

# ZIX TERMS AND CONDITIONS

These Terms and Conditions ("Terms and Conditions") describe the terms and conditions under which ZixCorp Systems, Inc. ("Zix" or "we") 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.** 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. 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 purchased and 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 Services Agreement to which these Terms and Conditions are attached and are non-refundable, except as provided in Sections 6 and 8.

**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.

The Subscription Materials are subject to U.S. export control laws and other applicable export and import laws. You must comply with all laws restricting the use, import, export or re-export of the Subscription Materials. You represent and agree that (1) you are not located in, and the Subscription Materials will not be accessed from, released in, or transferred or provided to Cuba, Iran, Sudan,

Syria, North Korea, or any country subject to an embargo or sanctions program administered by the U.S. government (Prohibited Countries); (2) you are not a foreign national of a Prohibited Country or any person or entity on the U.S. Treasury Department's Specially Designated Nationals and Blocked Persons List, the U.S. Commerce Department's Entity List or Denied Parties List, or any other U.S. government list of prohibited or restricted persons or entities; (3) you are not owned or controlled by any such persons or entities and the Subscription Materials will not be accessed by, released to, or transferred or provided to any such persons or entities and (4) you will not use the Subscription Materials in connection with prohibited nuclear, missile, chemical or biological weapons end-uses, or other end uses restricted by the U.S. government.

**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.

To the extent Customer's use of the Subscription Services or the Subscription Materials involves personal data originating outside of the United States, Customer (1) acknowledges and consents to the transfer of such personal data outside of its country of origin; (2) shall ensure that it has provided any required notice to, and obtained any required consent(s) from, individuals for the processing of their personal data by Zix and for the transfer of their personal data outside of its country of origin; (3) shall comply with all privacy and data protection laws applicable to such personal data; and (4) shall indemnify and hold Zix and its affiliates harmless from and against any and all claims, causes of action, liabilities, penalties, costs or expenses incurred by Zix or any affiliate thereof as result of your breach or violation of the provisions of this Section 4. Zix self-certifies to and complies with the EU-US Privacy Shield Framework, as administered by the US Department of Commerce, and will maintain its self-certification to and compliance with the EU-US Privacy Shield Framework with respect to the processing of personal data that is transferred from the European Economic Area to the United States for the Subscription Services.

To the extent your use of the Subscription Services involves the processing by Zix of the personal data of data subjects located in the European Union or otherwise subject to Regulation (EU) 2016/679, the General Data Protection Regulation, together with any additional implementation legislation, rules or regulations that are issued by applicable supervisory authorities ("GDPR"), the following provisions apply effective May 25, 2018. Words and phrases shall, to the greatest extent possible, have the meanings given to them in the GDPR.

a. Zix shall process personal data on your behalf, according to your instructions, and in accordance with the GDPR requirements directly applicable to Zix's provision of the Subscription Services. The following specifications apply ("Specifications"):

(1) The subject matter of the processing is the performance of the Subscription Services to you pursuant to the Agreement. Zix may process the personal data for the following purposes: (1) processing in accordance with the Agreement; (2) processing initiated by your end users in their use of the Subscription Services;

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and (3) processing to comply with other documented reasonable instructions provided by you (e.g., via email) where such instructions are consistent with the terms of the Agreement.

(2) The duration of the processing is for the duration of the Agreement except where otherwise required by applicable law, as required by a legal obligation or for Zix to protect its rights or those of a third party, or as required for Zix to continue processing personal data based on a legitimate interest.

(3) The categories of data subjects about whom Zix processes personal data are determined and controlled by you, in your sole discretion, which may include, but are not limited to, your end users.

(4) The types of personal data that Zix processes are determined and controlled by you, in your sole discretion, and may include, but are not limited to, IP address, email address, and username and password.

b. Zix shall process the personal data only on documented instructions from you and in accordance with the Specifications above, unless required to do otherwise by applicable law to which Zix is subject; in such a case, Zix shall inform you of that legal requirement before processing personal data, unless that law prohibits such disclosure on important grounds of public interest. The Agreement constitutes your complete and final documented instructions, and any additional or alternate instructions must be agreed upon separately.

c. Zix shall, to the extent legally permitted, promptly notify you if Zix receives a request from a data subject to exercise the data subject's right of access, right to rectification, restriction of processing, erasure ("right to be forgotten"), data portability, objection to processing, or right not to be subject to automated individual decision making ("Data Subject Request"). Taking into account the nature of the processing, Zix shall assist you, insofar as is possible, in the fulfillment of your obligation to respond to a Data Subject Request. In addition, to the extent you, in your use of the Subscription Services, do not have the ability to address a Data Subject Request, Zix shall upon your written request provide commercially reasonable efforts to assist you in responding to such Data Subject Request, to the extent Zix is legally permitted to do so and the response to such Data Subject Request is required under applicable laws. To the extent legally permitted, you shall be responsible for any costs arising from Zix's provision of such assistance. Please note that Zix may not be able to fulfill a Data Subject Request where to do so would violate laws applicable to Zix, would interfere with Zix's ability to meet legal obligations or protect its rights or those of a third party, or would prevent Zix from continuing to process personal data where it has a legitimate interest in doing so.

d. You acknowledge and agree that Zix may retain third party service provider subprocessors during or in connection with your use of the Subscription Services. Zix shall enter into a written agreement with each subprocessor containing data protection obligations not less protective than those in the Agreement with respect to the protection of your personal data to the extent applicable to the services provided by the third party service provider. Zix shall ensure that persons authorized to carry out processing have committed themselves to confidentiality or are under the appropriate statutory obligation of confidentiality. You hereby provide Zix with general written authorization to engage such subprocessors in connection with this Agreement. Zix shall make available to you a current list of subprocessors for the Subscription Services upon your written request. You may also make a written request that Zix notify you of any new subprocessors. If you make such written request, Zix shall provide notification of new subprocessors before authorizing any new subprocessors to process personal data in connection with the provision of the Subscription Services to you. You may object to

Zix's use of a new subprocessor by notifying Zix promptly in writing within ten (10) business days after receipt of Zix's notice. In the event you object to a new subprocessor, Zix will use reasonable efforts to make available to you a change in the Subscription Services or recommend a commercially reasonable change to your configuration or use of the Subscription Services to avoid processing of personal data by the objected-to new subprocessors without unreasonably burdening you. If Zix is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, you may terminate the applicable Subscription Services which cannot be provided by Zix without the use of the objected-to new subprocessor by providing written notice to Zix. Zix will refund you any prepaid fees covering the remainder of the term following the effective date of termination with respect to such terminated Subscription Services, without imposing a penalty for such termination on you. Zix shall be liable for the acts and omissions of its subprocessors to the same extent Zix would be liable if performing the services of each subprocessor directly under the terms of the Agreement.

e. Upon your written request, Zix shall provide you with reasonable cooperation and assistance as needed and appropriate to fulfil your obligations under the GDPR to carry out a data protection impact assessment related to your use of the Subscription Services, to the extent you do not otherwise have access to the relevant information, and to the extent such information is available to Zix. Zix shall provide reasonable assistance to you in the cooperation or prior consultation with the Supervisory Authority in the performance of its tasks relating the data protection impact assessment, to the extent required under the GDPR.

**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; or (ii) procure for you the right to use the Subscription Services and/or Subscription Materials without infringing any patent of any third party; or (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; 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 clauses (iii) or (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 présentes ont expressément exigé que la présente convention et ses Annexes soient rédigées en langue anglaise.

**12. Security.** Certain of our Subscription Services operations are independently audited annually by an independent accounting firm. Zix has earned the Payment Card Industry certification for demonstrating for the previous twelve months the effectiveness of industry best practice controls of the PCI Data Security Standard. Zix has also earned the SOC 2 for HiTrust Type 2 report accreditation. 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 of Zix.

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, if any, and the GDPR, where applicable. Zix regularly monitors compliance with these measures. Zix will not materially decrease the overall security of the Subscription Services during its provision of the Subscription Services pursuant to the Agreement.

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 shall not apply to incidents that are caused by you or your end users.

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**13. Archiving.** The following terms apply to archiving services:

a. *Third-party accounts.* You may be required to provide end user access credentials for accounts. You are responsible for obtaining access approval from each individual end user. Third-party email, social media, and other communication services are not offered, controlled or provided by Zix, so Zix is not responsible for how a third party transmits, accesses, processes, stores, uses or provides data to Zix.

b. *Data Retention.* Retention of information archived in the archiving services is based on variables set or implemented by you. You are responsible for using archiving and managing retention of archived information in accordance with applicable law, third-party email service terms and conditions, and your own internal retention requirements. Following termination of the Agreement, Zix reserves the right, in its sole discretion and subject to applicable law and regulations, to delete archived information. Archiving Services allow you to download archived information, and professional data exportation is available at additional charge.

c. *FINRA/SEC Archiving Obligations.* If applicable to you, this agreement does not relieve you from any responsibilities you have under SEC Rules 17a-3 and 17a-4. If you elect to cease using Zix, for some or all of your records preservation, the obligation to maintain and preserve books and records reverts back to you and you must provide written instructions to Zix in order to transfer your records to you or an alternative recordkeeping service.