

# TERMS OF USE

Cumulo Information System Security GmbH (hereafter referred to as CUMULO) provides nimbusec as a service to monitor web applications. It can identify manipulated and hacked websites (malware, defacements, blacklisting, web shells) at an early stage.

By using nimbusec you agree to the nimbusec Terms of Use stated here and nimbusec Privacy Policy.

## 1. SCOPE OF SERVICE

The detailed scope of service offered by CUMULO is defined in your booked nimbusec package and optionally through an individual Service Level Agreement.

Upon booking a nimbusec package, CUMULO will monitor your domain(s) and inform you about detected manipulations and black-listings according to the applicable nimbusec package. Cleaning up detected manipulations is not part of nimbusec unless explicitly agreed.

CUMULO is striving vigorously to provide highest possible detection rates, but we need to stress that a detection rate of 100% is not possible and therefore not within the nimbusec scope of service.

We provide software that you need to install on your web server in order to use all functions of nimbusec (Server Agent). Installation of the Server Agent is not part of the service. If the Server Agent is not installed, it is not possible to use all nimbusec functions. This does not represent a service interruption.

Unless agreed otherwise in writing, CUMULO support is available Monday to Friday, 9 AM to 4 PM CET.

## 2. CHANGES IN SCOPE OF SERVICE

CUMULO continuously extends and improves its offers and services. CUMULO is permitted to upgrade and extend services of existing contractual agreements free of charge.

## 3. SERVICE INTERRUPTIONS/WARRANTY

Nimbusec is provided as is and there are no warranties which extend beyond the description on the face hereof. Scanning intervals are defined for each function depending on your booked nimbusec package. We define a service interruption as failure to provide a scan based on service records measured at CUMULO server center. Changes in scanning intervals are no service interruption as long as the agreed number of scans is provided within a 48 hour window.

If a service interruption is caused due to wrong information provided by you or due to misuse

we are neither obligated to fix this problem free of charge nor to issue credit. In this case CUMULO services are considered to be rendered according to contract.

## 4. SERVICE LEVEL-AGREEMENT/ SERVICE CREDIT

CUMULO is pledging to provide the agreed nimbusec service level and backs this by granting credit in case we do not reach our targets.

We calculate monthly nimbusec service level using following formula:

$(\text{Hours per month less down-time in hours}) / (\text{hours per month}) * 100.$

If this percentage falls below 99.8% we will issue following credit:

Monthly nimbusec service level	Service credit
< 98 %	25 %
< 95 %	50 %
< 90 %	100 %

THERE IS NO ADDITIONAL COMPENSATION FOR SERVICE INTERRUPTIONS IN EXCESS OF THE SERVICE CREDIT DESCRIBED HERE.

### 4.1. CLAIMING SERVICE CREDIT

To claim credit due to nimbusec service level underperformance send us an e-mail or a letter containing following information:

- Description of the occurrence
- Duration of the service interruption
- Number and domains of affected users (if applicable).

The claim for credit needs to be received including all information within 60 days of the service interruption.

Upon confirmation we will calculate your service credit using the monthly nimbusec service level formula and apply it to your monthly service fees. You can only claim one credit per month.

## 5. LIMITATIONS TO CREDIT CLAIMS

The above service level agreement and credit regulation does not apply for interruptions of service caused by:

1. factors outside the control of CUMULO,
2. services, hardware or software not provided by CUMULO,

3. not following advice of CUMULO (e.g. installing an update),
4. failing to use required configurations, supported platforms and follow terms of use,
5. using beta-, demonstration or preview versions of the service,
6. by unauthorized actions or omissions of you, your employees or representatives (e.g. unauthorized access to the network of CUMULO);
7. domains covered by nimbusec subscriptions with overdue payments

## 6. LIMITATION OF LIABILITY

Nimbusec provides industry leading detection rates but even so cannot guarantee detection of all incidents. Therefore we cannot assume liability for damages deriving from an undetected incident including indirect damages and loss of profit unless caused intentionally or by gross negligence of CUMULO. This also applies to damages caused by CUMULO subcontractors.

UNDER NO CIRCUMSTANCES WILL THE CUMULO OR ANY OTHERS INVOLVED IN CREATING NIMBUSEC BE LIABLE FOR ANY DAMAGES OR INJURY, INCLUDING ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR OTHER DAMAGES RESULTING FROM ANY CIRCUMSTANCE INVOLVING NIMBUSEC (INCLUDING BUT NOT LIMITED TO DAMAGES OR INJURY CAUSED BY ERROR, OMISSION, INTERRUPTION, DEFECT, FAILURE OF PERFORMANCE, MISDIRECTED OR REDIRECTED TRANSMISSIONS, FAILED INTERNET CONNECTIONS, UNAUTHORIZED USE OF THE WEBSITE, LOST DATA, DELAY IN OPERATION OR TRANSMISSION, BREACH OF SECURITY, LINE FAILURE, DEFAMATORY, OFFENSIVE OR ILLEGAL CONDUCT OF ANY USER OF THE WEBSITE, OR COMPUTER VIRUS, WORM, TROJAN HORSE OR OTHER HARMFUL COMPONENT), EVEN IF CUSTOMER HAS ADVISED THE COMPANY IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGE.

CUSTOMER ALSO EXPLICITLY AGREES THAT CUMULO SHALL HAVE NO LIABILITY OR OBLIGATION, WHETHER ARISING FROM CONTRACT, WARRANTY, TORT, OR OTHERWISE, FOR ANY LOSS OF REVENUE, PROFIT, DATA, USE OF MONEY, USE OF TIME, OR FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR INDIRECT DAMAGES, FORESEEN, FORESEEABLE, UNFORESEEABLE, OR OTHERWISE, ARISING FROM YOUR USE OF NIMBUSEC, TO THE EXTENT ALLOWED BY LAW. THIS LIMITATION APPLIES TO ALL CLAIMS OR CAUSES OF ACTION INCLUDING BUT NOT LIMITED TO THOSE OCCURRING FROM SERVICE AVAILABILITY, YOUR ACCESS AND USE OF THIRD PARTY SERVICES, CONTENT OR SOFTWARE, OR ANY OTHER MATTER RELATED TO NIMBUSEC.

You agree to bring any and all actions within one year from the date of the accrual of the cause of action, and that actions brought after this date will be barred.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM THE COMPANY OR THROUGH OR FROM NIMBUSEC SHALL CREATE ANY WARRANTY OR OTHER OBLIGATION NOT EXPRESSLY STATED IN THIS TERMS

When ordering nimbusec clean-up services in the wake of a cyber-attack there is no liability regarding loss of data. We also cannot guarantee data recovery for clean-up services.

## 7. AUTOMATIC CONTRACT RENEWAL AND BILLING

Your account will be charged depending on your subscribed nimbusec package.

Nimbusec package subscriptions are not terminated and renew automatically at the end of every subscription period. Nimbusec Packages can be cancelled at any time unless agreed otherwise in writing.

Upon cancelation the contract is considered terminated by the end of the current subscription period. This means you have to cancel your nimbusec package before the start of a subscription period to avoid being charged for it. A nimbusec subscription period is always one month and will be charged regardless of actual use. It is not allowed to net charges against receivables towards CUMULO.

## 8. GENERAL

CUMULO may contract third parties to fulfill its obligations.

If any provision of this Agreement is found by a court of competent jurisdiction, arbitrator or other valid tribunal to be invalid or otherwise unenforceable, the unenforceable provision shall be deemed amended, and the remaining Agreement will be construed to give maximum effect to the intention of the Parties at the time of execution of the Agreement.

This Agreement is made in and shall be governed by the laws of Austria valid for registered merchants without regard to its choice of law principles. Any legal disputes arising out of the contract itself or the attached Terms of Use shall be governed by the laws of the Federal Republic of Austria under exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG).

Exclusive Jurisdiction of the courts of the Federal Republic of Austria is to be considered as stipulated in any case of a legal dispute.

CUMULO accepts the "Internet Ombudsmann" as an institution for extrajudicial dispute settlement, Internet Ombudsmann, Margaretenstraße 70/2/10, 1050 Wien.

[www.ombudsmann.at](http://www.ombudsmann.at)