

# EULA

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## END USER LICENSE AGREEMENT (EULA)

### 1. Services

1.1 Your use of the Secure Email (“Secure Email”) products, software, services and websites (referred to collectively as the “Services”) is subject to the terms of this End User License Agreement (“EULA”). For greater clarity, the Services do not include any other services provided to you in connection with Secure Email by any OEM, VAR or Reseller of the Services (each as defined herein). This EULA includes and incorporates by reference the terms of any Legal Notices attached to the Services (the “Additional Terms”). If there is any contradiction between the Additional Terms and the terms of this EULA, then the Additional Terms will take precedence.

1.2 This EULA, including the Additional Terms, forms a legally binding agreement in relation to your use of the Services, and contains important information regarding your legal rights, remedies and obligations. It is important that you take the time to read them carefully. If you are not willing to be bound by each and every term and condition of this EULA, or if any representation made by you is not true, you may not sue, and must cease using, the Services.

1.3 By using the Services, you are agreeing to be bound by the terms and conditions of this EULA. In addition, you may be asked, from time to time, to indicate your acceptance of or agreement to this EULA and Additional Terms by clicking an “I accept” button, checkbox or similar in the user interface for certain of the Services.

1.4 You may not use the Services and may not accept the EULA if (a) you are not of legal age to form a binding contract, or (b) you are a person barred from receiving the Services under the laws of the United States, Canada, United Kingdom or other countries including the country in which you are resident or from which you use the Services.

### 2. Service Provider

2.1 The Services are provided to you by the “Service Provider”, which may be the manufacturer, a direct reseller of the Services (a “Reseller”), a value-added reseller of the Services (a “VAR”) or as a white-label offering from an OEM reseller (an “OEM”), or any subsidiary or affiliate thereof. This EULA will be applicable to your use of the Services regardless of the particular Service Provider, and any reference to the Service Provider herein means the applicable Service Provider in your particular circumstance.

2.2 You acknowledge and agree that the form and nature of the Services provided may change from time to time without prior notice to you, and that provision of the Services may be transferred from one Service Provider to another, without prior notice to you.

### **3. License to the Services**

3.1 The Service Provider grants you a personal, worldwide, non-assignable and non-exclusive license to use the software provided to you as part of the Services (referred to as the “Software” below). This license is for the sole purpose of enabling you to use and enjoy the benefit of the Services as provided, in the manner permitted by the EULA.

3.2 You may not (and you may not permit anyone else to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the Software or any part thereof, unless this is expressly permitted or required by law, or unless you have been specifically authorized to do so, in writing.

3.3 Unless you have specific written permission to do so, you may not assign (or grant a sub-license of) your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software. For greater clarity, you may not assign this EULA to any other person without the prior written consent of the Service Provider, in the sole discretion of the Service Provider.

### **4. Use of the Services by you**

4.1 In order to access the Services, you may be required to provide information about yourself (such as identification or contact details) as part of the registration process for the Services, or as part of your continued use of the Services. You agree that any registration information you give will always be accurate, correct and up-to-date.

4.2 You agree to use the Services only for purposes that are permitted by (a) the EULA and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United States or other relevant countries).

4.3 Unless you are specifically permitted to do so in a separate written agreement, you agree that you will not:

- (a) access (or attempt to access) any of the Services by any means other than through the interface that is provided;
- (b) access (or attempt to access) any of the Services through any automated means (including use of scripts or web crawlers);
- (c) engage in any activity that interferes with or disrupts the Services (or the servers and networks which are connected to the Services); or
- (d) reproduce, duplicate, copy, sell, trade or resell the Services for any purpose.

4.4 You agree that you are solely responsible for (and that the Service Provider has no responsibility to you or to any third party for) any breach of your obligations under the EULA and for the consequences (including any loss or damage) of any such breach.

### **5. Your passwords and account security**

5.1 You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the Services. Accordingly, you agree that you will be solely responsible for all activities that occur under your account. If you become aware of any unauthorized use of your password or of your account, you agree to notify us immediately at [support@secure-messaging.com].

## **6. Content in the Services**

6.1 You understand that all information (including without limitation all data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which you may have access to as part of, or through your use of, the Services are the sole responsibility of the person from which such content originated. All such information is referred to herein as the "Content".

6.2 You understand that by using the Services you may be exposed to Content that you may find offensive, indecent or objectionable and that, in this respect, you use the Services at your own risk.

6.3 You agree that you are solely responsible for (and that the Service Provider has no responsibility to you or to any third party for) any Content that you create, transmit or display while using the Services and for the consequences of your actions (including any loss or damage which the Service Provider may suffer) by doing so. You may obtain a decrypted copy of your Content by either:

- (a) requesting a decrypted copy from the Service Provider, which the Service Provider will provide to you on a disc for its then-prevailing rate; or
- (b) through the Services, setting up an auto-decryption to a third-party archive, the settings of which will be managed by you. Please note that this feature will archive all secure messages, including recalled and expired messages.

6.4 You may also use the 'data retention' feature, which will allow you to delete the content and file attachments associated with a secure message, while retaining a record of the secure message, including certain metadata. You agree that any use of the 'data retention' feature is at your own risk, and that once data is deleted through this feature it is irretrievable for both you and the Service Provider.

## **7. Your Responsibilities and Acknowledgements**

7.1 In addition to any other responsibilities set out herein, you will be responsible for the following:

- (a) you or your administrator are responsible for any settings related to data retention periods for Content using the Services;
- (b) you or your administrator are responsible for any security settings;
- (c) you or your administrator are responsible for any data leak prevention, including the accuracy of any keywords or lexicons which may be used; and

(d) if you are an administrator, you are further responsible for all such settings on any account over which you have administrative access.

7.2 You further acknowledge and agree with the following:

- (a) any use of the Crypto Relay to send your email traffic is at your own risk, and the Service Provider expressly disclaims any warranty regarding its use;
- (b) any use of IMAP is not supported by the Services, and any such use is at your own risk, and the Service Provider expressly disclaims any warranty regarding its use;
- (c) if you create any customer portal for access to the Services, this will be solely your responsibility, and the Service Provider expressly disclaims any warranty regarding its use;
- (d) any use of the archive feature in the Services is solely at your own risk, and the Service Provider expressly disclaims any warranty regarding its use or the accuracy of archived Content;
- (e) storage for Content is pooled for all accounts within a portal at a rate of 2GB of data storage per Pro Paid User; and
- (f) all accounts within a portal are capped at 250 transactions per Pro Paid User per month, on a pooled basis, with individual outbound secure messages capped at 250 per user in any given 24 hour period. Additional transactions may be subject to additional transaction charges, which may include charges for outbound secure messages, inbound secure messages (e.g. replies and forwards from Guest users), queries to the system, email SMTP notifications and notification alerts, including any such transactions through an API, based on the then-current published rate sheet or as otherwise agreed with the Service Provider, and
- (g) any use of the e-signature feature may be subject to local laws in your jurisdiction, or in the jurisdiction of individuals you invite to sign documents, and you acknowledge that (i) you will bear the sole responsibility for ascertaining and understanding all such laws prior to using the e-signature feature, or relying on any document signed using the e-signature feature, and (ii) the Service Provider makes no claims or warranties with respect to the legal enforceability of any e-signature in any jurisdiction.

7.3 You acknowledge and agree that the technical processing and transmission of the Services, including your Content, may involve transmissions over various networks and changes to conform and adapt to technical requirements of connecting networks or devices, and that such Content may be subject to “caching” or other technical processing or transmission policies and procedures by us or at intermediate locations on the Internet. The Services depend on the Internet, including networks, cabling, facilities and equipment that are not in the Service Provider’s control; accordingly (i) any representation made by the Service Provider regarding access performance, speeds, reliability, availability, use or consistency of the Services is on a “commercially reasonable efforts” basis, and (ii) the Service Provider cannot guarantee any minimum level regarding such performance, speed, reliability, availability, use or consistency.

7.4 You will indemnify and save the Service Provider harmless from and against any liabilities, actions, proceedings, claims, causes of action, demands, debts, losses, damages, charges and costs, including reasonable legal costs, any amount paid to settle any action or to satisfy a judgment and expenses of any kind and character whatsoever incurred by the

Service Provider relating to or arising from your Content or your use of the Services, including instances where the your Content (A) infringes any third party content or other third-party intellectual property rights, or (B) is inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful.

## **8. Billing, Fees and Payment**

8.1 Your use of the Services may be subject to specific billing conditions as set out in a separate signed agreement or as set out in an invoice for the Services, as applicable (a "Billing Agreement"). Each Billing Agreement will set out the following, and is hereby incorporated into this EULA by reference:

- (a) Fees payable for access to the Services (the "Fees");
- (b) Any applicable payment terms for such fees;
- (c) Any applicable taxes; and
- (d) The term during which the Services are to be provided, as well as any specific renewal terms.

8.2 Except as otherwise set out in a Billing Agreement, the Fees may be adjusted by the Service Provider at any time upon 30 days notice to you.

## **9. Proprietary rights**

9.1 You acknowledge and agree that the Service Provider (or its licensors) own all legal right, title and interest in and to the Services, including any intellectual property rights which subsist in the Services (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You further acknowledge that the Services may contain information which is designated confidential and that you will not disclose such information without prior written consent. All such legal right, title and interest, and obligations of confidentiality, will survive any expiration or termination of this EULA.

9.2 Nothing in the EULA gives you a right to use any trade names, trademarks, service marks, logos, domain names, or other distinctive brand features of the Service Provider or Secure Email. Any use by you of such brand features pursuant to a separate written agreement must also be in compliance with this EULA.

9.3 The Service Provider acknowledges and agrees that it obtains no right, title or interest from you (or your licensors) under this EULA in or to any Content that you submit, post, transmit or display on, or through, the Services, including any intellectual property rights which subsist in that Content (whether those rights happen to be registered or not, and wherever in the world those rights may exist). Unless you have agreed otherwise in writing, you agree that you are responsible for protecting and enforcing those rights and that the Service Provider has no obligation to do so on your behalf.

9.4 You agree that you will not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) which may be affixed to or contained within the Services.

## **10. Software updates**

10.1 The Software which you use may automatically download and install updates from time to time. These updates are designed to improve, enhance and further develop the Services and may take the form of bug fixes, enhanced functions, new software modules and completely new versions. You agree to receive such updates as part of your use of the Services. The Services may be unavailable from time to time in order for the Service Provider or its licensors to perform system maintenance, upgrades or updates. The Service Provider may provide advance notice of such unavailability as and when possible.

## **11. Ending your relationship**

11.1 The terms of this EULA are perpetual and will continue to apply until terminated as set out below.

11.2 If you want to terminate your legal agreement, you may do so by (a) notifying the Service Provider at any time, (b) requesting to have your account suspended for all of the Services which you use, or (c) in the case of free guest accounts, ceasing to use the Services for ninety (90) days. Your notice should be sent, in writing, to [support@secure-messaging.com].

11.3 The Service Provider may at any time, terminate your use of the Services and its legal agreement with you if:

- (a) you have breached any provision of the EULA (or have acted in manner which clearly demonstrates that you do not intend to do so, or are unable to comply with the provisions of the EULA); or
- (b) the Service Provider is required to do so by law (for example, where the provision of the Services to you is, or becomes, unlawful in any manner); or
- (c) the Service Provider has terminated or otherwise loses its rights to provide the Services to you; or
- (d) the Service Provider is transitioning to no longer providing the Services to users in the country in which you are resident or from which you use the Services; or
- (e) upon 90 days notice for convenience, including if the provision of the Services offered to you are no longer commercially viable.

11.4 Except as expressly provided, upon termination of this EULA, the Service Provider will have no further obligations or liabilities to you, and your use of the Services will cease, provided that the provisions of paragraph 17.8 will continue to apply to any rights, obligations or liabilities which may continue.

11.5 In any event of termination of this EULA, the Service Provider will suspend your account for a period of ninety (90) days, after which time any Content will be deleted from the Service Provider's servers. It is your sole responsibility to make arrangements for any retrieval of the Content prior to this scheduled deletion.

## **12. EXCLUSION OF WARRANTIES**

12.1 NOTHING IN THESE TERMS, INCLUDING BUT NOT LIMITED TO SECTIONS 11 AND 12, WILL EXCLUDE OR LIMIT THE SERVICE PROVIDER'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR CONDITIONS OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR LOSS OR DAMAGE CAUSED BY NEGLIGENCE, BREACH OF CONTRACT OR BREACH OF IMPLIED TERMS, OR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, ONLY THE LIMITATIONS WHICH ARE LAWFUL IN YOUR JURISDICTION WILL APPLY TO YOU AND OUR LIABILITY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

12.2 YOU EXPRESSLY UNDERSTAND AND AGREE THAT YOUR USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE."

12.3 IN PARTICULAR, THE SERVICE PROVIDER, ITS SUBSIDIARIES, AFFILIATES, RESELLERS, OEMS, VARS, AND LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT:

- (a) YOUR USE OF THE SERVICES WILL MEET YOUR REQUIREMENTS,
- (b) YOUR USE OF THE SERVICES WILL BE UNINTERRUPTED, TIMELY OR FREE FROM ERROR,
- (c) ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE SERVICES WILL BE ACCURATE OR RELIABLE, AND
- (d) THAT DEFECTS IN THE OPERATION OR FUNCTIONALITY OF ANY SOFTWARE PROVIDED TO YOU AS PART OF THE SERVICES WILL BE CORRECTED.

12.4 ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

12.5 NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE PROVIDER OR THROUGH OR FROM THE SERVICES WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THE EULA.

12.6 THE SERVICE PROVIDER FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

### **13. LIMITATION OF LIABILITY**

13.1 SUBJECT TO PARAGRAPH 11.1 ABOVE, YOU EXPRESSLY UNDERSTAND AND AGREE THAT THE SERVICE PROVIDER, ITS SUBSIDIARIES, AFFILIATES, RESELLERS, VARS, OEMS AND LICENSORS WILL NOT BE LIABLE TO YOU FOR:

(a) ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY. THIS WILL INCLUDE, BUT NOT BE LIMITED TO, ANY LOSS OF PROFIT (WHETHER INCURRED DIRECTLY OR INDIRECTLY), ANY LOSS OF GOODWILL OR BUSINESS REPUTATION, ANY LOSS OF DATA SUFFERED, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR OTHER INTANGIBLE LOSS;

(b) ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO LOSS OR DAMAGE AS A RESULT OF:

(i) ANY CHANGES WHICH THE SERVICE PROVIDER MAY MAKE TO THE SERVICES, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE SERVICES (OR ANY FEATURES WITHIN THE SERVICES);

(ii) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE SERVICES;

(iii) YOUR FAILURE TO PROVIDE THE SERVICE PROVIDER WITH ACCURATE ACCOUNT INFORMATION;

(iv) YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL;

13.2 THE LIMITATIONS ON THE SERVICE PROVIDER'S LIABILITY TO YOU IN PARAGRAPH 13.1 ABOVE WILL APPLY WHETHER OR NOT THE SERVICE PROVIDER HAS BEEN ADVISED OF OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

#### **14. Copyright and trademark policies**

14.1 It is the Service Provider's policy to respond to notices of alleged copyright infringement that comply with applicable international intellectual property law (including, without limitation, in the United States, the Digital Millennium Copyright Act) and to terminating the accounts of repeat infringers. Inquiries regarding this policy may be sent to [support@secure-messaging.com].

#### **15. Other content**

15.1 The Services may include hyperlinks to other web sites or content or resources. The Service Provider has no control over any web sites or resources which are provided by companies or persons other than the Service Provider.

15.2 You acknowledge and agree that the Service Provider is not responsible for the availability of any such external sites or resources, and does not endorse any advertising, products or other materials on or available from such web sites or resources.

15.3 You acknowledge and agree that the Service Provider is not liable for any loss or damage which may be incurred by you as a result of the availability of those external sites or resources, or as a result of any reliance placed by you on the completeness, accuracy or



existence of any advertising, products or other materials on, or available from, such web sites or resources.

## **16. Changes to the Terms**

16.1 The Service Provider may make changes to the EULA, including the Additional Terms, from time to time, without notice to you. When such changes are made, the Service Provider will make a new copy of the EULA available to you by publishing the updated EULA through the Services.

16.2 You understand and agree that you are responsible for regularly reviewing the Eula in order to obtain timely notice of any such updates, and that by continuing to use the Services after the date on which the EULA has changed, you will be deemed to have accepted any changes to the EULA.

## **17. General legal terms**

17.1 Where provided with a translation of the English language version of the EULA, you agree that the translation is provided for your convenience only and that only the English language versions of the EULA will govern your relationship with the usage of the Services. If there is any contradiction between the English language version of the EULA and a translation, then the English language version will take precedence.

17.2 Sometimes when you use the Services, you may (as a result of, or through your use of the Services) use a service or download a piece of software, or purchase goods, which are provided by another person or company. Your use of these other services, software or goods may be subject to separate terms between you and the company or person concerned. If so, this EULA does not affect your legal relationship with these other companies or individuals.

17.3 This EULA constitutes the entire legal agreement between you and the Service Provider and governs your use of the Services except and to the extent expressly provided otherwise in writing, and completely replaces any prior agreements in relation to the Services, except and to the extent expressly provided otherwise in writing. For greater certainty, this EULA includes the following, each of which is incorporated herein by reference:

- (a) Privacy Policy-the Privacy Policy located at <http://help.secure-messaging.com/privacy> forms a part of, and is integral to, this EULA; and
- (b) Business Associate Agreement-to the extent that you are a “covered entity” as defined in 45 CFR § 160.103 of HIPPA, the Business Associate Agreement located at <http://help.secure-messaging.com/baa> will apply wherein you are the “Customer”. “HIPPA” collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health Act (“HITECH”) and by the Modifications to

the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the HITECH and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule;

(c) Support and Service Levels Policy-the Support and Service Levels Policy located at <http://help.secure-messaging.com/trust-center/sla/> forms a part of, and is integral to, this EULA. To the extent that you are a Reseller, VAR or OEM, you are the “Service Provider” therein. To the extent you are an individual user, you are an “End User” therein, and the “Service Provider” will be the same party as in this EULA.

17.4 You agree that the Service Provider may provide you with notices, including those regarding changes to the EULA, by email, regular mail, or postings on the Services.

17.5 You agree that if the Service Provider does not exercise or enforce any legal right or remedy which is contained in the EULA (or which the Service Provider has the benefit of under any applicable law), this will not constitute a formal waiver of any of the Service Provider’s rights and that those rights or remedies will at all times remain available to the Service Provider.

17.6 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this EULA is invalid, then that provision will be removed from the EULA without affecting the rest of the EULA. The remaining provisions of the EULA will continue to be valid and enforceable.

17.7 You acknowledge and agree that each member of the group of companies of which the Service Provider is the parent or a subsidiary will be third party beneficiaries to the EULA and that such other companies will be entitled to directly enforce, and rely upon, any provision of the EULA which confers a benefit on (or rights in favor of) them. Other than as set forth herein, no other person or company will be third party beneficiaries to the EULA.

17.8 This EULA, and your relationship with the Service Provider under this EULA, will be governed by the laws of the Province of British Columbia and the federal laws of Canada applicable therein, without regard to its conflict of law provisions. You and the Service Provider agree to submit any dispute, conflict or other matter arising out of or related to this EULA to the exclusive jurisdiction of the courts located within the Province of British Columbia. Notwithstanding this, you agree that monetary damages would not be an adequate remedy for any breach of this EULA by you, and that the Service Provider will be entitled, in addition to any other legal or equitable remedies, to seek an injunction or similar equitable relief against any such breach or threatened breach in any jurisdiction, without the necessity of posting any bond.

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