



SUBSCRIPTION TERMS AND CONDITIONS

WatchMouse By Nimsoft Terms of Service

The terms of service for WatchMouse By Nimsoft Monitoring are listed below. By clicking "I Accept" or "Register" you agree to be bound by these terms. You can then proceed to our server to complete your registration and submit payment details. If you prefer to register by mail, click here to contact us for alternate arrangements.

1. Acknowledgement and Acceptance of Terms of Service

The WatchMouse By Nimsoft Monitoring Service ("Service"), owned and operated by Nimsoft, Inc. ("Company"), is provided to you ("Customer") under the terms and conditions of these WatchMouse Terms of Service (WMTOS) and any operating rules and policies that may be published by Company. The WMTOS comprises the entire agreement between Customer and Company and supersedes all prior agreements between the parties regarding the subject matter contained herein. BY CLICKING THE "I ACCEPT" or "REGISTER" BUTTON, YOU ARE INDICATING YOUR AGREEMENT TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THE WMTOS.

2. Description of Service

Company is to monitor one or more Internet Servers (IS) on behalf of Customer and notify Customer if certain events occur during the monitoring process. Events for which notifications are sent are defined by Customer as part of account maintenance. Notifications shall be sent in a manner as determined by Company, which notices may include sending by email, GSM short message (SMS), pager, or Instant Message (IM). Customer must: (1) supply information required to set up the account, IS(s), notifications, and notification events; (2) provide for own access to the Internet and pay any (telephone service) fees associated with such access.

If any information provided by Customer is inaccurate, Company retains the right to terminate Customer's customership and right to use the Service. Help desk and other support services and consulting services are not available pursuant to this WMTOS.

3. Customer Representations

The Customer affirms, for any IS tested by the Service through Customer's account, that Customer is the legal owner of the IS, is an employee of the legal owner of the domain, or is then under an existing contract to enable Customer's access and use of the IS. Customer expressly agrees to indemnify Company from any claims by a third party arising from use of the Service in testing an IS.

4. Right of Access

Customer grants Company permission to download files from any IS monitored by the Service as part of the account services. Customer understands that operation of the Service will involve repeated access by the Service to any IS monitored as part of the account services.

5. Compensation for Service

In consideration of this Service, Customer agrees to: (1) pay Company an account setup fee; (2) pay on a monthly basis for each IS monitored per day of monitoring; (3) pay for phone calls to toll numbers made as part of Service notification. Rates for account setup, IS monitoring, and toll calls shall be as defined in the current service rate page; (4) place the required HTML code on Customer's webserver in case of a Free account. Company shall notify Customer of any change of service rates, which notification may be in the form of a general publishing of revised rates provided to Company's customers

Unless prior written arrangement has been made between Customer and Company, Customer shall be billed in advance for use of Service, with a invoicing period as indicated in the account, and with bills being due within 14 days of posting.

6. Disclaimer of Warranties

CUSTOMER EXPRESSLY AGREES THAT USE OF THE SERVICE IS AT THE CUSTOMER'S SOLE RISK. THE SERVICE IS PROVIDED ON AN "AS IS" BASIS. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED.

COMPANY MAKES NO WARRANTY THAT THE SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE; NOR DOES COMPANY MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICE OR AS TO THE ACCURACY OR RELIABILITY OF ANY INFORMATION OBTAINED THROUGH THE SERVICE OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED.

7. Customer Account, Password, and Security

As part of account setup, Customer will select an account name and password. Customer shall be entirely responsible and liable if Customer does not maintain the confidentiality of Customer's password or account. If Customer learns that Customer's password has been compromised, Customer must notify Company in a timely manner of any known breach of security. Company shall use commercially reasonable practices to enable that Customer's data is disclosed only to Customer. However, Customer acknowledges that the internet is an open system and Company cannot and does not warrant or guarantee that third parties cannot or will not intercept or modify Customer's data.

8. Modifications to Terms of Service

Company may change the terms and conditions of the WMTOS from time to time. Upon any change in the terms and conditions of the WMTOS, Company will notify you by posting the changes as a start-up screen following Customer's account log-on.

9. Modifications to Service

Company reserves the right to modify or discontinue the Service with or without prior notice to Customer. Company shall not be liable to Customer or any third party should Company exercise its right to modify or discontinue the Service.

10. Termination

Either Customer or Company may terminate the Service with or without cause at any time and effective immediately upon thirty (30) days prior written or email notice to the other party. Notices of termination initiated by Customer and sent via email shall be addressed to nimsoft.support.com. Company shall not be liable to Customer or any third party for termination of Service.

Should Customer object to any terms and conditions of the WMTOS or any subsequent modifications hereto, Customer's only recourse is to immediately: (1) discontinue use of the Service and (2) terminate this Agreement in the manner described herein.

Upon notice of termination of the Service, Customer's right to use the Service ceases at the respective termination date. Customer shall have no right and Company shall have no obligation thereafter to forward any monitoring data associated with Customer's account. Upon notice of termination of the Service, Customer shall remain liable for charges accrued in the period between the notice of termination and the date of termination, and for any outstanding charges from previous months.

Any remaining credit may be used to continue checking of IS(s)

11. Suspension of Service

Company reserves the right to suspend the Service with or without cause at any time and effective immediately. Suspension will be accompanied by written or email notice sent to the Point of Contact listed in Customer's account information.

12. No Resale of Service

Customer's right to use the Service is personal to Customer. Customer may be an individual, a corporation, or other legal entity. Customer agrees not to resell or make any commercial use of the Service without the express written consent of Company.

13. Limitation of Liability

IN NO EVENT WILL COMPANY BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, FOR ANY LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF BUSINESS, LOSS OR CORRUPTION OF DATA, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING IN ANY WAY OUT OF THIS AGREEMENT, EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE. THE AGGREGATE LIABILITY OF COMPANY FOR DAMAGES UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF THE ACTION (AND WHETHER IN CONTRACT OR IN TORT) WILL BE LIMITED TO THE TOTAL AMOUNT PAYABLE TO COMPANY UNDER THIS AGREEMENT IN THE PRECEDING TWELVE (12) MONTHS

14. Indemnification

14.1 Company Indemnification. Company agrees to indemnify Customer against any losses or damages finally awarded against Customer incurred in connection with a third party claim alleging that the Customer's use of the unaltered Services infringes or misappropriates any United States or European Union member states' patent, copyright, or trade secret of such third party, provided that Customer (a) provides prompt written notice of such claim to Company, (b) grants Company the sole right to defend such claim, and (c) provides to Company all reasonable assistance. In the event of a claim or threatened claim under this Section by a third party, Company may, at its sole option: (i) revise the Services so that they are no longer infringing; (ii) obtain the right for Customer to continue using the Services; or (iii) terminate this WMTOS upon ten (10) days notice (and refund any pre-paid unused subscription fees). Notwithstanding the foregoing, Company shall have no liability or indemnification obligations for: (a) any modification of the Service by any party than Company; (b) use of the Service in combination with any third party hardware or software (to the extent that such liability would not arise without such combination); (c) for any open source code contained within the Services, if any; (d) any use of the Service not in conformance with the Documentation; or (e) any use of the Service after Company has provided instructions to terminate such use. THIS SECTION 14.1 REPRESENTS THE SOLE AND EXCLUSIVE LIABILITY OF COMPANY AND THE EXCLUSIVE REMEDY OF CUSTOMER FOR INFRINGEMENT OR MISAPPROPRIATION OF THIRD PARTY RIGHTS.

14.2 Customer Indemnification. Customer agrees to indemnify and hold Company, its officers, employees and supporting contractors, harmless from any claim or demand, including attorney's fees, made by any third party due to or arising out of Customer's use of the Service, the violation of this WMTOS by Customer, or the infringement by Customer, or other user of the Service using Customer's computer, of any property or other right of any person or entity.

15. Proprietary of Rights

As between Company and Customer, Company owns all rights, including Intellectual Property rights, in the Services, any materials relating thereto, and any modifications, enhancements, customizations, updates, revisions or derivative works thereof, and all results of consulting services, whether made pursuant to this WMTOS or a separate statement of work. No transfer of ownership will occur under this WMTOS. All rights not expressly granted to Customer are reserved by Company.

Customer acknowledges that content, including but not limited to text, software, graphics, domain names, or other material presented to Customer as part of the Service ("Content") by Company, is protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws; therefore, Customer is only permitted to use this Content as expressly authorized by Company. Customer may not copy, reproduce, distribute, or create derivative works from this Content and shall not "frame" or "mirror" this Content without expressly being authorized to do so by Company. Customer shall not perform competitive or comparison analysis of the Services and/or the Content.

16. Feedback

Customer, from time to time, may submit comments, information, questions, data, ideas, description of processes, or other information provided to Company ("Feedback"). For any and all Feedback, Customer grants to Company a non-exclusive, worldwide, perpetual, irrevocable license to use, exploit, reproduce, incorporate, distribute, disclose, and sublicense any Feedback in its products and services. Customer represents that it holds all intellectual or proprietary rights necessary to grant to Company such license, and that the Feedback will not violate the personal, proprietary or intellectual property rights of any third party.

17 Confidentiality

17.1 Confidential Information. Each party hereby agrees that it will not use or disclose any Confidential Information received from the other party other than as expressly permitted under the terms of the Agreement or as expressly authorized in writing by the other party. Each party will use the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of like nature, but in no circumstances less than reasonable care. Neither party will disclose the other party's Confidential Information to any person or entity other than its officers, principals, employees and subcontractors who need access to such Confidential Information in order to effect the intent of the Agreement and who are bound by confidentiality terms no less restrictive than those in the Agreement. act of the Receiving Party; (c) has been rightfully received from a third party authorized to make such disclosure without restriction; (d) is independently developed by the Receiving Party; (e) has been approved for release by the Disclosing Party's prior written authorization; or (f) has been disclosed by court order or as otherwise required by law, provided that the party required to disclose the information provides prompt advance notice thereof, to the extent practicable, to enable the Disclosing Party to seek a protective order or otherwise prevent such disclosure.

17.2 Exceptions. The restrictions set forth in Section 16.1 will not apply to any Confidential Information that the Receiving Party can demonstrate: (a) was known to it prior to its disclosure by the Disclosing Party; (b) is or becomes publicly known through no wrongful

17.3 Injunctive Relief. The parties agree that a breach of Section 16.1 may cause irreparable damage which money cannot satisfactorily remedy and therefore, the parties agree that in addition to any other remedies available at law or hereunder, the Disclosing Party will be entitled to seek injunctive relief for any threatened or actual disclosure by the Receiving Party.

18. Use of Customer Company Name

Company has the right to use the company name of Customer of their customers for marketing, sales or other promotional purposes.

19. Laws

Governing Law; Venue. The validity, construction and interpretation of the Agreement will be governed by the internal laws of the State of New York, excluding its conflict of laws provisions. The parties consent to the exclusive jurisdiction and venue of the federal and state courts located in Suffolk County, New York for any action arising hereunder.

20. Section Titles

The section titles of the WMTOS are solely used for convenience of the parties and have no legal or contractual significance.