



Master Subscription Agreement

Free Trial Access. If you or the entity that you represent are using any LogicMonitor product or service on a free trial basis (e.g., proof of value implementation or a beta release), then use of that product or service (or specific feature or functionality of a product or service) is subject to the **Free Trial Subscription Agreement** not this Master Subscription Agreement.

Purchase Through Channel Partner. If you or the entity that you represent are using any LogicMonitor product or service purchased through an authorized reseller, managed service provider, or payment intermediary ("**Channel Partner**"), then use of that product or service is subject to the **Channel Customer Addendum** in addition to and partially amending this Master Subscription Agreement.

Managed Service Providers. If you or the entity that you represent are using any LogicMonitor product or service in your capacity as a managed service provider for your own customer(s), then use of that product or service is subject to the **MSP Addendum** in addition to and partially amending this Master Subscription Agreement.

The terms of this Master Subscription Agreement (this "**MSA**" or this "**Agreement**") govern your use of, and purchase of subscriptions to, the LogicMonitor hosted data center monitoring services (the "**Service**" or the "**Services**") and any associated use of the LogicMonitor Technology (as hereafter defined). This MSA is a contract between LogicMonitor, Inc., a Delaware corporation having its headquarters at 820 State St., 5th Floor, Santa Barbara, CA 93101 U.S.A. (sometimes hereafter referred to as "**LogicMonitor**," "**we**," "**our**," "**us**" or "**Company**") and you or the entity or organization that you represent (sometimes hereafter referred to as "**Customer**," "**you**" or "**your**"). Customer and LogicMonitor are sometimes hereinafter referred to individually as a "**party**" and collectively as the "**parties**".

If you are an individual using the Services for your own purposes: (a) all references to "**Customer**" are to you and (b) you represent and warrant that you are at least 18 years of age (or have otherwise reached the age of majority where you reside) and that you have the right, power and authority to enter into this Agreement.

If you are using the Services on behalf of an entity or organization that you represent: (a) all references to "**Customer**" are to that entity or organization and (b) you represent and warrant that you are at least 18 years of age (or have otherwise reached the age of majority where you reside) and that you have the right, power and authority to enter into this Agreement on behalf of Customer.

This Agreement becomes binding and effective on Customer upon the earliest of: (a) when you access or use the Services, (b) when you click an "**I Accept**," "**Sign up**" or similar button or check box referencing this Agreement, or (c) when you execute a binding order form, purchase order or equivalent purchasing document ("**Order**") for a subscription to the Services (such earliest date, the "**Effective Date**"). If you do not agree to the terms of this Agreement, do not access the Service or download and install the Collector Software.

If you and LogicMonitor have entered into a signed agreement governing your subscription for the Service which remains active, such signed agreement supersedes this Master Services Agreement.

1. MODIFICATIONS.

- LogicMonitor may modify this Agreement from time to time by posting a revised version [Here](#); provided, that, any such updated version of this Agreement shall become effective for a given Customer only at the start of the subsequent Renewal Term (as hereafter defined). If Customer objects to the updated Agreement, Customer may elect not to renew (including cancelling any terms set to auto-renew) as its sole and exclusive remedy. For the avoidance of doubt, any Order is subject to the version of the Agreement in effect as of the date of such Order.

2. YOUR SUBSCRIPTION.

- **A.** We offer subscription-based Services. By subscribing to the Services, you have a limited, non-exclusive, royalty-free (apart from the Services fees due to LogicMonitor), non-transferable and terminable license to access and to use the Services solely for your internal business operations during the subscription period specified on your applicable Order. You are expressly prohibited from sublicensing use of the Services to third parties. However, you may choose to offer access to and use of the Services to your Affiliates, provided that
 - (i) you shall remain the contracting party with us with respect to the payment of fees and all access and use; and
 - (ii) you hereby agree that you shall retain full, unconditional responsibility for all such access to and use of the Services and LogicMonitor Technology and all compliance herewith. “**Affiliate**” means a corporation or other legal entity which a party owns or controls, is controlled by or is under common control with such entity through ownership or control of more than 50% of the shares entitled to vote. You hereby agree that neither you nor your Affiliates or customers shall take any action intended to interfere with or disrupt the Services or any other user’s use of the Services.
- **B.** Support. LogicMonitor will provide any technical support included with your subscription purchase in accordance with the terms of your applicable support plan, as described [Here](#). Customer will automatically be enrolled in the basic support plan at no additional charge. Premier support plans are available for purchase and, if applicable, will be set forth on your Order.
- **C.** We shall use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week during the Term, except for:
 - (i) Planned Maintenance. “**Planned Maintenance**” means maintenance where at least forty-eight (48) hours prior notice is provided via email based on your account settings within the Services, or by using Notification capabilities within the Services (see <https://support.logicmonitor.com/>). Planned Maintenance shall be conducted only during the hours of 6:00p.m. to 12:00a.m. Pacific Time and shall not exceed (a) 8 hours in any given month, or (b) 40 hours in any given year. Downtime will be minimized at all times and if the expected impact of planned operations is less than five (5) minutes of downtime, we may elect not to give advance notice; or
 - (ii) Extraordinary Circumstances. “**Extraordinary Circumstances**” means any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government (including U.S. sanctions or embargoes), flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet outages or delays.

- **D.** Your use of the Services is expressly only licensed for the duration of the Term and any trial period while you are and remain a current customer in good standing. You acknowledge and agree that you will not have access to historical information or data related to your use of the Services upon expiration or termination of your use of the Services; provided, however, that we agree to assist upon your request prior to termination to download all such available data.
- **E. Professional Services.** Professional Services may be included in your Order upon request. Fees, coverage and terms for Professional Services are available from LogicMonitor and will be set forth on your Order and/or a separate statement of work for such Professional Services. “**Professional Services**” means services provided by LogicMonitor personnel on a time and materials or fixed price basis for a customer-identified project or scope of work.

3. SUBSCRIPTION FEES, BILLING AND RENEWAL.

- **A. Paid Subscription.** By subscribing to the Services, you expressly agree to pay subscription fees corresponding to your subscription plan, plus any applicable taxes and duties, if any. During any Term that you remain in good standing, we will, unless either party gives the other written notice of non-renewal at least thirty (30) days before the end of the Initial Term or any Renewal Term, automatically renew for additional periods equal to the expiring Term (each as defined below). Subscription fees are fully earned upon payment and, except as otherwise specified herein, the payments are nonrefundable and there are no refunds or credits for partial subscription periods.
 - (i) Your Subscription. Except as otherwise set forth on your Order for the Services, fees are billed as of the Service commencement date for the entire initial subscription period set forth on the Order (the “**Initial Term**”) and for each additional renewal period of the same length (a “**Renewal Term**”), for the initial device commitment specified in the Order (the “**Reserved Commitment**”), net of any contractual discount. The period of your use of the Services during the Initial Term and each Renewal Term under this Agreement is referred to as the “**Term**”.
 - (ii) Any increase in the actual usage beyond the Reserved Commitment will be billed to you by LogicMonitor for each month of Service, upon the end of the applicable month, via invoice at the applicable overage pricing rate set forth on your Order. Such invoiced amounts, if applicable, shall be due and payable in accordance with this Agreement. Usage of the Service is calculated in accordance with the methodology set forth below.
- **B. Usage.** Your usage of the Service is determined by the number of hosts monitored by the Services during the period in question, measured on a daily basis. A “**host**” or “**device**” is a logical host defined by a network (IP) address. It need not be a physical host. Overage fees shall only apply to the extent that Customer’s average usage for a month (based on daily usage calculations) exceeds the Reserved Commitment.
- **C. Payment Methods.** Unless otherwise set forth on an Order, during the registration process, you will choose a business charge card or U.S. domestic electronic funds transfer (“**ACH**”) bank account for directly charging your subscription fees. You hereby authorize us to automatically debit your designated charge card or ACH bank account for the subscription fees until you cancel your subscription, and we reserve the right to delay or suspend access to the Service unless these accounts are designated and maintained. If you would like to change your payment method or details, such as your credit card validity or expiration date,

you may access and edit your account information through our application. LogicMonitor uses a third-party intermediary to manage credit card processing and this intermediary is not permitted to store, retain nor use your billing information except to process your credit card information for the LogicMonitor Service.

- **D. When Payments are Due.** All payments shall be due and payable as described in the applicable Order Form (the “**due date**”). You are responsible for paying any taxes (including without limitation any sales, use or withholding taxes now or hereafter enacted), and any duties, excises or tariffs (together “**duties**”), that are applicable to receipt of the Service (provided that you shall not be responsible for any taxes based on LogicMonitor’s income). All payments hereunder shall be made without deduction for taxes or duties of any kind or nature. However, if LogicMonitor determines in its sole judgment that we are legally obligated to add taxes to your service fees, LogicMonitor will include such taxes in your Service Agreement or invoices and the full amount inclusive of such taxes will be due and paid. Late payments will be subject to late fees at the rate of one percent (1%) per month, or, if lower, the maximum rate allowed by law. LogicMonitor’s obligations under this Agreement are conditioned upon your timely payment. If you fail to pay fees within thirty (30) days following the payment due date, LogicMonitor has the right to suspend performance of the Service and seek all remedies available, and you agree to reimburse our reasonable expenses, including attorneys’ and other fees incurred in collecting amounts due. Payments received after default shall be applied against interest, expenses, and principal as LogicMonitor determines in its sole discretion. The Service will be reinstated at our discretion after all current and overdue amounts and accumulated late fees and expenses are paid.

4. TERM AND TERMINATION.

- This Agreement is in force starting on the Effective Date and, subject to any earlier termination permitted in this Agreement, will remain in force throughout the Term. Except where your early termination is pursuant to LogicMonitor’s uncured material breach (pursuant to subsection (A) below) (in which case we will promptly refund to you the prepaid fees (if any) for that portion of the terminated period for which Services were not provided), early termination of a subscription or ceasing your use of the Services will not result in a refund of any prepaid fees or modify your obligation to pay fees for the remainder of the then current Term. Either party may terminate this Agreement during the Term by written notice: (A) if the other party breaches any material term or condition of this Agreement and, assuming such default is capable of cure, fails to cure such default within thirty (30) days after written notice specifying the default (“**Notice of Default**”), (B) if the other party becomes insolvent or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or (C) if a petition under the United States Bankruptcy Act, as it now exists or as it may be amended, or any similar law of any other jurisdiction, is filed concerning the other party. Additionally, immediately upon the detection of suspicious circumstances or behavior, or the receipt of information we believe is credible regarding the unauthorized use or disclosure of your data or of a demonstrable threat to either your data or the LogicMonitor Technology, LogicMonitor has the right to suspend the access to or use of the Service or LogicMonitor Technology by your authorized users. In such event, we will provide a prompt, written description of the issue(s) or event(s) resulting in the suspension, and you agree to regularly communicate with our support team, and work in good faith to resolve the matter promptly. For the avoidance of doubt, we are not responsible for, and termination under this Section will not apply when any delay in restoration of services is related to your failure to provide prompt responses, reasonable assistance, and cooperation with us. If the matter is not resolved within ten (10) days of suspension, either party has the right to terminate the Agreement upon written notice, and assuming the suspension was not prompted by

Customer's uncured breach, LogicMonitor will promptly refund the prepaid fees (if any) covering that portion of the terminated period for which Services were not provided.

5. OUR TECHNOLOGY.

- **A.** The Services are enabled by and utilize a hosted software application (the "**LogicMonitor Software**"). We shall host the LogicMonitor Software and may update the functionality and user interface of the LogicMonitor Software from time to time in our sole discretion as part of our ongoing mission to improve the Services and our users' use of the Services, provided that such modifications will not materially decrease the functionality of the Services. You must have access to the LogicMonitor Software in order to use the Services. In addition, to use the Services fully, you will be required to download and install a piece of our software on your network (the "**Collector Software**" and collectively with the LogicMonitor Software, the "**Software**").
- **B.** You agree that the rights granted to you are provided on the condition that you will not (and will not allow, give permission to or enable any third party, including without limitation any customer or Affiliate, to) copy, create a Derivative Work of, or reverse engineer, reverse assemble, disassemble, or decompile the Software or any part thereof or otherwise attempt to discover any source code, modify the Software in any manner or form, or use unauthorized modified versions of the Software, including (without limitation) for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the Services. "**Derivative Work**" means any modification of or extension to any software, process, algorithm, trade secret, work of authorship, invention, or to any other intellectual property right therein or thereto.
- **C.** License. Subject to your compliance with the terms of this Agreement, we hereby grant to you a limited, non-exclusive, royalty-free (apart from the fees paid to LogicMonitor for the Services), non-transferable license to download, install and use the Collector Software (in object code form) onto your network for internal business purposes for the sole purpose of using the LogicMonitor Service. The Software is not sold but licensed hereunder.

6. OWNERSHIP.

- **A.** LogicMonitor Technology. You acknowledge and agree that the LogicMonitor Software, including the specific design and structure of individual programs, components and aspects thereof, constitutes the proprietary trade secrets and copyrighted material of LogicMonitor, and that LogicMonitor owns all rights, title and interest in and to the Services, the Software, Feedback and all technology, information, trade secrets, patent rights, copyrights, know-how and documentation associated therewith as provided or otherwise made available by LogicMonitor and used in the performance of the Services, including all intellectual property rights and Derivative Works therein, on a worldwide basis (collectively, the "**LogicMonitor Technology**"). As used herein, "**Feedback**" means bug reports, suggestions, comments or other feedback provided by Customer to LogicMonitor with respect to the Service, excluding any Customer Confidential Information. The license granted to you is limited by this Agreement and does not convey any other rights in the LogicMonitor Technology, express or implied, nor does it grant any ownership in the LogicMonitor Technology or any intellectual property rights therein or thereto. Any rights not expressly granted herein are reserved by LogicMonitor.

- **B. Customer Data.** You retain all right, title and interest in and to all Customer Data. “**Customer Data**” means electronic data, files or information submitted by Customer to the Service. LogicMonitor’s right to access and use Customer Data is limited to the right to access and use such Customer Data for the purpose of providing the Service or as may otherwise be explicitly set forth in this Agreement. No other rights with respect to your Customer Data are implied. Customer Data shall at all times be classified and treated as Confidential Information hereunder.

- **C. Implementations.** Excluding your Confidential Information, and any applicable Personal Data, you agree that if you make any customizations or customized implementations of the Software or LogicMonitor Technology that do not qualify as Derivative Works (“**Implementations**”), such Implementations are hereby licensed to us on a non-confidential, nonexclusive, irrevocable, worldwide, royalty-free, sublicensable basis to perform services, use, distribute, publish, display, copy, sell, have sold, make, have made, create Derivative Works of, import, export, and license the Implementations and products and services utilizing or incorporating the Implementations, and to otherwise commercially exploit the same. If any integrations with third party tools, platforms or programs are implemented for your use in conjunction with the Service, you agree that LogicMonitor has no obligation to support the same.

- **D. Copyright and Proprietary Legends.** You agree not to remove any copyright or proprietary legends in the LogicMonitor Technology, and to implement reasonable security measures to protect our proprietary rights therein from unauthorized use or disclosure. Certain marks, words and logos displayed on the Services, which may or may not be designated by a “**TM**” “**®**” “**SM**” or other similar designation, constitute trademarks, trade names, or service marks belonging to us or our licensors. Except as necessary for you to make use of the Services in accordance with the license rights herein, you are not authorized to use any such marks. Ownership of all such marks and the goodwill associated therewith remains with us or our respective licensors.

7. CONFIDENTIALITY.

- **A.** The parties agree that during the course of performance under this Agreement, each party may disclose to the other party certain technical and/or non-technical information, which (i) is disclosed in a tangible or visual form and clearly labeled as “**Confidential**”; (ii) is disclosed in an oral, non-tangible or visual form, identified at the time of disclosure as confidential and confirmed in writing within thirty (30) days; or (iii) is identified and treated as confidential by disclosing party and given the circumstances of disclosure, and/or the nature of the information, the recipient knew or should reasonably have known the information was confidential (collectively, the “**Confidential Information**”). For purposes of clarification and in addition to the Confidential Information addressed in the previous sentence, LogicMonitor Technology shall be deemed our Confidential Information and all Customer Data shall be deemed your Confidential Information. Confidential Information does not include information, technical data or know-how which (a) is rightfully in the possession of the receiving party at the time of disclosure as shown by the receiving party’s files and records immediately prior to the time of disclosure; (b) prior to or after the time of disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving party; (c) is approved in writing for release by the disclosing party; or (d) is independently developed by the receiving party without use of or reference to any Confidential Information of the disclosing party.

- **B.** Each party agrees not to use the Confidential Information disclosed to it by the other party for any purpose except as necessary to perform its obligations under this Agreement. Neither party will disclose the Confidential Information of the other party to third parties or to the first party's employees except employees and service providers who are required to have the information in order to carry out such party's obligations hereunder who have agreed in writing, as a condition of employment, engagement or otherwise (or who are otherwise bound by fiduciary duty or rules of professional conduct), to protect the Confidential Information with terms no less stringent than are imposed by this Section; provided, however, that this Agreement may also be disclosed to potential successors in interest (and their respective attorneys and advisors) pursuant to a contemplated merger, acquisition, corporate reorganization or sale of all or substantially all of a party's assets, so long as such recipient in each case has agreed in writing to protect the Confidential Information with terms no less stringent than are imposed by this Section. Notwithstanding the above, LogicMonitor may use data about Customer's configuration and use of the Service that has been aggregated and/or anonymized (collectively, "**Usage Data**") in order to (i) measure general Service usage patterns and characteristics of its user base and/or (ii) to improve the Service and develop new insights and features, and may include such Usage Data in promotional materials or reports to third parties; provided, that, for the avoidance of doubt, (x) such Usage Data is rendered in such a manner that does not allow a third party to identify Customer or its suppliers, customers, contractors, agents, affiliates, or subsidiaries and (y) such Usage Data does not reference Personal Data, names, phone numbers, email addresses, or other personally identifiable information. "**Personal Data**" generally means nonpublic, personally identifiable information of or concerning any living individual among the consumers, employees, clients and customers of Customer or LogicMonitor, their parents, subsidiaries, affiliates and agents. Each party agrees that it will use the same standard of care that it uses in protecting its own Confidential Information, but in no case less than reasonable care. Each party agrees to promptly notify the other in writing of any misuse or misappropriation of Confidential Information of the other party that may come to its attention.

- **C.** The confidentiality and non-use obligations of each receiving party under this Agreement will survive expiration or termination of this Agreement for a period of five (5) years; except that such obligations shall survive indefinitely with respect to (i) Personal Data, and (ii) each disclosing party's software and technology-based trade secrets so long as they remain eligible for trade secret under prevailing law (without regard to any breach of the receiving party). In the event of any expiration or termination of this Agreement, or upon request by the disclosing party, the receiving party shall cease all use of the other party's Confidential Information and return to the disclosing party all copies of the disclosing party's Confidential Information in the receiving party's possession or control, or destroy the same and certify as to its destruction. The receiving party will not be required to return or immediately destroy an archive copy of the disclosing party's Confidential Information made for backup purposes in the ordinary course; provided that such archive copy will be subject to the ongoing obligations of confidentiality and non-use contained herein and shall be destroyed in the ordinary course of business not to exceed ninety (90) days, or with respect to Personal Data, such shorter period as is necessary to comply with prevailing law.

- **D.** While the parties understand that incidental capturing of certain nominal Personal Data may occur in connection with the Service (as described in the DPA), the purpose and focus of the Service is on IT systems performance monitoring and not to function as a receptacle or conduit to store, manipulate, transmit or retrieve Restricted Data. As used herein, "**Restricted Data**" means (i) Protected Health Information, as such term is defined under the U.S. Health Insurance Portability and Accountability Act, (ii) financial account data or payment cardholder information under PCI Data Security Standard, (iii) Personal Data

beyond that which is incidental to the Service and described in the DPA, and/or (iv) any other data that is subject to specific or heightened requirements under applicable law or industry standards, such as Social Security numbers in the United States. Without limiting its other obligations under this Agreement, and subject to the foregoing caveat regarding collection of certain nominal Personal Data, the parties agree that (x) you shall not provide Restricted Data to LogicMonitor, and shall configure the Collector Software so that it will be used only to collect information from devices and applications using methodology which will not expose or divulge Restricted Data; (y) you will not send any logs to LogicMonitor that contain Restricted Data; and (z) you will isolate and secure the Software on your systems and network to prevent unauthorized access, use, disclosure and loss using at a minimum industry standard security practices and technologies and as otherwise required by applicable laws.

- **E. Compelled Disclosure.** In the event that the receiving party is required by applicable law, regulation or any competent judicial, supervisory or regulatory body to disclose any of the Confidential Information, the receiving party shall provide the disclosing party with prompt written notice of any such requirement so that the disclosing party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Agreement. If, however in the opinion of the counsel of the receiving party, the receiving party is nonetheless, in the absence of such order or waiver, compelled to disclose such Confidential Information, then it may disclose only such portion of the Confidential Information which, in the opinion of its counsel, the receiving party is compelled to disclose. The receiving party will not oppose any action by the disclosing party to obtain reliable assurance that confidential treatment will be accorded the Confidential Information. The receiving party will reasonably cooperate with the disclosing party in its efforts to obtain a protective order or other appropriate remedy that the disclosing party elects to seek to obtain, in its sole discretion.
- **F.** Each party shall comply with prevailing laws and regulations governing Personal Data, including, without limitation and as may be applicable, the EU General Data Protection Regulation (“**GDPR**”), the UK General Data Protection Regulation (“**UK GDPR**”), the California Consumer Privacy Act (“**CCPA**”), and the California Privacy Rights Act (“**CPRA**”).
- **G. Service Provider Attestation (CCPA/CPRA).** LogicMonitor is a “**Service Provider**” as defined under the CCPA and CPRA. Customer discloses Personal Data (as defined under the CCPA and CPRA) to LogicMonitor solely (i) for a valid business purpose and (ii) for LogicMonitor to provide the Services contemplated by this Agreement. LogicMonitor expressly certifies, understands and agrees that except as permitted or required by applicable law, it is prohibited from (1) selling (as defined under the CCPA and CPRA) any of Customer’s Personal Data, (2) retaining, using or disclosing any of Customer’s Personal Data for any commercial purpose other than providing the Services contemplated by this Agreement, (3) retaining, using or disclosing Personal Data outside of the direct business relationship between LogicMonitor and Customer and this Agreement, or (4) combining the personal information that it receives from, or on behalf of, Customer with personal information that it receives from, or on behalf of, another person or persons, or collects from its own interaction with the consumer, provided that LogicMonitor may combine personal information to perform a business purpose in limited circumstances. LogicMonitor understands the prohibitions that are outlined in this Section 7(G) and hereby certifies its compliance therewith. LogicMonitor shall generally not respond to end user requests except to the extent required by law, and shall direct such requests to Customer where feasible. We will notify you in the event that we cannot meet our obligations as a Service Provider under the CCPA,

CPRA, and applicable regulations. We will also provide any required information to enable you to comply with a consumer request, if applicable.

- **H. Data Processing Addendum.** The parties hereby agree to comply with the terms of the Data Processing Addendum set forth [Here](#).
- **I. Security Practices.** During the Term, LogicMonitor will implement and maintain minimum administrative, physical and technical safeguards and measures designed to protect against unauthorized access to Customer Data as described [Here](#). During the Term, LogicMonitor will not materially diminish the protections provided by the Security Practices.

8. REPRESENTATIONS AND WARRANTIES.

- **A. Representations.** Each party hereby represents and warrants to the other that (i) such party has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (ii) the making of this Agreement does not violate any agreement existing between such party and any third party.
- **B. Limited Service Warranty.**
 - (i) We warrant that we will deliver and perform the Services in a good and workmanlike manner consistent with applicable industry standards and the functional requirements and technical specifications set forth in the applicable Order.
 - (ii) **Service Level Terms.** We will provide the Services in accordance with the [Service Level Terms](#) (individually or collectively, the “**Service Level Terms**”), and any remedies for failure to comply with such standards are set forth therein.
- **C.** In the event that Customer notifies LogicMonitor in writing of a breach of the foregoing warranties, LogicMonitor shall use commercially reasonable efforts to correct the reported non-conformity, at no additional charge to Customer, or if LogicMonitor determines such remedy to be impracticable, Customer may terminate this Agreement and receive a prorated refund of fees pre-paid to LogicMonitor for Customer’s use of the Service for the remainder of the then current subscription period. The foregoing remedy shall be Customer’s sole and exclusive remedy for any breach of warranty hereunder; provided, that, remedies available for breach of the Service Level Terms are as set forth in the Service Level Terms.

9. INDEMNIFICATION.

- **A. By LogicMonitor.** We shall, at our own expense, indemnify, defend and hold you harmless from and against any damages and expenses (including reasonable attorneys’ fees) as a result of third party claims, to the extent of any finding that the LogicMonitor Technology, when used in strict compliance with the license rights and use instructions provided by LogicMonitor infringed or misappropriated the copyright, patent rights or trade secret rights of a third party; provided we receive prompt notice and the opportunity to provide the defense and participate in the litigation and settlement negotiations. Notwithstanding the foregoing, we shall have no liability, and shall have no obligation to defend or indemnify you, for any third party claim of infringement to the extent based upon (i) use of other than the then current, unaltered version of the LogicMonitor Technology and applicable Services, unless the infringing portion is also in the then current, unaltered release; (ii) use of the Services or LogicMonitor Technology other than strictly in

accordance with our instructions and documentation; or (iii) use, operation or combination of the applicable Services with non-LogicMonitor programs, data, equipment or documentation if such infringement would have been avoided but for such use, operation or combination. In the event the use of any Service or LogicMonitor Technology is, or we believe is likely to be, alleged or held to infringe any third party intellectual property right, we may, at our sole option and expense, (a) procure for you the right to continue using the affected service, (b) replace or modify the affected service with functionally equivalent service so that it does not infringe, or, if either (a) or (b) is not commercially feasible, (c) terminate the Services and refund the fees received by us from you for the affected service for the remaining Term of then-current subscription period. THE FOREGOING CONSTITUTES OUR ENTIRE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY THIRD PARTY CLAIMS OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND OR NATURE.

- **B. By You.** You shall defend, indemnify and hold us harmless from and against any and all claims, damages and expenses (including reasonable attorney's fees) arising from:
 - (i) your violation of this Agreement; or
 - (ii) your violation of any third party intellectual property or privacy right; provided, that we (a) promptly give you written notice of the claim; (b) give you control of the defense and settlement of the claim (provided that you may not settle any claim unless the settlement unconditionally release us of all liability); and (c) provide to you all reasonable assistance, at your expense. We may participate in the defense and settlement activities with counsel of our choosing at our expense.

10. DISCLAIMERS, LIMITATION OF DAMAGES AND LIABILITY.

- **A. DISCLAIMERS AND EXCLUSIVE REMEDY.**

EXCEPT FOR THE REPRESENTATIONS AND LIMITED WARRANTY IN SECTIONS 8.A (REPRESENTATIONS) AND 8.B. (LIMITED SERVICE WARRANTY), THE SERVICES AND LOGICMONITOR TECHNOLOGY ARE PROVIDED “**AS IS**” WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR TRADE USAGE INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, NOR DO WE WARRANT THAT THE LOGICMONITOR TECHNOLOGY OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, OR REGARDING THE SECURITY, ACCURACY, RELIABILITY, TIMELINESS OR PERFORMANCE OF THE SERVICES. WE MAKE NO WARRANTY ABOUT THE SUITABILITY OF THE LOGICMONITOR TECHNOLOGY OR SERVICES FOR ANY PURPOSE AND DO NOT WARRANT THAT THE LOGICMONITOR TECHNOLOGY OR SERVICES WILL MEET YOUR REQUIREMENTS.

- CUSTOMER ACKNOWLEDGES AND AGREES THAT LOGICMONITOR SHALL NOT HAVE ANY LIABILITY FOR (I) MODIFICATIONS OR ALTERATIONS TO THE COLLECTOR SOFTWARE MADE BY YOU OR ANY THIRD PARTY NOT AUTHORIZED BY LOGICMONITOR OR (II) CUSTOMER'S USE OF MONITORING SCRIPTS MADE AVAILABLE IN LM EXCHANGE, LOGICMONITOR'S CUSTOMER COMMUNITY, THAT ARE NOT AUTHORED BY LOGICMONITOR.

- **B. INDIRECT AND CONSEQUENTIAL DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCLUDING THE INDEMNIFICATION OBLIGATIONS IN SECTION 9 OR CLAIMS, LIABILITIES OR LOSSES ARISING FROM FRAUD OR INTENTIONAL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF OR IN ANY WAY RELATING TO THIS AGREEMENT, THE SERVICES PROVIDED, OR THE USE OF OR INABILITY TO USE THE SERVICES INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, LOST PROFITS, LOSS OF DATA, COMPUTER FAILURE OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES EVEN IF ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

- **C. LIMITATION OF LIABILITY.** EXCEPT WITH RESPECT TO LIABILITIES OR LOSSES ARISING FROM FRAUD OR INTENTIONAL MISCONDUCT, IN NO EVENT WILL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT AND ALL ORDERS EXCEED (I) THE SUM OF THE AMOUNTS RECEIVED BY AND OWED TO US FROM YOU DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, AND (II) TWO (2) TIMES THE AMOUNT IN SUBSECTION (I) WITH RESPECT TO A PARTY'S INDEMNITY OBLIGATIONS UNDER ARTICLE 9 OR LIABILITIES OR LOSSES RESULTING FROM EITHER PARTY'S BREACH OF ITS OBLIGATIONS UNDER ARTICLE 7 (CONFIDENTIALITY), WHICH FOR CLARITY, INCLUDES ALL DATA PRIVACY AND INFORMATION SECURITY OBLIGATIONS. THESE LIMITATIONS ARE CUMULATIVE FOR ALL CLAIMS HOWSOEVER ARISING UNDER ALL AGREEMENTS AND ORDERING DOCUMENTS, AND SHALL APPLY EVEN IF THE REMEDIES PROVIDED IN THIS AGREEMENT SHALL FAIL OF THEIR ESSENTIAL PURPOSE.

- **D. BASIS OF BARGAIN.** YOU ACKNOWLEDGE AND AGREE THAT THE FOREGOING SECTIONS ON WARRANTIES AND DISCLAIMERS, INDEMNIFICATION AND LIMITATION OF LIABILITY FAIRLY ALLOCATE THE RISKS BETWEEN THE PARTIES AND ARE ESSENTIAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. YOU EXPRESSLY ACKNOWLEDGE THAT THE FEES THAT WE CHARGE FOR THE SERVICES ARE BASED UPON OUR EXPECTATION THAT THE RISK OF ANY LOSS OR INJURY THAT MAY BE INCURRED BY USE OF THE SERVICES WILL BE BORNE BY YOU AND NOT US AND WERE WE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN, SUCH FEES WOULD OF NECESSITY BE SET SUBSTANTIALLY HIGHER.

11. GENERAL PROVISIONS.

- **A. Notices.** You agree to provide LogicMonitor with your email address, to promptly provide LogicMonitor with any changes to your email address, and to accept emails (or other electronic communications) from LogicMonitor at the email address you specify. Except as otherwise provided in this Agreement, you further agree that LogicMonitor may provide any and all notices, statements, and other communications to you through either email or posting on the Service portal. Notices to you may be provided by email and shall be addressed to the system administrator or user designated by you for your relevant Services account, and in the case of billing-related notices, to the relevant billing contact

designated by you. The Company maintains the right to require placement of a valid email address within the Services portal for both billing, Services notification and notices purposes. In no event shall the Company be held liable for negative consequences resulting from a lack of Company notices in the case notification email addresses are not included by you in the Services portal as required. Legal notices to you may at our option also be sent to the address on the Order or that you have last provided, and such notices to us should be sent to LogicMonitor, Inc., 820 State St. 5th Floor, Santa Barbara, CA 93101, USA, Attention: Legal Department or by email to legal@logicmonitor.com.

- **B. Governing Law, Jurisdiction and Dispute Resolution.** Each party agrees to the applicable governing law of the State of California without regard to choice or conflicts of law rules, and except for actions seeking injunctive relief, the parties agree to the exclusive jurisdiction of the federal and state courts in Santa Barbara County, California. Excluding actions seeking injunctive relief, in the event of any disputes arising with respect to this Agreement or an Order, before taking formal action, the parties will make reasonable attempts to resolve the dispute amicably between them within thirty (30) days from the date that one party notifies the other of such dispute in reasonable detail.
- **C. Notice to U.S. Government Users.** All LogicMonitor products and services are commercial in nature. The Software and LogicMonitor Technology are “**Commercial Items**,” as defined at 48 C.F.R. §2.101, consisting of “**Commercial Computer Software**” and “**Commercial Computer Software Documentation**,” as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §§227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to U.S. Government end users (i) only as Commercial Items, and (ii) with only those rights as are granted to other users pursuant to this Agreement. All unpublished rights are reserved.
- **D. Export Restrictions.** Each party shall (i) comply with applicable laws and regulations administered by the U.S. Commerce Bureau of Industry and Security, U.S. Treasury Office of Foreign Assets Control or other governmental entity imposing export controls and trade sanctions (“**Export Restrictions**”), including designating countries, entities and persons (“**Sanctions Targets**”) and (ii) not directly or indirectly export, re-export or otherwise deliver Services to a Sanctions Target, or broker, finance or otherwise facilitate any transaction in violation of any Export Laws. Customer represents that it is not a Sanctions Target or prohibited from receiving Services pursuant to this Agreement under any applicable laws or regulations, including Export Restrictions.
- **E. Anti-Bribery and Anti-Corruption.** LogicMonitor is committed to conducting business that is free from any and all forms of corruption or bribery, including kickbacks, money laundering and fraud. LogicMonitor is committed to compliance with all applicable anti-bribery and anti-corruption laws and regulations, including but not limited to the U.S. Foreign Corrupt Practices Act 1977 and the UK Bribery Act 2010. Each party agrees not to directly or indirectly offer, promise, provide or accept anything of value to or from the other party’s employee, a government official or commercial business partner in violation of any provisions of any applicable anti-bribery laws in connection with this Agreement or any LogicMonitor business.

LogicMonitor shall ensure that it, and all of its personnel and affiliates, comply fully with the UK Modern Slavery Act 2015.

- **F. High Risk Activities.** The Software is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as, but not limited to, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage (“**High Risk Activities**”). The Company specifically disclaims any express or implied warranty of fitness for High Risk Activities.

- **G. Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

- **H. Insurance.** Each party will, at its expense, during the Term and for the 2-year period following termination or expiration hereof, purchase and maintain insurance policies with an insurance company or companies of U.S. or internationally-recognized standing with a rating of A-/Class IX, or better, as rated by A.M. Best, with the following minimum limits:
 - (i) Comprehensive General Liability Insurance, with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, covering bodily injury, personal injury and property damage;

 - (ii) Technology Errors and Omissions Insurance, with limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate with respect to claims related to the LogicMonitor Technology delivered by LogicMonitor under this Agreement;

 - (iii) Privacy and network security liability (“**Cyber**”) Insurance, with limits of at least \$1,000,000 per claim and \$2,000,000 in the aggregate, providing protection against liability for privacy breaches, system breaches, denial or loss of service, introduction, implantation or spread of malicious software code and unauthorized access to or use of computer systems; and

 - (iv) Workers Compensation and Employers Liability Insurance as required by applicable laws, in amounts that meet or exceed those required by applicable laws.
 - If any of such insurance policies are to be modified or canceled during the Term of this Agreement in a way that would materially affect the coverage required hereunder, the party holding the policy will provide written notice to the other party at least thirty (30) days prior to such modification or cancellation. Each party will, upon a party’s request, provide the other party with certificates of insurance evidencing satisfactory coverage of the types and limits set forth above.

- **I. Survival.** Sections 3 (Subscription Fees, Billing and Renewal) (surviving until all fees and charges are paid), 4 (Term and Termination), 5.B. (Our Technology), 6 (Ownership), 7 (Confidentiality) (surviving for the term specified therein), 9.B. (Indemnification), 10 (Disclaimers, Limitation of Damages and Liability), and 11 (General Provisions) (surviving according to the specified periods, if any), shall survive expiration or termination of this Agreement.

- **J. Third-Party Programs.** Customer may receive access to third-party software programs (“**Third-Party Programs**”) through the Collector Software, and/or third-party programs may be bundled with the Collector Software. These Third-Party Programs are governed by their own license terms, which may include open source licenses, and those terms will prevail over the terms of this Agreement as it relates to Customer’s use of Third-Party Programs. This Agreement does not limit Customer’s rights under any such Third-Party Program or grant Customer any rights that supersede the terms of any such license agreement for a Third-Party Program.

- **K. Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, we may assign this Agreement in its entirety, without your consent to our Affiliate provided the assignee accepts full responsibility for our obligations hereunder, or to a successor in interest pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

- **L. Publicity.** (i) Neither party will make any news or press release regarding this Agreement without the other party’s prior written consent. You grant us the right to include your name and logo as a customer in our promotional materials; provided however, that you can opt to have your name excluded from such use by us except as agreed to in writing on a case-by-case basis by providing a sufficiently detailed email request regarding the same to sales@logicmonitor.com; the subject line in such email should be entitled “**Non-use of Subscriber Name.**” (ii) Subject in each case to your agreement and only on an occasional basis, we may ask that you consider in your sole discretion making a representative available (x) to serve as a non-public reference to our prospective customers to discuss your experience working with us; and (y) to work with us in developing and publishing case studies and press releases that describe your use of the Services.

- **M. Force Majeure.** Except for the nonpayment of money due, neither party shall be liable for any delay or failure in performance due to Extraordinary Circumstances (as defined in Section 2.C.(ii) hereof); provided, that, if such force majeure conditions result in the Service being unavailable for thirty (30) consecutive days, either party may terminate this Agreement upon written notice.

- **N. Effect of Transaction.** For the avoidance of doubt, (i) in the event that Customer is acquired by or merged into another entity that is a customer of LogicMonitor, this Agreement and the commercial terms set forth on any Order hereunder shall continue to apply for the subscription term set forth on any such Order; and (ii) in the event that Customer acquires (whether by acquisition or merger) another entity that is a customer of LogicMonitor, Customer acknowledges and agrees that the commercial and legal terms then in place between LogicMonitor and such entity shall continue for the duration of such entity’s current subscription term.

- **O. Compliance with Federal, State and Local Laws.** Each party agrees the Services provided hereunder shall be delivered and used in accordance with all applicable federal, state and local laws and regulations.

- **P. Relationship of the Parties.** The parties are independent contractors and this Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to this Agreement.
- **Q. Waiver and Cumulative Remedies.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies available to a party at law or in equity.
- **R. Entire Agreement.** This Agreement and any exhibits or addendums linked herein along with any Orders constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Any terms and conditions of any other instrument issued by Customer in connection with this Agreement which are in addition to, inconsistent with or different from the terms and conditions of this Agreement shall be of no force or effect. Additionally, this Agreement supersedes any confidentiality, non-disclosure, evaluation or trial agreement previously entered into by the Parties with respect Customer's or an Affiliate's evaluation of the Services or otherwise with respect to the Services. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by the party against whom the modification, amendment or waiver is to be asserted. In the event of any conflict or inconsistency between the provisions of this Agreement and any Order, the same shall be resolved by giving precedence to this Agreement.