



## TERMS OF SERVICE

### 1. AGREEMENT.

The following terms of service (collectively, the “Terms”) govern the use of the LogicMonitor hosted data center monitoring services (the “Service” or “Services”) and any associated use of the LogicMonitor Technology offered by LogicMonitor, Inc. (below referred to as “LogicMonitor,” “we,” “our”, “us” or “Company”).

BY USING THE SERVICES OR SOFTWARE, OR EXECUTING THROUGH ECHOSIGN, OR BY CLICKING ON “I AGREE” BUTTON BELOW (IF ANY), YOU CONSENT TO BE LEGALLY BOUND BY ALL THESE TERMS. IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE SERVICES.

### 2. YOUR SUBSCRIPTION.

A. We offer subscription-based Services. By subscribing to the Services, you have a limited, non-exclusive, non-transferable and terminable license to access and to use the Services solely for your internal business operations during your subscription period. 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 and customers, provided that (a) prior to any access or use, each such party accepts electronically or otherwise executes an **End User License Agreement** in the form of **Exhibit A** hereto, (b) you shall remain the contracting party with us with respect to the payment of fees and all access and use; and (c) 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. 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. During your subscription period, we shall: (a) provide to you (and not to your customers or affiliates) any support included with your subscription purchase during normal business hours or as otherwise scheduled by the Company for the Services, (b) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for:

(i) For maintenance, we will use commercially reasonable efforts to provide at least forty-eight (48) hours prior notice via email based on your account settings within the Services, or by using Notification capabilities within the Services (see <http://support.logicmonitor.com/>). If the expected impact of planned operations is less than one (1) minute of downtime, we may elect not to give advance notice; or

(ii) Any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, or Internet service provider failures or delays (collectively “Extraordinary Circumstances”).

C. Extended support and Professional Services are available for an additional fee. “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. Fee, coverage and terms information are available from LogicMonitor and will be included in an order upon request.

D. Your use of the Services, and all information, data or reporting derived from said use, is expressly only licensed for the duration of the subscription or trial term 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.

### **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 30 days before the end of the relevant subscription term, automatically renew for additional periods equal to the expiring subscription term.

(i) Monthly Subscriptions. If you elect a Monthly Subscription, you agree to pay the greater of the contracted Minimum Monthly Fee (or committed pricing tier) or the usage fees for that month, if the calculated fees for usage are greater than that covered by the Minimum Monthly Fee. For Monthly Subscriptions, fees are billed on the last day of the applicable service month, using the greater of the Minimum Monthly Fee and the fee for usage.

(ii) Annual Subscriptions. For Annual Subscriptions, fees are billed as of the service commencement date for the entire term (twelve months) of the agreement for the initial Minimum commitment specified in the service agreement, net of any contractual discount.

(iii) Any increase in the actual daily usage above the derived daily Minimum commitment paid for during the term will be billed to you by LogicMonitor for each month of service, upon the end of the applicable month, via invoice, which shall be due and payable in accordance with LogicMonitor’s standard terms.

B. Usage Fees. Your usage fees shall be determined by the number of hosts monitored by the Services during the period in question, measured on a daily basis. A “host” is a logical host defined by a network (IP) address. It need not be a physical host. We reserve the right to count hosts with a large number of objects that need separate monitoring (e.g. volumes, virtual IPs, virtual machines) as more than one host, and to adjust fees with thirty (30) days advance notice. Premium features are available for an additional fee, and will be included in the invoice if ordered. The pricing during any automatic renewal term will be the same as the pricing during the immediately prior term unless We have given You written notice of a pricing increase at least 30 days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

C. Payment Methods. During the registration process, you will choose one of the payment methods accepted by us for directly charging your subscription fees. You hereby authorize us to automatically charge your payment method for the subscription fees until you cancel your subscription. Subscription fees are fully earned upon payment and the payments are nonrefundable and there are no refunds or credits for partial subscription periods. 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 or use Your billing information except to process Your credit card information for Logicmonitor.

D. When Payments are Due. All payments shall be made within thirty (30) days of billing notice or invoice (the “due date”) by credit card, electronic funds transfer, check or wire transfer payable to LogicMonitor. 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. All payments hereunder shall be made without deduction for taxes or duties of any kind or nature. 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 late fees, interest, expenses, and principal as we determine 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.

E. Free Trials. We may offer a free trial of our Services from time to time. Free trials are for a limited period of time and may be for limited features of the Services. To view specific details of or eligibility for a free trial, visit our website or communicate with a Company Sales Representative. We may require you to register and designate a payment method even for the free trial. We retain the right to begin charging your designated payment method for monthly subscription fees plus any applicable tax at the end of the free trial unless you cancel prior to the end of the free trial period. Your subscription shall be deemed to have commenced at the end of the free trial period.

**4. TERM AND TERMINATION.** This agreement is in force from the earlier of your electronic acceptance of these terms or use of the Services or Software and subject to any earlier termination permitted by these terms, will remain in force for the duration of the usage of the Services through any trial and subscription period (“Term”). Except as otherwise provided herein, early termination of a subscription or ceasing your use of the Services will not result in a refund of any prepaid fees. Either party may terminate this Agreement during the Term by written notice: (i) either party may terminate this Agreement at any time for its convenience upon thirty (30) days’ prior written notice to the other party, (ii) 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 (except in the case of failure to pay fees, which must be cured within fifteen (15) days after any late notice), (iii) 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 (iv) if a petition under the United State 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, LogicMonitor may terminate your password, account or use of the Service or LogicMonitor Technology and this Agreement immediately upon written notice in its sole discretion upon the unauthorized use or disclosure of the LogicMonitor Technology, or the breach of any part of Sections 5, 6 or 7 hereof. Professional Services are separately ordered from the Service. A breach by a party of its obligations with respect to Professional Services shall not by itself constitute a breach by that party of its obligations with respect to the Service even if the services are enumerated in the same Order Form

## 5. OUR SOFTWARE.

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. 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 “Client 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 to) copy, create a Derivative Work of, 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” for this agreement 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. You further acknowledge and agree that the LogicMonitor Technology and Client Software is being made available to you subject to both these Terms and the terms and conditions of the **End User License Agreement** attached as **Exhibit A**, and that any access you choose to provide to your personnel and to any affiliates or customers is subject to their prior acceptance of and compliance with the **Exhibit A End User License Agreement** terms.

## 6. OWNERSHIP.

A. You acknowledge and agree that the LogicMonitor Software and Service, including the specific design and structure of individual programs, components and aspects thereof, constitute the valuable trade secrets and proprietary copyrighted material of LogicMonitor, and that LogicMonitor owns all rights, title and interest in and to all intellectual property rights in the Services, the Software 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”). The license granted to you is limited by these Terms 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. You agree that if any customizations or customized implementations of the Software or LogicMonitor Technology do not qualify as Derivative Works (“Developments”), such Developments are hereby licensed to us on an unlimited, 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 Developments and products and services utilizing or incorporating the Developments, and to otherwise commercially exploit the same.

C. 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. 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 these Terms, 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”). LogicMonitor Technology shall be deemed our Confidential Information. Confidential Information does not include information, technical data or know-how which (a) is 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; or (b) prior 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, or (c) is approved for release by the disclosing party, or (d) is independently developed by the receiving party without the use of any Confidential Information of the other 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 these Terms. 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 parties 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. Notwithstanding the above, LogicMonitor may use aggregate information to measure general Service usage patterns and characteristics of its user base, and may include such aggregate information about its customers in promotional materials or reports to third parties. This aggregate information will not reference names, phone numbers, email addresses, or other personally identifiable information, and shall not be traceable to a specific party. 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 notify the other in writing of any misuse or misappropriation of Confidential Information of the other party that may come to its attention. In the event of any expiration or termination of these Terms, or upon request by the disclosing party, the receiving party shall return to the disclosing party all copies of the disclosing party’s Confidential Information in the receiving party’s possession or control, or certify as to its destruction.

## **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 these Terms and to fully perform all its obligations hereunder; and (ii) the making of these Terms does not violate any agreement existing between such party and any third party.

B. Limited Service Warranty. We warrant that we will use commercially reasonable efforts to deliver and perform the Services in a good and workmanlike manner consistent with applicable industry standards.

## **9. INDEMNIFICATION.**

A. By LogicMonitor. We shall, at our own expense, indemnify you from and against any damages finally awarded in a final adjudication on the merits, to the extent of any finding therein that the LogicMonitor Technology, when used in strict compliance with the license rights and use instructions provided by LogicMonitor infringed or misappropriated a third party’s U.S. copyright or U.S. trade secret

rights; 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; (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; or (iv) any third party hardware or software. 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, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Services except for claims covered by our indemnification obligations above; (ii) your violation of these Terms; or (iii) your violation of any third party right, including without limitation any copyright, 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 your expense.

## **10. DISCLAIMERS, LIMITATION OF DAMAGES AND LIABILITY.**

A. DISCLAIMERS AND EXCLUSIVE REMEDY. EXCEPT FOR THE LIMITED WARRANTY IN SECTION 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, 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. IN THE CASE OF A BREACH OF WARRANTY BY LOGICMONITOR, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE, AT OUR OPTION, FOR LOGICMONITOR TO REPERFORM THE SERVICES OR TO RECEIVE A PRO RATA RETURN OF FEES CORRESPONDING TO THE NONCONFORMING SERVICE.

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 ASSOCIATED WITH A BREACH OF YOUR

OBLIGATIONS UNDER SECTIONS 5 THROUGH 7, 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 THESE TERMS, 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.** IN NO EVENT WILL LOGICMONITOR'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATING TO THESE TERMS AND ALL ORDER FORMS EXCEED THE AMOUNTS RECEIVED BY US FROM YOU DURING TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY, WITH RESPECT TO THE PARTICULAR SERVICE GIVING RISE TO LIABILITY UNDER THE MOST APPLICABLE ORDERING DOCUMENT. THIS LIMITATION IS CUMULATIVE FOR ALL CLAIMS HOWSOEVER ARISING UNDER ALL AGREEMENTS AND ORDERING DOCUMENTS, AND THIS LIMITATION 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 e-mail address, to promptly provide LogicMonitor with any changes to your e-mail address, and to accept emails (or other electronic communications) from LogicMonitor at the e-mail 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 e-mail or posting on the Service. 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. Notice to us may be sent to the address set forth on our Website at <http://support.logicmonitor.com>.

**B. Agreement to Governing Law and Jurisdiction.** 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.

**C. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to these Terms.

D. 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 (1) only as Commercial Items, and (2) with only those rights as are granted to other users pursuant to Terms hereof. All unpublished rights are reserved.

E. Export. Software and technical data are subject to U.S. export control laws, including the U.S. Export Administration Act and its associated regulations, and may be subject to export or import regulations in other countries. You agree not to export the Software or LogicMonitor Technology or LogicMonitor's technical data in violation of any such laws or regulations and to comply strictly with all applicable rules and regulations.

F. Relationship of the Parties. The parties are independent contractors and these Terms do not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. There are no third-party beneficiaries to these Terms.

G. Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under these Terms 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 of a party at law or in equity.

H. Severability. If any provision of these Terms is held by a court of competent jurisdiction to be 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 these Terms shall remain in effect.

I. Survival. Sections 3 (Term), 4.B., C. and D. (Subscription Fees, Billing and Renewal) (surviving until all fees and charges are paid), 5.B. (Our Software), 6 (Ownership), 7 (Confidentiality) (surviving 5 years, or if longer for the duration of protection under the U.S. Copyright Act and the California Uniform Trade Secret Act for the LogicMonitor Technology), 9.B. (Indemnification), 10 (Disclaimers, Limitation of Damages and Liability), and 11 (General Provisions), shall survive expiration or termination of this Agreement.

J. 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 these Terms in its entirety, without your consent to our Affiliate provided the assignee accepts full responsibility for our obligations hereunder, or a successor in interest pursuant to a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

K. Publicity. Neither party will, without the other party's prior written consent, make any news release, public announcement, denial or confirmation of these Terms, its value, or its terms and conditions, or in any manner advertise or publish the fact of these Terms. You grant us the right to include your name as a customer in our promotional material. 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." Additionally, we may request that you agree to make representatives available, subject to their availability and only on an occasional basis, to serve as a non-public reference to our prospective customers to discuss your experience working with us. We may request you to agree

to work with us in developing and publishing case studies and press releases that describe your use of the Services, provided that such publicity neither expresses endorsement nor approval of us or our products or services, unless agreed to otherwise by you.

L. 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.B (Your Subscription). hereof).

M. Entire Agreement. These Terms (including the End User License Agreement terms in Exhibit A) constitute the entire agreement between the parties and supersede all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. As between the parties, these Terms shall control with respect to any conflicts between these Terms and the End User License Agreement terms in Exhibit A. No modification, amendment, or waiver of any provision of these Terms 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.

## EXHIBIT A

### LOGICMONITOR END USER LICENSE AGREEMENT

**IMPORTANT – PLEASE READ CAREFULLY:** This End User License Agreement (the “Agreement” or “Terms”) is a legally enforceable contract between you (either an individual or an entity and referred to herein as “you”) and LogicMonitor, Inc. (referred to as “LogicMonitor,” “we,” “our,” “us” or the “Company”) regarding the use of the Company’s hosted data center monitoring services (“Service” or “Services”) software programs accompanying or provided under this Agreement (the “Software”) together with the associated media, corresponding Documentation, technical configurations, and technical data (collectively with the Service, the “LogicMonitor Technology”). “Documentation” means the user’s guide and other documentation (including print and online), if any, provided to you with the Software. “Subscriber” means the contracting party who has subscribed to the Services with LogicMonitor on either a trial or fee-bearing basis.

BY USING THE SERVICE OR DOWNLOADING, INSTALLING OR OTHERWISE USING THE SOFTWARE OR ANY PART OF THE LOGICMONITOR TECHNOLOGY, YOU ARE LEGALLY BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THESE TERMS ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE SERVICES OR SOFTWARE.

Certain third party programs or code are being provided to you via inclusion with the Software. BY USING THE SERVICE OR INSTALLING, COPYING OR OTHERWISE USING THE SOFTWARE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AS WELL AS THE PERTINENT TERMS OF ANY THIRD PARTY SOFTWARE INCLUDED THEREIN. IF YOU DO NOT AGREE TO ALL SUCH TERMS, DO NOT USE THE SERVICE OR INSTALL OR USE THE SOFTWARE.

1. License. Subject to your compliance with the terms of this Agreement, we hereby grant you a limited, non-exclusive, non-transferable and non-sublicensable license to download, install and use Software (in object code form) onto your network for the sole purpose of using LogicMonitor Services. Software is not sold but licensed hereunder. PLEASE NOTE THAT YOUR USE OF LOGICMONITOR SERVICE IS ALSO SUBJECT TO THE SUBSCRIBER’S CONTINUED GOOD STANDING AND SUBSCRIBER’S COMPLIANCE WITH THE LOGICMONITOR TERMS OF SERVICE THAT ARE AVAILABLE AT <http://www.logicmonitor.com/LogicMonitorTerms.pdf>.

2. Restrictions. The Software is licensed solely for use by you. The Company and its licensors reserve all rights not expressly granted to you in this Agreement. Without limiting the generality of the foregoing, you shall not nor shall you give permission to, allow or enable any other party to: (i) make copies of the Software except as expressly set forth in this Agreement, or (ii) disassemble, decompile or translate any part of the Software, or otherwise attempt to reconstruct or discover the source code of the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation, or (iii) modify or create Derivative Works based upon the Software, or (iv) externally distribute, sublicense, resell, encumber or otherwise transfer the Software, or (v) rent, lease, lend, or use the Software, or any part thereof, for timesharing or bureau use, or (vi) give permission to, allow or enable a third party to copy, access, or use the Software (except as expressly provided in this

Agreement), or (vii) alter or remove any copyright, trademark or other proprietary notice which may appear on the Software, (viii) take any action that would cause the Software to be placed in the public domain or become subject to open source license agreement, or (ix) use the Software in any manner that violates any statute, law, rule, regulation, directive, guideline, bylaw whether presently in force or may be implemented by federal, state or local authorities. A “Derivative Work” for this agreement 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.

3. Third Party Licenses. For the avoidance of doubt, third party software included with the Software is free or appropriately-licensed software licensed under the terms of Company agreements. You understand and agree that, although provided to you by the Company with the Software, your use of such software shall be and is governed by the terms and conditions of this Agreement, which includes your acknowledgement that the Software is being provided “AS IS” WITHOUT ANY WARRANTY, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

4. Term, Use of Services and Termination.

A. This agreement is in force from the earlier of your electronic acceptance of these terms or your use of the Services or Software and subject to any earlier termination, will remain in force for the duration that the Subscriber remains a customer in good standing through the period of any trial and subscription period (“Term”).

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5. Ownership.

A. You acknowledge and agree that the LogicMonitor Software and Service, including the specific design and structure of individual programs, components and aspects thereof, are the valuable trade secrets and proprietary and copyrighted material of LogicMonitor, and that LogicMonitor owns all rights, title and interest in and to all intellectual property rights in the Services, the Software 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 or Software, including all intellectual property rights in Derivative Works therein on a worldwide basis (collectively, the “LogicMonitor Technology”). The license granted to you is limited by these Terms 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.

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7. Representations and Limited Warranty. You represent and warrant that you have the right, power and authority to enter into these Terms and to fully perform all obligations hereunder and that the making of these Terms does not violate any existing agreement to which you are a party. Our warranties are issued to and may be relied upon only by the Subscriber. We warrant to the Subscriber pursuant to the Terms of Service that we will use commercially reasonable efforts to deliver and perform the Services in a good and workmanlike manner consistent with applicable industry standards.

8. Disclaimers and Limitation of Damages and Liability.

A. Disclaimer of Warranties. WITH THE EXCEPTION OF THE EXPRESS WARRANTIES IN SECTION 7 (Representations and Warranties) ABOVE, THE SERVICES, SOFTWARE 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, 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. IN THE CASE OF A BREACH OF WARRANTY BY LOGICMONITOR, YOUR SOLE AND EXCLUSIVE REMEDY SHALL BE, AT OUR OPTION, FOR LOGICMONITOR TO REPERFORM THE

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B. No Consequential or Incidental Damages. EXCEPT AS BETWEEN LOGICMONITOR AND SUBSCRIBER – WITH RESPECT TO WHICH THE TERMS OF SERVICE AGREEMENT BETWEEN THEM SHALL CONTROL, IN NO EVENT SHALL LOGICMONITOR BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES ARISING OUT OF, PURSUANT TO OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFIT OR OTHER MONETARY LOSS, EVEN IF ADVISED IN WRITING IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

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#### 9. General Provisions.

A. Export Restrictions. You agree to comply with all export and re-export restrictions and regulations (“Export Restrictions”) imposed by the United States or any other country in which you conduct business. Without limiting the generality of the foregoing, and regardless of any disclosure made by you to the Company regarding an ultimate destination of the Software, you represent and warrant that you understand the U.S. law currently prohibits the export or re-export, directly or indirectly (including via remote access) of U.S. origin products and technology to certain proscribed countries (including Cuba, Iran, Sudan, North Korea and Syria and/or any other country that may become subject to an embargo by the United States), entities, organizations and individuals, without prior authorization from the U.S. Government. You will not commit any act or omission that will result in a breach of any such Export Restrictions. Your breach of this clause shall constitute cause for immediate termination of this Agreement.

B. 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 (1) only as Commercial Items, and (2) with only those rights as are granted to all other end users pursuant to Terms hereof. All unpublished rights are reserved

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D. Miscellaneous Provisions. **Choice of Law:** This Agreement shall be governed by the laws of the State of California, except for its conflict of laws principles, and you agree to bring any claims against Company only in the state or federal courts located in Santa Barbara, California, and you hereby

submit to the jurisdiction of such courts. **Severability:** In the event that any one or more provisions of this Agreement shall be declared invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. **Entire Agreement:** This is the entire agreement with respect to its subject matter, and will apply exclusively, notwithstanding any terms and conditions in any prior agreements. However, as between LogicMonitor and Subscribers, the Terms of Service at <http://www.logicmonitor.com/LogicMonitorTerms.pdf> shall also apply - and shall control with respect to any conflicts with the terms and conditions of this End User License Agreement. **Notices:** You agree to provide LogicMonitor with your e-mail address, to promptly provide LogicMonitor with any changes to your e-mail address, and to accept emails (or other electronic communications) from LogicMonitor at the e-mail address you or Subscriber specifies. 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 e-mail or posting on the Service. Notice to us may be sent to the address set forth on our Website at <http://support.logicmonitor.com>. **Assignability:** Neither the benefits nor obligations of this Agreement are assignable by you without the prior written consent of LogicMonitor. **Survival:** Section 2 (Restrictions), 4 (Term, Use of Services and Termination), 5 (Ownership), 6 (Confidentiality), 8 (Disclaimers and Limitation of Damages and Liability), and 9 (General Provisions), shall survive expiration or termination of this Agreement. **No Waiver:** Failure to enforce any right or obligation of the other party shall not act as a waiver thereof.