

# MSP TECHNICAL SUPPORT TERMS AND CONDITIONS

Please read these MSP Technical Support Terms and Conditions carefully before purchasing Support Services. If MSP does not accept the terms of these Terms and Conditions, then MSP must not purchase Support Services. By entering into the Agreement, MSP confirms that MSP meets all criteria of MSP set out in Section 1.8 herein. Failure to meet the criteria set out in Section 1.8 or provision of false information about MSP's business may result in termination by Zabbix of the Agreement for breach under provisions of Section 8.3.1 herein.

These Terms and Conditions shall apply and govern any Zabbix's issued commercial offer or Invoice, or statement of works or any other document executed between Zabbix and Company for the purpose of providing Support Services.

## 1 DEFINITIONS

- 1.1 "Affiliate" means a separate legal entity, directly or indirectly, controlling, controlled by, or under common control with the MSP.
- 1.2 "Agreement" means the MSP Technical Support Agreement, entered into by and between Zabbix and MSP, and these T&Cs forming an integral part of Agreement. The Agreement does not constitute a software license agreement.
- 1.3 "Customer" means a legal or private entity which is a customer of MSP.
- 1.4 "Documentation" means the technical, user and reference manuals, notes, instructions and summaries, technical release notes, specifications, and any other supporting documentation related to Software, written by Zabbix in digital, printed, or other form.
- 1.5 "Host" means a logical object within Software, which describes a particular physical or logical element to be monitored by Software (ex., physical server, router, printer, database, web site, IoT device, virtual machine, human being, vehicle, etc.).
- 1.6 "Invoice" means a commercial document issued by Zabbix to MSP, indicating the level of Support Tier to be provided, quantity, agreed prices, payment terms, and special conditions, if any. Upon receipt of payment, Invoice becomes an integral part of the Agreement.
- 1.7 "Item" means a logical object within Software, which describes a particular data metric collected from Host. Host may have one or more Items.
- 1.8 "Legal Entity" means a separate legal entity, which may be either the MSP (acting as a headquarter company/ parent company) or the Affiliate (acting as an affiliate/ subsidiary of the headquarter company/ parent company)
- 1.9 "MSP" means a legal entity acquiring the right to use Zabbix Support Services, and which is a party to the Agreement. MSP under these T&C means a managed service provider that provides monitoring services to its customers as a managed service, where MSP's customers own or have direct oversight of the resources being monitored, while MSP is responsible for monitoring setup, configuration, maintenance, troubleshooting, and provision of monitoring results to MSP's customers. MSP shall meet all of the following criteria: (a) MSP is not affiliated with MSP's customers; (b) MSP does not use Support Services solely for own consumption.
- 1.10 "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control.
- 1.11 "Party" refers to Zabbix or MSP, and "Parties" refers to both Zabbix and MSP collectively.
- 1.12 "Platform" means an automated information system of technical support available online at <https://support.zabbix.com/servicedesk/>. Support Services provided through Platform will be provided by humans and not by artificial intelligence.
- 1.13 "Proxy" means a stand-alone element of Software under Documentation and Software a Zabbix Proxy which is capable of collecting, buffering, processing, and sending data from Hosts to Zabbix Server.
- 1.14 "Purchase Order" means the written order(s) submitted by MSP, or any third party to whom MSP has authorized to submit written order(s) on MSP's behalf, to Zabbix which identifies the Support Services MSP desires to obtain from Zabbix.
- 1.15 "Remote troubleshooting service" refers by default to Support Services provided remotely to fix problems under Support Cases with "Blocker" or "Critical" priority in relation to the blocked operation of Server or Proxy. Zabbix can decide, at its discretion, against providing remote troubleshooting service for a Support Case with lesser than "Blocker" or "Critical" priority; and, in such case, Zabbix will provide response to User through the Platform in the relevant Support Case ticket.
- 1.16 "Restricted Person" means (i) any country or territory which is or becomes prohibited under Sanctions; (ii) person or entity owned or controlled by or acting on behalf of the government which is or becomes prohibited under Sanctions; (iii) person designated under Sanctions or SDN List; or (iv) any entity that is 50% or more owned or controlled by any of the foregoing.

- 1.17 "Sanctions" are: (i) restrictions imposed by the Republic of Latvia, the United Nations Organization, and the European Union; (ii) restrictions imposed by the Member States of North Atlantic Treaty Organization, including but not limited to the United States and the United Kingdom, and which are directly applicable in Latvia; (iii) other applicable export controls and trade and economic sanctions.
- 1.18 "SDN List" means the OFAC's Specially Designated Nationals and Blocked Persons List.
- 1.19 "Server" means a stand-alone element of Software under Documentation and Software a Zabbix Server, which is a central element of Software that performs monitoring, data processing, visualization, notification, interacts with Proxies and agents, allows overall management of Software.
- 1.20 "Software" means Zabbix Monitoring Solution software developed by Zabbix SIA. Software is released under the terms of the open source software license applicable to the relevant version of the Software. More detailed information about the open source software licenses applicable to relevant Software's versions is available at <https://www.zabbix.com/license>.
- 1.21 "Support Case" is a precise statement of a single question, problem or issue related to correct installation, functional and operations of Software, as well as problem resolution, that MSP is facing while using Software with all related sub-questions and comments, submitted to Zabbix using channels described herein.
- 1.22 "Support Fees" means the support fees set out in Invoice for a period specified in Invoice.
- 1.23 "Support Services" are the technical support services and other services included in particular Support Tier set out in Section 4 herein to be provided to MSP under the scope of the Agreement. Support Services will be provided to Company by Zabbix personnel.
- 1.24 "Support Tier" is a set of contractual obligations and limitations to be provided by Zabbix to MSP under the scope of the Agreement according to tables in Section 4.
- 1.25 "Terms and Conditions" or "T&Cs" means these MSP Technical Support Services Terms and Conditions.
- 1.26 "User" or "Users" refers to MSP's Authorized Support Contact(s) as may be nominated by MSP from time to time.
- 1.27 "Workaround" means a suggested set of actions or recommendations that the Company may follow to circumvent or mitigate the impact of an error, notwithstanding that the error still exists. A Workaround, as a temporary solution to an issue, can be provided under SLA set out in Section 4.10.2 only in cases where no modifications to Software's code are necessary to address the issue.
- 1.28 "Zabbix" means either (i) Zabbix SIA, a limited liability company registered in the Register of Enterprises of the Republic of Latvia with registration number 40003738045, or (ii) Zabbix LLC, the US-based subsidiary of Zabbix SIA, that is specifically identified in the document issued by Zabbix to Company or executed between Zabbix and Company.
- 1.29 "Zabbix personnel" means Zabbix SIA's technical specialists employed by Zabbix SIA and based in Latvia, as well as independent contractors contracted by Zabbix SIA.

## **2 MSP's OBLIGATIONS**

- 2.1 MSP will be responsible for performing operations on MSP's and Customers computer systems and Zabbix shall have no responsibility to perform operations on MSP's and Customers computer systems. MSP acknowledges that Zabbix ability to perform certain Support Services may be conditioned upon access to certain MSP and Customers information and access to MSP's and Customers computer system as reasonably requested by Zabbix. Zabbix cannot refuse to solve a certain problem due to impossibility to access MSP's and Customers computer systems without providing a good reason why the problem in question cannot be solved by Zabbix through other technical means (e.g., screen sharing, log files, etc.) without direct access to MSP's and Customers computer systems. Such information may include, but is not limited to, the type of hardware MSP or Customers are using, a description of the problem for which MSP seeks Support Services, and additional software MSP is using that falls outside the Support Services scope of coverage. MSP understands and agrees that the completeness and accuracy of the information provided by MSP to Zabbix may affect Zabbix's ability to provide Support Services. Support Services purchased by MSP are intended for use only for the benefit of MSP and only for the instances (Servers, Proxies and Hosts) covered by this Agreement. MSP may not use Support Services for other third-party beneficiaries and for instances that are not covered by the Agreement. Any unauthorized use of the Support Services will be deemed to be a material breach of this Agreement.
- 2.2 Should MSP initiate a Support Case, Zabbix may require MSP to provide Zabbix with the following information, which shall be considered to be Confidential Information, related to such issue or the technical assistance: (a) a general description of the operating environment, (b) a list of all hardware components, operating systems and networks, (c) a reproducible test case, and (d) any log files, trace and systems files. MSP's failure to provide this information may prevent Zabbix from identifying and resolving that purported issue.
- 2.3 Support Services shall be provided solely to Users. Zabbix strongly recommends Users to be trained on Software. MSP shall be asked to designate Users in writing, including their full name, primary corporate email address, and phone numbers, following the date of entry into force of the Agreement. MSP may not use a single User to act as a mere forwarding service for other personnel. Zabbix shall assign access for Users to use Support Services. Number of Users

is limited for each Support Tier. The initial list of Users is set out in Section "Authorized support contacts" of the Agreement. MSP may change its designated Users at any time by providing written notice to Zabbix. If Zabbix receives any requests or inquiries from MSP employee other than User, Zabbix may address such requests or inquiries, but Zabbix is not obligated to do so. MSP may purchase additional Users for a fee. User may not use Support Services on the basis of this Agreement to benefit any person or entity other than MSP. Each User must have "read and/or write" access to all necessary files. Each User must have good command of English and relevant technical knowledge necessary to assist Zabbix in performing Support Services contemplated under the Agreement. Such knowledge includes familiarity with Software, MSP's infrastructure and Customer's infrastructure.

- 2.4 MSP may initiate a Support Case through the Platform. Users are authorized to login to Platform and to submit a Support Case for any covered Support Service, or to register Support Case by sending e-mail message to Zabbix support e-mail address, or over the phone during Support Services availability time. Each submitted Support Case is given a unique identification number. Support Services logged through the Platform are managed in English.
- 2.5 MSP will be responsible for provision of regular usage reports according to instructions provided by Zabbix. Reported data will consist of number of Items, Hosts, Proxies, Software version, and similar technical and usage information to ensure MSP compliance with T&Cs. Zabbix may use such data as well to produce statistical reports, where all personal information will be removed.
- 2.6 Each Support Tier is limited by the number of Hosts covered under the relevant support tier as set out in Section 4.9. MSP may within its course of operations exceed this limit. MSP may choose either to upgrade to higher Support Tier according to Section 8.2 or to pay for excess use according to the price specified in the initial Invoice that covers particular Support period.

### **3 PRICING, INVOICING & TAXES**

- 3.1 Support Fees shall be due and payable in the currency and pursuant to the payment terms indicated in the Invoice. Without limiting the foregoing, Zabbix shall notify MSP of the then-current annual Support Fee for Support Tier in each renewal Invoice. Support Fees are non-refundable except as required by applicable law or as otherwise specifically permitted in these T&Cs. Zabbix may suspend or terminate Support Services if Support Fees are past due and if MSP does not remedy such failure within five (5) business days upon receipt of Zabbix's notice. MSP shall provide complete and accurate billing and contact information to Zabbix.
- 3.2 MSP shall pay the Support Fees without withholding or deduction. Support Fees are exclusive of taxes and MSP is responsible for all taxes. Zabbix will charge taxes when required to do so. MSP will pay Zabbix net of any applicable withholding taxes. If MSP is required to withhold or deduct any taxes from Support Fees before remitting payment to Zabbix, then MSP agrees to increase the amount payable to Zabbix by the amount of such taxes so that Zabbix receives the full amount of all Support Fees. Thereby, Zabbix may gross up its rates and the amount due in an Invoice to ensure that the net amount actually received by Zabbix equals the gross amount due. MSP and Zabbix will work together to avoid any withholding tax if exemptions, or a reduced treaty withholding rate, are available. If Zabbix qualifies for a tax exemption, or a reduced treaty withholding rate, Zabbix will provide MSP with reasonable documentary proof.
- 3.3 Zabbix shall accept a Purchase Order by issuing the Invoice. The provisions of these T&Cs shall prevail over the terms and conditions of Purchase Orders. Consequently, terms and conditions of Purchase Orders, which are new or conflicting from those set forth in these T&Cs, shall not apply.
- 3.4 Having determined the number of Legal Entities to which the Support Services will be provided under the Agreement, Zabbix applies the appropriate pricing model and Support Tier after assessing the scope of the Support Services to be provided, and the size of the MSP (including the number of Affiliates to be covered by the Agreement).

### **4 SUPPORT SERVICES AND SUPPORT TIERS**

- 4.1 Subject to MSP's payment of the applicable Support Fees set forth in the Invoice, Zabbix shall provide Support Services set out in the Agreement and in the Invoice in accordance with Support Tier descriptions set forth below.
- 4.2 Support Services only cover Support Cases, directly related to, or caused by Software and its functionality, stemming from the Software usage by MSP.
- 4.3 Delivery of Support Services for Software versions is limited according to provisions set out in this Section 4.3. Support Services are provided for Software versions according to Zabbix Life Cycle & Release Policy available at [https://www.zabbix.com/life\\_cycle\\_and\\_release\\_policy](https://www.zabbix.com/life_cycle_and_release_policy), which offers detailed up-to-date information on frequency and cycles of updates for Software versions, and sets out currently supported Software versions. The schedule below sets out supported Software versions, which are actual and applicable on the date of publication of this version of T&Cs. For clarity and consistency purposes, it is recommended for MSP to refer to Zabbix Life Cycle & Release Policy during the period of validity of the Agreement for up-to-date information on currently supported Software versions.

Full Support Services include resolution of all Support Case types, while Limited Support services include only resolution of Support Cases with "Critical" priority and security related issues. Zabbix does not guarantee any problem resolution for older releases and non-stable releases.

Release name	End of Full Support	End of Limited Support
Zabbix 5.0 LTS	May 31, 2023	May 31, 2025
Zabbix 6.0 LTS	February 28, 2025	February 28, 2027
Zabbix 7.0 LTS	June 30, 2027	June 30, 2029
Zabbix 7.2	June 30, 2025	December 31, 2025

- 4.4 Zabbix shall have no obligation of any kind to provide Support Services for Support Cases directly or indirectly resulting from errors (bugs), performance or other issues occurring due to any of the following: (i) MSP is using Software that is modified or changed either by MSP, or any third party in any way without written direction or express authorization by Zabbix; or (ii) MSP is using Software in ways or use cases other than as provided in the Documentation.
- 4.5 Support Cases are handled based on Support Case priority levels as described in Section 4.8. When submitting Support Case, MSP selects the priority in accordance with the priority guidelines set forth in Section 4.8. Zabbix may upon receipt of Support Case change priority of Support Case if Zabbix reasonably considers the Support Case as non-conforming to the criteria for the selected priority. Zabbix shall respond to Support Case and shall provide Workarounds or problem resolution in accordance with terms set in Section 4.10 for each specific Support Tier. A Support Case is considered to be closed upon receiving a solution from Zabbix that is considered proper by MSP.
- 4.6 Support Services will be provided within Support Services availability time set out in Section 4.9. Support Services availability time 24x7 shall mean availability of Support Services twenty-four (24) hours a day, seven (7) days a week. Support Services availability time 8x5 shall mean standard business hours from 9 a.m. to 6 p.m. according to time zone set out in the Agreement, from Monday to Friday.

If response time set out in Section 4.10 (for Support Tier with Support Services availability time 8x5) falls out of that particular business day's Support Services availability time, then the remaining response time is transferred to the next business day's Support Services availability time.

- 4.7 Zabbix will use commercially reasonable efforts to provide a response within the response guideline period set forth in Section 4.10 during standard business hours and days as set forth therein.
- 4.8 Support Case priorities are assigned based on the technical importance of the problem in MSP's Zabbix environment.

Support Case Priority	Support Case priority criteria
Blocker	Critical problem that causes downtime of Software
Critical	Critical problem that cannot be bypassed for Software
Major	Problem that cannot be bypassed for Software
Minor	Problem that can be bypassed for Software
Trivial	Inaccuracy or case where Software is not operating as documented
New Feature	Request for new feature to estimate its development
Task	Consultation related to MSP's environment if additional consulting hours are purchased

- 4.9 Both number of Support Cases and support availability time are limited as per Support Tier according to the table below.

Support Tier	MSP 500	MSP 1000	MSP 2500	MSP 5000	MSP 10000	MSP 20000	MSP 50000	MSP 100000	MSP Unlimited
Number of monitored Hosts	500	1 000	2 500	5 000	10000	20 000	50 000	100 000	Unlimited
Supported Server and Proxies	Unlimited	Unlimited							
Native Zabbix HA	Included	Included							
Customers supported	Unlimited	Unlimited							
Maximum number of Support Cases	15	25	50	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited

Available support channels	Platform	Platform	Platform	Platform, e-mail & phone					
Support Services availability time	8x5	8x5	8x5	24x7	24x7	24x7	24x7	24x7	24x7
Initial response time	8 hours	8 hours	8 hours	4 hours	4 hours	4 hours	4 hours	2 hours	2 hours
Remote troubleshooting	Option	Option	Option	Option	Included	Included	Included	Included	Included
Number of Users	2	3	5	5	7	10	15	20	40
ZCU public by Zabbix	2	3	5	5	7	10	15	20	40
ZCS public by Zabbix	n/a	n/a	n/a	1	2	3	5	10	20
ZCP public by Zabbix	n/a	n/a	n/a	n/a	n/a	1	2	4	10
ZCE public by Zabbix	n/a	n/a	n/a	n/a	n/a	n/a	1	1	3
Technical Account Manager	n/a	n/a	n/a	n/a	Option	Option	Included	Included	Included

4.9.1 Additionally, it is possible to purchase additional services to all MSP Support Tiers – performance tuning, environment review, upgrade to a newer version, additional development works, if required.

4.9.2 All MSP Support Tiers, except MSP Unlimited, cover only one Legal Entity. MSP Unlimited covers five Legal Entities, and it is possible to cover additional Legal Entities for an extra Support Fee, if required.

#### 4.10 Support Services SLA

4.10.1 Maximum time period for providing initial response and acknowledgment, by Support Case priority:

Support Case Priority	MSP 500	MSP 1000	MSP 2500	MSP 5000	MSP 10000	MSP 20000	MSP 50000	MSP 100000	MSP Unlimited
Blocker	8 business hours	8 business hours	8 business hours	4 hours	4 hours	4 hours	4 hours	2 hours	2 hours
Critical	8 business hours	8 business hours	8 business hours	4 hours	4 hours	4 hours	4 hours	2 hours	2 hours
Major	8 business hours	8 business hours	8 business hours	4 hours	4 hours	4 hours	4 hours	2 hours	2 hours
Minor	1 business day								
Trivial	2 business day								
New Feature	3 business day								
Task	1 business day								

4.10.2 Maximum time period for providing Workarounds, by Support Case priority:

Support Case Priority	MSP 500	MSP 1000	MSP 2500	MSP 5000	MSP 10000	MSP 20000	MSP 50000	MSP 100000	MSP Unlimited
Blocker	n/a	n/a	n/a	n/a	n/a	24 hours	24 hours	16 hours	16 hours
Critical	n/a	n/a	n/a	n/a	n/a	48 hours	48 hours	24 hours	24 hours

Major	n/a	n/a	n/a	n/a	n/a	48 hours	48 hours	24 hours	24 hours
Minor	n/a	n/a	n/a	n/a	n/a	48 hours	48 hours	48 hours	48 hours
Trivial	n/a	n/a	n/a	n/a	n/a	5 business days			

4.10.3 Maximum time period for providing problem resolution, by Support Case priority:

Support Case Priority	MSP 500	MSP 1000	MSP 2500	MSP 5000	MSP 10000	MSP 20000	MSP 50000	MSP 100000	MSP Unlimited
Blocker	n/a	n/a	n/a	n/a	n/a	7 days	7 days	3 days	3 days
Critical	n/a	n/a	n/a	n/a	n/a	10 days	10 days	7 days	7 days
Major	n/a	n/a	n/a	n/a	n/a	10 days	10 days	7 days	7 days
Minor	n/a	n/a	n/a	n/a	n/a	determined unilaterally by Zabbix		14 days	14 days
Trivial	n/a	n/a	n/a	n/a	n/a	determined unilaterally by Zabbix			

**5 PROBLEM RESOLUTION, SUPPORT CASE'S HANDLING PROCEDURE, CONTRACTUAL PENALTIES**

**5.1 Problem Resolution**

Zabbix will use all commercially reasonable efforts to resolve any issue stemming from the usage of Software by MSP as reported under Support Case.

Zabbix at its sole discretion may resolve such issue in the version of Software that MSP is currently using or may instruct MSP to migrate to a newer minor version of Software with that issue resolved. Zabbix reserves the right to provide MSP with a Workaround in lieu of resolving an issue should Zabbix in its sole judgment determine that it is more effective to do so.

Zabbix may decide against resolving an issue if such resolution, due to complexity based upon the results of the evaluation of technical feasibility in terms of staff time and financial resources needed, places disproportionate burden on Zabbix and requires means clearly out of proportion to commercial viability (e.g., rewriting of significant part of the source code). In the event that Zabbix decides against resolving an issue in Software, as requested by MSP, the latter shall be entitled to decide whether to terminate the Agreement within thirty (30) calendar days from the date when Zabbix informed MSP of such decision by providing five (5) business days' notice in writing to Zabbix, and Zabbix will refund the remaining pro-rata prepaid Support Fees according to the remaining period of Support Services paid and not received by MSP. After receipt of the pro-rata refund of the prepaid Support Fees the MSP will have no further recourse against Zabbix.

**5.2 Support Case's Registration and Handling Procedure**

5.2.1 MSP, as the necessity in Support Services appears, opens Support Case under procedure that is set out below. The Support Case must contain the name, surname, and contact details of the person who had faced the problem directly, priority of Support Case as per the classification set out in Section 4.8, as well as a detailed description of a question or non-routine situation.

Support Cases may be submitted to Zabbix by User through any of the means listed below:

- through the Platform;
- via e-mail address;
- by telephone.

5.2.2 At the time of registration of Support Case the Platform sends a message with Support Case's number, link to Support Case and the status of Support Case to the e-mail address of User who had registered Support Case. The status "Waiting for Support" is assigned.

5.2.3 The time of commencement of providing the Support Services under Support Case is the time of registration of Support Case by Zabbix.

5.2.4 MSP shall add comments to previously registered Support Case in the Platform in case of repeated request regarding the same problem. Support Case is assigned with the status "Waiting for Support" after adding each comment to Support Case from MSP's side in the Platform.

5.2.5 The reaction time to Support Case is an amount of time between the submission of Support Case by MSP in the Platform and receiving the first human reply message from Zabbix after registration of the respective Support Case. The upper time limit for reaction to Support Case is set out in Section 4.10.1 of these T&Cs. Support Case is assigned with the status "Waiting for Customer" after sending the initial and each subsequent response to MSP's Support Case.

- 5.2.6 The time for providing Workaround is an amount of time between the moment MSP provided Zabbix all necessary information and details regarding particular Support Case and all additional information requested by Zabbix as stated in Section 2.2 and the moment of providing the solution to MSP that allows to reduce the priority of Support Case. The upper time limit for providing Workaround is set out in Section 4.10.2 of these T&Cs.
- 5.2.7 MSP singlehandedly, or Zabbix subject to MSP's approval, will change Support Case's status to "Resolved" after the problem resolution is provided by Zabbix and in case MSP concurs with such resolution. Otherwise, Zabbix representative shall contact User to identify the reason of nonconcurrency, and Zabbix shall resume the provision of Support Services under Support Case (when requested).
- 5.2.8 The time for providing problem resolution is an amount of time between the moment MSP provided Zabbix all necessary information and details regarding particular Support Case and all additional information requested by Zabbix as stated in Section 2.2 and the moment of providing the solution to MSP that allows to close Support Case. The upper time limit for problem resolution is set out in Section 4.10.3 of these T&Cs.
- 5.2.9 MSP shall check the proposed solution and shall inform Zabbix on MSP's concurrence or nonconcurrency with such solution no later than thirty (30) days after the change of Support Case's status to "Resolved". If MSP concurs with proposed solution, MSP shall change Support Case's status to "Closed" in manual way. Otherwise, MSP shall change Support Case's status to "Waiting for Support".
- 5.2.10 The Platform will assign Support Case with the status "Closed" automatically if MSP does not change Support Case's status either to "Closed" or to "Waiting for Support" within thirty (30) days after Support Case is being assigned with the status "Resolved". Support Case is permanently closed for editing, commenting, or changing its status after the change of Support Case's status to "Closed". MSP shall register a new Support Case if new questions or comments arise in connection with Support Case with status "Closed".
- 5.3 **Contractual penalties for delayed Support Services.** In case of a delay in fulfilment of Zabbix obligations that are set out in Section 4.10 of these T&Cs, MSP shall be entitled to impose a contractual penalty for each hour of delay amounting to: (i) one tenth percent (0.1%) of the annual Support Fees for problems with "Blocker" and "Critical" priority; (ii) five hundredths percent (0.05%) of the annual Support Fees for problems with "Major" and "Minor" priority. The total amount of contractual penalties in aggregate shall be capped at five percent (5%) of the annual Support Fees.
- 5.4 If the delay in the process of fulfilment of the duties of one Party makes it impossible for the other Party to timely fulfil its duties under the Agreement and these T&Cs, the term of the fulfilment of the duties by the other Party shall be prolonged for the period of the delay by the delaying Party. The Party, which claims the prolongation of the period of fulfilment of the duties, shall present documents certifying the fact of the delay in the fulfilment of the duties of the other Party.

## 6 OWNERSHIP

- 6.1 Zabbix will own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or generated by Zabbix in connection with performing its support obligations (collectively "Zabbix Materials"), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights (collectively, "Intellectual Property Rights") therein. MSP will have no rights in the Zabbix Materials except as expressly agreed to in writing by the Parties. Nothing in this Agreement will be deemed to restrict or limit Zabbix right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party provided that Zabbix complies with its obligations under Section 7 with respect to MSP's Confidential Information.

## 7 CONFIDENTIAL INFORMATION

- 7.1 "Confidential Information" means: (i) MSP's materials and Zabbix Materials; (ii) personal data; (ii) any business or technical information of Zabbix or MSP that is designated by a Party as "confidential" or "proprietary" at the time of disclosure or due to its nature or under the circumstances of its disclosure the Party receiving such information knows or has reason to know should be treated as confidential or proprietary; and (iii) any information that a reasonable person would expect to be confidential, including but not limited to, the Agreement, business or technical information, log files, trace and system files, and which is disclosed by a Party to the other Party.
- 7.2 Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach of this Agreement by the receiving Party; (ii) is rightfully known by the receiving Party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving Party without use of the disclosing Party's Confidential Information; (iv) is rightfully received by the receiving Party from a third party without restriction on use or disclosure; or (v) is disclosed with the prior written approval of the disclosing Party.
- 7.3 Each Party will not use the other Party's Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of this Agreement; provided that each such employee and subcontractor is bound by a

written agreement that contains use and nondisclosure restrictions consistent with the terms set forth in this Section. Each Party will employ all reasonable steps to protect the other Party's Confidential Information from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance. The foregoing obligations will not restrict either Party from disclosing the other Party's Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the Party required to make such a disclosure gives reasonable notice to the other Party to contest such order or requirement; (ii) to its legal or financial advisors, provided that such advisor(s) shall be bound by nondisclosure restrictions consistent with the terms set forth in this Section; (iii) as required under applicable laws and regulations; and (iv) subject to customary restrictions, to present or future providers of venture capital and/or potential private investors in or acquirers of such Party.

## **8 TERM, RENEWAL, UPGRADE AND TERMINATION**

**8.1 Term.** The date of commencement of the provision of Support Services by Zabbix under the Agreement and these T&Cs shall be either the start date of period set out in Sub-Section "Support period" of Section "Support details" of the Agreement or any such later date as may be specified in the written notification signed by authorized representative of MSP and duly submitted to Zabbix or a date set out in Invoice (the "Effective Date").

The Agreement shall commence on the Effective Date, and continue for a period of one (1) year or other term specified in the Agreement or Invoice (the "Term") and thereafter terminate, unless terminated earlier in accordance with its terms. Support Cases unused during the Term are not transferable to the next Term.

Upon expiration of the Term, the renewal of the Agreement can be made by the extension through one of the following extension options: (i) by mutual written agreement of the Parties, (ii) by MSP's payment of the renewal Invoice issued by Zabbix, or (iii) by MSP issuing the Purchase Order.

If MSP allows the Term to expire, and subsequently reactivates Support Services, then MSP shall cover Support Fees for the lapsed period. At the same time, Zabbix is not obligated to provide Support Services during the lapsed period.

If MSP had reached the maximum number of Support Cases set out in Section 4.9 within the Term, and subsequently required the initiation of additional Support Case, then this Term shall be deemed as expired and MSP shall renew this Agreement for another Term.

Zabbix, at its discretion, shall have the right, but not an obligation, to block MSP's access to Platform and to permanently delete and remove from Platform the Support Cases with all details and comments, after thirty (30) days of the lapsed period. MSP will be able to access the Support Cases during the thirty (30) days of the lapsed period only.

MSP may register Support Cases up until the end of the last day of the Initial Term or the Renewal Term, and Zabbix will provide the Support Services regarding the registered Support Cases until those are resolved.

**8.2 Upgrade.** MSP may request upgrade to a higher Support Tier at any time by informing Zabbix in writing (including via e-mail). If upgrade is requested within then current Term, such upgrade can be made through the following procedure:

- a. for Support Fees for current Support Tier, a pro-rata amount based on remaining number of Support Cases and a pro-rata amount based on remaining Term are calculated, and smaller amount is selected as deductible amount;
- b. Support Fees for upgraded Support Tier are reduced by deductible amount set out in Sub-Section 8.2 (a) above;
- c. Term of upgraded Support Tier commences on date of the upgrade.

### **8.3 Termination**

**8.3.1 Termination for Breach.** Each Party is entitled to terminate this Agreement if the other Party breaches any material term of this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice thereof.

If the Agreement is terminated by Zabbix due to the MSP's breach of the material term, Zabbix will have no obligation to refund any amounts of the prepaid Support Fees for Support Services paid and not received by MSP. If the Agreement is terminated by the MSP due to Zabbix's breach of the material term, Zabbix will refund the remaining pro-rata prepaid Support Fees according to the remaining period of Support Services paid and not received by MSP. After receipt of the pro-rata refund of the prepaid Support Fees the MSP will have no further recourse against Zabbix.

**8.3.2 Termination for Sanctions Compliance.** If MSP or any individual, entity, or organization holding any ownership interest or controlling interest in MSP, including a director, is determined at any time to be an individual, entity, organization with whom Zabbix is prohibited from dealing by Sanctions, including without limitation, names appearing on the SDN List, then MSP will be deemed to be in material breach of this Agreement and Zabbix may terminate this Agreement immediately, without an obligation to refund any amounts of the prepaid Support Fees for Support Services paid and not received by MSP.

- 8.3.3 **Termination for Convenience.** MSP may, at its option, immediately terminate the Agreement, at any time and for any reason, by giving written notice to Zabbix. Upon such termination, Zabbix will have no obligation to refund any amounts of the prepaid Support Fees for Support Services paid and not received by MSP.
- 8.4 **Effect of Termination.** Upon the expiration or termination of this Agreement: (i) Zabbix will promptly return all MSP's materials to MSP or destroy/delete such MSP's materials; (ii) each Party will promptly return to the other Party all Confidential Information of the other Party in its possession or control, or destroy such Confidential Information, in each case save to the extent that the Party is required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body or in accordance with reasonable internal policy, or where the Confidential Information has become embedded in its electronic storage systems through automated backup or archiving procedures, to the extent that this is necessary, and in compliance with the confidentiality obligations mentioned above; and (iii) MSP will, within thirty (30) days after receipt of Zabbix invoice, pay all accrued and unpaid fees and expenses.
- 8.5 **Survival.** The rights and obligations of the Parties contained in Sections 6, 7, 8, 9.2, 10, and 11 of these T&Cs will survive the expiration or termination of the Agreement.

## 9 REPRESENTATIONS AND WARRANTIES, LIMITATION OF LIABILITY

### 9.1 Representations and Warranties

- 9.1.1 Zabbix represents and warrants that (a) it has the authority to enter into the Agreement, (b) the Support Services will be performed in a professional and workmanlike manner by qualified personnel.

MSP represents and warrants that (a) it has the authority to enter into the Agreement, and (b) MSP's use of Software will comply with all applicable laws, and MSP will not use Software for any illegal activity.

- 9.1.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SOFTWARE IS PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS OR WARRANTIES EXPRESS OR IMPLIED, AND ZABBIX DISCLAIMS ALL SUCH REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY THE COURSE OF DEALING OR USAGE OF TRADE. ZABBIX DOES NOT REPRESENT OR WARRANT THAT SOFTWARE WILL BE UNINTERRUPTED, SECURE, ERROR FREE, ACCURATE OR COMPLETE, OR THAT ZABBIX WILL CORRECT ALL ERRORS.

- 9.1.3 **Sanctions.** The Parties shall comply with all applicable Sanctions in performance of the Agreement. The Party shall not do anything which would cause the other Party to be in breach of applicable Sanctions.

No transaction shall be made with the Restricted Persons under this Agreement, except to the extent that such transaction is permitted under Sanctions (for example by way of a general or specific license granted by the relevant authorities).

Except as has previously been disclosed in writing, each Party represent that it, its beneficial owners, and directors are not and have not in the past been identified as a Restricted Person.

Should a Party, any of its beneficial owners or directors be identified as a Restricted Person, such Party shall promptly notify the other Party in writing. Upon receipt of such notice, the other Party may and hereby reserves its rights to take steps necessary to comply with applicable laws up to and including terminating this Agreement.

### 9.2 Limitation of Liability

- 9.2.1 MSP IS RESPONSIBLE FOR THE RIGHT EXPLOITATION OF SOFTWARE. MSP IS OBLIGED TO MAKE BACKUP COPIES OF DATA AND SOFTWARE.

- 9.2.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, OR FOR ANY DAMAGES FOR LOST OR DAMAGED DATA, LOST PROFITS, LOST SAVINGS OR BUSINESS OR SERVICE INTERRUPTION, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- 9.2.3 IN NO EVENT WILL ZABBIX TOTAL AND AGGREGATE LIABILITY FOR ALL CLAIMS AND ALL THEORIES OF LIABILITY ARISING OUT OF OR RELATING TO THE AGREEMENT EXCEED THE AMOUNT OF ANY DIRECT DAMAGES UP TO THE AMOUNT OF SUPPORT FEES PAID TO ZABBIX BY MSP UNDER THIS AGREEMENT.

- 9.2.4 NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT AND THESE TERMS AND CONDITIONS, ZABBIX DOES NOT EXCLUDE OR LIMIT LIABILITY FOR (A) PERSONAL INJURY OR DEATH OF ANY INDIVIDUAL TO THE EXTENT THAT SUCH INJURY OR DEATH RESULTS FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF ZABBIX, ITS EMPLOYEES, OR SUBCONTRACTORS; (B) DAMAGES RESULTING FROM FRAUD; (C) ANY OTHER LIABILITY WHICH IS NOT PERMISSIBLE AT LAW TO EXCLUDE OR LIMIT.

## 10 NON-SOLICITATION

During the term of the Agreement and for a period of twelve (12) months thereafter, either Party will not recruit or otherwise solicit for employment any employees or subcontractors of the other Party who participated in the

performance of the Agreement without such other Party's express prior written approval. Notwithstanding the foregoing, this Section 11 shall not preclude either Party from hiring any person so employed or retained by the other Party where such person independently responds to an employment opportunity broadcast by the Party to the general public (e.g., via newspaper, magazine, broadcast, internet, etc.).

## 11 GENERAL PROVISIONS

11.1 **Assignment.** Neither Party may assign its rights and obligations under the Agreement without prior written consent of the other Party.

11.2 **Governing Law.** The Agreement, and all matters arising out of or relating to the Agreement, will be governed by and construed under the laws of the jurisdiction set out in the governing law column opposite the applicable Zabbix entity, signatory to the Agreement, in the table below. Further, for any action arising out of or related to the Agreement, MSP consents to the exclusive jurisdiction and venue of the courts located in the venue column opposite the applicable Zabbix entity in the table below.

Zabbix entity	Governing Law	Jurisdiction and Venue
Zabbix SIA	The substantive law of the Republic of Latvia, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction.	Riga City Vidzeme District Court.
Zabbix LLC	The substantive and procedural law of the State of New York, without giving effect to any of the conflicts of law principles which would result in the application of the substantive law of another jurisdiction.	The Supreme Court of the State of New York, County of New York or the United States District Court for the Southern District of New York.

11.3 **Notices.** Any notice to be given pursuant to this Agreement, including any notice of change of address for notice, shall be sent by registered post, delivered in person or via courier service with signature upon delivery, to the Party's address set out in the Agreement, and such notice shall be deemed notified on the seventh day after handing it over to the post office, or on the second business day after delivery in person or via courier service.

11.4 **Waiver.** The waiver of any breach or default of any provision of the Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

11.5 **Severability.** If any provision of the Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

11.6 **MSP Reference.** MSP permits Zabbix to use MSP's name and logo, and to refer to MSP as a user of Software and a customer of Zabbix.

11.7 **Force Majeure** Neither Party will be responsible for any failure or delay in its performance under Agreement due to causes beyond its reasonable control, including, but not limited to, strikes, lockouts, fire, failure of the public electricity supply, acts of government or public authority, war, acts of terror, riot, acts of nature.

11.8 **Changes.** This version supersedes any previously existing version. Zabbix reserves the right to update these T&Cs from time to time and/or to supplement them with additional terms or conditions specific to Support Services as it may deem appropriate. If Zabbix amends these T&Cs in a manner that materially reduces level or quality of Support Services, Zabbix will notify MSP at the email address stated in Agreement with at least thirty (30) days prior notice. Where MSP raises no objections within the period specified above, it shall be assumed that MSP has consented to the amendments.

### 11.9 Data Protection.

No transfer and processing of personal data, especially MSP's Customers' personal data, shall be made by Zabbix for the purpose of performing of Support Services under the Agreement, save for the processing of limited scope of MSP's authorized personnel's (Users and Company's Authorized Representatives) personal data (first name, surname, e-mail address, telephone number, position) for business continuity purpose.

Zabbix is committed to protecting the privacy of personal data under the Governing Law and the EU General Data Protection Regulation 2016/679 (GDPR). For the purposes of GDPR, Zabbix will be the controller of personal data of Users and MSP's Authorized Representatives that Zabbix collects from MSP in connection with the provision of Support Services. Zabbix Privacy Policy is available at [https://www.zabbix.com/privacy\\_policy](https://www.zabbix.com/privacy_policy). If such need arises and MSP requires Zabbix to process MSP's Customers' personal data, for the purposes of GDPR, MSP will be controller and Zabbix will be processor of such personal data and the processing of personal data of MSP's Customers shall be made solely based on documented instructions from MSP.

11.10 **Anti-corruption.** All business relationships under the Agreement must be guided by the strictest rules of integrity. Zabbix does not tolerate any form of corruption, extortion, or misappropriation of assets (which includes the promise, delivery, or acceptance of bribery). All business relationships must be fully transparent and precisely recorded in records and books of account. Each Party hereby is obliged to comply with applicable anti-corruption laws.