

LogTag® CCA Terms of Use

Effective date: 1 October, 2020

Preamble

At LogTag® Recorders, we strive for transparency and clarity when we conduct business with you, our customers.

We have developed these Terms of Use ("Terms") so you understand your and our obligations when you use our online Service, and the choices you have associated with that Service.

These Terms form a legally binding contract between you, or the person you represent, and us. They apply when you use our Service as defined below.

To use our Service, you must:

- be of legal age;
- set up an account with your valid email address and any other mandatory information we deem necessary;
- agree that you will only use the service with your own account access details;
- confirm that you understand it is your responsibility to keep account access details confidential and your password secure;
- agree to these Terms; where your access and use the Service on behalf of another person, you confirm that you have the full power, capacity and authority to act on behalf of that person and in fact, agree to these terms on that person's behalf and that, by agreeing to these terms on that person's behalf, that person is bound by these terms; and
- agree to the most recent version of our [Privacy Policy](#), which is included by way of reference into these Terms.

Using an Account constitutes your agreement with these Terms.

If you do not agree to these Terms, you are not authorized to access and use the Service, and you must immediately stop doing so.

Definitions

In these Terms:

CCA Credits means credits that provide access to For Pay Functionality of the Service.

Confidential Information means any information that is not public knowledge and that is obtained from the other party in the course of, or in connection with, the provision and use of the Service. Our Confidential Information includes Intellectual Property owned by us (or our licensors), including the LogTag® CCA Software. Your Confidential Information includes the Data.

Data means all data, content, and information (including personal information) owned, held, used or created by you or on your behalf that is stored using, or inputted into, or transmitted to, the Service.

Equipment means our proprietary hardware items sold by us or our Resellers, used with the System.

Fees means the applicable fees as agreed in writing between you and us or our Resellers.

Force Majeure means an event that is beyond the reasonable control of a party, excluding:

- an event that could have been avoided by a party taking reasonable steps or reasonable care; or
- a lack of funds for any reason.

For-Free Functionality are those parts of the Service that can be accessed and used without payment of any fees.

For-Pay Functionality are those parts of the Service that can only be accessed and used with CCA credits.

including and similar words do not imply any limit.

Intellectual Property Rights includes copyright and all rights existing anywhere in the world conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. Intellectual Property has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

LogTag® CCA application means the software owned by us (and our licensors) that is used to provide the Service.

Objectionable includes being objectionable, defamatory, obscene, harassing, threatening, harmful, or unlawful in any way.

a **party** includes that party's permitted assigns.

a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity.

personal information means information about an identifiable, living person.

personnel includes officers, employees, contractors and agents, but a reference to 'your personnel' does not include us.

Reseller is a person authorized and appointed to sell the service on our behalf, and to provide technical assistance, including distributors and agents.

Service means the service having the core functionality described on the Website.

Start Date means the date that you set up an account.

Terms means these Terms of Use titled LogTag® CCA Terms of Use.

Underlying Systems means the LogTag® CCA Software, IT solutions, systems and networks (including software and hardware) used to provide the Service, including any third-party solutions, systems and networks.

We, us or our means LogTag® Recorders Limited, NZBN 9429035220022.

Website means the internet site at <https://cca.logtagonline.com>, or such other site notified to you by us.

You or your means you or both you and the person on whose behalf you are acting.

Words in the singular include the plural and vice versa.

A reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them.

Our Offer of Service

Provision

We will provide the Service to you:

- in accordance with these Terms and with applicable New Zealand law;
- exercising reasonable care, skill and diligence; and
- using suitably skilled, experienced and qualified personnel.

Exclusivity

Our provision of the Service to you is non-exclusive. Nothing in these Terms prevents us from providing the Service to any other person.

Availability

We strive for, and will use all reasonable efforts to ensure the Service is available to you on a 24/7 basis. However, it is possible that on occasion the Service may be unavailable, for instance, to permit maintenance or another development activity to take place, or in the event of a Force Majeure event. We will use reasonable efforts to publish on the Website advance details of any planned unavailability. We will use reasonable efforts to schedule such planned activities at a time that provides the least inconvenience to our global audience.

Third-party services

Through the use of web services and APIs, the Service inter-operates with and relies upon a range of third-party service features. We do not make any warranty or representation on the availability of those features. Without limiting the previous sentence, if a third-party provider ceases to provide that feature or ceases to make that feature available on reasonable terms, we may cease to make available that feature to you. To avoid doubt, if we exercise our right to cease the availability of a third-party feature, you are not entitled to any refund, discount or other compensation, except as agreed between us in writing.

Messaging

Email messages are provided by third-party communication platforms. These services are facilitated by us on a "best effort" basis, and timely delivery of messages cannot be guaranteed. Messages are restricted to registered users of the Service who have created an account.

Your Obligations

Intent

You and your personnel must use the Service in accordance with these Terms solely for:

- your own internal business purposes for recording, tracking, reporting and analyzing temperature and humidity data from our equipment;
- lawful purposes, including complying with New Zealand's Unsolicited Electronic Messages Act 2007 or equivalent international laws;
- legitimate business purposes related to your role as a current or prospective customer, developer, partner, supplier or Reseller.

You and your personnel must not resell or make available the Service to any third party, or otherwise commercially exploit the Service, except where explicitly permitted by us in writing to do so.

You are responsible for procuring all licences, authorisations and consents required for you and your personnel to use the Service, including to use, store and input Data into, and process and distribute Data through, the Service.

Access

When accessing the Service, you and your personnel must:

- not impersonate another person or misrepresent authorization to act on behalf of others or us;
- correctly identify the sender of all electronic transmissions;
- not attempt to undermine the security or integrity of the Underlying Systems;
- not use, or misuse, the Service in any way which may impair the functionality of the Underlying Systems or impair the ability of any other user to use the Service;
- not attempt to view, access or copy any material or data other than:
 - that which you are authorised to access; and
 - to the extent necessary for you to use the Service in accordance with these Terms; and
- neither use the Service in a manner, nor transmit, input or store any Data, that breaches any third-party right (including Intellectual Property Rights and privacy rights) or is objectionable, incorrect or misleading.

Flowdown

A breach of any of these Terms by your personnel is deemed to be a breach of these Terms by you.

Data

Access

You acknowledge:

- that we may require access to the Data to exercise our rights and perform our obligations under these Terms;
- that we may authorize a member or members of our personnel to access the Data for this purpose;
- you must arrange all consents and approvals that are necessary for us to access the Data in such way.

Analytics

You acknowledge and agree that:

- we may use Data and information about your use of the Service to generate anonymised and aggregated statistical and analytical data (Analytical Data), and use such Analytical Data for our internal research and product development purposes and to conduct statistical analysis and identify trends and insights;
- our rights under this clause will survive termination of expiry of the Agreement; and
- title to, and all Intellectual Property Rights in, Analytical Data is and remains our property.

You acknowledge and agree that, to the extent Data contains personal information, in collecting, holding and processing that information through the Service, we are acting as your agent for the purposes of the Privacy Act 1993 and any other applicable privacy laws. You must obtain all necessary consents from the relevant individual(s) to enable us to collect, use, hold and process that information in accordance with these Terms.

We will not make Data available to any third party without your express permission.

Storage

While we will take standard industry measures to back up all Data stored using the Service, you agree to keep a separate back-up copy of all Data uploaded by you onto the Service.

You agree that we may store Data (including any personal information) in secure servers in one or more overseas territories and we may access that Data (including any personal information) in these territories and/or New Zealand from time to time.

Indemnity

You indemnify us against all and any liability, claim, proceeding, cost, expense (including the actual legal fees charged by our solicitors) and loss of any kind arising from any actual or alleged claim by a third party that any use by us of Data infringes the rights of that third party (including Intellectual Property Rights and privacy rights) or that the Data is Objectionable, incorrect or misleading.

Fees

A limited subset of the functions of the Service are offered to you for free ("For-free Functionality"), the remainder requires you to pay a subscription fee ("For-pay Functionality").

For-Free Functionality

Your right to access and use the free aspects of the Service is not guaranteed for any period of time and we reserve the right, at our sole discretion, to limit or terminate your use of free access of the Services by you or by any individual or entity related to you.

We also reserve the right to reduce the number of For-Free Functions available to you.

For-pay Functionality

For-pay Functionality is accessed by assignment to account and associated CCA credits which are paid for in advance.

- In the event the For-pay Functionality lapses at any time, we do not guarantee that any Data collected previously will be retained;
- No refunds will be given, should you remove a specific functionality from the Service; and
- No refunds will be given, should you stop using the Service.

Trials

If you are using the For-pay Functionality of the Service on a trial or promotional basis ("Trial Period"), your Trial Period and access to the Services will terminate at the end of the Trial Period agreed with you when you signed up; if no date is specified, the trial period ends 30 days after your initial access to the Service. You may continue to use the restricted For-Free Functionality of the Service after this time, however, access to the For-Pay Functionality and the Data

generated during the Trial period will be removed. During the Trial Period, to the extent permitted by law, we provide the Services "AS IS" and without any warranties, indemnities or representations whatsoever. We may modify or discontinue any trials or promotions at any time without notice.

Payables

You must pay any fees for CCA credits in accordance with the payment terms agreed with us or one of our Resellers, electronically, in cleared funds, and without any deduction.

If you do not pay the fees as agreed, we reserve the right to terminate the functionality and related CCA credits would be deemed expired.

We or any Reseller may increase the cost of CCA credits. These changes will become effective when you next purchase CCA credits. If you do not wish to pay the increased Fees, you may terminate these Terms and your right to access and use the Service. If you do not terminate these Terms and your right to access and use the Service in accordance with this clause, you are deemed to have accepted the increased Fees.

You are responsible for all fees and charges imposed by your data transmission providers related to your access and use of the Service. You are responsible for providing accurate and current billing, contact and payment information to us or any Reseller.

Intellectual Property

We have the utmost respect for the intellectual property of others, and we ask you for the same.

The Service in its entirety, including the Website Content, is owned by us or our licensors and is protected by New Zealand and international laws regarding copyrights, patents, trademarks, trade secrets and other intellectual property or proprietary rights.

You agree that you shall not copy, modify, create derivative works of, publicly display or perform, republish, download or store, or transmit any Website Content without our express prior written consent or except as expressly provided in these Terms.

We give you the right to reproduce, copy and publish material we offer to you for the sole purpose of generating your own training material or in-house procedures, solely for publication for your personnel. You must not publish such material in a way that makes it publicly accessible.

Title to, and all Intellectual Property Rights in, the Service, the Website, and all Underlying Systems is and remains our property (and/or our licensors' property). You must not contest or dispute that ownership, or the validity of those Intellectual Property Rights.

Title to, and all Intellectual Property Rights in, the Data (as between the parties) remains your property. You grant us a worldwide, non-exclusive, fully paid up, transferable, irrevocable licence to use, store, copy, modify, make available and communicate the Data for any purpose in connection with the exercise of our rights and performance of our obligations in accordance with these Terms.

To the extent not owned by us, you grant us a royalty-free, transferable, irrevocable and perpetual licence to use for our own business purposes any know-how, techniques, ideas, methodologies, and similar Intellectual Property used by us in the provision of the Services.

If you provide us with ideas, comments or suggestions relating to the Service or Underlying Systems (together feedback):

- all Intellectual Property Rights in that feedback, and anything created as a result of that feedback (including new material, enhancements, modifications or derivative works), will be owned solely by us; and
- we may use or disclose the feedback for any purpose.

Confidentiality

Each party must, unless it has the prior written consent of the other party:

- keep confidential at all times the Confidential Information of the other party;
- effect and maintain adequate security measures to safeguard the other party's Confidential Information from unauthorized access or use; and
- not disclose the other party's Confidential Information to its personnel or professional advisers except on a need to know basis and, in that case, ensure that any personnel or professional adviser to whom it discloses the other party's Confidential Information is aware of, and complies with this section of the Terms.

The obligation of confidentiality does not apply to any disclosure or use of Confidential Information:

- for the purpose of performing a party's obligations, or exercising a party's rights, under these Terms;
- required by law (including under the rules of any stock exchange);
- which is publicly available through no fault of the recipient of the Confidential Information or its personnel;
- which was rightfully received by a party from a third party without restriction and without breach of any obligation of confidentiality; or
- by us if required as part of a bona fide sale of our business (assets or shares, whether in whole or in part) to a third party, provided that we enter into a confidentiality agreement with the third party on terms no less restrictive than this clause 9.

Warranties

Each party warrants that it has full power and authority to enter into, and perform its obligations under, these Terms.

To the maximum extent permitted by law:

- our warranties are limited to those set out in these Terms, and all other representations and warranties whether expressed or implied by statute or otherwise (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) are expressly excluded or, to the extent that they cannot be excluded, our liability for them is limited to NZ\$500.00; and
- we make no representation concerning the quality of the Service and do not promise that the Service will:
 - meet your requirements or be suitable for a particular purpose, including that the use of the Service will fulfil or meet any statutory role or responsibility you may have; or
 - be secure, free of viruses or other harmful code, uninterrupted or error free

You agree and represent that you are acquiring the Service, and accepting these Terms, for the purpose of trade. The parties agree that:

- to the maximum extent permissible by law, the Consumer Guarantees Act 1993 and any other applicable consumer protection legislation does not apply to the supply of the Service or these Terms; and
- it is fair and reasonable that the parties are bound by this clause.

Where legislation or rule of law implies into these Terms a condition or warranty that cannot be excluded or modified by contract, the condition or warranty is deemed to be included in these Terms. However, our liability for any breach of that condition or warranty is limited, at our option, to:

- supplying the Service again; and/or
- paying the costs of having the Service supplied again.

Liability

Our maximum aggregate liability under or in connection with these Terms or relating to the Service, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must not in any Year exceed the amount equal to the fees paid by you relating to the Service in the previous Year (which in the first Year is deemed to be the total Fees paid by you from the Start Date to the date of the first event giving rise to liability). The cap in this clause includes the cap set out in clause "Warranties".

Neither party is liable to the other under or in connection with these Terms or the Service for any:

- loss of profit, revenue, savings, business, use, data (including Data), and/or goodwill; or
- consequential, indirect, incidental or special damage or loss of any kind.

This clause does not apply to limit your liability:

- to pay the Fees;
- under the indemnity clause; or
- for those matters stated in the following clause.

This clause does not apply to limit our liability under or in connection with these Terms for:

- fraud or wilful misconduct; or
- a breach of confidentiality.

Neither party will be responsible, liable, or held to be in breach of these Terms for any failure to perform its obligations under these Terms or otherwise, to the extent that the failure is caused by the other party failing to comply with its obligations under these Terms, or by the negligence or misconduct of the other party or its personnel.

Each party must take reasonable steps to mitigate any loss or damage, cost or expense it may suffer or incur arising out of anything done or not done by the other party under or in connection with these Terms or the Service.

Term, Termination and Suspension

Unless terminated under this clause, these Terms and your right to access and use the Service:

- starts on the Start Date; and
- continues until a party gives at least 30 days' notice that these Terms and your access to and use of the Service will terminate on the expiry of that notice.

Either party may, by notice to the other party, immediately terminate these Terms and your right to access and use the Service if the other party:

- breaches any material provision of these Terms and the breach is not:
 - remedied within 10 days of the receipt of a notice from the first party requiring it to remedy the breach; or
 - capable of being remedied; or

- becomes insolvent, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or ceases to continue business for any reason.

Termination of these Terms does not affect either party's rights and obligations that accrued before that termination.

On termination of these Terms, you must pay all Fees for the provision of the Service prior to that termination.

No compensation is payable by us to you as a result of termination of these Terms for whatever reason, and you will not be entitled to a refund of any Fees that you have already paid.

Except to the extent that a party has ongoing rights to use Confidential Information, at the other party's request following termination of these Terms but subject to the next clause, a party must promptly return to the other party or destroy all Confidential Information of the other party that is in the first party's possession or control.

At any time prior to one month after the date of termination, you may request:

- a copy of any Data stored using the Service, provided that you pay our reasonable costs of providing that copy. On receipt of that request, we must provide a copy of the Data in a common electronic form. We do not warrant that the format of the Data will be compatible with any software; and/or
- deletion of the Data stored using the Service, in which case we must use reasonable efforts to promptly delete that Data.

We are not required to provide you with a copy of the Data if you have previously requested deletion of that Data.

Breach of terms

We reserve the right to terminate accounts of users committing infringements of this policy.

Without limiting any other right or remedy available to us, we may restrict or suspend your access to and use of the Service and/or delete, edit or remove the relevant Data if we consider that you or any of your personnel have:

- undermined, or attempted to undermine, the security or integrity of the Service or any Underlying Systems;
- used, or attempted to use, the Service:
 - for improper purposes; or
 - in a manner, other than for normal operational purposes, that materially reduces the operational performance of the Service;
- transmitted, inputted or stored any Data that breaches or may breach these Terms or any third-party right (including Intellectual Property Rights and privacy rights), or that is or may be Objectionable, incorrect or misleading; or
- otherwise materially breached these Terms.

General

Neither party is liable to the other for any failure to perform its obligations under these Terms to the extent caused by Force Majeure.

No person other than you and us has any right to a benefit under, or to enforce, these Terms.

For us to waive a right under these Terms, that waiver must be in writing and signed by us.

We are your independent contractor, and no other relationship (e.g. joint venture, agency, trust or partnership) exists under these Terms, unless specifically stipulated elsewhere in these Terms.

If we need to contact you, we may do so by email or by posting a notice on the Website. You agree that this satisfies all legal requirements in relation to written communications. You may give notice to us under or in connection with these Terms by emailing support@logtagrecorders.com.

These Terms, and any dispute relating to these Terms or the Service, are governed by and must be interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with these Terms or the Service.

Clauses which, by their nature, are intended to survive termination of these Terms continue in force.

If any part or provision of these Terms is or becomes illegal, unenforceable, or invalid, that part or provision is deemed to be modified to the extent required to remedy the illegality, non-enforceability or invalidity. If modification is not possible, the part or provision must be treated for all purposes as severed from these Terms. The remainder of these Terms will be binding on you.

Subject to the next clause (*Changes to these Terms*) any variation to these Terms must be in writing and signed by both parties.

These Terms set out everything agreed by the parties relating to the Service, and supersede and cancel anything discussed, exchanged or agreed prior to the Start Date. The parties have not relied on any representation, warranty or agreement relating to the Service that is not expressly set out in these Terms, and no such representation, warranty or agreement has any effect from the Start Date. Without limiting the previous sentence, the parties agree to contract out of sections 9, 12A and 13 of the Fair Trading Act 1986, and that it is fair and reasonable that the parties are bound by this clause.

You may not assign, novate, subcontract or transfer any right or obligation under these Terms without our prior written consent, that consent not to be unreasonably withheld. You remain liable for your obligations under these Terms despite any approved assignment, subcontracting or transfer.

Changes to these Terms

We may update these Terms from time to time. We will notify you of any changes by posting a prominent notice on the Service's website. Unless we say otherwise, the changes become effective from the date published at the top of this Terms document. We will also make a [list of changes](#) available, so you can easily assess the impact these changes have on you.

You are responsible for ensuring you are familiar with the latest Terms. By continuing to access and use the Service after the new "effective date" you agree to be bound by the changed Terms.

Contact Us

We are committed to conducting our business in accordance with these Terms in order to provide a first-class Service to you.

If you have any questions about this document, please contact us:

- By email: support@logtagrecorders.com
- By phone: +64 (0)9 448 2311

- By mail: LogTag Recorders LTD, P.O. Box 36 295, Northcote, Auckland 0748, New Zealand

LogTag® CCA Terms of Use Change History

Occasionally, we need to change or improve the way we make LogTag® CCA available to you. Below is a list of changes and clarifications to our Terms of Use, and the date these became effective.

1 Sept, 2020

- Initial