

## Evaluation License Terms

**Permitted Uses.** Customer may use the applicable Zix services, related computer software, documentation and equipment, as specified in the Zix Evaluation Agreement ("Evaluation Items") solely for evaluating Customer's potential subscription for the Zix services. The Evaluation Items shall be used only for normal business e-mail and shall not be used for any emails that violate any federal or state law.

**Evaluation Price.** Zix will bear the cost of shipping physical Evaluation Items, if any, to and from Customer's site. If Customer does not subscribe for the Zix services by the end of the Evaluation Period, then Customer shall within 14 days either return any physical Evaluation Items or pay to Zix its then-current price for the Evaluation Items.

**Ownership and Risk of Loss.** Zix retains ownership of the Evaluation Items and is providing to Customer the temporary custody of the Evaluation Items. All copyrights, trade secret rights and other intellectual property rights with respect to the Evaluation Items are and will at all times be the property of Zix. Customer shall return any physical Evaluation Items to Zix in good condition promptly upon the expiration of the Evaluation Period. Customer bears the risk of loss or damage to any physical Evaluation Items while they are in its possession or custody.

**Disclaimer of Warranty.** ZIX DISCLAIMS ANY AND ALL WARRANTIES WITH RESPECT TO THE EVALUATION ITEMS, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF QUALITY, PERFORMANCE, INTEROPERABILITY, DATA SECURITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE EVALUATION ITEMS ARE PROVIDED "AS IS." CUSTOMER ASSUMES ALL RISKS OF USE OF THE EVALUATION ITEMS. ZIX HAS NO OBLIGATION TO CORRECT ANY DEFECTS IN THE EVALUATION ITEMS.

**Limit on Liability.** NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES, LOST PROFITS OR LOST PROSPECTIVE ECONOMIC ADVANTAGE, ARISING FROM ANY PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY THEREOF, AND EACH PARTY HEREBY RELEASES AND WAIVES ANY CLAIMS AGAINST THE OTHER PARTY REGARDING SUCH DAMAGES. UNDER NO CIRCUMSTANCES WILL EITHER PARTY'S LIABILITY UNDER THIS AGREEMENT OR IN CONNECTION WITH THE EVALUATION ITEMS EXCEED ZIX'S THEN-CURRENT PRICE OF THE EVALUATION ITEMS FOR THE EVALUATION PERIOD.

**Confidentiality.** "Confidential Information" means information disclosed by one party ("disclosing party") to the other party ("recipient"), either directly or indirectly, in writing, orally, or by inspection of tangible objects, that is marked "Confidential" or "Proprietary" or some similar designation or that is provided in a circumstance under which the receiving party, exercising reasonable business judgment, should understand requires confidential treatment of the information. Zix's Confidential Information includes, without limitation, the Evaluation Items, marketing materials and customer lists. Any and all Customer emails that are processed by Zix during the evaluation period are Customer's Confidential Information. "Confidential Information" excludes information that is (a) available in the public domain other than by reason of acts or omissions of recipient, or its employees or agents; (b) obtained by recipient from a third party legally entitled to disclose that information; (c) independently developed by recipient without use of, or reference to, the disclosing party's Confidential Information; or (d) legally known to, or in the possession of, recipient prior to receiving the Confidential Information by the disclosing party, as shown by the recipient's files and records. The confidentiality and non-use obligations of each party under this Agreement will survive the expiration or termination of this Agreement. Recipient may make copies of Confidential Information only as strictly necessary for the permitted purposes and shall reproduce on any such copies the other party's proprietary rights notices that were contained in the originals. Recipient shall not disclose any Confidential Information of the disclosing party to any third parties (including without limitation affiliates or employees), except the receiving party's

employees who have a "need to know" such Confidential Information for the permitted purposes. Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the disclosing party, and shall take at least those measures that recipient takes to protect its own most highly confidential information. This paragraph does not apply to the extent that Confidential Information is required to be disclosed by operation of law, including an order of a court of competent jurisdiction. The recipient, if legally permitted to do so, shall give the disclosing party prompt written notice of such requirement prior to such disclosure and assistance in obtaining an order, if necessary, protecting the information from public disclosure.

**Intellectual Property.** Customer shall not modify, disassemble, reverse engineer, decompile or otherwise attempt to derive source code or other trade secrets from or create other works from the Evaluation Items or any of Zix's other intellectual property.

**No Export.** Customer warrants that it will not export or re-export, directly or indirectly, in any manner, any portion of the Evaluation Items.

**Governing Law.** This Agreement and all disputes arising out of or related to this Agreement or the Evaluation Items will be governed by and will be construed, interpreted and enforced in accordance with the laws of the state of Texas without regard to any conflict of laws provisions. The parties submit to the exclusive jurisdiction of the courts in the state of Texas, and agree that any disputes related to this Agreement will be litigated there. The parties disclaim the application of the Uniform Computer Information Transaction Act to this Agreement and the transactions described by this Agreement, even if that act is part of the laws of the state specified above.

**Notices.** All notices and demands must be in writing and delivered to Customer at the Customer address in the Zix Evaluation Agreement or to Zix at 2711 N. Haskell Ave., Suite 2200, LB 36, Dallas, Texas 75204-2960. All notices or demands shall be transmitted by certified or registered mail, return receipt requested, or by nationally-recognized private express courier, and shall be deemed complete upon receipt.

**Entire Agreement.** Customer is not and will not be obligated to subscribe for the Zix service unless and until it signs a definitive subscription agreement. This document sets forth the entire understanding between the parties with respect to its subject matter and supersedes any prior written or oral agreement or understanding, and any contemporaneous oral understanding or agreement, between the parties with respect to that subject matter. It is the final, complete and exclusive expression of the parties' understanding on the matters described in this document. In entering into this Agreement, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those in this Agreement. No provisions in either party's purchase orders, invoices, websites or in any other business forms employed by either party will supplement or modify the terms of this Agreement.

**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 présentes ont expressément exigé que la présente convention et ses Annexes soient rédigées en langue anglaise.