

Terms and Conditions

These Terms and Conditions describe the terms and conditions under which ZixCorp Systems, Inc. ("ZixCorp" or "we"), provides a subscription to use its computer software ("Software") and provide its secure messaging services, as applicable ("Secure Messaging Services"), to you ("you" or "Customer") to which you have subscribed.

1. Subscription. You have a non-exclusive subscription and right, subject to the terms and conditions of this Agreement, to use the executable form of the Software and related documentation files ("Documentation") in connection with your subscription to and use of the Software and Secure Messaging Services. The Software and the Documentation are collectively referred to as the "Subscription Materials." You may use the Subscription Materials so long as you have paid the applicable fees for the Software and Secure Messaging Services to which the Subscription Materials relate. The fees for your use of the Software and Secure Messaging Services are specified in the Services Agreement to which these terms and conditions are attached and are non-refundable, except as expressly provided in Sections 5 and 7.

2. Services. So long as Customer has paid the applicable fees, ZixCorp will provide the Software and Secure Messaging Services to which Customer has subscribed. ZixCorp will also provide you with support services for the Software and Secure Messaging Services ("Support Services") as set forth in ZixCorp's standard Service Level Agreement. For ZixPort[®] implementations, we reserve the right to display a ZixCorp icon in an unobtrusive location on the screen where recipients retrieve the secure messages.

3. Other Rights and Limitations. You may not reverse engineer, decompile, or disassemble the Software, except and only to the extent that such activity is expressly permitted by applicable law not withstanding this limitation.

The Software and Secure Messaging Services are for use with normal outbound business e-mail traffic by Customer only. For greater clarity, the Software and Secure Messaging Services shall not be used for any emails that would violate any applicable federal or state law and, unless specifically licensed, shall not be used to encrypt application-generated (bulk) emails or for inbound content scanning.

You may freely transfer your rights under this Agreement to your affiliated companies or in connection with any acquisition of your business or assets so long as the transferee is bound by the terms of this Agreement. ZixCorp may terminate this Agreement upon written notice to you if you breach any of the terms hereof or other agreement between you and ZixCorp. Upon termination, you agree to (i) discontinue use of Subscription Materials; (ii) remove Subscription Materials from any servers upon which they have been installed; and (iii) destroy or return to ZixCorp any archived copies of the Subscription Materials.

The Subscription Materials contain encryption technology that is controlled for export by the U.S. Government. Under U.S. law, Customer may not (and agrees not to) export, re-export, or download the Subscription Materials (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea,

Sudan, or Syria (or other countries listed on our Web site from time-to-time) or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders or Entity List. The Subscription Materials may also be subject to import and/or use regulations in foreign jurisdictions. It is Customer's responsibility to comply with foreign laws and regulations on encryption import, export and use.

4. U.S. Government: Rights; Acknowledgements. 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(c)(2) 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.

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 Secure Messaging Services.

5. Limited Warranty. ZixCorp warrants that the Software and Secure Messaging Services will perform substantially as set forth in ZixCorp's published documentation. ZixCorp's only liability or responsibility with respect to this limited warranty is to make commercially reasonable efforts to solve any problem issues as set forth in ZixCorp's standard Service Level Agreement. If ZixCorp's products and services do not perform substantially as set forth in ZixCorp's published documentation and if ZixCorp is unable to remedy any such performance deficiency to your satisfaction with respect to the Software or Secure Messaging Services, you may terminate your subscription to use the Software/Secure Messaging Services upon five (5) days written notice to ZixCorp and ZixCorp shall refund to Customer the pro rata portion of any prepaid annual subscription fees paid to ZixCorp by Customer that relate to the period following the effective date of the termination. 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 Materials, Secure Messaging Services, and Support Services (the "Disclaiming Parties") disclaim all warranties with respect to your use, or a Disclaiming Party's provision, of the Subscription Materials, Secure Messaging Services, and Support Services. Other than for a warranty of title and the warranty provided in this Section 5, the Subscription Materials, Secure Messaging Services, and Support Services are provided "as is," "as available" without warranties of any kind, either expressed or implied, including implied warranties of merchantability, fitness for a particular purpose, or non-infringement (subject to Section 7) or non-interference. This limited warranty gives you specific legal rights. You may have others, which vary from state and jurisdiction. Some states and jurisdictions do not allow limitations with respect to implied warranties, so the above limitation may not apply.

Terms and Conditions

6. Limitation of Liability. To the maximum extent permitted by applicable law, neither you, on the one hand, nor we nor any of our contractors, suppliers, and other parties who may be associated with providing the Subscription Materials, Secure Messaging Services and Support Services, on the other hand, will be liable to the other or any third party for any indirect, incidental, 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 Secure Messaging Services or Support Services. In any event, except for our indemnity obligations under Section 7, 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 Secure Messaging Services or Support Services shall not exceed, for all causes of action that arose in a calendar year, the amounts you actually paid to us under this Agreement for such calendar year, unless otherwise specifically agreed in writing between the parties. Our limits of liability apply regardless of the type of claim brought, including those for negligence. Some states and jurisdictions do not allow the exclusion or limitation of liability, so the above limitation may not apply to you.

7. Intellectual Property Indemnity. To our knowledge, your use of the Software and Secure Messaging Services will not infringe any patent of any third party. ZixCorp will defend, indemnify and hold you harmless, or, at its option, settle any action at law against you based on a claim that your use of the Software or Secure Messaging Services in accordance with this Agreement infringes any patent of any third party. Alternatively, ZixCorp may modify the allegedly infringing item to make it non-infringing. ZixCorp shall not have any duty or liability for such infringement if the infringement arises (a) from your modification of the Software or Secure Messaging Services; or (b) from the use of the Software or Secure Messaging Services in combination with other products, software, or services not furnished by ZixCorp; or (c) resulting from the use of the Software or Secure Messaging Services other than as authorized in this Agreement; or (d) based on your use of the Software or Secure Messaging Services after ZixCorp recommends discontinuation because of possible or actual infringement; or (e) based on your use of a superseded or altered release of Software or Secure Messaging Services if the infringement would have been avoided by use of a current or unaltered release of the Software or Secure Messaging Services made available to you. If these options are not reasonably available, you shall cease using the infringing Software and Secure Messaging Services, and ZixCorp shall refund to you any fees that relate to the period following the time you cease using the infringing product/services.

8. Title. Title, ownership rights, and intellectual property rights in and to the Subscription Materials, including the ZixGateway™ servers, shall remain with ZixCorp. The Subscription Materials are protected by

the copyright laws of the United States and international copyright treaties. You agree to exercise due care over ZixCorp-owned equipment. You agree to return ZixCorp-owned equipment at your expense immediately upon expiration or termination of this Agreement. If the equipment is not returned, ZixCorp may invoice you for each server not returned at the then-current fee for an additional server.

9. General. This Agreement represents the complete agreement concerning this subscription and service arrangement between the parties and supersedes all prior agreements and representations between them. This Agreement may 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 shall 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 excluded. 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.

10. Canadian 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.

11. SysTrust Certified Operations. ZixCorp has earned the American Institute of Certified Public Accountants SysTrust certification for the use of industry best practices in operating the Secure Messaging Services. The ZixCorp Secure Messaging Services operations are independently audited annually by an independent accounting firm. SysTrust certification requires demonstrating the effectiveness of best practice controls in the areas of security, confidentiality, availability, and integrity of the Secure Messaging Services for the previous twelve months. A copy of the certification requirements and the most recent accounting firm report with respect to ZixCorp's SysTrust compliance are available from the ZixCorp website, www.zixcorp.com, by clicking on the SysTrust certification seal. Customer agrees to accept the accounting firm's report as reasonable assurance that ZixCorp's Secure Messaging 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.