

## ZIMPERIUM, INC.

### END USER LICENSE TERMS

**THIS DOCUMENT IS A LEGAL CONTRACT. PLEASE READ IT CAREFULLY.** These End User License Terms ("**Terms**") govern your access to and use of the zANTI and zIPS client-side mobile application software (the "**Software**") provided by Zimperium, Inc. ("**Zimperium**," "**we**," or "**us**"), and the zCONSOLE cloud-based software-as-a-service application that we make available through or in connection with the Software (the "**Cloud Application**").

#### 1. Acceptance of these Terms

Your use of and access to the Software and Cloud Application are conditioned on your compliance with these Terms and all applicable local, state, national, and international laws, rules and regulations. By installing the Software or by using the Software or Cloud Application you are indicating that you understand and agree to abide by these Terms. If the Software or Cloud Application is to be used by or on behalf of a company or other organization, the individual expressing acceptance of these Terms represents and warrants that he or she has the authority to bind that company or other organization to these Terms, and "you," and "your" will refer to that company or other organization. If you do not accept all of these Terms, then we are unwilling to license the Software or make the Cloud Application available to you, and you must delete all copies of the Software without retaining any copies thereof.

#### 2. Rights to Use the Software and Cloud Application

Subject to your compliance with these Terms, we grant you a non-exclusive, non-transferable license to: (i) install one copy of the Software on each compatible mobile device for which we have issued you a valid license key for that Software (each, an "**Authorized Device**"); and (ii) to use the Software on each such Authorized Device, and access and use the Cloud Application in connection with your Authorized Device(s), solely for your own personal or internal business use during the license period for which we have issued you the applicable license key(s). The foregoing rights may be suspended or terminated as set forth in these Terms. For non-evaluation and other paid licenses, the foregoing rights are also conditioned upon your timely payment and our receipt of all associated fees (as specified by us at the time you selected the license) and applicable taxes, if any.

#### 3. Prohibitions

**a.** The Software and Cloud Application are intended to be used only in accordance with Zimperium's applicable documentation and only to evaluate, manage, and protect the security of mobile devices and wireless networks that you own or control. Any other use of the Software or Cloud Application is strictly prohibited. Prohibited uses include (without limitation) using the Software or Cloud Application to attack, probe, assess the security of, or interfere with any third party's network, device or other target without that third party's express, informed authorization. You may not disclose any vulnerabilities discovered, reproduced, or confirmed through the use of the Software or Cloud Application except in accordance with industry accepted vulnerability disclosure practices. You acknowledge that improper use of the Software or Cloud Application could significantly harm your network and/or devices, and you assume all risks associated with your use.

**b.** You may not, and you agree not to: (i) copy, modify or distribute the Software for any purpose; (ii) transfer, sublicense, lease, lend, rent or otherwise distribute the Software or the Cloud Application to any third party; (iii) decompile, reverse-engineer, disassemble, or create derivative works of the Software or the Cloud Application; (iv) make the functionality of the Software or the Cloud Application available to multiple users through any means; (v) use the Software or Cloud Application in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with these Terms or our applicable documentation; (vi) access or use any areas of the Cloud Application for which we have not granted you authorization, or tamper or interfere with our computer systems or the technical delivery systems of our providers; (vii) gather or use information, such as other users' names, real names, or email addresses, through the Cloud Application to transmit any unsolicited advertising, junk mail, spam or other form of solicitation; or (viii) encourage or enable anyone to do any of the foregoing.

c. You promise to indemnify and hold harmless Zimperium and its representatives fully against any claims, liabilities, costs, expenses, and other harm arising from your unauthorized use of the Software or Cloud Application or any other violation of these Terms (including any of the prohibitions stated above). We reserve the right, but have no obligation, to monitor compliance with the prohibitions set forth above, and we may investigate and prosecute violations of any of the above and/or involve and cooperate with law enforcement authorities in prosecuting users who violate these Terms.

#### **4. Ownership**

Your rights with respect to the Software and Cloud Application are limited to those expressly granted in Section 2 above. Zimperium and its licensors reserve sole and exclusive ownership of the Software and Cloud Application and all copyrights, patents, trademarks, and other intellectual property rights therein. You may not remove, alter, or obscure any copyright, trademark, or other proprietary rights notices appearing on the Software or Cloud Application. If you provide us with any suggestions, comments, or other feedback regarding the Software or Cloud Application ("**Feedback**") you acknowledge that such Feedback will become the exclusive property of Zimperium, and we may use (or not use) any such Feedback in any manner and for any purpose, without compensation to you and without implying or creating any interest on your part in any of our products or services that may be based on such Feedback. You hereby irrevocably assign to us all right, title, and interest in any Feedback you provide.

#### **5. Modifications**

The Cloud Application and Software may change from time to time (for example, we may push updates to your Authorized Device, increase or decrease server capacity, or modify our user interface), and/or we may stop providing the Cloud Application or any of its features (permanently or temporarily), possibly without prior notice to you. In the case of paid licenses, however, we will not discontinue the essential features of the Software or Cloud Application during your paid license period without offering a reasonable substitute or alternative. We may decide to charge users a fee for the use of certain features, although if we do, we will provide you with prior notice before such fees take effect.

#### **6. Your Account**

In order to access and use certain features of the Cloud Application, you will need to register and create an account ("**Account**"). By creating an Account, you represent that you are of legal age to form a binding contract and are not a person barred from receiving services under the laws of the United States or any other applicable jurisdiction. When creating an Account, you may be required to provide certain personal information about yourself and will establish a username and a password. You agree to provide accurate, current and complete information about your Account. We reserve the right to suspend or terminate your Account if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading. You are responsible for maintaining the confidentiality of your password and Account, and agree to notify us if your password is lost, stolen, or disclosed to an unauthorized third party, or otherwise may have been compromised. You are responsible for all activities that occur under your Account.

#### **7. Data Collection and Transmission**

a. In order for the Software and Cloud Application to identify patterns associated with security attacks and to perform other functions for which they were designed, they will gather and transmit to our servers certain technical information, user data, and metadata associated with your Authorized Device(s) and use of the Software, including device IDs, MAC addresses, user names and email addresses, IP configurations, stored sessions, open ports, captured credentials, network metadata, and device operating system, status, version, and configuration (collectively, "**Data**").

b. You consent to our collection, transmission, storage, monitoring, copying, processing, analysis and use of the Data to administer the Cloud Application, to develop and improve the Software and Cloud Application and our other products and services, and to monitor compliance with these Terms. You acknowledge that this may include transmission of your Data to or from locations in the United States, Europe, and other countries or jurisdictions, potentially including those outside of where you reside or use the Software. We may also disclose Data as needed to cooperate with law enforcement activities and otherwise to fulfill our legal obligations

and protect our legal rights. You are solely responsible for securing any privacy-related rights and permissions from your individual users of the Software, consistent with this Section 7, as may be required by local law or by your organization's internal policies.

#### **8. Contacting You**

As part of making the Cloud Application available to you, we may need to provide you with certain communications, such as service announcements and administrative messages. These communications are considered part of the Cloud Application and your Account, which you may not be able to opt-out from receiving.

#### **9. Third-Party Software**

The Software and/or Cloud Application may be accompanied by or utilize certain third-party software components, libraries or applications that are distributed (with or without modifications) under open-source licensing terms (the "**Open-Source Components**"). Your rights with respect to the Open-Source Components are, to the extent of any conflict with these Terms, governed by and subject to the terms of the open-source licenses under which they are distributed. You are responsible for complying with those licenses. Please refer to our website for more specific information regarding the Open-Source Components that we redistribute and the licenses that apply to them. You may not assume or infer that we endorse, or that we have reviewed, verified, or authenticated, any Open-Source Components or other third-party software that may be furnished with, available through, or used in connection with the Software or Cloud Application. Open-Source Components and any other third-party software, and the information or results provided by them, may be unreliable, inaccurate, incomplete, delayed, or otherwise defective. We make no representations, warranties, or guarantees in connection with any third-party software or the information or results provided by it. You acknowledge sole responsibility for and assume all risk arising from your use of or reliance on any third-party software.

#### **10. Verification and Audit**

We may (but are not required to) monitor the use of the Software and Cloud Application, including by tracking the device IDs and license keys associated with the Authorized Devices on which the Software is used, for purposes of verifying compliance with these Terms. In addition, you agree to track and keep records of the individual users and Authorized Device(s) using the Software and promptly notify us if you learn of any unlicensed use. At our written request, you will provide us with a certification signed by you (or, if you are an organization, by an officer of the organization) verifying that the Software and Cloud Application are being used in compliance with these Terms. We may, at any time during the term of your license or for one year thereafter, upon reasonable written notice, audit your use of the Software. We may use a third-party organization to assist us in conducting such an audit. You agree to cooperate with us in such audit and will promptly make available to us all information, equipment and materials reasonably required by us to conduct such an audit. If an audit reveals that you have underpaid any license or service fees for the period audited, you agree to promptly pay us for such underpaid fees based on our price list in effect at the time the audit is completed. If the underpaid fees exceed five percent (5%) of the fees you paid for the relevant period, then you also agree to pay our reasonable costs of conducting the audit.

#### **11. Termination**

Your rights under these Terms will expire at the end of the period(s) for which you have acquired a valid license key from us for the Software. The Software may cease to function once the license key has expired. Any license renewals or extensions will be subject to availability and your payment of all applicable fees as then in effect. We have no obligation to offer license renewals or extensions, and we may condition renewals upon your acceptance of revised or new terms and conditions. Your rights under these Terms will automatically terminate, and we may suspend or terminate your Account and your use of the Software and Cloud Application, immediately and without notice if you breach any of these Terms. In addition, we may suspend your Account and your use of the Software and Cloud Application as we deem appropriate to prevent, investigate, or otherwise address any suspected misuse of the Software or Cloud Application. Upon expiration or termination of these Terms or your Account, you agree to promptly and permanently delete all copies of the Software that are on the Authorized Device(s) or otherwise in your possession or control. The provisions of Sections 3, 4, 10, and 12 through 17 will survive any expiration or termination of these Terms.

**12. Disclaimers**

a. You understand and agree that the Software and the Cloud Application are provided to you “AS IS” and on an “AS AVAILABLE” basis. TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, WE DISCLAIM ANY AND ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT OR NON-INFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. We make no warranty that the Software or the Cloud Application will meet your requirements, will detect or prevent all security threats or vulnerabilities, or be available on an uninterrupted, secure, or error-free basis.

b. Some states or jurisdictions do not allow the exclusion of express or implied warranties in certain circumstances, so the above disclaimer may not apply to you. IN THAT EVENT, SUCH EXPRESS OR IMPLIED WARRANTIES SHALL BE LIMITED IN DURATION TO THE MINIMUM PERIOD REQUIRED BY THE APPLICABLE LAW.

**13. Limitation of Liability**

a. OUR TOTAL LIABILITY TO YOU FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SOFTWARE LICENSE. IF YOU HAVE AN EVALUATION OR OTHER NON-PAID LICENSE, WE WILL HAVE NO LIABILITY TO YOU WHATSOEVER; PROVIDED, HOWEVER, THAT WHERE LEGAL LIABILITY CANNOT BE EXCLUDED, BUT MAY BE LIMITED, OUR TOTAL LIABILITY SHALL INSTEAD BE LIMITED TO THE SUM OF FIFTY U.S. DOLLARS (\$50).

b. WE WILL NOT BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, ARISING IN ANY WAY OUT OF THESE TERMS OR RESULTING FROM YOUR ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SOFTWARE AND/OR CLOUD APPLICATION, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

c. You acknowledge that it is your responsibility to implement back-up plans and other safeguards appropriate for the value of the networks, devices, data, and systems with which you use the Software and Cloud Application and, accordingly, that the foregoing exclusions and limitations of damages and liability are reasonable. The allocation of risk described in this Section 13 is an essential basis of the bargain between you and us, and without it, the fees charged for the Software and Cloud Application would be significantly higher. To the extent, if any, that applicable local laws prohibit the exclusion or limitation of certain liabilities or damages, the provisions of this Section 13 will apply only to the maximum extent permitted by such laws.

**14. Maintenance and Support**

We have no software maintenance or technical support obligations under these Terms. We may from time to time offer maintenance and support services or other add-on services for the Software or Cloud Application for you to purchase. Any add-on services will be subject to such separate fees and contract terms and conditions as we may specify when offering those services.

**15. Export Control**

You agree to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Software nor Cloud Application, nor any direct product thereof, are: (i) downloaded or otherwise exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations, including but not limited to nuclear, chemical, or biological weapons proliferation.

**16. U.S. Government End Users**

The Software and Cloud Application consist of “commercial items,” “commercial computer software” and “commercial computer software documentation,” as those terms are used in FAR Subpart 12.2, DFARS 227.7202 and other government acquisition regulations, as applicable. Any use, duplication, or disclosure of the Software or Cloud Application by the U.S. government is permitted solely as expressly provided in Section 2 above, and is subject to restrictions as set forth in these Terms.

**17. General**

These Terms will be governed by and construed in accordance with the laws of the State of California, without regard to or application of conflict of laws rules or principles. The parties to these Terms irrevocably consent to the jurisdiction of, and venue in, the state or federal courts located in the State of California for any disputes arising under these Terms. Our failure to enforce any right or provision of these Terms will not be deemed a waiver of such right or provision. In the event that any provision of these Terms is held to be invalid or unenforceable, the remaining provisions of these Terms will remain in full force and effect. You may not assign, delegate or transfer these Terms or any of your rights or obligations hereunder without our prior written consent, and any attempt to do so will be void. We may assign these Terms without your consent. These Terms constitute the entire agreement between you and us regarding the Software and Cloud Application, and they supersede and replace any prior agreements and understandings between you and us regarding the Software or Cloud Application.

**18. Contacting Us**

If you have any questions regarding these Terms please contact us via email at [licensing@zimperium.com](mailto:licensing@zimperium.com).

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