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Logit.io Platform

UK G-Cloud 15 Framework

Terms and Conditions Document

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HM Government
G-Cloud
Supplier

LOGIT.IO LIMITED
TERMS AND CONDITIONS FOR THE SUPPLY OF THE LOGIT PLATFORM

1 Definitions and Interpretation

1.1 Unless the context requires otherwise, the following words and expressions shall have the following meanings:

Additional Services: any bespoke configuration services, software development services, consultancy services and/or any other services provided by Logit.io (or another Logit.io Group Company) from time to time, the provision of which is intended by Logit.io (or the relevant Logit.io Group Company) to be subject to an Additional Services Contract;

Additional Services Contract: has the meaning set out in Clause 6.2;

Annual Subscription: a Subscription where the Customer pays the Subscription Charges in respect of each Contract Year (or part thereof) annually in advance;

Authorised Users: the employees, officers, sub-contractors and agents of the Customer who are authorised by the Customer to use the Logit Platform or, in the case of a consumer, the Customer and any other persons who the Customer may choose to permit access to the Logit Platform;

Available: the following are available for access and use by the Authorised Users:

(a) the Logit Platform; and/or

(b) the stacks comprised in the Customer's Subscription;

subject to any exclusions set out in the Contract (and **Availability** shall be construed accordingly);

Availability SLA: has the meaning given to the term in paragraph 1.2 of Part 4 of Schedule 3;

Business Day:	a day other than a Saturday, Sunday or public holiday in England when banks in the City of London are open for business;
Charges:	all and any fees and charges payable by the Customer to Logit.io under or in connection with the Contract including the Subscription Charges and the SLA Charges (but excluding, for the avoidance of doubt, any fees or charges payable under or in connection with any Additional Services);
Commencement Date:	shall have the meaning given to the term in Clause 2.2;
Conditions:	these terms and conditions as amended from time to time in accordance with Clause 20.1;
Confidential Information:	any and all information of whatever nature disclosed directly or indirectly (whether before or after the Commencement Date and whether given in writing, verbally or by any other means) by a Party to the other Party, including any information relating to its business affairs, customers, suppliers, products and services (including the Logit Platform and other software products or services), technical information and data, financial information, marketing information, analyses, documents, Data, formulae, processes, designs, know-how, source code, object code, trade secrets and Intellectual Property Rights which information is designated in writing to be confidential or proprietary, or which information would, under the circumstances, appear to a reasonable person to be confidential or proprietary;
Contract:	the contract for the supply by Logit.io to the Customer of the Logit Platform comprising of these Conditions and (if and when submitted) the Customer's Order, which shall come into existence in accordance with Clause 4.1;
Contract Year:	(c) in respect of the 1st Contract Year, the period commencing on the Commencement Date and ending on the first anniversary of the Service Start Date; and (d) in respect of any other Contract Year, a period of 12 months commencing on a given anniversary of the Service Start Date, or such shorter period that commences on an anniversary of the Service Start Date and ends on the date of termination of the Contract;

Contractor:	a person to whom Logit.io subcontracts any of its obligations under the Contract from time to time;
Customer:	the person who signs up for a User Account in accordance with Clause 2.2 and is (if and when submitted) named in the Order Form;
Customer's Comms Link:	any and all information technology communication links required by the Customer or the Authorised Users to facilitate access to the Logit Platform;
Customer's Order:	the Customer's order for the Logit Platform submitted via the Order Form;
Customer Data:	any Data belonging to and inputted by the Customer and/or its Authorised Users, or Logit.io on the Customer's behalf, into the Logit Platform;
Customer Personal Data:	any Customer Data which is Personal Data;
Data:	data of any form, nature or structure, that can be created with, uploaded or inserted into, or derived from, the Software;
Data Protection Legislation:	unless and until the GDPR is no longer directly applicable in the UK, the GDPR together with and as amended and updated by the Data Protection Act 2018 and any other regulations and secondary legislation relating to data protection in England and Wales;
Force Majeure Event:	any acts, events, omissions or accidents beyond the reasonable control of Logit.io;
GDPR:	Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation);
Holding Company and Subsidiary:	a holding company and subsidiary as each are defined in Section 1159 of the Companies Act 2006;
Hosting Provider:	such provider(s) of the Hosting Services as Logit.io may appoint from time to time being, at the Commencement Date, the hosting provider(s) named in Part 2 of Schedule 1;

Hosting Provider Terms:	the terms and conditions of the Hosting Provider(s) for the provision of Hosting Services, as may be updated from time to time, the current version(s) of which can be found at the link(s) set out in Part 3 of Schedule 1;
Hosting Services:	the hosting services to be procured by Logit.io from time to time for the hosting of the Software and the Customer Data, being as at the Commencement Date, those hosting services provided by the Hosting Provider under the Hosting Provider Terms;
Incident:	a failure of the Logit Platform to operate substantially in accordance with the Specification, which the Customer cannot resolve having performed a reasonable level of diagnosis;
Insolvency Event:	one or more of the following events: (a) any distress, execution or other process levied upon any of the assets of the Customer; (b) where the Customer suspends, or threatens to suspend, payment of its debts or is, or is deemed, unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; (c) where the Customer convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or any court proceedings once commenced, notice given or petition passed for any of the foregoing; or (d) an event similar or analogous to (a) to (c) above in England and Wales or in any other jurisdiction;
Intellectual Property Infringement:	has the meaning set out in Clause 11.2;
Intellectual Property Rights:	any and all copyrights, moral rights, related rights, patents, supplemental protection certificates, rights in software, trade marks, trade names, service marks, design rights, database rights, website rights, domain name rights, rights in undisclosed information or Confidential Information, rights in get up, goodwill or to sue for passing off, unfair completion rights, and other intellectual property rights (whether registered or not) and applications for any such rights as may exist anywhere in the world;

Law:	all applicable statutory and other laws, rules, regulations, instruments, orders and/or provisions in force from time to time (including the Data Protection Legislation) to which a Party is subject from time to time;
Logit Platform:	the platform provided by Logit.io comprising of the Software, the User Account and the Hosting Services;
Logit.io:	Logit.io Limited (Company Number: 07167696);
Logit.io Group Company:	Logit.io and/or it's holding company or subsidiaries from time to time and any subsidiary from time to time of such holding company;
New Release:	a new release, upgrade or version of the Software that Logit.io generally releases to its customers;
Normal Business Hours:	9.00 am to 5.00 pm local UK time, on any Business Day;
Order Form:	Logit.io's standard order form from time to time containing details of the Customer's order for the Logit Platform which can be accessed and submitted through the Subscription Preferences (or as otherwise determined by Logit.io);
Open Source Software Terms:	the terms and conditions of the open source software providers whose software is utilised in the Logit Platform, as may be updated from time to time, the current version(s) of which can be found at the link(s) set out in Part 4 of Schedule 1;
Party:	a party to the Contract and Parties shall be construed accordingly;
Permitted Use:	the use by Authorised Users of the Logit Platform for the purpose of the Customer's internal business operations only or, if the Customer is a consumer, for the Customer's own personal, non-commercial use;
Personal Data:	has the meaning given to it in the Data Protection Legislation;
Service Start Date:	the date on which Logit.io accepts the Customer's Order;
SLA Charge(s):	the charge(s) payable for the Availability SLA as may be set out in (and varied by the Customer amending) the Subscription Preferences;

Software:	the Logit online software applications as more particularly detailed in Schedule 1;
Specification:	the functionality and performance specifications for the Software as set out in Schedule 1;
Subscription:	a subscription for the Logit Platform which comes into effect in accordance with Clause 4;
Subscription Charges:	the charges payable for the Subscription(s) (being those payable for the relevant Subscription Plan or as otherwise agreed between the Parties) as set out in the Order Form and/or the Subscription Preferences (as appropriate) and as may be varied by the Customer amending the Subscription Preferences or by Logit.io in accordance with Clause 8.8;
Subscription Period:	the period during which a Subscription is in force (being the period commencing on the Service Start Date and ending on expiry or termination of the relevant Subscription);
Subscription Plan:	a plan for the Customer's Subscription(s) made available by Logit.io to the Customer which comprises fixed usage rights for the Software (including Data upload capacity, Data retention period, number of Authorised Users and other usage rights);
Subscription Preferences:	the subscription preferences in the Customer's account settings area of the Software;
Supplier Staff:	any employees or officers of Logit.io (or any Logit.io Group Company) that are involved in the performance and/or delivery of the Logit Platform;
Support:	the support services to be provided by Logit.io as set out in Schedule 3;
Term:	the term of the Contract, being the period starting on the Commencement Date and ending on termination of the Contract;
Trial Period:	has the meaning given to the term in Clause 3.1;
User Account:	a user account which is created by the Customer and which comes into effect on the Commencement Date in accordance with Clause 2.2; and

VAT: value added tax chargeable under the Value Added Tax Act 1994 or any other equivalent applicable sales tax in force from time to time.

1.2 The Schedules form part of and are incorporated into these Conditions. References to **Clauses** and the **Schedules** are to clauses of, and the schedules to, these Conditions.

1.3 If there is any inconsistency between these Conditions, the Schedules, the Order Form and the Hosting Provider Terms (or the terms and conditions of any other Contractor which apply to the Customer in accordance with the Contract), the following order of precedence shall apply:

1.3.1 the Hosting Provider Terms (or the terms and conditions of any other Contractor which apply to the Customer in accordance with the Contract);

1.3.2 the Order Form and/or the Subscription Preferences;

1.3.3 these Conditions; and

1.3.4 the Schedule.

1.4 A reference in these Conditions to:

1.4.1 a **person** shall include an individual, company, limited liability partnership, corporate firm, partnership, joint venture, association, trusts or unincorporated bodies and associations (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns;

1.4.2 the **singular** shall include the plural and vice versa;

1.4.3 **writing** or **written** excludes fax, but includes e-mail. In the case of Logit.io serving written notices on the Customer, **writing** or **written** shall also include notices served via the "live chat" function of the Software and any other electronic notifications served on the Customer through the Software (whether automated or otherwise);

1.4.4 **include, including** and **in particular** or anything similar are illustrative only and none of them shall limit the sense of the words preceding or following them and each of them shall be deemed to incorporate the expression **without limitation**;

1.4.5 a **statute** or **statutory provision** is reference to it as

amended, extended or re-enacted from time to time and such statute or statutory provision shall include any subordinate legislation made from time to time under that statutory provision.

2 **Basis of Contract**

- 2.1 These Conditions apply to the exclusion of any other terms that the Customer seeks to impose or incorporate or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Contract shall come into existence at such time as the Customer signs up for and creates a User Account for the Logit Platform and agrees to these Conditions (whether electronically or otherwise) (the **Commencement Date**).
- 2.3 The Customer warrants and represents that:
 - 2.3.1 it has all requisite power and authority to enter into and perform the Contract; and
 - 2.3.2 it has entered into the Contract (and shall only submit the Customer's Order and/or update its Subscription Preferences) acting by a duly authorised representative who is authorised to bind the Customer to the terms of the Contract.

3 **Trial Period**

- 3.1 The provisions of this Clause 3 shall apply from the Commencement Date and until:
 - 3.1.1 the expiry of 14 days starting on the Commencement Date (or such other period as Logit.io may in its sole discretion determine from time to time); or
 - 3.1.2 such time as the Customer submits the Customer's Order, whichever is earlier (the **Trial Period**).
- 3.2 The Customer may during the Trial Period use the Logit Platform free of charge in accordance with the terms of this Clause 3.
- 3.3 Subject to the Customer complying with the restrictions and provisions set out in these Conditions, Logit.io shall, from the Commencement Date:
 - 3.3.1 grant to the Customer a non-exclusive, non-transferable licence solely for the Authorised Users (from time to time) to access and use the Software for the Permitted Use;

- 3.3.2 at its discretion, provide or procure the provision of such Support as Logit.io may deem necessary (and the Customer acknowledges that any Support required by the Customer during the Trial Period shall have a lower priority than any support required by customers who have paid for subscriptions);
 - 3.3.3 provide or procure the provision of the Hosting Services in accordance with Clause 5; and
 - 3.3.4 not charge the Customer the Subscription Charges that would otherwise be due and payable for the use of the Logit Platform for the duration of the Trial Period (provided that, for the avoidance of doubt, any charges for Additional Services shall, to the extent applicable, remain payable during the Trial Period), during the Trial Period and in each case, in accordance with and as required by these Conditions.
- 3.4 Upon expiry of the Trial Period, the Customer shall no longer be entitled to use the Logit Platform until such time as the Customer's Order is submitted and accepted. The Contract shall not terminate as a result of the expiry of the Trial Period and shall continue in full force and effect unless or until terminated in accordance with these Conditions.
- 3.5 Logit.io may bring the Trial Period to an end at any time without the need to give written notice to the Customer.
- 3.6 Subject to Clause 3.3.4, all other provisions of these Conditions shall apply (as applicable) in full force during the Trial Period.

4 Subscriptions

- 4.1 The Customer's Order constitutes an offer by the Customer to purchase the Logit Platform on the terms of the Order Form and these Conditions (which shall continue to apply following submission of the Customer's Order). The Customer is responsible for ensuring that the terms of the Customer's Order are complete and accurate and that it has selected an appropriate Subscription Plan.
- 4.2 The Customer's Order shall be deemed to be accepted once Logit.io has accepted the submission of the same, at which point the Customer's Order and the relevant Subscription Plan shall be deemed to be incorporated into the Contract.

- 4.3 Upon approval of the Customer's Order and subject to the Customer paying the Charges in accordance with Clause 8 and complying with the restrictions and provisions set out in these Conditions, the Subscription shall be deemed to have come into force and Logit.io shall, from the Service Start Date:
- 4.3.1 grant to the Customer a non-exclusive, non-transferable licence for the Authorised Users (from time to time) to access and use the Logit Platform (including the results generated by the Software) solely for the Permitted Use;
 - 4.3.2 provide or procure the provision of the Support; and
 - 4.3.3 provide or procure the provision of the Hosting Services in accordance with Clause 5,
 - 4.3.4 during the Subscription Period and in each case, in accordance with and as required by these Conditions.
- 4.4 The usage rights, limits and restrictions for the Subscription shall be those rights, limits and restrictions as are set out in the relevant Subscription Plan (and such limits, restrictions and rights shall be deemed to be incorporated into the Contract).
- 4.5 Logit.io may, at its discretion, make different or bespoke Subscription Plans available to the Customer from time to time.
- 4.6 The Customer may, during the Term, add new Subscriptions or vary the Subscription Plan for its existing Subscription(s) (which may incur new and/or revised Subscription Charges) by accessing the Subscription Preferences and altering the settings accordingly or by otherwise using any method determined by Logit.io from time to time. If the Customer submits a variation of its existing Subscription Plan during the Subscription Period, such variation shall be deemed to be incorporated into the Contract upon acceptance of the same by Logit.io.
- 4.7 Without prejudice to the generality of clauses 14.8.3 and 14.9.3, Logit.io shall not be obliged to offer any credits or refunds in relation to unused usage rights on expired or upgraded Subscriptions and any credits or refunds it may offer shall be at the sole discretion of Logit.io.

5 Updates and New Releases

- 5.1 Logit.io may from time to time release an update to the Logit Platform which corrects faults, adds functionality or otherwise amends and/or upgrades the Software (but which does not constitute a New Release or other update of the type referred to in clause 5.2) and such updates shall be take effect automatically and shall not require positive action from the Customer.

5.2 Logit.io may from time to time make available to the Customer:

5.2.1 a New Release;

5.2.2 other updates to stacks or functionality of the Logit Platform which, in Logit.io's sole opinion, falls outside of the scope of clause 5.1.

Acceptance of any such New Release or other update may (at Logit.io's discretion) be subject to the Customer's acceptance of further terms and conditions and/or payment of additional charges.

6 **Additional Services**

6.1 The Customer may from time to time request Logit.io (or the relevant Logit.io Group Member) to provide Additional Services and Logit.io (or the relevant Logit.io Group Member) may, at its absolute discretion, accept or refuse such request.

6.2 The provision of any Additional Services shall be subject to the Customer agreeing to the proposed or estimated fees and expenses of Logit.io (or the relevant Logit.io Group Company) and the relevant Logit.io Group Company and the Customer entering into a separate contract on the standard terms of Logit.io (or the relevant Logit.io Group Company's standard terms and conditions from time to time) (an **Additional Services Contract**).

7 **Hosting**

7.1 Logit.io shall provide or procure the provision of the Hosting Services to the Customer during the Term.

7.2 The Hosting Services shall be provided to the Customer by the Hosting Provider on the Hosting Provider Terms which shall apply as between Logit.io and the Customer mutatis mutandis (including to any variation made by the Hosting Provider to the Hosting Provider Terms from time to time). The Customer warrants that it has read and agrees to the Hosting Provider Terms and shall indemnify Logit.io against all losses and expenses which Logit.io may suffer arising out of or in connection with the Customer's breach or non-compliance with the Hosting Provider Terms.

7.3 In relation to any failure of the Logit Platform which arises due to any problem relating to the Hosting Services, the Customer's remedy shall be limited to Logit.io taking reasonable steps in accordance with the Hosting Provider Terms to require the Hosting Provider to restore the Hosting Service.

8 Charges and Payment Terms

- 8.1 The Customer shall pay the Subscription Charges (and where applicable the SLA Charges) which may be paid annually in advance (in respect of Annual Subscriptions) or monthly in advance or as otherwise stated in the Order Form or Subscription Preferences (as appropriate) for other types of Subscriptions.
- 8.2 Payment of the Subscription Charges (and where applicable the SLA Charges) shall be made by direct debit or other automated payment (on the dates as specified by Logit.io or as set out in the Customer's Order or Subscription Preferences) or, if agreed in writing in advance by Logit.io, upon receipt of an invoice by the Customer from Logit.io.
- 8.3 The Customer shall pay all Charges in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). Logit.io may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Logit.io to the Customer.
- 8.4 If Logit.io has not received payment by the due date or the date, and without prejudice to any other rights and remedies of Logit.io, interest shall accrue on a daily basis on such due amounts at an annual rate equal to 4% over the then current base lending rate of the Bank of England from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 8.5 All Charges are expressed exclusive of value added tax (or other relevant sales tax), which shall be added to payments of the Charges at the appropriate rate.
- 8.6 Logit.io may, by serving written notice on the Customer, increase any Charges under the Contract to reflect any increases in the cost to Logit.io in providing the Logit Platform which are beyond Logit.io's reasonable control (including any increases in the fees charged by any third party suppliers for any services connected to the Logit Platform, any increase in the fees charged by Hosting Provider or other Contractors, foreign exchange fluctuations, increases in tax and duties and increases in other costs associated with the provision of the Logit Platform). Upon written notice being served, increase in the Charges shall be deemed to be agreed and accepted incorporated into the Contract.
- 8.7 Notwithstanding Clause 8.6, Logit.io may otherwise increase any Charges under the Contract during the Term by giving not less than one months' written notice of such increase to the Customer. If the Customer has an Annual Subscription, such increase in any Charges shall only become effective at the end of the present Annual Subscription.
- 8.8 The Customer agrees that if it exceeds the upload usage limit which forms part of its Subscription for more than 3 days in any rolling 30 day period, Logit.io may, at its discretion, change or require the Customer to change the Customer's existing Subscription to another Subscription Plan which permits those usage rights (and such new Subscription Plan may, at Logit.io's sole discretion, be based on Logit.io's standard

Subscription Plans or may be tailored with such rights and Subscription Charges as Logit.io may deem to be appropriate in the circumstances).

- 8.9 In the circumstances referred to in Clause 8.8, Logit.io shall give written notice to the Customer containing details of the over usage. Upon service of such notice, Logit.io may vary the Customer's Subscription Preferences without the requirement for the Customer to agree to the same and the Customer shall be liable for any increased Subscription Charges from the date on which the notice is given (or, at the discretion of Logit.io on such future effective date as Logit.io may determine) on a pro-rata basis for the relevant proportion of the Subscription Period.

9 Customer's obligations

9.1 The Customer shall:

- 9.1.1 co-operate with Logit.io on all matters relating to the Contract, the provision of the Logit Platform and the matters that are set out in the Schedules;
- 9.1.2 comply with any applicable terms of the Open Source Software Terms which apply to it (which shall apply as between Logit.io and the Customer mutatis mutandis), including any variation made by the provider of such open source software to the Open Source Software Terms (and the Customer warrants that it has read and agrees to the Open Source Software Terms and shall indemnify Logit.io against all losses and expenses which Logit.io may suffer arising out of or in connection with the Customer's breach or non-compliance with the Open Source Software Terms);
- 9.1.3 provide Logit.io with full access to all information as may be required by Logit.io in order to provide the Logit Platform and otherwise exercise its rights or fulfil its obligations under the Contract, including the Customer Data;
- 9.1.4 maintain the Customer's Comms Link and environment in order to ensure the security of and efficient use of the Logit Platform by the Customer and Authorised Users;
- 9.1.5 maintain, and procure that its Authorised Users maintain, the confidentiality of all passwords issued and/or used for the purpose of the Logit Platform;

- 9.1.6 prevent any unauthorised access to, or use of, the Logit Platform (and notify Logit.io promptly of any such unauthorised access or use upon becoming aware of the same); and
 - 9.1.7 ensure that the Authorised Users use the Logit Platform in accordance with the Contract.
- 9.2 The Customer shall not access, store, distribute, transmit, upload or allow to be uploaded to the Logit Platform any material (including Customer Data) which:
 - 9.2.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive or which is otherwise illegal or which may cause harm to any person or property; and/or
 - 9.2.2 it does not have full permission to upload; and/or
 - 9.2.3 (if applicable) violates the Hosting Provider Terms (or any other Contractor's terms from time to time); and/or
 - 9.2.4 contains any viruses (including any device, software, code, file or programme which may prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network or network or any other service or device) or is not supported by the Software.
- 9.3 The Customer shall not at any time:
 - 9.3.1 (except as may be allowed by any Law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under the Contract), attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Logit Platform in any form or media or by any means or to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Logit Platform; or
 - 9.3.2 access, copy or infringe all or any part of the Logit Platform in order to build a product or service which competes with the same; or

- 9.3.3 license, sell, rent, lease, transfer, assign or otherwise distribute the Logit Platform or otherwise exploit the Logit Platform other than for the Permitted Use.
- 9.4 The Customer shall indemnify and keep Logit.io fully indemnified and hold Logit.io harmless against any claims, damages, losses, liabilities, costs, and expenses (including reasonable legal fees) arising out of or relating to any breach by the Customer or its Authorised Users of this Clause 9.
- 9.5 Any obligation or restriction on the Customer under the Contract shall, to the extent it also relates to the Authorised Users, be deemed to be an obligation on the Customer to procure that the Authorised Users shall also undertake such obligation or comply with such restriction (as appropriate). The Customer shall be responsible for the Authorised User's use of the Logit Platform and shall be liable for the acts and omissions of the Authorised Users and for any breach by any Authorised User of any provision of these Conditions.
- 10 **Customer data**
 - 10.1 Both Parties shall, during the Term, comply with their respective obligations under the Data Protection Legislation.
 - 10.2 The Customer shall:
 - 10.2.1 have sole responsibility for and hereby warrants the legality, reliability, integrity, accuracy and quality of the Customer Data; and
 - 10.2.2 ensure that it has all necessary appropriate consents and notices in place to enable the lawful transfer of the Customer Personal Data to Logit.io for the duration and purpose of the Contract.
 - 10.3 Notwithstanding Logit.io's obligations under the Data Protection Legislation and under Schedule 2, the Customer shall be responsible for ensuring the security of the Customer Data during the process of uploading the Customer Data to the Software, including any necessary encryption and/or other security measures. In particular, the Customer shall ensure (and hereby warrants) that it shall not use any unsecure transfer methods for any Customer Personal Data to upload the same to the Software.
 - 10.4 The Customer acknowledges that the Logit Platform holds any Customer Data uploaded to it strictly for the relevant period of time as may be specified as part of the Subscription (or for the duration of the Trial Period, as appropriate), following which time the Customer Data shall be deleted. The Customer agrees that:
 - 10.4.1 it shall keep its own copies of all and any Customer Data which it uploads to the Logit Platform; and

- 10.4.2 neither Logit.io nor the Hosting Provider(s), create or keep back-ups of any Customer Data and Logit.io (and/or the Hosting Provider(s), as appropriate) shall not be liable to the Customer, or otherwise required to recover or attempt to recover any Customer Data, in the event that such Customer Data stored on the Logit Platform is damaged, corrupted or lost at any time.
- 10.5 The Parties record their intention that, in respect of any Customer Personal Data uploaded to the Logit Platform by the Customer, the Customer shall be the controller and Logit.io shall be the processor (as each such term is defined in the Data Protection Legislation). The data processing terms set out in Schedule 2 shall apply as if set out in full in this Clause.
- 10.6 A general description of the scope, nature and purpose of processing by Logit.io, the duration of the processing and the types of Personal Data is set out in the Appendix.
- 11 Intellectual Property Rights**
- 11.1 The Customer acknowledges and agrees that Logit.io or the relevant Logit.io Group Member and/or their licensors (including in the case of open source software comprised in the Software) own all Intellectual Property Rights in the Logit Platform. Except as expressly stated herein, the Contract does not grant the Customer any rights to, or in, any Intellectual Property Rights in respect of the Logit Platform.
- 11.2 Logit.io will indemnify and hold harmless the Customer against any damages that may be awarded or payable by the Customer to any third party in respect of any claim or action that the Permitted Use of the Software by the Customer infringes the Intellectual Property Rights of any third party (an **Intellectual Property Infringement**) provided that the Customer:
- 11.2.1 gives notice to Logit.io of any suspected Intellectual Property Infringement immediately upon becoming aware of the same;
- 11.2.2 gives Logit.io the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement; and
- 11.2.3 acts in accordance with the instructions of Logit.io and gives to Logit.io such assistance, as it shall reasonably require in respect of the conduct of the said defence.
- 11.3 Logit.io shall have no liability to the Customer in respect of an Intellectual Property Infringement if the same results from any breach by the Customer of the obligations under the Contract (howsoever arising).

- 11.4 In the event of an Intellectual Property Infringement Logit.io shall be entitled at its own option either to:
- 11.4.1 procure the right for the Customer to continue using the Software;
 - 11.4.2 make such alterations, modifications, adjustments or substitutions to the Software so that it becomes non-infringing without incurring a material diminution in performance or functionality; or
 - 11.4.3 terminate the Contract.
- 11.5 This Clause 11.5 and Clause 13.5 state the Customer's sole and exclusive rights and remedies, and Logit.io's entire obligations and liability, for any Intellectual Property Infringement.
- 12 **Confidentiality**
- 12.1 Each Party may be given access to the Confidential Information of the other Party in order to perform its obligations under the Contract. A Party's Confidential Information shall not be deemed to include information that:
- 12.1.1 is or becomes publicly known other than through any act or omission of the receiving Party;
 - 12.1.2 was in the other Party's lawful possession before the disclosure;
 - 12.1.3 is lawfully disclosed to the receiving Party by a third party without restriction on disclosure;
 - 12.1.4 is independently developed by the receiving Party, which independent development can be shown by written evidence; or
 - 12.1.5 is required to be disclosed by any Laws, by any court of competent jurisdiction or by any regulatory or administrative body.
- 12.2 Each Party shall hold the other's Confidential Information in confidence and, unless required by Law and subject to Clause 10.5, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than for the purposes envisaged or permitted by the Contract, save that in the case of Logit.io, the Customer agrees that its Confidential Information can be disclosed to Hosting Provider and/or the Contractors.

- 12.3 Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of the Contract (and each Party shall be responsible for any such breach by their employees or agents).
- 13 **Limitation of liability**
- 13.1 The following provisions set out the entire liability of Logit.io (including any liability for the acts and omissions of Logit.io's officers, employees, agents and Contractors) in respect of:
- 13.1.1 any breach of its contractual obligations arising under and/or in connection with the Contract; and
 - 13.1.2 any use made by the Customer of Logit Platform or any part of it; and
 - 13.1.3 any misrepresentation, mis-statement or tortious act or omission (including negligence but excluding any of the same made fraudulently) arising under or in connection with the Contract.
- 13.2 Any act or omission on the part of Logit.io or Logit.io's staff and Contractors falling within Clause 13.1 shall for the purposes of this Clause 13 be known as an **Event of Default**.
- 13.3 Notwithstanding anything to the contrary in the Contract, nothing in the Contract shall limit or exclude Logit.io's liability:
- 13.3.1 for death or personal injury resulting from its own negligence or that of Logit.io's staff and/or Contractors; or
 - 13.3.2 fraud or fraudulent misrepresentation; or
 - 13.3.3 to the extent that such liability action or exclusion is not permitted by Law.
- 13.4 Except as expressly and specifically provided in the Contract:
- 13.4.1 the Customer assumes sole responsibility for results obtained from the use of the Logit Platform by the Customer, and for conclusions drawn from such use. Logit.io shall have no liability for any damage caused by errors or omissions in any information, instructions, widgets or scripts provided to Logit.io by the Customer in connection with the Logit Platform, or any actions taken by

Logit.io at the Customer's direction; and

13.4.2 the Logit Platform is provided to the Customer on an "as is" and "as available" basis.

13.5 Subject to Clause 13.3, the total liability of Logit.io in respect of all Events of Default in any Contract Year shall be limited to damages of an amount equal to 125% of the amount of the Charges that have been paid to Logit.io in the immediately preceding Contract Year or, during the first Contract Year, 125% of the amount of Charges actually paid by the Customer to Logit.io in respect of the first Contract Year, provided always that Logit.io shall never be liable for any amount which exceeds the amount it is able to recover from its insurers for any Event of Default.

13.6 Subject to Clause 13.3, Logit.io shall not be liable to the Customer in respect of any Event of Default for any loss or damage which may be suffered by the Customer (or any person claiming through or under the Customer) whether the same are suffered directly or indirectly and whether the same arise in contract, tort (including negligence) or otherwise howsoever, which falls within the following categories:

13.6.1 loss of profits or turnover;

13.6.2 loss of anticipated savings;

13.6.3 loss of business opportunity;

13.6.4 loss of goodwill;

13.6.5 loss or corruption of data or information;

13.6.6 damage to reputation; or

13.6.7 any special indirect or consequential loss,

provided that this Clause 13.6 shall not prevent claims for direct financial loss that are not excluded by Clauses 13.6.1 to 13.6.7 inclusive.

13.7 Logit.io shall not be liable for any damage or losses or any additional damage or losses arising from any Event of Default which arises as a result of or in connection with:

13.7.1 any failure of the Customer to observe and perform its obligations under the Contract;

13.7.2 any performance or other issues with the Logit Platform which are caused by the Customer uploading Customer Data in excess of the permitted usage under its Subscription;

- 13.7.3 any unauthorised or incorrect access or use of the Logit Platform or use of the Logit Platform by the Customer other than in accordance with the terms of the Contract or Logit.io's instructions; or
 - 13.7.4 any modification or alteration of Logit Platform by any party other than Logit.io or Logit.io's duly authorised Contractors.
- 13.8 If a number of Events of Default give rise substantially to the same loss, then they shall be regarded as giving rise to only one claim under the Contract.
- 13.9 Logit.io agrees to maintain in force professional indemnity and public liability insurance policies during the Term with such levels of cover as Logit.io may (acting reasonable) deem to be appropriate to cover its potential liabilities under the Contract.
- 13.10 Clauses 13.5 and 13.6 shall not apply to any Customer who is a consumer.
- 14 **Term and termination**
- 14.1 Subject to these Conditions, the Contract shall commence on the Commencement Date and shall continue in full force unless or until:
 - 14.1.1 terminated by Logit.io pursuant to Clause 3.5 or Clause 14.5; or
 - 14.1.2 terminated by Logit.io giving not less than 1 months' written notice to the Customer (provided that such notice shall, in relation to an Annual Subscription, expire on or after the end of the relevant 12 month period for which the Subscription Charges have already been paid by the Customer); or
 - 14.1.3 the Customer terminates its User Account by submitting a request through the account settings (and such request is accepted by Logit.io).
- 14.2 Either Party may terminate a Subscription (but not the Contract) at any time by giving notice in writing to the other Party (or, in the case of the Customer, by terminating the relevant Subscription through the Subscription Preferences), provided that the Subscription shall continue to run for the rest of the period for which the Client has paid Subscription Charges prior to coming to an end and shall only terminate at the end of that period.
- 14.3 Notwithstanding Clause 14.2, Subscriptions shall otherwise auto-renew or expire as set out in the relevant Order Form or Subscription Preferences for that Subscription.

- 14.4 If the Customer fails to pay any Charges on their due date for payment or if Logit.io is otherwise entitled to terminate the Contract Logit.io may, without prejudice to any of its other rights and remedies, at its sole discretion, restrict or suspend the Customer's access to the Logit Platform (until such time as the breach has been remedied to the satisfaction of Logit.io) without the requirement to give notice.
- 14.5 Logit.io may terminate the the Contract at any time with immediate effect (or following such notice period as it sees fit) without the need to give written notice if the Customer:
- 14.5.1 fails to pay any amount due under the Contract on the due date for payment and remains in default for not less than 10 Business Days thereafter;
 - 14.5.2 commits a material breach of any term of the Contract which is irremediable or, if remediable, is not remedied within 10 Business Days after being notified in writing by Logit.io to do so;
 - 14.5.3 repeatedly breaches any of the terms of the Contract;
 - 14.5.4 suffers an Insolvency Event or suspends or ceases (or threatens to suspend or cease) to carry on all or a substantial part of its business;
 - 14.5.5 commits a breach of the Hosting Provider Terms (or any other Contractor's terms and conditions from time to time),
 - 14.5.6 or where Logit.io otherwise has a right to terminate the Contract in accordance with any of the provisions of these Conditions.
- 14.6 Logit.io may terminate a Subscription at any time with immediate effect (or following such notice period as it sees fit) without the need to give written notice if the Customer:
- 14.6.1 fails to pay any amount due in respect of that Subscription on the due date for payment and remains in default for not less than 10 Business Days thereafter;
 - 14.6.2 commitments a breach of, or is subject to any of the events listed in Clauses 14.5.2 to 14.5.5 (inclusive);
 - 14.6.3 or where Logit.io otherwise has a right to terminate the the Subscription in accordance with any of the provisions of these Conditions.

- 14.7 If a User Account has been inactive for a period of 36 months (or such other period as Logit.io may, acting reasonably, determine from time to time), then Logit.io may, as part of its own internal procedures and at its sole discretion, terminate the Customer's User Account and the Contract without the need to give written notice to the Customer.
- 14.8 On termination of the Contract by either Party for any reason:
- 14.8.1 all licences and rights granted by Logit.io to the Customer under the Contract shall immediately terminate;
 - 14.8.2 the Customer shall immediately pay to Logit.io any outstanding Charges (and Logit.io shall be entitled to raise and submit further invoices for any Charges which are due but have not yet been invoiced);
 - 14.8.3 no Charges shall be refundable for any reason;
 - 14.8.4 Logit.io may (at its discretion) destroy or otherwise dispose of any of the Customer Data in its possession;
 - 14.8.5 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced; and
 - 14.8.6 any Conditions which expressly or by implication survive termination of the Contract or come into force on termination shall continue in full force and effect.
- 14.9 On termination of a Subscription (but not the Contract) by either Party for any reason:
- 14.9.1 all licences and rights granted by Logit.io to the Customer in relation to that Subscription shall immediately terminate;
 - 14.9.2 the Customer shall immediately pay to Logit.io any outstanding Charges in relation to that Subscription (and Logit.io shall be entitled to raise and submit further invoices for any Charges which are due but have not yet been invoiced);
 - 14.9.3 no Charges shall be refundable for any reason;
 - 14.9.4 Logit.io may (at its discretion) destroy or otherwise dispose of any of the Customer Data in its possession (save for any Customer Data which is validly stored on the Software under a separate

Subscription in accordance with the appropriate Subscription Plan);

14.9.5 any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination shall not be affected or prejudiced; and

14.9.6 the Contract shall otherwise continue in full force and effect.

15 **Force Majeure Event**

15.1 Logit.io shall not be deemed to be in breach of the Contract (or otherwise liable to the Customer) in any manner whatsoever for any failure or delay in performing its obligations under the Contract due to a Force Majeure Event.

16 **Warranties**

16.1 Logit.io warrants to the Customer that the services provided under the Contract shall be provided with reasonable care and skill.

16.2 Except as expressly set out in the Contract, all warranties, conditions, terms and undertakings, express or implied, statutory or otherwise, are excluded from the Contract to the fullest extent permitted by law.

16.3 The Customer acknowledges and accepts that:

16.3.1 Logit.io does not warrant that the Customer's use of the Logit Platform will be uninterrupted or error-free; and

16.3.2 Logit.io is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities.

16.4 The Customer further acknowledges and agrees that any results generated by the Logit Platform are intended to be for the purpose of providing an overview of the relevant Customer Data, but Logit.io does not warrant the accuracy or completeness of such results nor does Logit.io warrant that such results are fit for any particular purpose (such as identifying any overspends or savings). The Customer agrees that it shall analyse, interpret and/or use such results at its own risk.

17 **Contractors**

17.1 Logit.io shall be entitled to delegate any of its obligations under the Contract to any Contractor and the Customer agrees that such services may be subject to the relevant Contractor's standard terms and conditions as between the Customer and Contractor

(which shall apply to the Customer mutatis mutandis and which the Customer agrees it shall comply with, provided that such terms and conditions have been notified to the Customer by Logit.io).

17.2 The Customer shall only be entitled to recover losses or damages from Logit.io for a failure to provide any outsourced services by a Contractor if and to the extent that Logit.io has been able to recover such losses or damages from the Contractor.

17.3 Logit.io shall be entitled to change any Contractor to such other Contractor as it may (in its sole discretion) determine from time to time or to assume those obligations itself). In the event that Logit.io appoints another Contractor or to provide any such Services, Logit.io shall give notice to the Customer of the same together with the relevant Contractor's terms and conditions and the Customer shall comply with such terms and conditions.

18 **Assignment**

18.1 The Customer shall not be entitled to assign, charge or otherwise transfer the Contract nor any of its rights or obligations under the Contract, sub-license the right to use the Logit Platform or receive the Logit Platform or hold the benefit of the Contract in trust for any other person without the prior written consent of Logit.io.

18.2 Logit.io shall be entitled to assign, charge or otherwise transfer the Contract and any of its rights or obligations under the Contract to any third party without the consent of the Customer.

19 **Entire agreement**

19.1 The Contract and any documents expressly referred to in it contains the entire understanding between the Parties in relation to its subject matter and supersedes all (if any) subsisting agreements, arrangements, understandings, negotiations, discussions or correspondence (written or oral, express or implied) relating to the same.

19.2 Each Party acknowledges that in entering into the Contract it has not relied on any warranty, representation or undertaking (whether made innocently or negligently) which is not contained in or specifically incorporated into the Contract. Each Party agrees and acknowledges that its only remedy in respect of those representations, statements, assurances or warranties set out in the Contract will be for breach of contract, in accordance with the terms of the Contract, provided always that nothing in these Conditions shall exclude or limit the liability of a Party to the other Party for any fraudulent misrepresentation or warranty fraudulently given and upon which the other Party can prove it has placed reliance.

20 **General terms**

- 20.1 Logit.io may modify these Conditions at any time by providing prior written notice to the Customer, save in respect of adverse changes, in respect of which Logit.io will provide at least 20 Business Days prior written notice. Subject to the foregoing, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by Logit.io.
- 20.2 Notwithstanding anything to the contrary contained in the Contract, the Parties agree and intend that nothing in the Contract shall confer any rights on any third parties whether pursuant to the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 20.3 A failure, delay or neglect by either Party to exercise any right or remedy or enforce any of the provisions of the Contract shall not be construed or deemed to be a waiver or continuing waiver of that Party's rights or remedies, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 20.4 The Parties agree that nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between them, constitutes any Party the agent of the other Party, nor authorises any Party to make or enter into any commitments for or on behalf of the other Party.
- 20.5 If any of the provisions of the Contract shall be declared invalid or unenforceable in whole or in part by any competent court or other authority whose decisions shall have the force of law binding on the Parties, that provision or part-provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provisions shall not be affected.
- 20.6 The Customer shall comply with such policies as Logit.io may reasonably require the Customer to comply with from time to time (provided that such policies shall be notified to the Customer in advance).

21 **Notices**

- 21.1 Any notice required to be given under the Contract shall be in writing and shall be:
- 21.1.1 delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other Party at its registered office address (or such other address as may have been notified by that Party for such purposes); or

- 21.1.2 sent by e-mail by Logit.io to the Customer to the relevant e-mail address for the Customer as set out in the Order Form (or such other e-mail address as may have been notified by the Customer from time to time);
 - 21.1.3 sent electronically by Logit.io to the Customer using the “live chat” function of the Software and/or any other electronic notification which may be served on the Customer via the Software (whether automated or otherwise).
 - 21.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not made between 08:30 to 17:30 GMT on any Business Day, at 9am on the first Business Day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. An email notice and the electronic notifications of the type referred to in clause 21.1.3 shall be deemed to be served at the time of transmission.
- 22 **Governing Law and Jurisdiction**
- 22.1 The Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law.
 - 22.2 The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).

Schedule 1

Details of the Logit Platform and Hosting Services

Part 1 Overview of Software and Specification

Logit.io is a centralised log/data management company, focused on log collection for customers around the world. Logit.io takes open source software and adds custom developed products to enhance the platform.

Part 2 The Hosting Provider

- (1) OVH Limited (Company Number: 05519821)
- (2) Amazon Web Services UK Limited (Company Number: 08650665)

or, in either case, any other subsidiaries or group members of such companies as may provide the Hosting Services from time to time.

Part 3 The Hosting Provider Terms

- (1) OVH Limited Terms and Conditions: <https://www.ovh.co.uk/support/terms-and-conditions/>
- (2) AWS Hosting Terms and Conditions: <https://aws.amazon.com/legal/>

Part 4 The Open Source Software Terms

<https://github.com/elastic/elasticsearch/blob/0d8aa7527e242fbda9d84867ab8bc955758eebc/e/licenses/APACHE-LICENSE-2.0.txt>

Schedule 2

Data Processing Terms

1 Interpretation

- 1.1 In this Schedule, the phrases **controller, processor, data subject, processing** and **appropriate technical and organisational measures** have the meanings given to them in the Data Protection Legislation.

2 Data Processing

- 2.1 Logit.io shall, in relation to the Customer Personal Data which is processed in connection with the Contract:
- 2.1.1 only process the Customer Personal Data for the purpose set out in the Appendix and not for any other purpose, unless Logit.io is acting on the Customer's written instructions or Logit.io is otherwise required to do so by Law, in which case Logit.io will inform the Customer of such Law before processing (unless that Law prohibits such information on important grounds of public interest);
 - 2.1.2 ensure that Logit.io has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Customer Personal Data (appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected);
 - 2.1.3 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, take all measures required relating to data security, which may include pseudonymising and encrypting the Customer Personal Data, utilising back-up facilities and regularly evaluating our technical and organisational measures;
 - 2.1.4 ensure that all personnel who have access to and/or process the Customer Personal Data are obliged to keep the same confidential;
 - 2.1.5 not transfer any of the Customer Personal Data outside of the European Economic Area without the Customer's prior written consent and compliance with the relevant requirements of the Data Protection Legislation in relation to such transfers;
 - 2.1.6 assist the Customer (at the Customer's cost) in responding to any request from a data subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation concerning security, breach notifications, impact assessments and consultations;

- 2.1.7 notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 2.1.8 at the Customer's written direction, delete or return the Customer Personal Data to the Customer (unless Logit.io is required by Law to store the Customer Personal Data); and
 - 2.1.9 maintain complete and accurate records and information to demonstrate compliance with this paragraph 2.1 and the Data Protection Legislation and make such information available to the Customer and allow for and contribute to audits, including inspections, conducted by the Customer or another auditor mandated by the Customer.
- 2.2 The Customer agrees that Logit.io may appoint suitably qualified Contracts as sub-contractors to process the Customer Personal Data without the Customer's prior written consent, provided Logit.io impose contractual terms on the sub-contractor which are no less onerous than the terms set out in this Schedule 2.

Schedule 3

Support

Part 1 **Maintenance**

- 1.1 Subject to the provisions of this Schedule, Logit.io may carry out such maintenance from time to time as it may deem necessary for the purpose of the effective maintenance of the Software.
- 1.2 If any maintenance of the Software requires an interruption of the Logit Platform, then Logit.io shall use all reasonable endeavours to ensure that no such maintenance shall, except for any emergency maintenance, performed during Normal Business Hours.
- 1.3 Any maintenance which occurs during Normal Business Hours, and which was not requested or caused by the Customer or carried out for emergency purposes, shall be considered downtime for the purpose of the Availability measurement set out in Part 4 (below).
- 1.4 The Hosting Providers may interrupt the Logit Platform in accordance with their standard maintenance policies and practices.

Part 2 **Support Services**

- 1.1 Logit.io shall use its reasonable endeavours to provide:
 - 1.1.1 a live chat function which the Customer can access via the Software; and
 - 1.1.2 e-mail support queries, which the Customer can submit by e-mailing support@logit.io or such other e-mail address as Logit.io may notify to the Customer (or make available on its website or via the Software) from time to time.
- 1.2 Logit.io shall use its reasonable endeavours to resolve any issues reported to it, provided that the Customer acknowledges that Logit.io does not give any guarantees with regards to operating hours, availability or response times for the live chat function, e-mail support or any other support which Logit.io may make generally available to the Customer.
- 1.3 Logit.io will, upon receiving any reports of issues, give consideration to the nature of the Incident to identify the priority of the same. Logit.io shall, at its discretion, prioritise such Incidents in accordance with its usual internal protocols.
- 1.4 The Customer shall co-operate with Logit.io in respect of the provision of the Support and shall make available to Logit.io a list of any data and information that Logit.io may reasonably require to assist in the provision of the Support.

- 1.5 Support does not include Logit.io dealing with or providing:
- 1.5.1 any support which the Customer requires outside of Normal Business Hours;
 - 1.5.2 Incidents caused by the neglect of the Customer's Comms Link or environment;
 - 1.5.3 Incidents caused by the improper use (i.e. use for a purpose for which it was not designed) or operation of the Logit Platform, including any use contrary to Logit.io's instructions;
 - 1.5.4 any modification or alternation of the Logit Platform not authorised by Logit.io;
 - 1.5.5 operator error;
 - 1.5.6 any use of the Logit Platform on or with any operating system that is not approved by Logit.io;
 - 1.5.7 any third party software;
 - 1.5.8 Incidents arising from the breach by the Customer of any of its obligations under this Agreement;
- each being a "**Customer Cause**".
- 1.6 If the Customer requires any services of the type referred to in paragraph 1.5 above, it shall notify Logit.io and Logit.io shall consider whether it is able to provide such services, in which case Logit.io may, at its discretion, offer to provide such services to the Customer as Additional Services.

Part 3 **Service Availability (General)**

- 1.1 Logit.io shall use its reasonable commercial endeavours to minimise any downtime of the Logit Platform, provided that (save where the Customer has the benefit of an Availability SLA as part of its Subscription) the Customer's sole and exclusive remedy for any downtime shall be for Logit.io to use all reasonable endeavours to restore the Availability of the Logit Platform as soon as reasonably practicable following a report of downtime which has been verified by Logit.io.

Part 4 **Service Availability (Service Level Agreement)**

- 1.1 This Part 4 shall only apply where:
- 1.1.1 Logit.io has agreed in writing to provide the Availability SLA to the Customer as part of its Subscription (and the Availability SLA is confirmed as forming part of the Subscription in the Subscription Preferences); and

1.1.2 the Customer has paid the applicable SLA Charge(s) for the relevant calendar month in question (or, where Logit.io has otherwise expressly agreed in writing to commit to the Availability SLA as part of a particular Subscription Plan and the Customer has paid the relevant Subscription Charges).

1.2 Subject to paragraph 1.1 of this Part 4, Logit.io agrees that it shall ensure that the Logit Platform shall be Available to the Customer for not less than the percentage of the time on a monthly basis which is specified in the Customer's Subscription (**Availability SLA**). The following table shows the maximum permitted downtime (on a monthly basis) depending on the percentage Availability SLA which forms part of the Customer's Subscription:

Availability SLA (%)	Maximum permitted downtime (per month)
99.9%	43.83 minutes
99.99%	4.38 minutes
99.999%	5.26 seconds

1.3 Logit.io will use industry standard tools to monitor and track the service Availability. Logit.io shall keep and shall send to Customer, on request, reasonable records of its Availability measurement activities.

1.4 The following downtime events shall be excluded from the Availability SLA and any measurements prepared by Logit.io under this Part 4:

- 1.4.1 planned and notified maintenance outages or scheduled downtime;
- 1.4.2 any device failure including, non-availability or reduced availability of mobile network cover;
- 1.4.3 any problem with the internet or the Customer's Comms Link (including any Wi-Fi connection where one is being used);
- 1.4.4 any instance of a cyber security or virus attack;
- 1.4.5 any unavailability of the Hosting Services due to the Hosting Service Provider;
- 1.4.6 any period of unavailability due to a Customer Cause; and/or
- 1.4.7 any Force Majeure Events, including any failure of the internet or occurrence of another major circumstance or event outside of Logit.io's control.

Service Credits

- 1.5 Subject always the Customer having paid the relevant SLA Charge (or the Subscription Charges, where the Subscription includes an Availability SLA), if the Logit Platform does not meet the Availability SLA in a given calendar month, the Customer shall be entitled to claim within 10 days of the Service Credit being deemed due, a Service Credit calculated in accordance with paragraphs 1.6 and/or 1.7 (below).
- 1.6 Where the Availability SLA is not met in a calendar month, the Service Credit shall be calculated at the rate of 5% of the total Subscription Charges payable for that month (or, where the Customer has paid an Annual Subscription, a pro-rated amount of the Subscription Charges equivalent to 5% of one twelfth of such Subscription Charges).
- 1.7 If, with reference to the table set out in paragraph 1.2 of this Part 4 (above):
 - 1.7.1 the downtime of the Logit Platform falls below the Availability SLA by up to 1% of the total Availability SLA, then the Customer shall be entitled to the Service Credit referred to in paragraph 1.6 above as its sole remedy;
 - 1.7.2 the downtime of the Logit Platform falls below the Availability SLA by an amount in excess of 1% of the total Availability SLA, then for every additional 1% of the total Availability SLA by which the downtime of the Logit Platform falls below the Availability SLA, the Customer shall be entitled to an additional Service Credit which shall be equal to 5% of the total Subscription Charges payable for the subsequent month (or, where the Customer has paid an Annual Subscription, a pro-rated amount of the Subscription Charges equivalent to 5% of one twelfth of such Subscription Charges),

provided that any Service Credits awarded in any month shall be capped at 100% of the monthly Subscription Charges (or the relevant pro-rated monthly equivalent charge, where the Customer has paid an Annual Subscription).

Worked examples of the Service Credits are set out in the section entitled "Service Credit Examples" below.

- 1.8 The procedure for claiming the Service Credits shall be as follows:
 - 1.8.1 the Customer shall send an e-mail request to Logit.io by using the support@logit.io e-mail address (or such other e-mail address as Logit.io may notify to the Customer from time to time for this purpose);
 - 1.8.2 the e-mail shall set out:
 - (a) the Customer's Logit Platform account identification;
 - (b) the stack ID(s) effected; and
 - (c) the dates and times of unavailability;

- 1.8.3 if Logit.io (acting reasonably) finds that the Customer is entitled to a Service Credit(s), then the Customer's account will be credit with the Service Credit(s) within 10 Business Days from the date on which Logit.io makes such finding.
- 1.9 Service Credits may only be used against future Subscription Charges and not for any other reason. Logit.io shall not in any circumstances be obliged to pay any money to, or make any refund of Charges which have been previously paid by, the Customer.
- 1.10 The Parties acknowledge that the Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty.
- 1.11 The provision of a Service Credit shall be the sole and exclusive remedy for breach of the Availability SLA.
- 1.12 Service Credits shall be payable on a "per Subscription" basis, so that Service Credits may only be offset against Subscription Charges for a Subscription in respect of which the SLA Charge has been paid (or where the particular Subscription includes an Availability SLA).

Worked Examples

- (1) The Customer has the benefit of an Availability SLA based on 99.9% uptime.

Availability: The Availability in the month is 43.83 minutes. The Availability has therefore fallen below the 99.9% Availability SLA (43.84 minutes) by no more than 1% of the total Availability SLA.

Service Credit Entitlement: The Customer is entitled to a 5% Service Credit at the rate of 5% of the total Subscription Charges payable for that month.

- (2) The Customer has the benefit of an Availability SLA based on 99.9% uptime.

Availability: The Availability for the month is 21.92 hours. The actual Availability for the month is calculated at 97%. Accordingly, the Availability has fallen below the 99.9% Availability SLA (43.84 minutes) by 2.9% of the total Availability SLA.

Service Credit Entitlement: The Customer is entitled to:

- The standard 5% Service Credit at rate of 5% of the total Subscription Charges payable for that month (on the basis that the downtime fell below the Availability SLA up to 1%).
- A further 5% Service Credit at the rate of 5% (on the basis that the downtime fell below the Availability SLA for an additional 1% over and above the initial 1% referred to above).
- The Customer shall not be entitled to any service credit for the additional 0.9%, as the additional Service Credit right at paragraph 1.7.2 only applies for each additional full 1% by which the downtime falls below the Availability SLA.

Appendix

Details of processing undertaking by us

Subject matter and duration of the processing	The Customer Personal Data which is provided in connection with the provision by Logit.io to the Customer of the Software, support for the Software (the Support) and the performance of our other obligations under the Contract. The Software is a cloud hosted platform and Logit.io may have access to the Customer Personal Data when and if Logit.io provides the Support. Logit.io will only process the Customer Personal Data for as long as is required to comply with the Contract and/or to provide the Logit Platform or where Logit.io is required to store the Customer Personal Data to comply with Laws, to engage in marketing activities with the Customer after our Contract comes to an end or for our business record keeping purposes in accordance with our data retention protocols.
Nature and purpose of the processing	Processing of the Customer Personal Data in order to perform the Contract and/or provide the Software and Support (or where Logit.io is required to store the Customer Personal Data to comply with Laws, to engage in marketing activities with the Customer after our Contract comes to an end or for our business record keeping purposes in accordance with our data retention protocols).
Type of Personal Data	The Software is a logging and tracking platform and the Customer Personal Data may therefore include the personal identification data of those persons whose details are uploaded and/or stored in the Software. These may include names, addresses, dates of birth, places of birth, contact details and other personal identifiers as may be necessary or desirable for the Customer's effective use of the Software.
Categories of data subjects	Individuals whose details are uploaded to the Logit Platform for the necessary or desirable use of the Logit Platform by the Customer.