

JetStream, Inc. ("JetStream") and you ("You" or "Customer"), agree that the following terms and conditions apply to the services You order from JetStream and to any additional services obtained through orders subsequently placed pursuant to this document.

1. ACCEPTANCE OF TERMS. JetStream provides its Services to You subject to this Terms of Service ("TOS"). By use of the services, You acknowledge that You have read, understood, and agree to be bound by this TOS. If You are entering into this TOS on behalf of a company, business or other legal entity, You represent that you have the authority to bind such entity and its affiliates to this TOS, in which case the terms "You" or "Your" shall refer to such entity and its affiliates. If You do not have such authority, or if You do not agree with this TOS, You must not accept this TOS and may not use the Service.

2. DESCRIPTION OF SERVICES. JetStream's Services include a variety of services for handling email. The "Services" include (a) security related such as scanning for viruses and stopping spam; (b) hosted exchange where services for Microsoft Exchange in mail Watch data centers are utilized; (c) email archiving; and (d) encrypting email. The Services may also include data and other content and printed and electronic documentation that may be provided to You by JetStream ("Documentation"). Any new features added to or augmenting the Service are also subject to this TOS. The Services may be provided to You in one or more of the following methods, all of which are covered by this TOS. The available "Deployment Methods" include: (a) as a "SaaS Service" with no hardware or software at the customer site; (b) as a "Device" where JetStream will bundle the software on a server and provide it to You as an integrated unit which You install on Your network, in which case JetStream will provide frequent software updates but You will be responsible for maintenance of the Device; or (c) as a "Virtual Device" which You install on dedicated hardware or on a virtual machine in which case JetStream will provide regular software updates but You are responsible for maintenance of the Virtual Device. Whichever Deployment Method is applicable to You, the SaaS Service, Device or Virtual Device, this TOS applies.

3. LICENSE AND USE OF SERVICES; RESTRICTIONS

3.1 Subject to the timely payment of all fees due hereunder, and Your acceptance of and compliance with this TOS and any Documentation, JetStream grants to Customer a limited, revocable, non-exclusive, non-assignable, non-transferable, and non-sublicensable limited right and license during the term of this TOS to allow access to, and use of, the Services only by "End Users." "End Users" are employees or other representatives of Customer who are identified and authorized by Customer to utilize the Services. Any rights not expressly granted herein are reserved and no license or right to use any trademark of JetStream or any third party is granted to You in connection with the Services.

3.2 You agree that any software, products, materials, and associated intellectual property rights used or furnished in connection with the performance of the Services hereunder remains the property of JetStream and/or its third party licensors. Accordingly, You may not: rent, lease, or resell the Services; translate, reverse engineer, decompile, disassemble any such software; or attempt to derive a source code equivalent of any such software used or furnished in connection with the performance of the Services. You shall respect the copyrights, trade names, and trademarks of JetStream and its third party licensors and comply with the product handling and licensing requirements of JetStream and/or its third party licensors. You may not make copies of any software owned or licensed by JetStream, which is used or furnished in connection with the performance of the Services. You shall use reasonable commercial efforts to enforce such requirements. You may not perform or knowingly omit to perform any act whereby any intellectual property right of JetStream and/or its third party licensors may become invalidated.

You agree to promptly communicate to JetStream Your discovery of any bugs or errors in the Services, and You may communicate to JetStream suggestions for improvements to the Services (collectively, "Feedback"). JetStream shall own all right, title, and interest in and to the Feedback, and will be entitled to use the Feedback without restriction. JetStream shall not be required to use any Feedback, including fixing any bugs or errors, and will in its sole discretion determine the manner and schedule for any bug or error fixes.

3.3 You represent, covenant, and warrant that You will use the Services only in compliance with this TOS, JetStream's standard published policies then in effect, and all applicable laws and regulations (including but not limited to policies and laws related to spamming, privacy, intellectual property, consumer and child protection, obscenity or defamation). Any use of the Services in violation of the foregoing will result in immediate termination of Your account and JetStream may pursue all available remedies at law and equity. You hereby agree to indemnify and hold harmless JetStream against any damages, losses, liabilities, settlements and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Your use of Services in violation of this TOS. Without limiting JetStream's other rights and remedies, You acknowledge and agree that any actual or threatened breach of Section 3 or 5 would result in irreparable harm to JetStream, and JetStream shall be entitled to equitable relief as a remedy for such breach.

4. PRICE AND PAYMENT

4.1 You agree to pay to JetStream the charges for the Services that are ordered.

4.2 Upon commencement of the Agreement, You will receive a bill for all Services to be provided under the Proposal of Services. You shall pay JetStream within thirty (30) days from the date of the bill for the Services provided hereunder. You shall reimburse JetStream for all costs, including reasonable legal fees, court costs, bank charges, late payment fees of the lesser of one and one-half percent (1.5%) or the maximum allowed by law, and any applicable costs associated with collecting delinquent or dishonored payments.

4.3 If You fail to pay any charges when due and such condition continues unremedied for ten (10) days from JetStream's written notice, then JetStream may, in its sole discretion, interrupt Your Services until the amount due and any reimbursement required under section 4.2 and 4.4 have been paid.

4.4 In addition to the late payment fees mentioned in section 4.2, if You fail to pay JetStream within thirty (30) days from the date of the bill for Services, then JetStream may charge You a late fee of \$25.00 per every thirty (30) days You are late. Such remedy will not be deemed to be the exclusive remedy for breach of this Agreement, but will be in addition to all other remedies available at law or equity.

4.5 If You are paying by credit card, then JetStream may pre-bill Your credit card for the Services You have ordered and may bill Your credit card more or less frequently than once per calendar month, based on the amount of charges You incur.

4.6 You agree to pay all shipping charges, taxes, governmental charges, and other similar charges (and any related interest and penalties) imposed as a result of Services except for net income taxes imposed on JetStream.

4.7 You authorize JetStream to request, obtain, and exchange credit information as needed to extend credit to You. JetStream may request a security deposit or other prepayment from You. Such deposit or prepayment amounts shall be reasonable, based on the expected value of Your future service usage, and Your creditworthiness as determined by JetStream. If You fail to pay such security deposit or prepayment, then JetStream may deny or discontinue Services.

4.8 JetStream may revise prices in its sole discretion and without notice.

5. YOUR RESPONSIBILITIES

5.1 You agree that all use of Services will comply with the applicable Documentation including any supplemental information provided from time to time by written materials or electronic messages. You shall indemnify JetStream (and its parent, subsidiaries, and their affiliates and each of their respective directors, officers, employees, agents, representatives, subcontractors, interconnection service providers, and suppliers) from any liabilities, including reasonable attorneys' fees, resulting from You or Your End Users' use of the Services, including, but not limited to, liabilities resulting from the content of any messages You or Your End Users send through the Services.

5.2 You may not transmit a message or other material which infringes a copyright or trademark or a violates of a law of the United States or any country in which the Services are used. If You transmit such a message, then JetStream may discontinue Services and appropriate legal action.

5.3 The copyright in the information and data supplied under any information feature of the Services and any hard copy or visual representations of such information or data belongs to JetStream or its third party licensors. You may not use this information and data, or any part thereof, except in the ordinary course of business (however, You may not re- disseminate, re-circulate, or republish the information or data), and You may not transfer, retransmit, duplicate or resell such information and data.

6. OBLIGATIONS AND RIGHTS OF JetStream

6.1 Unless required by law, JetStream will not disclose information in Your files without Your consent. JetStream may permit its employees to monitor Your files to operate the Services and to disclose information if JetStream determines that such action is necessary to satisfy any law, regulation, or other governmental requirement.

6.2 JetStream may modify or discontinue any feature or functionality of the Services, in whole or in part, at any time.

6.3 The Service Level Agreement is incorporated into and is a part of the Terms of Service.

7. USE OF INFORMATION

7.1 All technical or business information ("Business Information") furnished to You is the property of JetStream. You shall use Business Information only in connection with Services obtained. Unless authorized by JetStream, You may not reproduce or copy, in whole or in part, any Business Information. You shall return or destroy and Business information or copies of Business Information when no longer needed or authorized for use.

7.2 If Business information is designated as "confidential" or "proprietary", then You shall kept the Business Information in confidence except for any part that: (1) is rightfully obtained by You free of any obligation to keep in confidence; (2) becomes generally known to the public through acts not attributable to You; or (3) is independently developed by You.

7.3 JetStream agrees not to access Your subscriber information and the contents of Your messages except as reasonably necessary to provide the Services or in accordance with applicable laws and regulations.

8. WARRANTIES

8.1 WARRANTIES AND DISCLAIMER. JetStream shall use reasonable efforts consistent with prevailing industry standards to provide and maintain the Services in a manner which minimizes errors and interruptions in the Services. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by JetStream or by third-party providers, or because of other causes beyond JetStream's reasonable control. JetStream will use commercially reasonable efforts to schedule maintenance during night, weekends, or off-peak periods. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT ANY WARRANTIES OF ANY KIND, AND JetStream EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, OR AS TO THE USE OF THOSE SERVICES IN CONJUNCTION WITH EQUIPMENT, PROGRAMS, OR OTHER MATERIALS YOU PROVIDE. IN THE EVENT THAT THE SERVICES SUFFER FROM MATERIAL DEFECTS, CUSTOMER AGREES THAT JetStream's SOLE LIABILITY SHALL BE, AT ITS OPTION, TO EXERCISE REASONABLE EFFORTS TO HAVE ERRORS IN THE SERVICES CORRECTED, TO REPLACE THE SERVICES WITH FUNCTIONALLY EQUIVALENT SERVICES, OR TO TERMINATE THE APPLICABLE PROVISION OF SERVICES AND TO REFUND ANY APPLICABLE FEES FOR SERVICES TO BE PROVIDED AFTER THE DATE OF TERMINATION.

8.2 No third party supplier of information or data supplied under any information feature of the services makes any warranty, express or implied, including any warranty as to accuracy, adequacy, or completeness of such information or data and specifically disclaims any warranties of merchantability or fitness for a particular purpose.

9. LIMITATIONS OF LIABILITY

9.1 For purposes of this Section 9, "JetStream" shall include JetStream and its parent, subsidiaries, and their affiliates, and each of their respective directors, officers, employees, agents, representatives, subcontractors, interconnection service providers, and suppliers of all of them; and "damages" shall be deemed to refer collectively to all injury, damage, loss, or expense incurred.

9.2 JetStream shall have no liability to You for damages caused by acts or events beyond JetStream's control. under no circumstances and under no legal theory (whether in contract, tort, or otherwise) shall JetStream be liable to You or any third party for (a) any indirect, incidental, special, exemplary, consequential or punitive damages, including lost profits, lost sales or business, lost data or business interruption, or (b) for any direct damages, costs, losses or liabilities in excess of the fees actually paid by You in the six (6) months preceding the event giving rise to Your claim. The provisions of this section allocate the risks under this TOS between the parties, and the parties have relied on these limitations in determining whether to enter into this TOS.

9.3 Some states do not allow the exclusion of implied warranties or limitations of liability for incidental or consequential damages,

which means that some of the above limitations may not apply to You. In these states, JetStream's liability will be limited to the greatest extent permitted by law.

9.4 The Services are not designed, intended, or certified for use in components of systems intended for the operation of weapons, weapons systems, nuclear installations, means of mass transportation, aviation, life support computers or equipment (including resuscitation equipment and surgical implants), pollution control, hazardous substances management, or for any other dangerous application in which the failure of the Services could create a situation where personal injury or death may occur. You may not use the Services in connection with such equipment or application.

9.5 Indemnification. You shall defend, indemnify, and hold harmless JetStream from and against any claims, actions or demands, including without limitation reasonable legal and accounting fees, arising or resulting from Your breach of this TOS, or Your other access, contribution to, use or misuse of the Services. JetStream shall provide notice to You of any such claim, suit or demand. JetStream reserves the right to assume the exclusive defense and control of any matter which is subject to indemnification under this section. In such case, You agree to cooperate with any reasonable requests assisting JetStream's defense of such matter.

9.6 JetStream's entire liability for loss or damage arising from JetStream's performance or non-performance of the services, regardless of the form of action, whether in contract, tort including negligence, strict liability, or otherwise, shall be as follows:

9.6.1 For improper performance or non-performance of or related to the services, the sole remedy shall be a refund or credit for any charges paid to JetStream for the improperly performed service.

For claims that the services violate the intellectual property rights of any third party, the sole remedy shall be, at JetStream's option, to procure the right for customer to continue using the services; or to replace or modify the components of the services subject to the infringement claim with non-infringing components of substantially equivalent functionality; or to refund to customer any fees for the unused portion of the services, shall terminate when JetStream notifies customer that such fees will be refunded.

9.6.2 For claims other than set forth above, JetStream's sole, entire liability shall be limited to direct damages, which are proven in an amount not to exceed U.S. \$10,000.

9.6.3 JetStream, any third party which interconnects with JetStream, and any third party supplier of information or data supplied under an information feature of services shall not under any circumstances be liable for incidental, indirect, special or consequential damages or for lost profits, savings, or revenues of any kind, whether or not JetStream has been advised of the possibility of such damages.

10. CONTRACT PERIOD, SUBSEQUENT ORDERS AND TERMINATION

10.1 These Terms and Conditions will be effective from the date JetStream commences to provide Services to You and will be based on the length of the contract as defined in the Proposal for Services. Your use of the Services indicates Your acceptance of the terms and conditions contained herein.

10.2 If You fail to pay any charge when due and such condition continues unremedied for ten (10) days from JetStream's written notice or if You fail to perform or observe any other material term or condition and such failure continues unremedied for thirty (30) days from JetStream's written notice, then You shall be in default and JetStream may terminate the Services and exercise any available right.

10.3 If a licensor or vendor of JetStream terminates its agreement with JetStream when such license or agreement is necessary to provide You Services, then JetStream may terminate any Service upon sixty (60) days' written notice to Customer,

10.4 If JetStream becomes aware of or suspects any unlawful, improper, or unauthorized use of the Services, or any use of the Services that JetStream reasonably determines in its sole discretion may be harmful to JetStream, other Customers, or the Services generally, then JetStream may immediately suspend or terminate any Service in whole or part.

10.5 Neither party shall incur liability whatsoever for any damage, loss, or expenses of any kind suffered or incurred by the other

because of the act of termination or the expiration of Service. Without limiting the foregoing, neither party shall be entitled to any damages on account of prospective profits or anticipated sales.

10.6 If this Agreement is terminated, You will not be refunded for any Services not yet rendered under the Proposal of Services.

10.7 If You continue to accept the provision of Services provided hereunder from JetStream past the length of the contract as defined in the Proposal of Services and are not otherwise allowed by express agreement in writing by You and JetStream, then You shall be deemed to have renewed this Agreement for one (1) year based on the terms and conditions contained herein (including but not limited to such terms and conditions as to pricing of the Services) and either party may thereafter terminate Services as provided herein.

11. EXPORT CONTROL

11.1 You hereby assure JetStream that You will not, without the prior written consent of JetStream (and, if required, of the U.S. Department of Commerce) sublicense, export, re-export, resell, or transfer ownership rights in any software owned or licensed by JetStream which is used or furnished in connection with the Services or Documentation or any Information licensed pursuant to this Services. In addition, You agree that You shall not violate any laws or regulations regarding the export or distribution of any software owned or licensed by JetStream which is used or furnished in connection with the Services outside the United States, including, but not limited to, encryption software. You acknowledge that certain software owned or licensed by JetStream, which is used or furnished in connection with the Services, must be exported in accordance with U.S. Export Administration Regulations and diversion contrary to U.S. laws is prohibited. You agree not to transfer, resell, or divert any such software or to provide services using such software to those countries that may be embargoed from time to time by the U.S. government. Further You represent that neither the United States Bureau of Export Administration nor any other federal agency has suspended, revoked, or denied Your export privileges and You will not provide access to the Services to any entity whose export privileges have been suspended revoked or denied. You represent that You will not use or transfer the Services for end use relating to any nuclear, chemical or biological weapons, or missile technology unless authorized by the U.S. government by regulation or specific license. You understand that certain software used in connection with the performance of the Services containing encryption is not exportable from the United States to Government End Users and may not be used to provide services to Government End Users. You hereby agree not to transfer, resell, or use the Services which contain encryption and are not classified by the U.S. government as "retail" to provide services to Government End Users unless authorized to do so by the U.S. Bureau of Export Administration under regulation or license. You acknowledge it is Your ultimate responsibility to comply with all import, export, and other applicable laws in the U.S. or elsewhere and that JetStream and its suppliers have no further responsibility after the initial delivery of the Services within the United States. For purposes of this Section 10.1 "Government End User" means any central, regional or local government department, agency, or entity performing governmental functions and which is not headquartered in Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, the Netherlands, Norway, New Zealand, Poland, Portugal, Spain, Sweden, Switzerland, the United Kingdom, or the United States. This definition includes any international governmental organizations as well as any governmental research institutions, governmental corporations, or their separate business units that are I) not headquartered in the countries named above, and II) engaged in the manufacture or distribution of items or services controlled on the Wassenaar Munitions list.

12. Amendments. JetStream reserves the right to change or modify portions of this TOS at any time. JetStream will notify You, either through the Services user interface, in an email notification or through other reasonable means, of any changes. Changes will also be posted on this page and JetStream will indicate at the top of this page the date this TOS was last revised. Any such changes will become effective no earlier than fourteen (14) days after they are posted, except that changes addressing new functions of the Services or changes made for legal reasons will be effective immediately. Your continued use of the Service after the date any such changes become effective constitutes Your acceptance of the new TOS.

13. Miscellaneous. If any provision of this TOS is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this TOS will otherwise remain in full force and effect and enforceable. This TOS is not assignable, transferable or sublicensable by You except with JetStream's prior written consent. JetStream may transfer and assign any of its rights and obligations under this TOS without consent. This TOS is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings related to the subject matter of this TOS, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. If You have entered into a written agreement with JetStream that supersedes any online or clickthrough agreements, the terms of such written agreement will supersede and govern the terms of this TOS in the event of any conflict. No agency, partnership, joint venture, or employment is created as a result of this TOS and You does not have any authority of any kind to bind JetStream in any respect whatsoever. In any action or proceeding to enforce rights under this TOS, the prevailing party will be entitled to recover costs and attorneys' fees. This TOS shall be governed by the laws of the State of California without regard to the principles of conflicts of law. Unless otherwise elected by JetStream in a particular instance, You hereby expressly agree to submit to the exclusive personal jurisdiction of the federal and state courts of the State of California for the purpose of resolving any dispute relating to Your access to or use of the Service.

14. GENERAL

14.1 JetStream may issue a joint press release provided that the release is first approved by You. You may not unreasonably withhold approval. In addition, JetStream may include Your name in one or more lists of customers that JetStream distributes or makes available to third parties.

14.2 Except for orders subsequently placed pursuant to initial Services; any supplement, modification, or waiver of any provision of this TOS must be in writing and signed by authorized representatives of both parties.

14.3 If either party fails to enforce any right or remedy available, that failure shall not be construed as a waiver of any right or remedy with respect to any other breach or failure by the other party.

14.4 Any legal action with respect to Services contracted shall be barred unless suit is commenced within two (2) years after the date the cause of action occurs.

14.5 You may not assign Services, in whole or in part, without the prior written consent of JetStream.