liabilities, damages and penalties to the extent arising out of any claims by a third party that the Service infringes or misappropriates any third party U.S. copyright, trade secret or patent right, except to the extent arising from Prospect's use of the Service in breach of this Agreement.
7. **Security.** Each party will be responsible for establishing and maintaining an information security program throughout the Term that is designed to: (a) ensure the security and confidentiality of the Service, Enabling Software and Customer Content; and (b) protect against any anticipated threats or hazards and the unauthorized access to or use of the Service, Enabling Software and Customer Content.
8. **Limitation of Liability.** NEITHER PARTY WILL HAVE ANY LIABILITY UNDER THIS AGREEMENT OR ANY ORDER FORM FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, DAMAGES FOR LOSS OF BUSINESS, OR BUSINESS INFORMATION, OR DAMAGES FOR BUSINESS

INTERRUPTION, COST OF COVER OR COST OF CAPITAL, EVEN IF SUCH PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES; PROVIDED, THAT, THE FOREGOING EXCLUSIONS SHALL NOT APPLY TO INTENTIONAL MISCONDUCT OR BREACH OF SECTION 3 (RESTRICTIONS ON USE). IN NO EVENT SHALL LOGICMONITOR'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED (A) TWO HUNDRED AND FIFTY DOLLARS (\$250), OR (B) FIFTY THOUSAND DOLLARS (\$50,000) WITH RESPECT TO LOGICMONITOR'S INDEMNIFICATION OBLIGATION UNDER SECTION 6. THE TERMS OF THIS SECTION 8 FAIRLY ALLOCATE THE RISKS UNDER THIS AGREEMENT, AND THE PARTIES HAVE RELIED ON THESE EXCLUSIONS IN DETERMINING TO ENTER INTO THIS AGREEMENT.

9. **Confidentiality.**

1. Definition of Confidential Information. Each party who receives information hereunder ("**Recipient**") understands that the other party ("**Discloser**") has disclosed or may disclose the information set forth below, which has commercial value in Discloser's business and is confidential or proprietary in nature, and which to the extent previously, presently or subsequently disclosed to Recipient is hereinafter referred to as "**Confidential Information**" of Discloser. Confidential Information includes any information that, given the circumstances of disclosure, and/or the nature of the information, that Recipient knew or should have known was Confidential Information, and includes, without limitation, Discloser's software, algorithms, source code, and technology.
2. Non-Disclosure and Non-Use Obligations. Each hereby agrees: (i) to hold Discloser's Confidential Information in strict confidence, and to take precautions to protect such Confidential Information from unauthorized disclosure and to use at least as strict as Recipient employs with respect to its most confidential materials, but in no case less than reasonable precautions; (ii) not to disclose any such Confidential Information or any information derived therefrom to any third party; (iii) not to make any use whatsoever at any time of such Confidential Information except for the sole limited business purposes of providing the Service (in the case of LogicMonitor) and evaluating whether to enter into a Paid Subscription Agreement (in the case of Prospect). The foregoing obligations shall not apply to information that Recipient can document: (1) becomes generally available to the public through no improper action or inaction by Recipient; (2) was in its possession or known by it prior to receipt from Discloser; (3) was rightfully disclosed to it by a third party without restriction; or (4) was independently developed by Recipient without use of or reference to Confidential Information.
3. Ownership; Return of Confidential Information. All Confidential Information, and any derivative works thereof, remains the property of Discloser and no license or other rights to Confidential Information is granted to the Recipient hereunder. Upon the expiration of the Free Trial Term or upon the request of Discloser at any time, Recipient will return to Discloser all Confidential Information of Discloser, and any copies or extracts thereof, provided, that, in the event that Prospect and

LogicMonitor enter into a Paid Subscription Agreement prior to expiration of the Free Trial Term, the confidentiality obligations in such Paid Subscription

4. Duration of Obligations. The nondisclosure and nonuse obligations of each Recipient hereunder shall survive for five (5) years from the date of this Agreement; provided, that, such obligations shall survive thereafter with respect to a Discloser's software and technology-based trade secrets so long as they remain eligible for trade secret protection under prevailing law (without regard to any breach of Recipient).
  5. Injunctive Relief. Upon any breach of Recipient's obligations under this Section 9, Discloser shall be entitled to seek appropriate equitable relief in addition to remedies at law.
10. **Miscellaneous.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws principles. Except for actions seeking injunctive relief, the parties agree to the exclusive jurisdiction of the federal and state courts in Santa Barbara County, California. The provisions of Sections 3, 5, 6, 8, 9 and 10 of this Agreement shall survive termination or expiration of this Agreement. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter, may not be modified, altered or amended except in writing and executed by both parties, supersedes all prior understandings and agreements and shall apply exclusively notwithstanding and previous or contemporaneous terms and conditions. Headings in this Agreement are for convenience only and will not be considered in the interpretation of this Agreement. Any notice or written communication required or permitted to be given by a party hereunder will be made by hand delivery, facsimile transmission (promptly confirmed by another permitted method of delivery) or overnight delivery at the address specified above or by electronic e-mail, or at such other addresses as the party may specify in writing. Any such notice, written communication or e-mail message will be considered to have been received on the date of hand delivery or transmission by facsimile or e-mail or the next business day after sent by overnight delivery service. If any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction, such provision will be deemed automatically modified to conform to the requirements for validity and enforceability, and as so modified, will be deemed a provision of this Agreement as though originally included herein.