

Terms & Conditions

(Rev. 2014-01-21)

1 Definitions

"Agreement"	means these Terms of Use.
"Subscription Fee"	means the recurring fee (excluding any taxes and duties) payable by the Subscriber in accordance with the price schedule set out on the Website (which may change from time to time on notice to You) or as otherwise agreed between the Subscriber and the Provider.
"Confidential Information"	includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Service but does not include information which is, or becomes, publicly available other than through unauthorized disclosure by the other party.
"Data"	means any data entered manually or automatically by the Subscriber or with the Subscriber's authority into the Service.
"Intellectual Property Right"	means any patent, trade mark, service mark, copyright, moral right, right in a design, knowhow and any other intellectual or industrial property rights whether or not registered.
"Service"	means services made available by the Provider as a cloud service via the Website or as a service locally installed within an environment controlled by the Subscriber.
"3 rd Party Service"	means any Service made available by the Provider on behalf of a 3 rd party provider.
"Website"	means www.zimonitor.com or any site or subdomain operated by the Provider.
"Provider"	is a reference to "Zimondo AB" defined above, and carries the same meaning.
"Subscriber"	means the person who registers to use the Service, and, where the context permits, includes any entity on whose behalf that person registers to use the Service.
"Invited User"	means any person or entity, other than the Subscriber, that uses the Service with the authorization of the Subscriber from time to time.
"Server"	means any backup server that the Subscriber has authorized the Service to access.
"Active Backup set"	means each unique backup set monitored.

2 Use of Services

The Provider grants the Subscriber the right to access and use the Service. This right is non-exclusive, nontransferable, and limited by and subject to this Agreement.

The Subscriber acknowledges and agrees that, subject to any applicable written agreement between the Subscriber and the Invited Users, or any other applicable laws:

- a. the Subscriber determines who is an Invited User and what level of user role access to the relevant organization and Service that Invited User has;
- b. the Subscriber is responsible for all Invited Users' use of the Service;
- c. the Subscriber controls each Invited User's level of access to the relevant organization and Service at all times and can revoke or change an Invited User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be an Invited User or shall have that different level of access, as the case may be;
- d. if there is any dispute between a Subscriber and an Invited User regarding access to any organization or Service, the Subscriber shall decide what access or level of access to the relevant Data or Service that Invited User shall have, if any.

3 The Subscriber's obligations

3.1 Subscription periods and payment terms

Subscription Fees for the Services are charged Monthly in advance by credit card.

If the Subscriber upgrade or downgrade an ongoing Subscription, the Subscriber will be charged for new billing rate immediately. The Subscriber's credit card will then be charged every 30 days thereafter unless the account is cancelled.

All statements will be sent to the Subscriber, or to a Billing Contact whose details are provided by the Subscriber, by email. The Subscriber is responsible for payment of all taxes and duties in addition to the Subscription Fee.

The Subscriber is responsible for the payment of any transactional fees that may be charged as a result of these payments. Payments must continue until this Agreement is terminated in accordance with clause 8.

3.2 Subscription Fees

Subscription Fees may be in the form of a one-time, monthly, quarterly or yearly fee and calculated based on a fixed price or a variable price. The variable price is, if not otherwise specified, based on the maximum number of Backup sets from the previous Subscription period, or, if such period does not exist, the maximum number of monitored Backup sets from a trial period.

One-time fees incurred during a Subscription period will be added to the next invoice. If however this Agreement is terminated in accordance with clause 8, any unpaid fees will be charged immediately.

3.3 General obligations

The Subscriber must only use the Service for its own lawful internal business purposes, in accordance with these Terms and any notice sent by the Provider or condition posted on the Website.

3.4 Access conditions

The Subscriber must ensure that all usernames and passwords required to access the Service are kept secure and confidential.

The Subscriber must immediately notify the Provider of any unauthorized use of its passwords or any other breach of security and take all other actions deemed reasonably and necessary to maintain or enhance the security of the Services as well as the computers and networks operated by the Provider.

As a condition of these Terms, when accessing and using the Services, the Subscriber must:

- a. not attempt to undermine the security or integrity of the Services and its surrounding networks;
- b. not use, or misuse, the Services in any way which may impair the functionality of the Services, or other systems used to deliver the Services or impair the ability of any other user to use the Services;
- c. not attempt to gain unauthorized access to any materials other than those to which the Subscriber has been given express permission to access or to the computer system on which the Services are hosted;
- d. not transfer, or input into the Services, any files that may damage any other person's computing devices or software, content that may be offensive, or material or data in violation of any law (including Data or other material protected by copyright or trade secrets which the Subscriber does not have the right to use),
- e. not attempt to modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer any computer programs used to deliver the Services; and
- f. not directly or indirectly start or get involved in competing monitoring services.

3.5 Communication Conditions

As a condition of these Terms, if the Subscriber use any communication tools available (such as any forum, chat room, emailing system or message center), the Subscriber agrees only to use such communication tools for lawful and legitimate purposes. The Subscriber must not use any such communication tool for posting or disseminating any material unrelated to the use of the Services, including (but not limited to): offers of goods or services for sale, unsolicited commercial e-mail, files that may damage any other person's computing devices or software, content that may be offensive to any other users of the Services or the Website, or material in violation of any law (including material that is protected by copyright or trade secrets which the Subscriber does not have the right to use). When the Subscriber make any communication using the Services, the Subscriber represent that it is permitted to make such communication. The Provider is under no obligation to ensure that the communications using the Services are legitimate or that they are related only to the use of the Services. As with any other web-based forum, the Subscriber must exercise caution when using the communication tools available.

The Provider reserves the right to remove any communication at any time in its sole discretion.

3.6 Indemnity

The Subscriber indemnifies the Provider against: all claims, costs, damage and loss arising from the Subscriber's breach of any of these Terms or any obligation the Subscriber may have to the Provider, including (but not limited to) any costs relating to the recovery of any Subscription Fees that are due but have not been paid by the Subscriber.

4 Confidentiality and Privacy

4.1 Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

4.1.1 Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

4.1.2 Each party's obligations under this clause will survive termination of these Terms.

4.1.3 The provisions of clauses 4.1.1 and 4.1.2 shall not apply to any information which:

- a. is or becomes public knowledge other than by a breach of this clause;
- b. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- c. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
- d. is independently developed without access to the Confidential Information.

4.2 Privacy

4.2.1 The Provider collects information from the Subscriber in order to provide the Services, and respond to queries. When using the Services, the Subscriber will be required to provide information such as email addresses, phone numbers and other contact details. Such information is used for purposes such as:

- a. personalization of the Subscribers and the Invited Users experience of the Service.
- b. communication between the Subscriber and the Provider, or any 3rd party used by the Provider to improve the Service or provide technical support as may be required from time to time.
- c. update the Subscriber about changes of the Services.
- d. advise the Subscriber of features, product offerings and promotions related to the Service.
- e. processing Subscription Fees.

4.2.2 The Provider does not collect or store credit card information. The Subscriber consent to the Provider passing Credit Card details to a well renowned payment gateway provider that is PCI compliant.

4.2.3 The Subscribers information, whether private or public, will not be sold, exchanged, transferred or given to any other company or organization for any reason whatsoever, without the Subscribers consent, other than for the express purpose of delivering the purchased Services.

4.2.4 The Provider will only share or store information with 3rd party providers, where is it necessary to do so in order to provide the Services. Any such providers are not permitted to contact the Subscriber, or use the Providers information for any purpose other than providing the stated Service in accordance with our agreement.

4.2.5 The Provider may use cookies to improve the experience. Cookies store information on computers used by the Subscriber when logged in to the Service.

4.2.6 The Provider holds information about the Subscriber in order to continue to provide the Services. If a Subscription related to Services hosted by The Provider is cancelled or ended, The Provider may save a compressed copy of all data in order to be able to quickly restore Services if the Subscriber re-subscribes. The Subscriber may request stored information and update it at any time. The Provider will destroy any and all information upon request. This will require the termination of your Service and explicitly requesting us to destroy all information.

4.2.7 If the Subscriber uses a 3rd Party Service, the 3rd Party Provider may store information about the Subscriber. The Provider is not responsible for removal of such information.

5 Intellectual Property

5.1 General

Title to, and all Intellectual Property Rights in the Services, the Website and any documentation relating to the Services remain the property of the Provider (or its licensors).

5.2 Ownership of Data

Title to, and all Intellectual Property Rights in, the Data remain the Subscriber's property. However, the Subscriber's access to the Data is subject to full payment of the Subscription Fee when due. The Subscriber grants the Provider a right to use, copy, transmit, store, and backup information and Data for the purposes of enabling access and use of the Services.

5.3 Backup of Data

The Subscriber must maintain copies of all Data inputted into the Service. The Provider adheres to its best practice policies and procedures to prevent data loss, but does not make any guarantees that there will be no loss of Data. The Provider expressly excludes liability for any loss of Data no matter how caused.

5.4 Third-party applications and your Data

If the Subscriber enables 3rd Party Services for use in conjunction with the Services, the Subscriber acknowledges that the Provider may allow these 3rd Party Providers access to Data as required for such 3rd Party Services to work as claimed. The Provider shall not be responsible for any disclosure, modification or deletion of the Subscriber's Data resulting from any such access by 3rd Party application providers.

6 Warranties and Acknowledgements

6.1 Authority

The Subscriber warrants that where and when the registration is made to use the Service on behalf of another entity - a person or company - the Subscriber has the authority to agree to these Terms on behalf of that entity and agree that by registering to use the Service the Subscriber binds the entity on whose behalf the Subscriber acts to the performance of any and all obligations that the Subscriber become subject to by virtue of these Terms, without limiting the Subscribers own obligations under these Terms.

6.2 Acknowledgement

6.2.1 The Subscriber acknowledge that

- a. The Subscriber is authorized to use the Services and to access the information and Data directly or indirectly entered, including any information or Data input into the Services by any person or system authorized by the Subscriber that is relevant for the subscribed Services. The Subscriber is also authorized

to access the processed information and Data that is made available as part of the subscribed Services (whether that information and Data is Your own or that of anyone else).

- b. The Provider has no responsibility to any entity other than the Subscriber and nothing in this Agreement confers, or purports to confer, a benefit on any entity other than the Subscriber. If the Subscriber use the Services on behalf of or for the benefit of anyone other entity the Subscriber agrees that:
 - i. the Subscriber is responsible for ensuring that the Subscriber have the right to do so;
 - ii. the Subscriber is responsible for authorizing any person who is given access to information or Data, and agree that the Provider has no obligation to provide any entity access to such information or Data without the Subscribers authorization and may refer any requests for information to the Subscribers to address; and
- c. the Subscriber will indemnify the Provider against any claims or loss relating to:
 - i. the Providers refusal to provide any entity access to information or Data in accordance with these Terms,
 - ii. the Provider making information or Data available to any entity authorized by the Subscriber.
- d. The provision of, access to, and use of, the Services are on an "as is" basis and at the Subscriber's own risk.
- e. The Provider does not warrant that the use of the Service will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Service, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Services. The Provider is not in any way responsible for any such interference or prevention of the Subscribers access or use of the Services.
- f. It is the Subscriber's sole responsibility to determine that the Services meet the needs of its business and are suitable for the purposes for which they are used.
- g. The Subscriber remains solely responsible for complying with all applicable accounting, tax and other laws. It is the Subscriber's responsibility to check that storage of and access to data complies with all applicable laws.

6.3 No warranties

The Provider gives no warranty about the Services or any 3rd Party Services. Without limiting the foregoing, The Provider does not warrant that the Services will meet the Subscribers requirements or that it will be suitable for any particular purpose. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

6.4 Consumer guarantees

The Subscriber warrant and represent that it is acquiring the right to access and use the Services for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of the Services.

7 Limitation of Liability

To the maximum extent permitted by law, The Provider excludes all liability and responsibility to the Subscriber (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of information, Data, profits and savings) or damage resulting, directly or indirectly, from any use of, or reliance on, the Service. If the Subscriber suffers loss or damage as a result of the Provider's negligence or failure to comply with these Terms, any claim by the Subscriber against the Provider arising from the Providers negligence or failure will be limited in respect of any one incident, or series of connected incidents, to the

Subscription Fees paid by the Subscriber for the current Subscription period. If the Subscriber is not satisfied with the Service, the Subscriber's sole and exclusive remedy is to terminate these Terms in accordance with Clause 8.

8 Termination

8.1 Trial policy

From time to time, the Subscriber may offer the Services on a trial basis. At first sign up for access to the Services the Subscriber may be permitted to evaluate the Services under the defined trial usage conditions, with no obligation to continue to use the Services. If the Subscriber chooses to continue using the Services thereafter, the Subscriber will be billed from the first day after the end of such trial period. If the Subscriber chooses not to continue using the Services, the Subscriber may cancel the Service by notifying via email. If the Subscriber has not provided a valid credit card at the end of trial, the Services will be automatically cancelled.

8.2 Prepaid Subscriptions

If the Subscription is canceled before the end of any prepaid period, the Services will continue to be available for the Subscriber until the end of that period.

8.3 No-fault termination

These Terms will continue for the period covered by the Subscription Fee paid or payable under clause 3.1 and 3.2.

At the end of each billing period these Terms will automatically continue for another period of the same duration as that period, provided that the Subscriber continues to pay the Subscription Fee when due.

8.4 Breach

8.4.1 If the Subscriber

- i. breaches any of these Terms (including, without limitation, by non-payment of any Access Fees) and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
- ii. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.4 or any payment of Subscription Fees that are more than 10 days overdue); or
- iii. the Subscriber's business become insolvent or goes into liquidation or has a receiver or manager appointed of any of its assets or if the Subscriber become insolvent, or make any arrangement with creditors, or become subject to any similar insolvency event in any jurisdiction, the Provider may take any or all of the following actions, at its sole discretion:
 - a. Terminate this Agreement and the Subscriber's use of the Services;
 - b. Suspend for any definite or indefinite period of time, the Subscriber's use of the Services;
 - c. Suspend or terminate access to all or any Data.
 - d. Take either of the actions in sub-clauses (a), (b) and (c) of this clause 8.4 in respect of any or all other entities whom the Subscriber has authorized access to.

8.4.2 For the avoidance of doubt, if payment of any invoice for Subscription Fees due in relation to any Services is not made in full by the relevant due date, The Provider may suspend or terminate the Subscribers use of the Service, the authority for all or any of the Invited Users to use the Service, or the rights of access to all or any Data.

8.5 Accrued Rights

8.5.1 Termination of these Terms is without prejudice to any rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement the Subscriber will:

- iv. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- v. immediately cease to use the Services and the Website.

8.6 Expiry or termination

Clauses 1, 3.1, 3.7, 4, 5, 6, 7, 8 and 9 survive the expiry or termination of these Terms.

9 General

9.1 Entire agreement

These Terms together with the terms of any other notices or instructions given to the Subscriber under these Terms of Use, supersede and extinguish all prior agreements, representations (whether oral or written), and understandings and constitute the entire agreement between the Subscriber and The Provider relating to the Services and the other matters dealt with in these Terms.

9.2 Waiver

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

If the Subscriber is in breach of these Terms without being notified of it, this breach should not be construed as a Waiver by the Provider.

9.3 Delays

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

9.4 No Assignment

The Subscriber may not assign or transfer any rights to any other entity without prior written consent from the Provider.

9.5 Governing law and jurisdiction

This Agreement shall be governed by and construed in accordance with the substantive laws of Sweden.

9.6 Severability

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

9.7 Notices

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to the Provider must be sent to info@zimondo.com. Notices to the Subscriber will be sent to the email address registered in the Services at any time by the Subscriber.

9.8 Rights of Third Parties

An entity who is not a party of these Terms has no right to benefit under or to enforce any term of these Terms.

9.9 Formatting and Numbering

Formatting, colors and numbering used in this document are for the purpose of increasing readability and in no way form part of the agreement. Formatting is not intended to suggest importance of one section over another, other than what may be correctly interpreted by the text.