1. **DEFINITIONS**

1.1 “Confidential Information” means information or materials provided by Zimbra to You which are in tangible form and labeled “confidential” or the like, or, information which a reasonable person knew or should have known to be confidential. The following information will be considered Confidential Information whether or not marked or identified as such: (a) license keys; (b) information regarding Zimbra’s pricing, amounts paid in any Order, product roadmaps, or strategic marketing plans; and (c) non-public materials relating to the Software.

1.2 “Customer Content” means any of Your data, content, and confidential and proprietary information: (a) that may be disclosed to Zimbra in conjunction with the performance of Services; or (b) that may be generated by Registered Users in conjunction with Your use of the Software; or (c) any trade names, trademarks, service marks, logos, slogans, trade dress, content, and web site navigation bars generated or embedded on Your website.

1.3 “Order” means a purchase order or other ordering document issued by You to Zimbra or a Zimbra-authorized reseller which is accepted by Zimbra for a package of bundled professional services made generally available by Zimbra with each bundle’s SKU selected by You (each SKU a “Services Package”).

1.4 “You(r)” or “Customer” means the person or entity whose authorized agent has ordered Professional Services from Zimbra or from an authorized distributor or reseller.

1.5 “Software” means the Zimbra computer programs listed on Zimbra’s commercial price list to which You acquire a license under an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support contract and that is not subject to a separate license agreement.

1.6 “Zimbra Technology” means Zimbra’s proprietary technology, including without limitations, hardware designs, algorithms, software, software and user-interface designs, architecture, documentation (both printed and electronic), network designs, know-how, trademarks, patents, trade dress, methodologies, trade secrets, confidential information, and any related intellectual property rights throughout the world (whether owned by Zimbra or licensed to Zimbra from a third party), used in the Professional Services or incorporated into any deliverables, and any derivatives, improvements, enhancements, or extensions of any of the foregoing, conceived, reduced to practice, or developed whether alone or jointly with others by Zimbra or You.

2. **SCOPE OF SERVICES**

2.1 Zimbra will provide services based upon the Services ordered. The Services Package will specify the nature of the project and work to be performed. Zimbra will not perform any work requested by You outside of the scope of the Services Package ordered. The Services Packages are sold on a fixed-price basis and Services are deemed accepted upon performance. Cancellation or scheduling of any Services within 15 business days prior to the effective start date, as mutually agreed to in writing by the parties, may incur a penalty of up to 5% of the total cost of the Services.
25% of the list price of the Services purchased. Services purchased must be used within a one year period from date of Order or will result in forfeiture of Services and are nonrefundable.

2.2 If there is any conflict between this Agreement and any Order, the terms of this Agreement will control.

2.3 Zimbra will respond promptly to a request for additional Services by submitting to You a statement of work ("SOW") specifying services to be provided by Zimbra and remuneration to be paid by You, which will be executed by the parties. Zimbra will use commercially reasonable efforts to complete the Services by the applicable dates set forth in the SOW ("Target Dates").

2.4 Except for the rights expressly granted herein, this Agreement does not transfer from Zimbra to Your any Zimbra Technology, and all right, title, and interest in and to Zimbra Technology will remain solely with Zimbra. Except for the rights expressly granted herein, this Agreement does not transfer from You to Zimbra any Customer Content, and all right, title, and interest in and to Customer Content will remain solely with You or its licensors.

3. ASSIGNED PROFESSIONALS

You may at any time require the removal of one or more members of Your project team. This will not, however, necessarily have any bearing on the individual’s continuing relationship with Zimbra. In the event of removal of an individual, if a replacement is requested by You, Zimbra will replace the individual for the remainder of the project within a commercially reasonable timeframe. If the replacement of an individual is requested for a reason other than misconduct, You will pay all relevant travel costs for the removal and replacement of any such individual.

4. WORKING ARRANGEMENT

4.1 You agree to provide reasonable work space, computer-machine time, personnel, technology, resources, and any other materials that may be necessary in connection with the performance of the Services as described in the Services Package. You represent to Zimbra that You has the authority to permit Zimbra to use such materials in furtherance of the Services.

4.2 You acknowledge that meeting the Target Dates is contingent upon timely completion of activities by You as contemplated by the parties under the applicable SOW ("Client Obligation"). You will immediately advise Zimbra in writing as soon as You become aware of any developments that may delay completion of a scheduled deliverable including, without limitation, Your failure or inability to perform a Client Obligation. The Target Dates (though only an estimate) will be equitably adjusted by the parties (but in no event less than a day-for-day adjustment) in writing in the event of: (a) any delay caused by Your failure or inability to perform a Client Obligation; (b) any delay due to Your request for changes (whether pursuant to a Change Order or otherwise); (c) any delay due to a third party’s act, failure to act, or delay in performing any obligation whatsoever; or (d) any other delay incurred as a result of Your action(s) or omission(s). No such delay will relieve or suspend Your obligation to pay Zimbra and, in addition to such payment obligations, You will pay for any and all costs and expenses incurred by Zimbra relating to re-staffing as a result of any delay caused by You.

5. TERM AND TERMINATION

5.1 This Agreement commences upon Order and continues for the term described in the Service Package.

5.2 This Agreement may be terminated by Zimbra upon the occurrence of any of the following events of default and Your failure to cure its default within thirty (30) days after written notice of default has
been given by Zimbra to You: (a) if any undisputed sum of money owed by You is not paid when due; (b) if any breach occurs under any of the confidentiality provisions; or (c) if any material breach by You occurs as to any other term of this Agreement. You may terminate this Agreement on occurrence of any of the following events of default and the failure of Zimbra to cure its default within thirty (30) days after written notice of default has been given by You to Zimbra: (a) if any breach occurs under any of the confidentiality provisions; or (b) if any material breach by Zimbra occurs as to any other term of this Agreement.

5.3 Your payment obligations and any other provision of this Agreement, which by its terms is intended to so survive, will survive any expiration or termination of this Agreement for any reason.

6. INSURANCE AND INDEMNIFICATION

6.1 At all times while Services are being performed for You, Zimbra, at its own cost, will maintain general comprehensive liability insurance and worker’s compensation insurance (or equivalent coverage) in a sufficient amount to cover the Services to be provided as defined by the Services Package, and, upon written request, will furnish You with certificates evidencing the same.

6.2 Zimbra agrees to indemnify You from and against any and all suits, demands, liabilities, claims, actions, and damages, including costs of litigation and reasonable attorney’s fees, arising as a direct result of the gross negligence or willful misconduct of Zimbra, its officers, directors, employees, or agents. The extent of Zimbra’s liability to You will be limited to the amounts of coverage under insurance required to be maintained under this Agreement.

7. COMPLIANCE WITH LAWS

6.1 Zimbra agrees to comply with all local, state, and federal laws applicable to employment of Zimbra’s employees or pertaining to Zimbra’s performance of the Services.

7.2 Zimbra will take commercially reasonable efforts to comply with all of Your written rules and procedures that are supplied by You to Zimbra at least fifteen (15) days before the rules and procedures taking effect, at the site or sites where Services are to be performed.

7.3 The performance of Services by Zimbra pursuant to this Agreement is undertaken only as a non-exclusive independent contractor, and nothing in this Agreement or otherwise is intended or will be construed to create a joint venture, partnership, employment, or other similar relationship between Zimbra and You. Neither Zimbra nor any of its employees will be deemed to be Your employee or any of its subsidiaries or affiliates, and will not be entitled to participate in any of Your employee benefits. Zimbra will be solely responsible for the withholding or payment of all applicable federal, state, and local personal income taxes, social security taxes, workers compensation insurance, unemployment and sickness disability insurance, and other payroll taxes with respect to its employees.

8. WARRANTS AND LIMITATIONS OF LIABILITY

8.1 Zimbra warrants that all Services performed by Zimbra will be of professional quality conforming to generally accepted computer-industry practices. Any work produced by Zimbra, which is determined by You and Zimbra to be of less than professional quality, will be corrected by Zimbra without charge. This warranty is conditioned on a clear description of the Services defined in the Services Package and prompt (within thirty (30) days) request by You for review of work.
product considered to be unsatisfactory. This warranty is limited to re-performance of the unsatisfactory Services without change to the original specification.

8.2 IN NO EVENT WILL INDEMNIFICATION BE PROVIDED FOR A CLAIM FOR BREACH OF WARRANTY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ZIMBRA MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, SUITABILITY, QUIET ENJOYMENT, NON-INFRINGEMENT, ORIGINALITY, OR FITNESS FOR A PARTICULAR PURPOSE, IRRESPECTIVE OF ANY PREVIOUS COURSE OF DEALINGS BETWEEN THE PARTIES OR CUSTOM OR USAGE OF TRADE.

8.3 IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS, LOSS OF BUSINESS, LOST SAVINGS, LOST DATA, COMMERCIAL LOSS OR BUSINESS INTERRUPTIONS INCLUDING LOSS OR DELAY OF BUSINESS OPERATIONS OR OTHER INCIDENTAL OR CONSEQUENTIAL, INDIRECT, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES UNDER ANY CIRCUMSTANCES WHATSOEVER EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDIES PROVIDED IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

8.4 ZIMBRA'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE FEES PAID BY CUSTOMER FOR THE SERVICES ORDERED GIVING RISE TO THE CLAIM FOR, OR ALLEGEDLY CAUSING, THE DAMAGES.

8.5 EACH PARTY ACKNOWLEDGES THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT ZIMBRA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS OF LIABILITY.

9. CONFIDENTIAL INFORMATION

9.1 In order to facilitate the performance of the Services as described in the Services Package, each party may disclose certain Confidential Information to the other party.

9.2 Except as the disclosing party may authorize in writing, during the term of this Agreement and for a period of one (1) year afterward, the receiving party and its employees: (i) will treat and cause to be treated as confidential all Confidential Information, (ii) will limit access to Confidential Information to the receiving party’s employees and contractors, and (iii) will not disclose any Confidential Information, without the written direction of the disclosing party, except to the extent necessary to perform its obligations under this Agreement.

9.3 Zimbra will maintain the confidentiality of any non-public Customer Content that You provide to Zimbra and will treat the information with the same degree of care and security as Zimbra treats its own confidential information. Zimbra acknowledges that the disclosure of any non-public Customer Content could cause You irreparable injury for which it would have no adequate remedy at law, and that, in addition to any other remedies You may have, it will be entitled to preliminary and other injunctive relief against any violation without posting bond or proving damages.

9.4 Notwithstanding anything to the contrary in this Agreement, each party retains the right to use general ideas, concepts, and techniques retained by its employees in intangible form; provided that such party makes no unauthorized use of the other party’s Confidential Information or infringes the other party’s intellectual property rights.

10. ZIMBRA TECHNOLOGY

You acknowledge and agree that as between You and Zimbra, title to and ownership of the Software, Zimbra’s Technology, and all intellectual property rights relating thereto, including without limitations, code, copyrights, hardware designs, algorithms,
11. **MISCELLANEOUS PROVISIONS**

11.1 **Publicity.** Zimbra may indicate on its website and sales materials that You are a licensee of the Software if the indication does not imply an endorsement of Zimbra by You without Your prior written consent.

11.2 **Assignment.** This EULA and any Orders, and any of Your rights or obligations thereunder, may not be assigned, subcontracted or transferred by You, in whole or in part, whether voluntary, by operation of contract, law or otherwise, without Zimbra’s prior written consent. Any attempted assignment or transfer in violation of the foregoing will be null and void. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

11.3 **Notices.** Any notice delivered by Zimbra to You under this Agreement will be delivered via mail, email, or fax. Any notices delivered to Zimbra must be delivered to Zimbra, Inc., Attn: Legal, 3000 Internet Blvd., Suite 200, Frisco, Texas 75034. If You have any questions concerning this Agreement, please send an email to legal@zimbra.com.

11.4 **Waiver.** The waiver of a breach of any provision of this Agreement will not constitute a waiver of any other provision or any subsequent breach.

11.5 **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect.

11.6 **Compliance with Laws; Export Control; Government Regulations.** Each party will comply with all laws applicable to the actions contemplated by this Agreement. You acknowledge that the Software is of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that: (1) you are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) you will not permit the Software to be used for, any purposes prohibited by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Software and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation,” respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying, or disclosing of the Software and Documentation by the U.S. Government will be governed solely by the terms and conditions of this Agreement.

11.7 **Construction.** The headings of sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word “including” means “including but not limited to.”
11.8 **Choice of Law and Language.** This Agreement will be governed by the laws of the State of Delaware, USA, to the exclusion of the UN Convention on Contracts for the International Sale of Goods and to the Uniform Computer Information Transactions Act. You acknowledge that the headquarters of the Zimbra family of companies is located in Texas, and that the software licensed under this Agreement and the related products marketed in connection with such software were in substantial part conceived, developed, or marketed by Zimbra personnel in the United States. Further, you acknowledge, agree and stipulate that the laws of the United States bear a substantial relationship to this Agreement and that the selection of Delaware law to govern this Agreement and the license of the Software is reasonable and appropriate, and you consent to the selection of such law to govern this Agreement and the relationship of the parties. This Agreement has been agreed to only in the English language, which version of this Agreement will be controlling regardless of whether any translations of this Agreement have been prepared or exchanged. As an exception to the preceding sentence, if Zimbra provides this Agreement to you only in a non-English language version, then such non-English language version will control. Otherwise, you acknowledge and represent that you have carefully reviewed this Agreement with the involvement and assistance of your employees, advisors, and/or legal counsel fluent in the English language, that you have consulted with local legal counsel and counsel competent to render advice with respect to transactions governed by the law applicable to this Agreement, that you have no questions regarding the meaning or effect of any of this Agreement’s terms, and that you have obtained high-quality translations of this Agreement for use by you or any of your team who are not fluent in the English language, with the understanding that you alone will bear the risk of any misunderstandings that may arise as a result of such translation. All communications in connection with this Agreement will be in the English language. Les parties ont demandé que cette convention ainsi que tous les documents qui s’y rattachent soient rédigés en anglais.

11.9 **Jurisdiction and Venue.** All disputes arising out of this Agreement involving Zimbra will be subject to the jurisdiction of the federal or state courts of Northern Texas, with venue lying in Dallas County, Texas. **YOU WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT YOU MAY HAVE TO TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS EULA.** In the event of any action or proceeding brought by either party against the other arising out of this Agreement, the prevailing party will be entitled to recover reasonable attorneys’ fees and costs incurred in such action and such amount will be included in any decision rendered in such proceeding.

11.10 **Third Party Rights.** Other than as expressly set out in this Agreement, this Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to this Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it.

11.11 **Documentation.** In addition to the above sections, Your use of the Software is subject to any additional terms and conditions set forth in the Documentation, which is incorporated into this Agreement.

11.12 **Order of Precedence.** In the event of conflict or inconsistency among the Documentation, this Agreement and the Order, the following order of precedence will apply: (a) the Documentation, (b) this Agreement, and (c) the Order. With respect to any inconsistency between this Agreement and an Order, the terms of this Agreement will supersede and control over any conflicting or additional terms and conditions of any Order, acknowledgement or confirmation or other document issued by You, unless the parties execute a written agreement expressly indicating: (i) that such Order will modify this Agreement; or (ii) that the terms of such Order will supersede and control in the event of any inconsistency.
11.13 **Force Majeure.** Zimbra will not be liable for any nonperformance or delays in deliveries caused by strikes, differences with workmen, accidents, fires, floods, transportation delays, delays in procuring materials or supplies, government regulations, war, disaster, Acts of God, or other delays caused by events beyond the reasonable control of Zimbra.

11.14 **Entire Agreement.** This Agreement, including accepted Orders and any amendments to this Agreement, and the Documentation contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings, and agreements, whether written or oral, between the parties regarding this license agreement. This Agreement may be amended only in writing signed by authorized representatives of both parties.