

Logtivity Limited Data Processing Agreement

This agreement shall come into force at the time You accept our Service Agreement, and shall form part of our Service Agreement as if this agreement were written out in full therein.

WHEREAS:

- (1) Under a written agreement between You and Us (“the Service Agreement”) We provide to You the Services as set out fully in the Service Agreement.
- (2) The provision of the Services by Us involves Our processing the Personal Data described in Clause 3 on Your behalf.
- (3) Article 28(3) of the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (the “UK GDPR”) requires an agreement in writing between You and any organisation which processes Personal Data on its behalf, governing the processing of that Personal Data.
- (4) The Parties have agreed to enter into this Agreement to ensure compliance with the said provisions of the UK GDPR in relation to all processing of the Personal Data by Us for You.
- (5) The terms of this Agreement are to apply to all processing of Personal Data carried out for You by Us and to all Personal Data which We have agreed to hold in relation to all such processing.

IT IS AGREED as follows:

1. Definitions and Interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

“Data Protection Legislation” means all applicable legislation in force from time to time in the United Kingdom applicable to data protection and privacy including, but not limited to, the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder), and the Privacy and Electronic Communications Regulations 2003 as amended;

“Data Subject” shall have the meaning given to the term “data subject” in Article 4 of the UK GDPR;

“EEA” means the European Economic Area, consisting of all EU Member States plus Iceland, Liechtenstein, and Norway;

“Information Commissioner” means the Information Commissioner, as defined in Article 4(A3) of the UK GDPR and section 114 of the Data Protection Act 2018;

“Personal Data Breach” shall have the meaning given to the term “personal data breach” in Article 4 of the UK GDPR;

“Personal Data” means all such “personal data”, as defined in Article 4 of the UK GDPR, as is, or is to be, processed by Us (but limited only to the Personal Data that We have agreed to process and excluding all other Personal or other Data) on Your behalf, as described in Clause 3;

“processing, “process”, “processes”, “processed” shall have the meaning given to the term “processing” in Article 4 of the UK GDPR;

“Services” means the provision of a logging service which You can use to track, monitor and visualise activity that occurs on Your websites and applications as set out in Our Service Agreement;

“Term” means the term of this Agreement, as set out in Clause 17.

“You/Your” as data controller shall have the meaning given to the term “controller” in section 6 of the Data Protection Act 2018;

“We/Us/Our” as data processor shall have the meaning given to the term “processor” in Article 4 of the UK GDPR.

1.2 Unless the context otherwise requires, each reference in this Agreement to:

- a) “writing”, and any cognate expression, includes a reference to any communication effected by electronic transmission or similar means;
- b) a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
- c) a Clause or paragraph is a reference to a Clause of this Agreement; and
- d) a “Party” or the “Parties” refer to the parties to this Agreement.

1.3 The headings used in this Agreement are for convenience only and shall have no effect upon the interpretation of this Agreement.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include any other gender.

1.6 References to persons shall include corporations.

2. Scope and Application of this Agreement

2.1 The provisions of this Agreement shall apply to the processing of the Personal Data described in Clause 3, carried out for You by Us, and to all Personal Data held by Us/in relation to all such processing limited to that which We have agreed to process) whether such Personal Data is held at the date of this Agreement or received afterwards.

2.2 The provisions of this Agreement shall be deemed to be incorporated into the Service Agreement as if expressly set out in it. Subject to sub-Clause 2.3, definitions and interpretations set out in the Service Agreement shall apply to the interpretation of this Agreement.

2.3 In the event of any conflict or ambiguity between any of the provisions of this Agreement and the Service Agreement, the provisions of this Agreement shall prevail.

3. Provision of the Services and Processing Personal Data

3.1 We will process the following:

- a) Categories of Personal Data:

- personally identifiable information (e.g. name, surname, email, IP);
- statistical or other usage data observed on the internet (e.g. via analytics, services etc.);
- Your and Your user's history;
- logs accepted via the API include data such as:
 - User ID from Your systems.
 - Username from Your system.
 - IP Address.
- The action and associated meta data that Your user has taken on the site.

We do not knowingly accept any further Personal Data from Your/Your user's API and we strictly do not consent to having any personal or other data sent by You via the API.

b) Personal Data from:

- Customers/users;
- Potential customers/users
- Users of Your websites/applications that You have set up using Our Services;
- Internet users;
- Your employees, associates, staff members.

3.2 Subject to sub-Clause 4.1, We will only carry out the Services, and process the Personal Data received from You:

- a) for the purposes of those Services and not for any other purpose;
- b) to the extent and in such a manner as is necessary for those purposes; and
- c) strictly in accordance with the express written authorisation and instructions of You (which may be specific instructions or instructions of a general nature or as otherwise notified by You to Us).

3.3 You shall retain control of the Personal Data at all times and shall remain responsible for its compliance with the relevant Data Protection Legislation including, but not limited to, its collection, holding, and processing of the Personal Data, having in place all necessary and appropriate consents and notices to enable the lawful transfer of the Personal Data to Us, and with respect to the written instructions given to Us.

4. Our Obligations

4.1 As set out above in Clause 3, We shall only process the Personal Data to the extent and in such a manner as is necessary for the purposes of the Services and not for any other purpose. All instructions given by You to Us shall be made in writing and shall at all times be in compliance with the Data Protection Legislation. We shall act only on such written instructions from You unless We are required by domestic law to do otherwise (as per Article 29 of the UK GDPR) (in which case, We shall inform You of the legal requirement in question before processing the Personal Data for that purpose unless prohibited from doing so by law).

4.2 We shall not process the Personal Data in any manner which does not comply with the provisions of this Agreement or with the Data Protection Legislation. We will inform You as soon as is reasonably practical, if, in Our opinion, any instructions given by You do not comply with the Data Protection Legislation.

4.3 We shall use our reasonable endeavours to promptly provide instructions upon Your (or any user of the Services) request on how to amend, transfer, delete (or otherwise dispose of), or to otherwise process the Personal Data. This task will not be undertaken by Us, and must be done by You (or the user of the Services).

4.4 We shall use our reasonable endeavours to promptly comply with any written request from You requiring Us to stop, mitigate, or remedy any unauthorised processing by Us involving the Personal Data.

4.5 We shall provide all reasonable assistance (at Your cost) to You in complying with Our obligations under the Data Protection Legislation including, but not limited to, the protection of Data Subjects' rights, the security of processing, the notification of Personal Data Breaches, the conduct of data protection impact assessments where we believe that such assessment is required, or you specifically request that such assessment be completed), and in dealings with the Information Commissioner (including, but not limited to, consultations with the Information Commissioner where a data protection impact assessment indicates that there is a high risk which cannot be mitigated).

4.6 For the purposes of sub-Clause 4.5, "all reasonable assistance" shall take account of the nature of the processing carried out by Us and the information available to Us.

4.7 In the event that We become aware of any changes to the Data Protection Legislation that may, in Our reasonable interpretation, adversely impact Our performance of the Services and the processing of the Personal Data, either under the Service Agreement or under this Agreement, We shall inform You promptly.

5. Confidentiality

5.1 We shall maintain the Personal Data in confidence, and in particular, unless You have given written consent for Us to do so, We shall not disclose the Personal Data to any third party. We shall not process or make any use of any Personal Data supplied to Us by You otherwise than as necessary and for the purposes of the provision of the Services to You.

5.2 Nothing in this Agreement shall prevent Us from complying with any requirement to disclose or process Personal Data where such disclosure or processing

is required by domestic law, court, or regulator (including, but not limited to, the Information Commissioner). In such cases, We shall notify You of the disclosure or processing requirements prior to disclosure or processing (unless such notification is prohibited by domestic law) in order that You may challenge the requirement if You wish to do so.

5.3 We shall ensure that all employees who are to access and/or process any of the Personal Data are informed of its confidential nature and are contractually obliged to keep the Personal Data confidential.

6. Employees and Data Protection Officer

6.1 The Parties warrant that they have or will appoint a data protection officer in accordance with Article 37 of the UK GDPR and provide those details to the other Party within 14 days of receipt of a written request to do so.

6.2 We shall ensure that all employees who are to access and/or process any of the Personal Data are given suitable training on the Data Protection Legislation, Our obligations under it, their obligations under it, and its application to their work, with particular regard to the processing of the Personal Data under this Agreement.

7. Security of Processing

7.1 We shall implement appropriate technical and organisational measures as We believe are reasonable and required, and take all steps necessary to protect the Personal Data against unauthorised or unlawful processing or accidental or unlawful loss, destruction, or damage.

7.2 The measures implemented by Us shall be appropriate to the nature of the personal data, to the harm that may result from such unauthorised or unlawful processing or accidental or unlawful loss, destruction, or damage (in particular to the rights and freedoms of Data Subjects) and shall have regard for the state of technological development and the costs of implementation (taking on board the cost of implementation compared to the cost of the Services provided under the Service Agreement).

7.3 The measures implemented by Us may include, as We feel appropriate, pseudonymisation and encryption of the Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services; the ability to restore the availability of and access to the Personal Data in a timely manner in the event of a physical or technical incident; and a process for regularly testing, assessing, and evaluating the effectiveness of the technical and organisational measures.

8. Data Subject Rights and Complaints

8.1 We shall take appropriate technical and organisational measures and provide all reasonable assistance (at Your cost) to You in complying with Our obligations under the Data Protection Legislation with particular regard to the following:

a) the rights of Data Subjects under the Data Protection Legislation including, but

not limited to, the right of access (data subject access requests), the right to rectification, the right to erasure, portability rights, the right to object to processing, rights relating to automated processing, and rights to restrict processing; and

b) compliance with notices served on You by the Information Commissioner pursuant to the Data Protection Legislation.

8.2 It is Your sole responsibility to deal with any notice, complaint or other communication relating to the Personal Data processing (unless the same relates to Our compliance with Data Protection Legislation).

8.3 In the event that We receive any notice, complaint, or other communication relating to the Personal Data processing or to either Party's compliance with the Data Protection Legislation, We shall notify You promptly in writing.

8.4 In the event that We receive any request from a Data Subject to exercise any of their rights under the Data Protection Legislation including, but not limited to, a data subject access request, We shall notify You without undue delay.

8.5 We shall cooperate fully (at Your cost) with You and provide all reasonable assistance in responding to any complaint, notice, other communication, or Data Subject request, including by:

- a) providing You with full details of the complaint or request;
- b) providing the necessary information and assistance in order to comply with a subject access request;
- c) providing You with any Personal Data We hold in relation to a Data Subject (within the reasonable timescales required by You); and
- d) providing You with any other information requested by You.

8.6 We shall act only on Your instructions and shall not disclose any Personal Data to any Data Subject or to any other party except as instructed in writing by You, or as required by domestic law.

9. Personal Data Breaches

9.1 You are solely responsible any Data Protection Breach by You or any of your customers/users of the Services.

9.2 We shall, as soon as is reasonably practical, notify You in writing if We become aware of any form of Personal Data Breach by Us including, but not limited to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, the Personal Data.

9.3 When We become aware of a Personal Data Breach by Us, We shall provide the following information to You in writing without undue delay:

- a) a description of the Personal Data Breach including the category or categories of Personal Data involved, the number (approximate or exact, if known) of Personal Data records involved, and the number (approximate or exact, if known) of Data Subjects involved;
- b) the likely consequences of the Personal Data Breach; and
- c) a description of the measures We have taken to address the Personal Data Breach, including, where appropriate, measures to mitigate its possible adverse effects.

9.4 In the event of a Personal Data Breach by Us as described above, the Parties

shall cooperate with one another to investigate it. We shall provide all reasonable assistance to You including, but not limited to:

- a) assisting You with the investigation of the Personal Data Breach; and
- c) promptly taking all reasonable steps to mitigate the effects of the Personal Data Breach and to minimise any damage caused by it.

9.5 We shall use reasonable endeavours to restore any Personal Data lost, destroyed, damaged, corrupted, or otherwise rendered unusable in the Personal Data Breach as soon as possible after becoming aware of the Personal Data Breach.

9.6 We shall not inform any third party of any Personal Data Breach as described above without Your express written consent unless it is required to do so by domestic law.

9.7 You shall have the sole right to determine whether or not to notify affected Data Subjects, the Information Commissioner, law enforcement agencies, or other applicable regulators of the Personal Data Breach as required by law or other applicable regulations, or at Your discretion, including the form of such notification, but must provide Us with at least 28 days' notice in writing prior to making any such notification.

9.8 You shall have the sole right to determine whether or not to offer any remedy to Data Subjects affected by the Personal Data Breach, including the form and amount of such remedy.

9.9 Subject to the provisions of Clause 16, We shall bear all reasonable costs and expenses incurred by Us and shall reimburse You for all reasonable costs and expenses incurred by You in responding to the Personal Data Breach by Us, unless the Personal Data Breach resulted from Your express written instructions, negligence, breach of this Agreement, or other act or omission of Yours, in which case You shall instead bear and shall reimburse Us with such costs and expenses incurred by it.

10. Cross-Border Transfers of Personal Data

10.1 We (and any subcontractor appointed by Us) may, without any notice to You, process or transfer the Personal Data outside of the EEA.

10.2 You accept that We may process (or permit the processing) of the Personal Data outside of the EEA if one or more of the following conditions are satisfied:

- a) We are processing the Personal Data in a territory that is subject to adequacy regulations under the Data Protection Legislation that said territory provides adequate protection for the privacy rights of individuals;
- b) We participate in a valid cross-border transfer mechanism under the Data Protection Legislation under which We (and You, where appropriate) can ensure that appropriate safeguards are in place to ensure an adequate level of data protection with respect to the privacy rights of individuals as required by Article 46 of the UK GDPR; or
- c) the transfer of the Personal Data otherwise complies with the Data Protection Legislation for the reasons set out in Schedule 4.

11. Appointment of Subcontractors

11.1 We may, at Our sole discretion, and without any prior notice to You, subcontract any of Our obligations or rights under this Agreement, including, but not limited to cloud computing providers and payment processors.

11.2 In the event that We appoint a subcontractor to process any of the Personal Data, We shall:

a) ensure that all subcontractors comply fully with their obligations under the Data Protection Legislation; and

d) maintain control over all Personal Data transferred to subcontractors.

11.3 In the event that a subcontractor fails to meet its data protection obligations, subject to Clause 16, We shall remain fully liable to You for the subcontractor's compliance with its data protection obligations.

11.4 We shall be deemed to legally control any and all Personal Data that may be at any time controlled practically by, or be in the possession of, any subcontractor appointed by it under this Clause 11.

12. Deletion or Disposal of Personal Data

12.1 We shall provide You with the ability to export or delete Personal Data and You accept that We do not have the ability to undertake this task on Your behalf.

12.2 If You delete Your account all Data held within the account will be automatically deleted within 30 days and We shall not retain any copies of any part of the Personal Data or account information.

12.3 If We are required to retain copies of all or any part of the Personal Data by law, regulation, government, or other regulatory body, We shall inform You of such requirement(s) in writing, including precise details of the Personal Data that We are required to retain, the legal basis for the retention, details of the duration of the retention, and when the retained Personal Data will be deleted (or otherwise disposed of) once We are no longer required to retain it.

12.4 We may retain one copy of the Personal Data for up to 6 years only to assist Us in any claim for breach of the GDPR.

12.5 We shall be under no obligation to certify the completion of the deletion (or disposal) of the Personal Data.

12.6 All Personal Data to be deleted or disposed of under this Agreement shall be deleted or disposed of using such methods as we may, at Our sole discretion, determine.

13. Information

13.1 We shall make available to You any and all such information as is reasonably required and necessary to demonstrate Our compliance with the Data Protection Legislation and this Agreement but no more than 1 request can be made by You per year.

14. Audits

14.1 We shall, on reasonable prior notice, and at Your expense, instruct Our

authorised auditors inspect to audit Our compliance with Our obligations under this Agreement and with the Data Protection Legislation and thereafter produce an audit report but any such request for an audit may only be made (i) during the course of the Service Agreement and not after termination thereof; and (i) only once during any 24 month period.

14.2 We shall provide all necessary assistance (at Your cost) to Our authorised auditors in the conduct of such audits including, but not limited to

- a) access (including physical and remote) to, and copies of, all relevant information kept by Us. (There will not be able to access any of Our employees for the purpose of an audit); and
- b) access to and the inspection of all infrastructure, equipment, software, and other systems used to store and/or process the Personal Data.

15. Warranties

15.1 You hereby warrant and represent that the Personal Data and its use with respect to the Service Agreement and this Agreement shall comply with the Data Protection Legislation in all respects including, but not limited to, its collection, holding, and processing.

15.2 We hereby warrant and represent that:

- a) the Personal Data shall be processed by Us (and by any subcontractors appointed under Clause 11) in compliance with the Data Protection Legislation and any and all other relevant laws, regulations, enactments, orders, standards, and other similar instruments;
- b) We have no reason to believe that the Data Protection Legislation in any way prevents Us from complying with Our obligations pertaining to the provision of Our services under the Service Agreement; and
- c) We will implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing or accidental or unlawful loss, destruction, or damage, as set out in Clause 7.

16. Liability and Indemnity

16.1 You shall be liable for, and shall indemnify (and keep indemnified) Us in respect of, any and all actions, proceedings, liabilities, costs, claims, losses, expenses (including reasonable legal fees and payments on a solicitor and client basis), or demands, suffered or incurred by, awarded against, or agreed to be paid by, Us (and any subcontractor appointed by Us under Clause 11) arising directly or in connection with:

- a) any non-compliance by You with the Data Protection Legislation;
- b) any Personal Data processing carried out by Us (or any subcontractor appointed by Us under Clause 11) in accordance with instructions given by You to the extent that the instructions infringe the Data Protection Legislation; or
- c) any breach by You of Your obligations or warranties under this Agreement; but not to the extent that the same is or are contributed to by any non-compliance by Us (or any subcontractor appointed by Us under Clause 11) with the Data Protection

Legislation or its breach of this Agreement.

16.2 The extend of Our liability to You in respect of, any and all actions, proceedings, liabilities, costs, claims, losses, expenses, or demands, suffered or incurred by, awarded against, or agreed to be paid by, You arising directly or in connection with:

- a) any non-compliance by Us (or any subcontractor appointed by Us under Clause 11) with the Data Protection Legislation;
- b) any Personal data processing carried out by Us (or any subcontractor appointed by Us under Clause 11) which is not in accordance with instructions given by You to the extent that the instructions are in compliance with the Data Protection Legislation; or
- c) any breach by Us of Our obligations or warranties under this Agreement; but not to the extent that the same is or are contributed to by any non-compliance by You with the Data Protection Legislation or Our breach of this Agreement, shall be limited to no more than three times the fees paid by You to Us in the three month period prior to any such claim arising.

16.3 Nothing in this Agreement excludes or limits Our liability for (i) any matter which it would be illegal for Us to exclude or attempt to exclude Our liability; or (ii) for fraud or fraudulent misrepresentation.

16.4 You shall not be entitled to claim back from Us under sub-Clause 16.2 or on any other basis any sums paid in compensation by You in respect of any damage to the extent that You are liable to indemnify Us under sub-Clause 16.1.

17. Term and Termination

17.1 This Agreement shall come into force on Your acceptance of our Service Agreement and shall continue in force for the longer of:

- a) The duration of Our Services; or
- b) The period that the Service Agreement remains in effect; or
- c) The period that We have any of the Personal Data in Our possession or control.

17.2 Any provision of this Agreement which, expressly or by implication, is to come into force or remain in force on or after its termination or expiry shall remain in full force and effect.

17.3 In the event that changes to the Data Protection Legislation necessitate the re-negotiation of any part this Agreement, either Party may require such re-negotiation.

18. Law and Jurisdiction

18.1 This Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 Any dispute, controversy, proceedings or claim between the Parties relating to this Agreement (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

