

# TERMS OF SERVICE TO THE LOGICALLY WHOLESALE AGREEMENT

REVISED June 2023

These Wholesale Terms of Service ("Terms of Service") provide additional terms to and are incorporated into the Logically Wholesale Agreement (the "Agreement") between Logically and Wholesaler and should be read and understood in conjunction with that Agreement. Terms not defined in these Terms of Service shall have the meaning as ascribed to them in the Agreement, any addenda or exhibits to the Agreement, or any other Related Documents.

## **DEFINITIONS.**

These terms are used with special meanings throughout the Agreement and Related Documents. Any capitalized term not defined in the Agreement shall have the meaning ascribed to it here in this Section and throughout these Terms of Service.

1. **"Branding"** means the optional "relabeling" of the Services which Wholesaler may opt for, with Wholesaler's trademarks, subject to the availability of such branding options, according to the terms set forth herein.
2. **"Deal"** means an order for Services that Logically accepts.
3. **"Location"** is the unique physical service address to which a Customer receives the Services.
4. **"Logos"** mean any one or any combination of the registered or rights-claimed trademarks, tradenames, and/or mark (s) of either Party.
5. **"Margin"** is the compensation Wholesaler adds to its Customer Agreements from the sale of Services to Customers. Margin is the difference between the amount charged to the Customer and the Service Pricing Schedule. Wholesaler is free to set amount of Margin charged to each Customer.
6. **"Services"** means the equipment, software, network related, and other services that the Wholesaler purchases from Logically at prices stated in the Service Pricing Schedule and is authorized to offer for sale to Customers by the terms set forth herein.

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**6.1** Services prices listed in the Service Pricing Schedule are subject to change from time to time.

**6.2** Logically may modify, amend, supplement, delete, or cancel any of the Services, including the prices and terms of such offerings, at any time, at its sole and absolute discretion. Logically agrees that any price increase for the Services shall be effective on a go-forward basis only and shall not apply to currently invoiced Services.

**6.3** Notwithstanding the foregoing, Logically shall have the right to modify or change the prices for Services to recover any amounts it is required by governmental or quasi-governmental authorities to collect from or pay to others in support of new laws or other similar quasi-governmental orders that are binding on Logically ("Governmental Charges"). Such Governmental Charges will be pass-through charges to Wholesaler and not marked up by Logically.

**6.4** In the event Logically provides additional requested products and services not found in the Service Pricing Schedule, such services shall be subject to the Agreement and Related Documents and considered "Services" to the extent applicable.

**7.** "**Customer**" means a person or entity who is a party to a Customer Agreement with Wholesaler.

**8.** "**Customer Agreement**" is the legal contract for the Services between Wholesaler and a Customer that is obtained through the direct efforts of Wholesaler.

**9.** "**Customer Disclosures**" are all of the disclosures regarding the Services which Wholesaler is required to make to Customers, which Logically shall establish in writing from time to time, including without limitation, all disclosures, disclaimers, warnings, and advisories relating Logically's Master Services Agreement page located at <https://logically.com/agreements/master-services-agreement/> or a version that has been pre-approved in writing by Logically. Logically may, upon thirty (30) days prior written notice to Wholesaler, modify, amend, supplement, or delete Customer Disclosures in its sole and absolute discretion.

**10.** "**Taxes and Fees**" include all federal, state, local and jurisdictional taxes, fees, surcharges, and other regulatory, compliance and/or cost recovery fees, mandated or non-mandated, applicable to the Services, and all other products or services provided by Logically. Taxes and Fees are subject to change without notice.

## **BRANDING.**

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**1. Private Label of Services.** Wholesaler, at its option, may choose to brand the Services with their trademarks, subject to the availability of such branding options on and in the Services. Wholesaler shall have the right to private label the Services with its branding and trade dress so long as no action is taken that would weaken, confuse, disparage or void Logically's Logos. Logically reserves the right to reject the content of any private label at its reasonable discretion. Some system prompts cannot currently be privately labeled and will refer to Logically. All private-labeled Services shall bear a non-conspicuous statement declaring Wholesaler's private label product/service offering as "Powered by Logically." Any cost associated with private labeling shall be mutually agreed upon between the Parties.

**2. Marketing Materials.** Logically may supply Wholesaler with original electronic copies of marketing materials and textual training materials in a form such that Wholesaler may conveniently private label references to the Services. No other changes shall be made to such marketing materials without Logically's advance written consent. All rebranded materials shall bear a non-conspicuous statement declaring Wholesaler's relabeled products/services as "Powered by Logically."

### **TRADEMARKS AND PROPRIETARY NOTICES; LOGOS.**

**1.** During the Term of the Agreement, Wholesaler shall be authorized to distribute material containing the trademarks, trade names, logos, and designations ("Logos") used by Logically, provided, however, that all such materials (1) are either provided by Logically; (2) approved in writing by Logically; and (3) must be used by Wholesaler solely in connection with the promotion of the Services. All Logos or other intellectual property provided by Logically shall remain the property of Logically exclusively. Wholesaler shall not remove or destroy any copyright notices, trademarks, or other proprietary markings on the software, documentation, or other materials related to the Services.

**2.** Wholesaler shall not independently create or distribute any promotional or advertising material containing Logically's Logos without Logically's prior written consent, which may be withheld or conditioned. Wholesaler shall not use any Logically copyrighted materials or Logos on its website without Logically's prior written consent, which may be withheld or conditioned. Finally, the Wholesaler will not engage in any Internet-based mass marketing for the Services including, but not limited to, spamming or any other form of mass marketing or advertising using the Internet; provided, however, that Wholesaler shall be permitted to engage in targeted email campaigns and web page advertisements approved in advance by Logically as part of its marketing efforts provided that it otherwise complies with this Section.

**CUSTOMER DISCLOSURES.**

1. Wholesaler is required to provide such disclosures to Customers that Logically would provide to Customers if there were a direct relationship between Logically and Customer. Logically keeps its required disclosures current in *Logically's Master Services Agreement* found at <https://logically.com/agreements/master-services-agreement/>.

**TAXES, FEES, AND OTHER REGULATORY CHARGES.**

1. **Tax Compliance.** Wholesaler is properly registered with each taxing authority for which it is required to be registered. Wholesaler agrees to provide Logically with current and valid copies of its Tax Registrations and Certifications annually. Wholesaler has and will continue to timely file all returns and reports and timely pay all tax and charges required by each jurisdiction in which it is registered. Wholesaler will properly register and file in each additional jurisdiction it operates in during the Term. Upon request of Logically, Wholesaler shall make available to Logically for inspection such registrations, certifications, and/or returns as Logically may request, but no more frequently than one time per the calendar year per tax type and jurisdiction.

2. **Regulatory Compliance.** Wholesaler is properly registered with all regulatory bodies with which it is required to be registered as a provider of Services and has and will continue to timely file all financial and non-financial reports required by any such regulatory body during the Term. Wholesaler will properly register and file in each additional jurisdiction it enters during the Term. Upon request of Logically, Wholesaler shall make available to Logically for inspection such registrations and/or reports as Logically may request, but no more frequently than one time per the calendar year per filing and regulatory body.

3. **Certification.** Within ten (10) days of a written request from Logically, Wholesaler shall provide Logically with a current affidavit on a form reasonably acceptable to Logically, certifying to a list of its Customers that have signed Customer Agreements. The affidavit shall also provide sufficient details regarding the Customer as may reasonably be requested by Logically, including but not limited to the following information:

Sys	A/R Number	Customer Name	City	St	Zip	Phone No.	Account Status	Activation Date	Contract Term
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**MARGIN; INVOICING AND PAYMENT.**

1. **Margin.** Wholesaler determines the compensation that Wholesaler adds to its Customer Agreements from the sale of Services to Customers. Margin is the difference between the amount charged

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to the Customer and the Service Pricing Schedule. Wholesaler is free to set amount of Margin charged to each Customer.

**2. Invoices.** Logically shall invoice Wholesaler, in electronic format, via such delivery means in the normal course of Logically business to such address as is specified by Wholesaler in writing from time to time. Logically will provide an aggregate invoice for all amounts invoiced, together with separate detail for each Customer. Logically will determine the format of the invoice and each invoice and include such other information as may be determined by Logically from time to time.

**2.1 Standard Recurring Services.** Recurring Service charges are invoiced monthly on or near the first of the month for services provided during the prior month. Any partial month provided after the initial installation will be prorated at a rate of 1/30<sup>th</sup> of the monthly fee per day from date of installation until the end of the first calendar month.

**2.2 Taxes and Fees.** All rates and charges outlined in the Agreement are exclusive of taxes, fees, and other imposed charges that may apply and/or be required to be collected and remitted per applicable law or regulation. Logically may include all required taxes, fees, and charges on each invoice, except those for which Wholesaler has provided a current exemption certificate to Logically. Wholesaler shall be solely responsible for collecting and remittance of all applicable taxes, fees, and charges imposed in any jurisdiction on or incident to the provision, sale, resale, or use of the Product and Service Offerings by Wholesaler. The taxes, fees, and charges include but are not limited to value-added, consumption, sales, use, gross receipts, excise, access, bypass, franchise or other taxes, fees, duties, charges, or surcharges of any nature whatsoever, now imposed or hereafter imposed. Wholesaler agrees to provide Logically with valid exemption certificates and/or resale certificates (and all renewals) for all jurisdictions in which it is subject to tax related to the resale of the Services. Wholesaler further acknowledges agrees that it will timely comply in all material respects with all such laws in all jurisdictions that apply. Wholesaler agrees to provide Logically with written documentation required by Logically or any authority that may impose or other taxes and/or charges related to the sale or resale of the Services. Wholesaler agrees that if Logically does not receive this documentation in a timely manner or the documentation expires without being replaced with current documentation, that taxes and/or fees payable to tax authorities may be applied directly by Logically and/or its upstream providers as required by law or the services may be suspended or discontinued, in Logically's sole discretion.

**3. Payment.** Logically shall receive amounts payable and due hereunder within thirty (30) days of Wholesaler's receipt of Logically's invoice. Any undisputed invoice unpaid after thirty (30) days of receipt will be charged a 1.5% (18% annually) monthly late fee on the unpaid amount beginning on the first day of delinquency until paid.

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**3.1** All payments hereunder shall be in US dollars and made by check or ACH transfer. Payments shall be made to the address or account specified on the invoice or such other address or account as is specified by Logically in writing from time to time, provided that Logically shall give Wholesaler at least ten (10) days prior notice of any account, address or other change in payment instructions. Wholesaler will not be liable for any late or misdirected payment caused by Logically's failure to provide timely notice of any such change.

**3.2** If Wholesaler fails to make payments when due of undisputed amounts and Logically incurs any costs to collect overdue sums from Wholesaler, Wholesaler agrees that all such reasonable and documented costs shall immediately become due and payable to Logically. Logically retains the right to withhold Services from Wholesaler in any case where amounts are past due and owing under the Agreement.

**3.3** If Wholesaler objects in good faith to any portion of an invoice, Wholesaler shall notify Logically in writing within twenty-one (21) days of the receipt of Logically's invoice. Wholesaler shall identify in writing the specific cause of the amount in dispute and shall pay the portion of the invoice not in dispute by other payment terms herein stated. Failure by Wholesaler to notify Logically within this period will constitute acceptance and approval of the full invoice by Wholesaler, and Wholesaler agrees to pay the full invoice amount by these payment terms. Upon resolving the amount in dispute, Wholesaler will pay Logically any amount due within three (3) business days.

### **LICENSING AND TITLE TO SOFTWARE AND SERVICE.**

Logically grants a license to use all internet-based software ("Software") and associated documentation required for execution of the Services as described in the Service Pricing Schedule or as otherwise provided by Logically. Wholesaler shall not disclose any information contained in the Service Pricing Schedule or sell or distribute all or any part of the Software or associated documentation to any other party without written consent from Logically, whether or not provided to Wholesaler through the use of Logically's public or private website. Logically does not permit the resale or reuse of Logically Services to another Customer without Logically approval and may be subject to additional fees. Software licenses associated with Logically Services and/or components are not transferable without Logically's written authorization. Wholesaler shall not knowingly purchase or reuse previously deployed Logically Services. Logically RESERVES the right to refuse to provide service to any components it determines are being reused in violation of this policy. This provision is material to Logically. Title to all Services, facilities, equipment and Software furnished by Logically shall remain vested exclusively in Logically regardless of whether such Services, facilities, equipment and Software are paid for by Wholesaler, unless Logically and Wholesaler specifically agree in writing as to alternative ownership rights in any specific Services,

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equipment, facilities, or Software which are to be paid for by Wholesaler.

## **WHOLESALE'S RESELLERS.**

**1. Wholesaler's Obligations.** At Wholesaler's option, Wholesaler may authorize entities to resell the Services on behalf of Wholesaler ("Resellers"). According to the terms agreed to between Wholesaler and Resellers, such authorization shall be by agreement between Wholesaler and Resellers.

**1.1** Wholesaler shall (1) (a) comply with; and (b) cause all of its entities authorized to resell the Services on behalf of Wholesaler ("Resellers") to comply with all of Logically's written policies and procedures, terms, and conditions of service, and other directives relating to the Services (including, to the extent applicable, these Terms of Service, all as in effect from time to time during the Term of the Agreement; and (2) (a) offer; and (b) cause its Resellers to offer, the Services on substantially the same terms (other than pricing terms) as those contained in the then-current version of the Master Services Agreement found at <https://logically.com/agreements/master-services-agreement/>. Concerning Services ordering and provisioning processes, Wholesaler shall comply and shall cause its Resellers to comply with the commercially reasonable written protocols established by Logically from time to time hereunder.

**1.2 Standards of Conduct.** Wholesaler shall (1) (a) conduct and (b) cause its Resellers to conduct all business in an honest and forthright manner intended to reflect favorably at all times on the Services and Logically's brand, goodwill, and reputation; (2) refrain, and cause its Resellers to refrain, from all deceptive, misleading or unethical practices concerning Customers and Logically; (3) describe, and cause its Resellers to describe, the Services accurately in all material respects; and (4) ensure that all representations made to Customers by Wholesaler and/or its Resellers are true, complete and correct and entirely consistent with the information provided in Logically's written technical or sales materials.

**2. Logically's Obligations.** Logically shall use commercially reasonable efforts as defined in the Agreement (1) to process orders for the Services obtained by or through Reseller; (2) to comply with all federal, state, or local laws, rules, and regulations applicable to its performance under the Agreement; and (3) to perform its obligations under the Agreement in a professional manner as it relates to interactions with Resellers. Logically further represents and warrants that Logically shall not solicit and/or attempt to pursue contractual agreements with Resellers without the prior written permission of Wholesaler.

## **GOVERNMENT CONTRACTS.**

Logically may have products and services listed with various state and federal contract solicitations. All government contracts will be negotiated individually and may have terms, conditions, discounts, and

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pricing that vary from Logically's standard pricing. All Margin resulting from a government contract will be based on the unique terms and conditions of such government contracts and will be independently negotiated between Wholesaler and Logically at the appropriate time.

**INSURANCE REQUIREMENTS.**

1. Logically agrees to maintain in force during the Term insurance coverage in the categories and policy limits set forth herein and provide Wholesaler certificate(s) evidencing all such coverages:

<b><u>Insurance Category</u></b>	<b><u>Policy Minimums</u></b>
General Liability- Including Contractual Liability and Completed Operations	\$2,000,000 Each Occurrence \$5,000,000 Aggregate (Can include Umbrella Liability)
Automobile Liability- Including Hired and Non-owned Vehicles	\$2,000,000 Combined Single Limit for Bodily Injury and Property Damage (Can include Umbrella Liability)
Workers' Compensation	As required by each state in which Logically operates.
Employers Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee- Disease \$1,000,000 Policy Limit- Disease
Primary Commercial Blanket Bond	\$100,000 Each Employee
Umbrella Liability	\$10,000,000 Each Occurrence \$10,000,000 Aggregate
Professional Liability/ Errors & Omissions Coverage (Including coverage for Copyright, Trademark, Privacy, and Associated Intellectual Property Risk)	\$2,000,000 Each Occurrence
Privacy & Network Liability (Including Data Breach Fund and Regulatory	\$10,000,000 Per Claim \$10,000,000 Annual Aggregate

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Automobile Liability- Including Hired and Non-owned Vehicles	\$2,000,000 Combined Single Limit for Bodily Injury and Property Damage (Can include Umbrella Liability)
Workers' Compensation	As required by each state in which Wholesaler offers Services.
Employers Liability	\$1,000,000 Each Accident \$1,000,000 Each Employee- Disease \$1,000,000 Policy Limit- Disease
Primary Commercial Blanket Bond	\$100,000 Each Employee
Umbrella Liability	\$10,000,000 Each Occurrence \$10,000,000 Aggregate

**4.** Furthermore, Wholesaler agrees as follows:

**4.1** All insurance policies required to be maintained under Section 3 shall be procured from insurance companies rated at least A-VII or better by the then-current edition of Best's Insurance Reports published by A.M. Best Co. or such other publication of Logically's choosing if this publication becomes no longer available.

**4.2** Such above insurance shall not be canceled, the coverage hereunder reduced, or the policies materially changed.

**4.3** Within seven (7) days of the Effective Date, Wholesaler shall provide Logically with Certificates of Insurance (Accord Forms) evidencing the insurance required to be maintained under Section 3. The Certificates of Insurance shall evidence thirty (30) days' written notice of cancellation or non-renewal in coverage.

**4.4** All insurance coverage required to be maintained under Section 3 shall be on an occurrence basis. The only exception is if the claims-made coverage provides a three (3)-year period of "tail coverage" on any expiring/canceled claims-made insurance policy. In no event will Logically be required to accept self-insurance.

**4.5** All insurance required to be maintained under this Section shall be primary and noncontributory to any insurance maintained by Logically.

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## **INDEMNIFICATION.**

**1. Logically Indemnification.** Wholesaler shall indemnify, defend and hold Logically and its employees, members, officers, directors, representatives, and agents (collectively, "Logically Indemnitees") harmless from and against any and all assessments, claims, losses, damages, judgments, fines, or liabilities, including reasonable legal fees or other expenses (collectively, "Losses") arising out of any third-party claim, action, suit or judgment (each, a "Claim") asserted against any Logically Indemnatee, including:

- a.** Any Claim for damages which may arise out of or be caused by any act or omission of Wholesaler or any of its employees, officers, directors, representatives, and agents including, but not limited to, those Claims made by agents and employees of either Party hereto (including payment under any workers' compensation law or any plan for employee disability and death benefits);
- b.** Any Claim by any Customer, or third-party arising out of the use or access to the Services;
- c.** Any Claim by any Customer or third-party alleging misrepresentation of the Services by Wholesaler;
- d.** Any Claim by any Customer, or third-party arising out of a breach of the Agreement or a violation of law or order, by Wholesaler or any of its employees, officers, directors, representatives, and agents;
- e.** Any Claim by any Customer or third-party arising out of Wholesaler's failure to perform the obligations under the Agreement; or
- f.** Any Claim by any taxing authority, a government body, or quasi-government body that any required tax, fee, charge, duty, surcharge, or similar cost of any nature whatsoever required to be collected and/or remitted by Wholesaler was not collected and/or remitted, including all principal, interest, and penalty.

**2. Wholesaler Indemnification.** Logically shall indemnify, defend and hold Wholesaler and its employees, members, officers, directors, representatives, and agents (collectively, "Wholesaler Indemnitees") harmless from and against all Losses arising out of any Claim asserted against any Wholesaler Indemnatee arising out of any Claim for damages to tangible property, intangible property, or bodily injury to or death of any person, including, but not limited to, Customers and employees of Wholesaler (including payment under any workers' compensation law or any plan for employee disability and death benefits) which may arise out of or be caused by the gross negligence or intentional act or omission of Logically or any of its employees, members, officers, directors.

**3.** If it is judicially determined that Logically has infringed any third party's copyright or patent rights arising under the laws of the United States, Logically will, at its expense, either (1) procure for Wholesaler the right to continue the use of the infringing services, products, equipment or any component thereof;

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or (2) replace or modify such infringing services, products, equipment or any component thereof, with non-infringing services, products, equipment or component that are reasonably satisfactory to Wholesaler. Logically shall have no obligations under this Section concerning a Claim to the extent arising out of:

- a.** Any materials provided by Wholesaler to Logically;
- b.** Any modifications or changes made to the Services by any party other than Logically; or
- c.** Use of the Services in combination with any other service(s), product(s), or software not provided by Logically.

**4.** Each Party is solely responsible for the collection and remittance of all applicable Taxes and Fees in connection with the consumption, sale, or resale of the Services by that Party ("Obligor") and shall defend, indemnify, and hold harmless the other Party for such Taxes and Fees. To the fullest extent permitted by law, as of the date that an obligation to indemnify for Taxes and Fees arises, the Obligor shall defend, indemnify, hold harmless, pay and reimburse the other Party ("Obligee") against any Losses relating to any obligation or duty on the part of the Obligor to collect and/or remit Taxes and Fees in connection with the consumption, sale or resale of the Services by the Obligee. The foregoing Taxes and Fees indemnification obligation shall include expenses incurred in investigating or defending against such Losses and any amounts expended in settlement of any Losses to which the Obligee may become subject as a result of any obligation or duty on the part of the Obligor to collect and/or remit Taxes and Fees in connection with the consumption, sale or resale of the Services by the Obligor.

**5.** Each Party is also solely responsible for collection and remittance of any Taxes and Fees imposed on that Party that is based upon that Party's revenue, income, net income, net assets, net worth or capital or any Tax imposed in lieu thereof, and for the remittance of all contributions or taxes for unemployment insurance, social security payments or other assessments for those persons employed by that Party.

**6.** If any Claim arises to which the provisions of this Section may be applicable, the Party that claims entitlement to indemnification (the "Indemnitee") shall, immediately upon learning of such Claim, notify the other Party (the "Indemnitor"). The Indemnitor may settle or compromise such Claim (provided that such settlement or compromise does not require the Indemnitee to admit liability, pay money or suffer an impairment of rights) or retain counsel and control and prosecute the defense. In no event shall the Indemnitee have the right to pay, settle or otherwise compromise such Claim without the prior written consent of the Indemnitor unless the Indemnitor has received notice of the Claim and has failed to timely provide a defense through competent counsel experienced in the matters concerning the Claim.

**7.** If any Claim arises to which the provisions of this Section may be applicable, then each Party agrees that it will provide the other all reasonable aid and cooperation in the conduct of the investigation, defense, and/or settlement of such Claim as regards to potential liability to any third party. In this regard,

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the Indemnitee shall make available to the Indemnitor or its representatives all persons, records, and other materials required by them and in the possession or under the control of the Indemnitee, for the use of the Indemnitor and its representatives in defending any such Claim, and shall in other respects give reasonable cooperation in such defense. All such materials provided will remain the property of the Indemnitee and will be subject to the protections of the *Mutual Nondisclosure and Confidentiality Agreement* between the Parties.

8. The indemnification provisions in this Section shall survive the expiration, cancellation, breach, or termination of the Agreement.

### **DISCLAIMER OF WARRANTIES.**

LOGICALLY MAKES NO WARRANTIES NOR PROVIDES ANY REPRESENTATIONS AS TO THE SERVICES. THE SERVICES ARE PROVIDED WITHOUT ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EVEN IF SUCH PURPOSE OR USE WAS KNOWN OR WAS MADE KNOWN. LOGICALLY SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INTERRUPTIONS AFFECTING THE SERVICES THAT ARE ATTRIBUTABLE TO SOFTWARE OR EQUIPMENT FAILURES OR TO WHOLESALER'S BREACH OF THE AGREEMENT.

### **LIMITATION OF LIABILITY.**

1. **No Consequential or Indirect Damages.** EXCEPT AS PROVIDED BELOW IN THIS SECTION, IN NO EVENT SHALL EITHER PARTY OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, MEMBERS, OR OWNERS BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES OR ANY DAMAGES RESULTING FROM LOSS OF (1) USE, (2) DATA, (3) REVENUE OR (4) PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2. **Maximum Liability.** IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY WHOLESALER FOR THE SERVICES UNDER THE AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF A PARTY'S REMEDIES UNDER THE AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

3. **Tax Liability.** NEITHER PARTY SHALL BE RESPONSIBLE TO ANY TAXING AUTHORITY FOR ANY OF THE OTHER PARTY'S TAX LIABILITY UNDER ANY CIRCUMSTANCES. NEITHER PARTY SHALL BE LIABLE FOR ANY PENALTIES AND/OR INTEREST INCURRED BY THE OTHER PARTY AS A RESULT OF THE PARTY'S FAILURE TO TIMELY FILE ANY TAX RETURN AND/OR REMIT ANY TAX DUE.

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- 4. Exceptions.** THE LIMITATIONS AND EXCLUSIONS OUTLINED IN THIS SECTION SHALL NOT APPLY TO:
- a.** A breach of the *Mutual Non-Disclosure and Confidentiality Agreement*;
  - b.** Amounts owed to Logically by Wholesaler for Services provided under the Agreement;
  - c.** Logically's or Wholesaler's indemnification obligations;
  - d.** The grossly negligent acts or omissions or willful misconduct of either Party in performing its obligations under the Agreement; or
  - e.** A Party's obligation to pay attorneys' fees and court costs.

### **ASSIGNMENT.**

**1.** Neither Party shall assign, delegate or transfer the Agreement or any of its rights or duties hereunder, in whole or in part, without the other Party's prior written consent, such consent not to be unreasonably withheld, delayed, or conditioned. Provided, however, either Party shall be entitled to assign its rights and obligations hereunder to any parent company, subsidiary or affiliate or in connection with a merger or other business combination or connection with the voluntary sale or transfer of all or substantially all of its assets or equity ownership. Any permitted assignment shall not relieve the assigning Party of its obligations under the *Mutual Non-Disclosure and Confidentiality Agreement*. Any attempted assignment in violation of this provision shall be null and void. The Agreement is binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

**2.** If a Party is required to obtain consent to a proposed assignment, that Party shall provide a minimum of twenty-one (21) days written notice to the other Party. Such notice shall contain, at a minimum, the facts and circumstances surrounding the proposed assignment, the anticipated effective date of the proposed assignment, reasonable information concerning the intended assignee, and a reference to this provision. The non-assigning Party shall have the right to request additional information about the assignee before providing or withholding consent.

### **GOVERNING LAW.**

**1.** The Agreement shall be governed by the internal laws of the State of Ohio (without regard to conflict of laws or similar concepts). Each Party hereby irrevocably:

- a.** Submits to the exclusive jurisdiction of the federal courts of the United States of America located in the Southern District of Ohio, Eastern Division, or the courts of the State of Ohio, located in Franklin County, Ohio, in any action or proceeding arising out of, or relating to, the Agreement, the relations between the parties to the Agreement, and any matter, action or transaction described in the Agreement, whether in contract, tort or otherwise;
- b.** Agrees that such courts shall have exclusive jurisdiction over such actions or proceedings; and

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c. Waives the defense that Franklin County/Southern District of Ohio, Eastern Division, Ohio, is/are a/n inconvenient forum to maintain and continue such action or proceeding.

2. If an action or proceeding is initiated in one of the courts referenced above and is pending, the parties agree, for the convenience of the Parties and subject to any limitations on subject matter jurisdiction of the court, to initiate any counterclaims or related actions in the same proceeding (as opposed to a separate proceeding in any of the other courts specified above).

### **INDEPENDENT CONTRACTOR.**

Logically is contracting with Wholesaler for results only. Subject to the terms of the Agreement, Logically shall not control the means, methods, or times in which Wholesaler performs the obligations required of it under the Agreement. Wholesaler shall act exclusively as an independent contractor. Nothing contained herein will in any way constitute or shall be construed to be any association, partnership, employment arrangement, or joint venture between the Parties hereto, or be construed to evidence the intention of the Parties to establish any such relationship. Neither Party will have the power to bind the other Party or incur obligations on the other Party's behalf without the other Party's prior written consent in each instance. Except as otherwise specifically set forth herein, Wholesaler agrees to be solely responsible for all costs related to its performance under the Agreement and hold Logically harmless regarding such costs.

### **MODIFICATION AND AMENDMENTS.**

Except as otherwise set forth to the contrary in the Agreement, no modification to the Agreement, nor any waiver of any rights, will be effective unless such modification or waiver is in writing and signed by each of the Parties hereto; provided, however, that Logically shall have the right, in its sole and absolute discretion, to amend, modify, add, delete, or cancel the terms of any exhibit to the Agreement and the Related Documents (with the exception of the *Mutual Non-Disclosure and Confidentiality Agreement*), including these Terms of Service; provided further, however, that all such amendments, modifications, additions, deletions or cancellations, including price and term changes shall apply prospectively only; and provided further, that any such modification or amendment shall apply to only those Customers who execute a Customer Agreement after the effective date of such amendment or modification.

### **WAIVER; RIGHTS CUMULATIVE.**

Except as otherwise set forth to the contrary in the Agreement, the rights and remedies of the Parties to the Agreement are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power, or privilege under the Agreement or any of the documents referred to in the Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or

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privilege. To the maximum extent permitted by applicable law:

- a.** No claim or right arising out of the Agreement or any of the documents referred to in the Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party;
- b.** No waiver that a Party may give will be applicable except in the specific instance for which it is given in writing; and
- c.** No notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in the Agreement or the documents referred to or incorporated in the Agreement.

### **CAPTIONS AND REFERENCES.**

The headings of articles and paragraphs in the Agreement are provided for convenience only and will not affect the construction or interpretation of any provision hereof. Any references herein to a "section" means the corresponding Section of the Agreement. Any references herein to a "paragraph" means the corresponding paragraph of the Agreement. References herein to any gender include the other gender and the neuter, as applicable. References herein to the singular number include the plural number and vice versa. The words "hereunder," "hereof," "hereto," and words of similar import will be deemed references to the Agreement as a whole and not to any particular Section or other provision hereof or any exhibit attached hereto. When used in the Agreement, the word "including" (and with the correlative meaning "include" and "includes") means including without limiting the generality of any list or description following such term and will be deemed to be followed by the words "without limitation."

### **DOCUMENT CONSTRUCTION; PRECEDENCE.**

The Agreement has been negotiated at arm's length. Any rule of law or legal decision that requires interpretation of ambiguities against the drafting party is not applicable and is hereby waived. The provisions of the Agreement shall be interpreted in a commercially reasonable manner to effect the purpose of the Parties to the Agreement. In the event of any inconsistent or conflicting term, the order of precedence shall be these Wholesale Terms of Service, the Agreement, any addenda and/or exhibits subsequently added to the Agreement, and the *Mutual Non-Disclosure, and Confidentiality Agreement*.

### **DISPUTE RESOLUTION.**

Except for matters involving immediate equitable relief, non-payment for Services or products or services sold or provisioned by Logically, or as otherwise specifically provided in or permitted by the Agreement, all disputes, differences of opinion, or controversies arising in connection with the Agreement shall be subject to good-faith negotiation between the Parties in an attempt to arrive at a mutually agreeable

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resolution. The aggrieved Party shall first provide written notice of the dispute to the other Party and seek resolution before taking any action before any court or regulator or before issuing or authorizing any public statement about the nature of the dispute or controversy. If, after negotiating in good faith for a minimum period of fourteen (14) calendar days, or any agreed further period, the Parties cannot resolve the dispute, the Parties shall submit the matter to a mutually agreed-upon mediator based in Franklin County, Ohio. The mediation shall take place in the offices of the mediator unless otherwise agreed in writing by the Parties. The Parties shall present their side to the mediator within fourteen (14) calendar days or such other period as mutually agreed upon. The cost of the mediation shall be equally shared. If the Parties are unsuccessful in resolving the matter through the use of the mediator, either Party may seek a resolution by exercising any rights or remedies available to either Party at law or in equity. Arbitration shall not be mandatory and shall only be used if agreed to by the Parties, in writing, as binding and final.

### **PREVAILING PARTY ENTITLED TO ATTORNEYS' FEES AND COSTS.**

If any legal action or any other proceeding is brought for the interpretation or enforcement of the Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of the Agreement, the successful or Prevailing Party or parties shall be entitled to recover all reasonable costs and fees incurred in that action or proceeding which shall include, without limitation, reasonable fees of attorneys, legal assistants, paralegals, and other legal personnel which is supervised by an attorney together with reasonable fees of accountants, appraisers, and other professionals or experts, in addition to any other relief to which it or they may be entitled. All fees shall be limited to what is determined as reasonable by the matter's type, duration, and location and shall conform to the Rules Regulating the Ohio Bar. In this event, this definition shall apply to "litigation," which shall include arbitration if such arbitration is binding and agreed to by the Parties. For purposes hereof, "Prevailing Party" means any party or neither party in any proceeding that has substantially prevailed concerning the amount in controversy or has substantially prevailed concerning the most significant issue or set of issues presented as determined by the judge (not the jury) or the arbitrator(s) and any such judgment or award shall articulate the basis for determining the Prevailing Party. The preceding shall include fees incurred for proof of attorneys' fees (fees for fees), appellate proceedings, and collection by the Prevailing Party of any award or judgment.

### **WAIVER OF JURY TRIAL.**

EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THE AGREEMENT, INCLUDING ANY EXHIBITS, ATTACHED TO OR INCORPORATED INTO THE AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED,

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EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

### **TIME OF THE ESSENCE.**

Time is of the essence for all purposes of the Agreement. In computing any period under the Agreement, the day of the act, event, or default from which the designated period begins to run shall not be included, and the last day of the period so computed shall be included.

### **FORCE MAJEURE.**

Neither Party shall not be liable for any delay or failure to perform its obligations under the Agreement, except for the payment of any amounts owed hereunder, that is caused by an event outside the control of the Party (each a "Force Majeure Event"), including, without limitation, any of the following: (a) acts of God; (b) flood, fire, earthquake, named storms, hurricanes, pandemics, epidemics or quarantines; (c) war, invasion, hostilities (whether declared or not), terrorist threats or acts, riot, or other civil unrest; (d) court or government order, law, or actions, including without limitation orders resulting directly or indirectly in a Party's authorization to conduct business or perform under the Agreement, including, without limitation, the failure to obtain, or the termination or withdrawal of, any permit or license required to do business or for performance under the Agreement; (e) embargoes or blockades in effect on or after the Effective Date of the Agreement; (f) national or regional emergency (whether declared or not); (g) strikes, labor stoppages or slowdowns, or other industrial disturbances affecting third-parties, including if due in whole or in part to any events listed in items (a) to (i) of this paragraph; (h) shortage of adequate power or transportation facilities, dysfunction, modification or upgrades of networks or equipment (including as a result of the act or omission of an underlying carrier, ISP or other third-party service provider), machine viruses, cyber-attacks, and data breaches; and (i) any other similar events or circumstances beyond the control of a Party.

### **NOTICES.**

1. Notices regarding the following will be posted on either: Logically's website or portal: (a) new products and services and/or pricing changes; (b) new or modified documentation or order requirements; (c) new or modified Logically processes; and (d) Logically personnel change announcements.

2. Notices regarding the following will be in writing and sent to the address or email address listed in the Agreement to the other Party: (a) material changes to the Agreement; (b) internal or external changes materially impacting Logically's ability to do business; (c) breach; (d) termination; or (e) any

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other material information required to be in writing. Either party may change their address for notice purposes by sending the other party written notice of such change in the manner provided herein. Such notices will be deemed effectively given only (a) when received if delivered by hand (with written confirmation of receipt); (b) when received, if sent by a nationally recognized overnight courier or certified or registered mail, postage prepaid (with confirmation of receipt); or (c) on the date sent by email (with confirmation of sending) if sent to the recipient before 5:00 P.M. on a Business Day, and on the next Business Day, if sent after such time or sent on a day that is other than a Business Day and only if the notice according to this clause is immediately thereafter sent via a nationally recognized overnight courier.

### **SURVIVAL; SEVERABILITY.**

All terms and provisions of the Agreement that should by their nature survive the termination of the Agreement will so survive. If any provision of the Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; the Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement and the remaining portion(s) of the Agreement shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provision or by its severance from the Agreement.

### **COUNTERPARTS. ELECTRONIC SIGNATURES.**

The Agreement may be executed in any number of counterparts, each of which will constitute an original, all of which together will constitute one Agreement. Original signatures transmitted and received via facsimile or another electronic transmission of a scanned document (e.g., PDF or similar format) are true and valid signatures for all purposes under the Agreement as if executed "in person" in Dublin, Ohio, and will bind the Parties to the same extent as that of an original signature.

### **ANTI-BRIBERY.**

1. Wholesaler agrees to comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption (including but not limited to the US Foreign Corrupt Practices Act of 1977 and the UK Bribery Act of 2010).
2. Wholesaler agrees that Wholesaler and its owners, directors, officers, employees, agents, partners, and vendors have not and will not directly or indirectly pay, offer, promise to pay, or authorize the payment of any money or anything of value to any person to obtain improperly, retain, or direct business or secure any improper advantage in connection with the Services. Wholesaler also agrees to implement adequate procedures to prevent a breach of this section. If Wholesaler becomes aware of this section's breach or potential breach, Wholesaler shall immediately notify Logically and promptly take action against those involved.

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- 3.** Wholesaler certifies that none of its owners, directors, officers, employees, agents, or partners have been convicted of or pleaded guilty to bribery, fraud, or related charges.
- 4.** If Logically has reason to believe that a breach of this section has occurred or may occur, Logically may, at its discretion, and without liability to Wholesaler, notify Wholesaler of its obligation to cure within the Cure Period and/or terminate the Agreement immediately, until it receives confirmation to its satisfaction that no breach has occurred or will occur. Wholesaler agrees to further indemnify and hold Logically harmless against any related claims, losses, or damages incurred under a breach of this section.
- 5.** Wholesaler agrees to keep accurate books, accounts, and records related to its business with Logically and allow Logically, or its independent audit firm, reasonable access to these to verify compliance with this section.