



## Terms of Service

Last updated: March 9, 2022

Please read these Terms and Conditions ("Terms", "Terms and Conditions") carefully before using the <https://app.komodowellbeing.com/> website and the Komodo Monitr mobile application (the "Service") operated by Komodo Monitr Ltd. ("us", "we", or "our").

Your access to and use of the Service is conditioned on your acceptance of and compliance with these Terms. These Terms apply to all visitors, users and others who access or use the Service. You warrant that you are at least 18-years-old and you are legally capable of entering into binding contracts. If you are under 18-years-old, you warrant that you have obtained consent from your parent or guardian and they agree to be bound by these Terms on your behalf.

You may not access the Services if you are our direct competitor, except with our prior written consent. In addition, you may not access the Services, if you are, directly or indirectly, involved in the design, manufacturing, development, marketing or distribution of any products similar to or substitutable to Komodo Monitr Ltd. platform.

By accessing or using the Service you agree to be bound by these Terms. If you disagree with any part of the terms, then you may not access the Service.

### Privacy Policy

Please refer to Komodo Monitr Ltd. Privacy policy for information on how Komodo Monitr Ltd. collects, uses and discloses personally identifiable information from its users. By using the Services, you agree to our use, collection and disclosure of personally identifiable information in accordance with the Privacy policy.

### Subscriptions

Some parts of the Service are billed on a subscription basis ("Subscription(s)"). You will be billed in advance on a recurring and periodic basis ("Billing Cycle"). Billing cycles are set either on an annual basis when purchasing a Subscription.

At the end of each Billing Cycle, your Subscription will automatically renew under the exact same conditions unless you cancel it or Komodo Monitr Ltd. cancels it. You may cancel your Subscription renewal either through your online account management page or by contacting Komodo Monitr Ltd. customer support team.

A valid payment method, including credit card, is required to process the payment for your Subscription. You shall provide Komodo Monitr Ltd. with accurate and complete billing information including full name, address, state, zip code, telephone number, and a valid payment method information. By submitting such payment

information, you automatically authorize Komodo Monitr Ltd. to charge all Subscription fees incurred through your account to any such payment instruments.

Should automatic billing fail to occur for any reason, Komodo Monitr Ltd. will issue an electronic invoice indicating that you must proceed manually, within a certain deadline date, with the full payment corresponding to the billing period as indicated on the invoice.

## **Free Trial**

Komodo Monitr Ltd. may, at its sole discretion, offer a Subscription with a free trial for a limited period of time ("Free Trial"). IF YOU REGISTER FOR A FREE TRIAL FOR OUR SERVICES, THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL.

You may be required to enter your billing information in order to sign up for the Free Trial.

If you do enter your billing information when signing up for the Free Trial, you will not be charged by Komodo Monitr Ltd. until the Free Trial has expired. On the last day of the Free Trial period, unless you cancelled your Subscription, you will be automatically charged the applicable Subscription fees for the type of Subscription you have selected.

At any time and without notice, Komodo Monitr Ltd. reserves the right to (i) modify the terms and conditions of the Free Trial offer, or (ii) cancel such Free Trial offer.

IF YOU DO NOT PURCHASE A SERVICE BEFORE THE END OF YOUR TRIAL, OR IF YOU PURCHASE A SERVICE THAT WOULD BE A DOWNGRADE FROM THAT COVERED BY THE TRIAL, YOU MUST REQUEST TO EXPORT YOUR DATA BEFORE THE END OF THE TRIAL PERIOD OR YOUR DATA MAY BE PERMANENTLY LOST. DURING THE FREE TRIAL THE SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY.

## **Fee Changes**

Komodo Monitr Ltd., in its sole discretion and at any time, may modify the Subscription fees for the Subscriptions. Any Subscription fee change will become effective at the end of the then-current Billing Cycle.

Komodo Monitr Ltd. will provide you with a reasonable prior notice of any change in Subscription fees to give you an opportunity to terminate your Subscription before such change becomes effective.

Your continued use of the Service after the Subscription fee change comes into effect constitutes your agreement to pay the modified Subscription fee amount.

## **Refunds**

Except when required by law, paid Subscription fees are non-refundable.

## **Accounts**

When you create an account with Komodo Monitr Ltd., you must provide information that is accurate, complete, and current at all times. Failure to do so constitutes a breach of the Terms, which may result in immediate termination of your account on our Service.

You are responsible for safeguarding the password that you use to access the Service and for any activities or actions under your password, whether your password is with our Service or a third-party service.

You agree not to disclose your password to any third party. You agree to be fully responsible for activities that relate to your account or your password. You must notify us immediately upon becoming aware of any breach of security or unauthorized use of your account.

You may not use as a username the name of another person or entity or that is not lawfully available for use, a name or trademark that is subject to any rights of another person or entity other than you without appropriate authorization, or a name that is otherwise offensive.

## **Intellectual Property**

The Service and its original content, features and functionality are and will remain the exclusive property of Komodo Monitr Ltd. and its licensors. The Service is protected by copyright, trademark, and other laws of New Zealand, Australia, the European Union, the United States of America, and other countries. Our trademarks and trade dress may not be used in connection with any product or service without the prior written consent of Komodo Monitr Ltd. Nothing in these Terms constitutes a transfer of any Intellectual Property rights from us to you.

## **Links to Other Websites**

Our Service may contain links to third-party websites or services that are not owned or controlled by Komodo Monitr Ltd.

Komodo Monitr Ltd. has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party websites or services. You further acknowledge and agree that Komodo Monitr Ltd. shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

We only provide links to external websites as a convenience, and the inclusion of such a link to external websites does not imply our endorsement of those websites. You acknowledge and agree that when you access other websites on the Internet, you do so at your own risk.

We strongly advise you to read the terms and conditions and privacy policies of any third-party web sites or services that you visit.

## **Termination**

We may terminate or suspend your account immediately, without prior notice or liability, for any reason whatsoever, including without limitation if you breach the Terms.

Upon termination, your right to use the Service will immediately cease. If you wish to terminate your account, you may simply discontinue using the Service.

All provisions of the Terms which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, warranty disclaimers, indemnity and limitations of liability.

We shall not be liable to you or any third party for any claims or damages arising out of any termination or suspension or any other actions taken by us in connection therewith.

If applicable law requires us to provide notice of termination or cancellation, we may give prior or subsequent notice by posting it on the Service or by sending a communication to any address (email or otherwise) that we have for you in our records.

## **Indemnification**

As a condition of your access to and use of the Service, you agree to indemnify us and our successors and assigns for all damages, costs, expenses and other liabilities, including but not limited to legal fees and expenses, relating to any claim arising out of or related to your access to and use of the Service or your breach of these Terms and any applicable law or the rights of another person or party.

This indemnification section survives the expiration of your registration, and applies to claims arising both before and after the registration ends.

## **Limitation of Liability**

You agree that we shall not be liable for any damages suffered as a result of using the Service.

In no event shall we be liable for any indirect, punitive, special, incidental or consequential damage (including loss of business, revenue, profits, use, privacy, data, goodwill or other economic advantage) however it arises, whether for breach of contract or in tort, even if it has been previously advised of the possibility of such damage.

You have sole responsibility for adequate security protection and backup of data and/or equipment used in connection with your usage of the Service and will not make a claim against lost data, re-run time, inaccurate instruction, work delays or lost profits resulting from the use of the Service.

Without limiting the foregoing, in no event will our aggregate liability to you exceed, in total, the amounts paid by you to us.

## **Disclaimer**

Your use of the Service is at your sole risk. The Service is provided on an "AS IS" and "AS AVAILABLE" basis. The Service is provided without warranties of any kind, whether express or implied, including, but not limited to, implied warranties of merchantability, fitness for a particular purpose, non-infringement or course of performance.

Komodo Monitr Ltd. its subsidiaries, affiliates, and its licensors do not warrant that a) the Service will function uninterrupted, secure or available at any particular time or location; b) any errors or defects will be corrected; c) the Service is free of viruses or other harmful components; or d) the results of using the Service will meet your requirements.

This disclaimer of liability applies to any damages or injury caused by any failure of performance, error, omission, interruption, deletion, defect, delay in operation or transmission, computer virus, communication line failure, theft, or destruction or unauthorized access or, alteration of or use of record in connection with the use or operation of the Service, whether for breach of contract, tortious behavior, negligence or any other cause of action.

We make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the content contained on the Service for any purpose. Any reliance you place on such information is therefore strictly at your own risk. We disclaim any express or implied warranty representation or guarantee as to the effectiveness or profitability of the Service or that the operation of our Service will be uninterrupted or error-free. We are not liable for the consequences of any interruptions or errors in the Service.

## **Exclusions**

Some jurisdictions do not allow the exclusion of certain warranties or the exclusion or limitation of liability for consequential or incidental damages, so the limitations above may not apply to you.

## **Governing Law**

These Terms shall be governed and construed in accordance with the laws of New Zealand, without regard to its conflict of law provisions.

Our failure to enforce any right or provision of these Terms will not be considered a waiver of those rights. If any provision of these Terms is held to be invalid or unenforceable by a court, the remaining provisions of these Terms will remain in effect. These Terms constitute the entire agreement between us regarding our Service, and supersede and replace any prior agreements we might have between us regarding the Service.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to these Terms. Except where prohibited by applicable law, any claim, dispute or controversy (whether in contract or tort, pursuant to statute or regulation, or otherwise, and whether pre-existing, present or future) involving Komodo Monitr Ltd. and arising out of or relating to (a) these Terms; (b) the Site, the Content, the Add-ons or the Services; (c) oral or written statements, advertisements or promotions relating to these Terms or to the Site, the Content, the Add-ons or the Services; or (d) the relationships that result from these Terms or the Site, the Content, the Add-ons or the Services (collectively, a "Claim"), will be referred to and determined by a sole arbitrator (to the exclusion of the courts). Except where prohibited by applicable law, you waive any right you may have to commence or participate in any class action against Komodo Monitr Ltd. related to any Claim and, where applicable, you also agree to opt out of any class proceedings against Komodo Monitr Ltd. If you have a Claim, you should give written notice to arbitrate at the address specified below. If we have a Claim, we will give you notice to arbitrate at your address provided in your Registration Data. Arbitration will be conducted by one arbitrator pursuant to the commercial arbitration laws and rules in effect on the date of the notice in New Zealand. To the extent arbitration as described in the immediately preceding paragraph is prohibited by applicable law, you agree that all Claims will be heard and resolved in a court of competent subject matter jurisdiction located in New Zealand. You consent to the personal jurisdiction of such courts over you, stipulate to the fairness and convenience of proceeding in such courts, and covenant not to assert any objection to proceeding in such courts. If you choose to access the Services from locations other than New Zealand, you will be responsible for compliance with all local laws of such other jurisdiction and you agree to indemnify Komodo Monitr Ltd. and the other Released Parties for your failure to comply with any such laws.

## **Changes**

We reserve the right, at our sole discretion, to modify or replace these Terms at any time. If a revision is material, we will try to provide at least 30 days' notice prior to any new terms taking effect.

It is your sole responsibility to periodically check these Terms for any changes. If you do not agree with any of the changes to these Terms, it is your sole responsibility to stop using the Service. Your continued use of the Service will be deemed as your acceptance thereof.

## **Contact Us**

If you have any questions about these Terms, please contact us at [contact@komodowellbeing.com](mailto:contact@komodowellbeing.com).