

# ZIX SUBSCRIPTION TERMS

These Terms ("Terms") describe the terms and conditions under which ZixCorp Systems, Inc. ("Zix", "we", or Company) provides to the company ("you" or "Customer") a subscription to use Zix secure messaging services described in the Services Agreement ("Subscription Services"), including the related computer software ("Software"), documentation ("Documentation"), and equipment made available by Zix.

**1. Subscription Services.** Please read these Terms carefully as they contain the legal terms and conditions that you agree to when you use the Subscription Services. Review the documents provided on the company's Legal Webpage <http://www.zix.com/terms>, each of which is incorporated herein by reference.

So long as Customer has paid the Fees, Zix will provide the Subscription Services, subject to the Documentation, to which Customer has subscribed. Zix will also provide you with support services for the Software and Subscription Services ("Support Services") as set forth in Zix's applicable Service Level Agreement on the Legal Webpage. ZixCorp Systems, Inc., a wholly-owned subsidiary of Zix Corporation, 2711 North Haskell Avenue, Suite 2200, LB 36, Dallas, Texas 75204-2960, is the manufacturer of the Software, and provider of the Subscription Materials and the Subscription Services. Services for archiving are obtained from Zix affiliate CM2.COM, Inc. dba Erado.

**2. Subscription Materials.** You have a non-exclusive subscription and right, subject to the terms and conditions of the Services Agreement and these Terms and Conditions (together, this "Agreement"), to use the Documentation and the executable form of the Software in connection with your subscription to the Subscription Services. The Software and the Documentation are collectively referred to as the "Subscription Materials." You may use the Subscription Materials and equipment provided by us only so long as you have paid the applicable fees for Subscription Services to which the Subscription Materials relate. The fees for the Subscription Services ("Fees") are specified in the applicable Order Form or Services Agreement to which these Terms are attached, and are non-refundable, except as provided in Sections 6 and 8. The Customer acknowledges that for a multi-year Subscription, the annual subscription fees are either (a) due up front for the entire subscription; or (b) are due and payable for each year upfront on the anniversary of the Subscription (i.e., second year fees are due on the first anniversary) and in either event the fees are non-cancelable.

**3. Other Rights and Limitations.** You shall not (i) reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (ii) publish, display, rent, lease, modify, loan, distribute, or create derivative works based on the Software or any part thereof; (iii) attempt to hack into, infiltrate, or otherwise gain unauthorized access to the Software or other Zix systems; (iv) remove any proprietary notices or labels from the Software; or (v) use the Software or Subscription Services for any unlawful purpose or in a way not permitted by this Agreement.

Subscription Services are for use only with Customer's normal business e-mail traffic. You shall not use Subscription Services, unless specifically permitted by us in writing, to encrypt application-generated (bulk) emails.

You may use your Subscription Services for your affiliated companies' personnel. You may assign this Agreement in connection with any acquisition of your business or assets so long as the transferee is bound by the terms of this Agreement and you provide prior notice in writing to Zix. Zix may assign its rights and obligations under this Agreement, in whole or in part, to any party at any time.

Zix may terminate this Agreement upon written notice to you if you materially breach this Agreement, including non-payment of our Fees, or any other agreement between you and Zix. Upon termination, you agree to (i) discontinue use of the Subscription Services; (ii) remove Subscription Materials from all computers and servers; and (iii) destroy or return to Zix all archived copies of the Subscription Materials.

Customer acknowledges that the Subscription Services are subject to U.S. export control laws and other applicable export and import laws and Customer shall not use or disseminate the Services or any aspect thereof in violation of such laws (more information is available at the Legal Webpage).

**4. Personal Data.** You acknowledge and agree that Zix will process personal data during or in connection with your use of the Subscription Services. Zix operates as a data processor in providing the Subscription Services to you. You are the data controller and you determine the purposes for which and the manner in which any personal data are, or are to be, processed by Zix. Zix processes the personal data on your behalf and according to your instructions as set forth in the Agreement.

Zix requires, and you hereby warrant and represent, that any personal data you submit to Zix during or in connection with your use of the Subscription Services, has not been collected, stored, and transferred to Zix in violation of any law, regulation, or contractual obligation applicable to you. You shall have sole responsibility for the accuracy, quality, and legality of the personal data and the means by which you acquired the personal data.

Zix will abide by the Data Processing Agreement and Privacy Policy that are both available on the Legal Webpage and the terms of which are incorporated into this Agreement by this reference.

To the extent applicable, Company's Business Associate Agreement under the U.S. Health Insurance Portability and Accountability Act governs the provision and use of the Services. The Business Associate Agreement is incorporated by reference and available on the Legal Webpage. Company security measures are consistent with the requirements of the U.S. Gramm-Leach-Bliley Act (if applicable to you).

**5. U.S. Government: Rights; Acknowledgements.** If Subscription Materials are delivered to or provided for use by the U.S. Government, the following notice applies: The Subscription Materials are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the U.S. Government is subject to restrictions: if supplied to the Department of Defense, the Subscription Materials are "Commercial Computer Software"; if the Subscription Materials are supplied to any other government unit or agency, the government's rights in the Subscription Materials are defined in Clause 52.227-19(b) of the FAR, but if the Subscription Materials are supplied to NASA, the government's rights are defined in Clause 1852.227-86(d) of the NASA supplement of the FAR.

**6. Limited Warranty.** Zix warrants that the Software and Subscription Services will perform substantially as set forth in the Documentation. Zix's only liability or responsibility with respect to this limited warranty is to make commercially reasonable efforts to resolve performance deficiencies as set forth in the applicable Zix Service Level Agreement. If Zix is unable to remedy a material performance deficiency, you may terminate your subscription upon 5 days' written notice to Zix. We shall refund a pro rata portion of your prepaid subscription Fees for the period following the later of the effective date of termination or the date you cease using the Subscription Services. This is your sole remedy. To the maximum extent permitted by applicable law, we on our behalf and on behalf of any of our contractors, suppliers, and other parties who may be associated with providing the Subscription Services, Subscription Materials and Support Services (the "Disclaiming Parties") disclaim all warranties with respect to your use, or a Disclaiming Party's provision of the Subscription Services, Subscription Materials and Support Services. Other than a warranty of title and the limited warranty provided in this Section 6, the Subscription Services, Subscription Materials and Support Services are provided "as is," "as available" without warranties of any kind, either expressed or implied, including implied warranties of merchantability and fitness for a particular purpose. This limited warranty gives you specific legal rights. You may have others, which vary by jurisdiction. Some jurisdictions do not allow limitations with respect to implied warranties, so the above limitation may not apply to you.

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**7. Limitation of Liability.** To the maximum extent permitted by law, neither you on the one hand, nor we or any of the Disclaiming Parties on the other hand, will be liable to the other or any third party for any indirect, special, punitive, exemplary, or consequential damages of any kind arising under this Agreement or otherwise in connection with your use, or a Disclaiming Party's provision, of the Subscription Materials or Subscription Services or Support Services. In all events, our aggregate liability to you arising under this Agreement or otherwise in connection with your use, or a Disclaiming Party's provision, of the Subscription Materials or Subscription Services or Support Services will not exceed, for all causes of action that arose in a calendar year, the amounts you actually paid to us under this Agreement for that calendar year. Our limits of liability apply regardless of the type of claim brought. This limit of liability applies to all of our agreements with you that relate to Subscription Services notwithstanding any contrary wording. Some jurisdictions do not allow the exclusion or limitation of liability, so the above limitation may not apply to you. The limitations in this section do not apply to our indemnity described in Section 8.

**8. Intellectual Property Indemnity.** To our knowledge, your use of the Subscription Services and Subscription Materials in accordance with this Agreement will not infringe any patent of any third party. If you give us prompt notice of a legal action which alleges that your use of the Subscription Services and Subscription Materials, or any portion thereof, infringes any patent of any third party, Zix will do one or more of the following at its sole option and expense: (i) defend, indemnify and hold you harmless from that legal action; (ii) procure for you the right to use the Subscription Services and/or Subscription Materials without infringing any patent of any third party; (iii) modify the Subscription Services and Subscription Materials, without impairing in any material respect their functionality or performance, so that your use of them does not infringe any patent of any third party; and/or (iv) refund to you the portion of the Fees paid under this Agreement that relates to the period during which the claim of infringement prevented your use of the Subscription Services and Subscription Materials. You must immediately discontinue your use of the allegedly infringing Subscription Services and Subscription Materials upon written notice from Zix that it elects the remedies described in clause (iv) above. Zix's obligations under this section do not apply if the alleged infringement arose from: (a) your modification of the Subscription Services and Subscription Materials, unless that modification was approved in writing by Zix; or (b) your use of the Subscription Services and Subscription Materials in combination with products, software, or services not supplied or approved in writing by Zix; or (c) your use of the Subscription Services and Subscription Materials not in accordance with this Agreement; or (d) your use of the Subscription Services and Subscription Materials after Zix recommended you stop that use because of possible or actual infringement of any patent of any third party; or (e) your use of a superseded or altered release of Subscription Services and Subscription Materials if the infringement would have been avoided by use of a current or unaltered release made available to you.

**9. Title.** Title, ownership rights, and intellectual property rights in and to the Subscription Materials remain with Zix. The Subscription Materials are protected by the copyright laws of the United States and international copyright treaties. We reserve the right to display our name and logo in an unobtrusive location in the browser window for any Zix secure message portal and in messages that we transmit for you. Title and ownership of equipment, if any, we provide with the Subscription Services remains with us. You shall exercise due care over our equipment in your custody. You shall return our equipment immediately upon termination of this Agreement or pay our then-current replacement charge for any equipment you do not return.

**10. General.** This Agreement, including any attachments, represents the complete agreement concerning this subscription service arrangement between the parties and supersedes all prior agreements and representations between them. No conflicting or supplemental pre-printed provisions on Customer forms (including without limitation shrink wrap terms, terms on purchase orders or invoices) will be binding on the parties. The headings in this Agreement are for convenience of reference only and have no legal or contractual effect. This Agreement can only be amended by mutual written agreement. If any provision of this Agreement is held

to be void and unenforceable, it will not affect the validity of the balance of this Agreement, which will remain valid and enforceable according to its terms. This Agreement shall be governed by the laws of the State of Texas (without regard to the conflicts of law provisions thereof) and applicable U.S. federal law. The application of the U.N. Convention on Contracts for the International Sale of Goods is expressly disclaimed. In any action to enforce this Agreement, the prevailing party will be entitled to recover, in addition to other relief granted, reasonable attorneys' fees and expenses of litigation. Zix shall not be liable for any failure to perform hereunder to the extent that such failure arises by factors outside of Zix's reasonable control, including Acts of God, war, terrorism, natural disaster, or third party communication failure.

**11. Canada Residents.** If you obtained the Software in Canada, then you agree to the following: The parties hereto have expressly required that the present Agreement be drawn up in the English language. / Les parties aux presentes ont expressement exige que la presente convention et ses Annexes soient redigees en langue anglaise.

**12. Security.** Certain of our Subscription Services operations are independently audited annually by an independent accounting firm. Zix has earned the ISO 27001:2013 certification and SOC 2 for HiTrust Type 2 report accreditations. Customer agrees (i) to accept the accounting firm's report, which are available by contacting Zix Support or can be obtained from the Zix Support Website, as reasonable assurance that Zix's Subscription Services operate at the requisite level of security, availability, integrity, and confidentiality, and will not require additional customer-initiated audits or questionnaires covering areas addressed by this certification and (ii) that the information in such reports is confidential and shall not be disclosed without the prior written consent.

Zix will, as an email encryption service provider, implement and maintain appropriate technical and organizational measures for the protection of the security, confidentiality and integrity of personal data (including protection against unauthorized or unlawful processing and against accidental or unlawful destruction, loss or alteration or damage, unauthorized disclosure of, or access to, personal data) which are consistent with Massachusetts 201 CMR 17.00 (Standards for the Protection of Personal Information of Residents of the Commonwealth), applicable federal regulations, and the GDPR, where applicable. Zix regularly monitors compliance with these measures.

Zix maintains security incident management policies and procedures and shall notify you without undue delay after becoming aware of the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise processed by Zix or its subprocessors of which Zix becomes aware (a "Data Incident"). Zix shall make reasonable efforts to identify the cause of such Data Incident and take steps as Zix deems necessary and reasonable in order to remediate the cause of such a Data Incident to the extent the remediation is within Zix's reasonable control. The obligations herein do not apply to incidents that are caused by you or your end users.

**13. Third Party Terms and Service Specific Terms.** Customer may use the Services in connection with Third-Party Offerings being procured from a Vendor through the Company. Any such use by Customer, and any related exchange of data, is solely between Customer and the applicable Vendor. Customer agrees that (i) all warranties, terms and conditions relating to Third-Party Offerings shall be governed by the standard terms and conditions of such Vendor (unless otherwise agreed in writing), which may be set forth at the Legal Webpage and/or the Vendor's website (as updated from time to time); and (ii) Customer is responsible for obtaining any additional agreements with Vendor needed to comply with law (e.g., a data protection agreement or business associate agreement). Company does not warrant or maintain Vendor services or offerings, whether or not they are designated preferred or marketed by Company.

Customer may also use Services of the Company that require service-specific terms. Customer agrees to be bound by the terms and conditions applicable to such Services, which are incorporated into this Agreement by this reference as applicable and set forth at the Legal Webpage.