

SCALIX ENTERPRISE EDITION AND SCALIX SMALL BUSINESS EDITION AND SCALIX HOSTING EDITION LICENSE AGREEMENT

If you have entered into a binding, written agreement with Scalix, Inc. governing the license of Scalix Enterprise Edition or Scalix Small Business Edition or Scalix Hosting Edition software, then such written agreement shall be operative and the following license terms are not applicable. If you have not entered into a binding written license agreement with Scalix Inc., then the terms and conditions set forth below shall govern your installation and use of the software.

1. DEFINITIONS

For purposes of this License Agreement (the "Agreement") the following terms shall have the meanings set forth below:

1.1 "Customer" means your organization, enterprise, or other association or you personally if you intend to use Scalix Enterprise Edition or Scalix Small Business Edition personally.

1.2 "Documentation" means such manuals, guides, and other similar publications relating to the applicable components of the Scalix that Scalix generally provides to its licensees from time to time.

1.3 "Partner" means a distributor or reseller that has been authorized by Scalix to resell the Scalix Software.

1.4 "Premium User" means an individual permitted by Customer to access and use a fully-functional, MAPI-enabled mailbox on the Scalix Software.

1.5 "Premium User License" or "PUL" means a license to configure a fully-functional, MAPI-enabled, unique mailbox for a Scalix Software for use by a Premium User via a supported client application, including those using Scalix Connect for Outlook Software. Each PUL authorizes a specific, identifiable, unique user mailbox, each of which may be accessed by any number of methods, such as Scalix Connect for Outlook software, with a supported client application, independent client applications, webmail applications or handheld devices.

1.6 "Scalix" means Scalix, Inc.

1.7 "Scalix Enterprise Edition Software" or "Enterprise Edition" or "EE" means the Scalix Server Software, Scalix Connect Software, and Scalix Web Access Software, in executable form, as well as any patches, updates, or upgrades thereto, that Scalix provides to the Customer.

1.8 "Scalix Hosting Edition Software" or "Hosting Edition" or "HE" means the Scalix Server Software, Scalix Connect Software, and Scalix Web Access Software, in executable form, as well as any patches, updates, or upgrades thereto, that Scalix provides to the Customer.

1.9 "Scalix Small Business Edition Software" or "Small Business Edition" or "SBE" means the Scalix Server Software, Scalix Connect Software, and Scalix Web Access Software, in executable form, as well as any patches, updates, or upgrades thereto, that Scalix provides to the Customer.

1.10 "Scalix Software" means any of the software programs described in Sections 1.6, 1.7 or 1.8 hereof.

1.11 "Software Subscription Services" means those software update and upgrade services described in the section identified as "SOFTWARE SUBSCRIPTION SERVICE" herein.

1.12 "Standard User" means an individual permitted by Customer to access and use a mailbox on the Scalix Server Software via Scalix webmail applications, a supported client application, independent client applications, but specifically excluding the use of Scalix Connect for Outlook Software.

2. LICENSE GRANT

2.1 Enterprise Edition or Small Business Edition License Grant for Scalix Server Software. Subject to the terms and conditions of this Agreement, Scalix grants Customer a perpetual, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (without right to sublicense) to install and use the Scalix Server Software internally in accordance with the Scalix Server Software Documentation.

2.2 Hosting Edition License Grant for Scalix Server Software. Subject to the terms and conditions of this Agreement, Scalix grants Customer either a perpetual, non-exclusive, non-transferable, fully-paid, worldwide license (without right to sublicense) or a time-limited, subscription-based, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (without right to sublicense) to use the Scalix Hosting Edition Software to operate a hosted or managed e-mail service for an unlimited number of persons or entities outside of Customer's organization, enterprise or association, depending on the type of purchase made. In the event that the Customer purchases a time-limited, subscription-based Scalix Hosting Edition License, Customer shall pay to Scalix a monthly subscription fee based on the number of unique user mailboxes being used by Premium Users and Standard Users. The fee payable shall be the amount per Premium User and Standard User set out on Scalix's then current price list or agreed upon in writing between Customer and Scalix. Customer shall pay the monthly subscription fees to Scalix within 10 days of the end of each calendar month for the preceding month.

2.3 Premium User License Grant. Subject to the terms and conditions of this Agreement, Scalix grants Customer a non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (without right to sublicense) to [use the Scalix Software] to configure that number of unique mailboxes for Premium Users as Customer has paid for. Further subject to the terms and conditions of this Agreement, Customer may reproduce the Scalix Connect Software in amounts necessary to enable mailbox access for Premium Users, and to install and execute the Scalix Connect Software on Premium Users' machines for use solely in conjunction with the Scalix Server Software as per above license grant.

2.3 Standard User License Grant. Subject to the terms and conditions of this Agreement, Scalix grants Customer a non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (without right to sublicense) to [use the Scalix Software to] configure that number of unique mailboxes for Standard Users as Customer has paid for.

2.4 Licensing Restriction. Customer agrees not to cause or permit the reverse engineering, translation, disassembly, or decompilation of, or otherwise to attempt to derive the source code of any Scalix Software, whether in whole or in part. Customer shall not itself, and shall not permit or encourage any third party to, use the Scalix Software on a service bureau basis, to rent, lease, distribute, transfer, or make any derivative works of or changes, modifications, or enhancements to the Scalix Software. Customer shall not disclose or publish performance benchmark results for Scalix Software without Scalix's written consent. Customer shall not use the Scalix Software in any manner which is a violation of law or regulation.

2.5 Proprietary Notices. Customer shall not remove, alter, efface, or obscure any copyright notices or other proprietary notices or legends from any Scalix Software, or other material provided hereunder, and Customer shall reproduce all such notices and legends whenever any such notices appear in the Scalix Software or the Documentation.

2.6 Ownership. Except as specifically provided herein, Scalix and its licensors retain all right, title, and interest, including all intellectual property rights, in and to the Scalix Software. Except for the express licenses granted in this section "LICENSE GRANT," Scalix and its licensors reserve all rights in and to the Scalix Software.

2.7 Evidence of Compliance. Upon request of Scalix, Customer shall promptly, and in any event within thirty (30) days, provide Scalix with any and all evidence reasonably necessary to confirm Customer's compliance with the provisions of this section "LICENSE GRANT".

3. LICENSE FEES AND REPORTING

3.1 License Fees. This Agreement is valid only if Customer (or a Partner if Customers purchases the Scalix Software through a Scalix Partner) pays to Scalix the agreed-upon aggregate license fees for purchases of perpetual licenses for the Scalix Software or the monthly software subscription fees for purchases of time-limited subscription-based licenses for Scalix Hosting Edition Software. All such license fees are non-cancellable, non-refundable, and are payable in United States or Euro currency in accordance with the terms of sale dependent on the country in which the Customer is located.

3.2 Reporting and Auditing.

(a) Customer shall maintain complete, clear, and accurate accounting, user and distribution records, in accordance with generally accepted accounting practices, consistently applied, to support and document its use of the Scalix Software pursuant to this Agreement. Customer shall, upon written request from Scalix, provide access to such records to an independent auditor chosen by Scalix for the purposes of audit and to allow such auditor to make copies and summaries of such records.

(b) Scalix shall have the right, upon 48 hours' prior notice to Customer, at Scalix's sole expense and in as non-disrupting a manner as reasonably possible, to audit Customer's server(s) to verify Customer's compliance with its obligations hereunder. Customer shall permit up to 2 such audits per year.

(c) If any such audit discloses a shortfall in the reporting of the number of Scalix Software User Licenses, Customer shall immediately pay all license fees and late fees associated with such shortfall and, if the shortfall is more than five percent (5%) for any period, Customer agrees to pay or reimburse Scalix for the expenses of such audit.

4. LIMITED WARRANTIES

4.1 Limited Warranty. Scalix warrants that for a period of ninety (90) days following delivery of the Scalix Software to Customer, the Scalix Software will perform substantially in accordance with the accompanying Documentation, provided that: (a) Customer remains a compliant, continuous subscriber to Software Subscription Services and has installed all patches or updates made available to Customer by Scalix; (b) Customer is using the Scalix Software in accordance with Scalix's hardware and software guidelines; (c) any error or defect detected is reproducible by Scalix; (d) the performance issue, error, or defect does not relate to third-party software; and (e) Customer notifies Scalix of such non-conformance within the warranty period. Neither Scalix nor its licensors represent or warrant that the Scalix Software will be error-free or will operate without interruption. If during the warranty period, as defined above, the Scalix Software fails to perform in accordance with the warranty, Scalix shall use reasonable commercial efforts to correct the failure of the Scalix Software to perform in accordance with the warranty.

4.2 Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 4, SCALIX HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, WITH RESPECT TO THE SCALIX SOFTWARE, INCLUDING ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE.

5. SOFTWARE SUBSCRIPTION SERVICE

5.1 Software Subscription Service. So long as Customer remains a compliant, continuing subscriber to Scalix's Software Subscription Service, Scalix will make available to Customer all updates or upgrades to the Scalix Software that it generally makes available to its subscribers. In addition, as a continuing subscriber to Scalix's Software Subscription Service, Customer shall have access to on-line documentation, Scalix-produced webcasts, and Scalix's online download center. From time to time Scalix may release an update that it deems an "Essential Upgrade;" in such case, Customer shall promptly replace superseded version of its Scalix Software with such Essential Upgrade. Customer recognizes that the Scalix Enterprise Edition Software and Scalix Small Business Edition Software operate as an integrated technology and therefore agrees to employ the most recent version of the Scalix Software as made available by Scalix to Customer. Failure of Customer to comply with this Section will relieve Scalix of its warranty obligations, indemnification obligations, and limit any liability of Scalix or its licensors for any resulting damages, to the extent such damages would have been avoided by Customer's compliance. If Customer ceases to subscribe to the Software Subscription Service, Customer may re-enroll only by paying all of the subscription service fees Customer would have paid had Customer's subscription not lapsed. Scalix's Software Subscription Service will automatically renew on the anniversary of the Agreement effective date as described in the section identified "Term" and Customer will be billed for the Software Subscription Service renewal amount no less than 60 days before the expiration of the current

Software Subscription Service date. If the Customer does not wish to renew they will have up to 30 days before the auto renewal of Scalix's Software Subscription Service takes effect to provide written notice of cancellation.

6. SUPPORT SERVICES

6.1 Support Services. Scalix offers a variety of Support Services as detailed on the Scalix website and in promotional materials from time to time.

7. INDEMNIFICATION

7.1 Indemnity. Scalix shall defend or settle and pay any damages finally awarded, claims, costs, and fees (including reasonable attorneys' fees) with respect to any third-party claims brought against Customer that the Scalix Enterprise Edition Software or Scalix Small Business Edition Software as used within the scope of this Agreement infringes any trade secret or United States copyright of any third party, provided that (a) Customer notifies Scalix promptly in writing of the claim; (b) Scalix has sole control of the defense and all related settlement negotiations; and (c) Customer provides Scalix with all necessary assistance, information, and authority to perform these duties. To the extent that any delay by Customer in notifying Scalix results in any cost, expense, or liability to Scalix which would otherwise have been avoided, Scalix shall be relieved of its obligation to indemnify and shall be entitled to deduct such amount from sums paid or collect such amount from Customer.

7.2 Exclusions. Neither Scalix nor its licensors shall have any liability for any claim of infringement based on or arising from (a) use of any version other than the latest commercially available version of the Scalix Software made available to Customer, to the extent the infringement would have been avoided by use of such version; (b) modification of the Scalix Software by Customer or any third party; (c) use of the Scalix Software which exceeds the licenses granted by Scalix hereunder; or (d) the combination or use of the Scalix Software furnished hereunder with materials not furnished by Scalix to the extent such infringement would have been avoided by use of the Scalix Software alone.

7.3 Remedies. In the event the Scalix Software is held to, or Scalix believes is likely to be held to, infringe any third-party intellectual property rights, Scalix shall have the right at its sole option and expense to (i) substitute or modify the Scalix Software so that it is non-infringing, while retaining substantially equivalent features and functionality as set forth in the Documentation; (ii) obtain for Customer a license to continue using the Scalix Software under commercially reasonable terms; or (iii) if (i) and (ii) are not reasonably practicable as determined by Scalix, terminate this Agreement as to the infringing Scalix Software and return to Customer the license fees paid to Scalix with respect thereto, depreciated on a 5-year straight-line basis from the purchase date in full and complete satisfaction of Scalix's and its licensors' liability hereunder.

7.4 Sole Obligation. The foregoing indemnity states the sole obligation and exclusive liability of Scalix and its licensors, and Customer's sole recourse and remedy, for any claim of infringement of an intellectual property right or proprietary right by the Scalix Software.

8. TERM AND TERMINATION

8.1 Term. This Agreement shall become effective on the earlier of (1) the purchase date of the license between Scalix and Customer, and (2) the installation of the Scalix Software, and shall remain in effect unless terminated as permitted by this Agreement.

8.2 Termination. If at any time, either party defaults in a payment or other material obligation under this Agreement and, in the case of breaches capable of cure (other than the payment of license or other fees payable to Scalix), fails to completely cure such default for a period of thirty (30) days after written notice of default from the non-breaching party, the non-breaching party may immediately terminate this Agreement, upon written notice of termination given to the defaulting party. Scalix may terminate this Agreement by written notice immediately upon any breach of sections "LICENSE GRANT," "LICENSE FEES AND REPORTING," and "CONFIDENTIALITY." This Agreement shall terminate upon the election of and notice from a party to the other if the other party is adjudged insolvent or bankrupt, or the institution of any proceedings by or against the other party seeking relief, reorganization or arrangement under any laws relating to insolvency, or any assignment for the benefit of creditors, or the appointment of a receiver, liquidator or trustee of any of the other party's property or assets, or the liquidation, dissolution or winding up of the other party's business.

8.3 Effect of Termination. Upon termination of this Agreement for any reason, (i) all rights and licenses granted to Customer shall automatically terminate, and (ii) Customer shall certify to Scalix that all of the Scalix Software and Documentation in Customer's possession has been destroyed or erased from Customer's equipment. Sections "DEFINITIONS," "LICENSE FEES AND REPORTING," "LIMITED WARRANTIES," "INDEMNIFICATION," "CONFIDENTIALITY," "LIMITATION OF LIABILITY," and "MISCELLANEOUS," and subsections "Proprietary Notices," "Ownership," and "Effect of Termination" shall survive any expiration or termination of this Agreement. Except as expressly provided otherwise in this Agreement, (i) all remedies available to either party are cumulative and not exclusive; and (ii) termination of this Agreement or any license shall not limit either party from pursuing other remedies available to it, including injunctive relief. Upon termination, all amounts owed under this Agreement shall immediately become due and payable.

9. CONFIDENTIALITY

9.1 Definition. For purposes of this Agreement, "Confidential Information" of a party means non-public information or materials disclosed or otherwise provided by such party ("Disclosing Party") to the other party ("Receiving Party") that are identified as confidential or proprietary. This Agreement is expressly included in the definition of "Confidential Information". Confidential Information does not include that which (i) was known to the Receiving Party, without restriction and without duty of confidentiality, at the time of disclosure, as evidenced by the written records of Receiving Party, (ii) is or becomes part of public knowledge other than as a result of any action or inaction of the Receiving Party, (iii) is obtained by the Receiving Party from an unrelated third party without a duty of confidentiality, or (iv) is independently developed by the Receiving Party without reliance upon or use of the Confidential Information of the Disclosing Party.

9.2 Restrictions on Use and Disclosure. The Receiving Party shall not use Confidential Information of the Disclosing Party for any purpose other than in furtherance of this Agreement and the activities

described herein. The Receiving Party shall not disclose Confidential Information of the Disclosing Party to any third parties except as otherwise permitted hereunder. The Receiving Party may disclose Confidential Information of the Disclosing Party only to those related parties who have a need to know such Confidential Information and who are bound to retain the confidentiality thereof under provisions no less restrictive than those required by the Receiving Party for its own comparable Confidential Information. The Receiving Party shall maintain Confidential Information of the Disclosing Party with at least the same degree of care it uses to protect its own proprietary information of a similar nature or sensitivity, but in no event with less than reasonable care.

10. LIMITATION OF LIABILITY

IN NO EVENT SHALL SCALIX OR ITS LICENSORS HAVE ANY LIABILITY TO CUSTOMER OR ANYONE CLAIMING THROUGH OR UNDER CUSTOMER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, LOST DATA, EQUIPMENT DOWNTIME, IN ANY WAY ARISING OUT OF THIS AGREEMENT AND HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY, EVEN IF SCALIX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL SCALIX'S CUMULATIVE LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO SCALIX PURSUANT TO THIS AGREEMENT WITHIN THE TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO ANY SUCH CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION IS AN ESSENTIAL ELEMENT OF THE BARGAIN AND ABSENT THIS SECTION THE ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

11. MISCELLANEOUS

All notices under this Agreement must be delivered in writing by courier, by electronic facsimile, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth on the cover page hereto (or such other address designated by a party in writing), and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. If Customer exports, re-exports or imports the Scalix Enterprise Edition Software, Scalix Small Business Edition Software or Documentation, then Customer assumes responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. Scalix may suspend performance if Customer is in violation of any applicable laws or regulations. Neither party shall be liable to the other in any way whatsoever for any failure or delay in performance of any of the obligations under this Agreement (other than obligations to make payment), arising out of any event or circumstance beyond the reasonable control of such party (including, without limitation, war, rebellion, civil commotion, strikes, lock-outs or industrial disputes; fire, explosion, earthquake, acts of God, flood, drought or bad weather; the unavailability of deliveries, supplies, software, disks or other media or the requisitioning or other act or order by any government department, council or other constituted body). All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Customer's relationship to Scalix is that of an independent contractor, and neither

party is an agent or partner of the other. Either party may individually issue a press release discussing Customer's plans to use, or the use of, Scalix Enterprise Edition Software or Scalix Small Business Edition Software, and/or any publicly available information describing Scalix's or Customer's businesses, products or services. Customer consents to the use of its name on Scalix customer lists. Upon the request of Scalix, Customer will act as a reference for Scalix. If any provision of this Agreement is unenforceable, such provision will be changed to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. This Agreement may be executed in counterparts and signature pages may be transmitted by facsimile, each of which will be considered an original, but all of which together will constitute the same instrument. Customer may not assign or delegate this Agreement or its rights or duties hereunder (by operation of law or otherwise) without the express written consent of Scalix. Any assignment not in conformity with the foregoing will be null and void. If this license is acquired under a U.S. Government contract, use, duplication, and disclosure of the Scalix Enterprise Edition Software, Scalix Small Business Edition Software and Documentation by the U.S. Government is subject to restrictions set forth in this Agreement, which incorporates all applicable FAR provisions; without limitation, Customer agrees that the Scalix Enterprise Edition Software or Scalix Small Business Edition Software is delivered as "commercial computer software" as defined in DFARS 252.227-7014 (June 1995) or as a "commercial item" as defined in FAR 2.101(a), or as "restricted computer software" as defined in FAR 52.227-19 (Jun 1987) (or any equivalent agency regulation or contract clause), whichever is applicable. If the Scalix Enterprise Edition Software or Scalix Small Business Edition Software is licensed for use in the performance of a U.S. government prime contract, or subcontract, Customer agrees that the Scalix Enterprise Edition Software or Scalix Small Business Edition Software has been developed entirely at private expense. Customer agrees that the Scalix Enterprise Edition Software or Scalix Small Business Edition Software, and any derivatives or modifications, is adequately marked when the restricted rights legend below is affixed to the Scalix Enterprise Edition Software, Scalix Small Business Edition Software or to its storage media and is perceptible directly or with the aid of a machine or device. Customer agrees to conspicuously put the following legend on the Scalix Enterprise Edition Software or Scalix Small Business Edition Software media with Customer's name and address added below the notice:

RESTRICTED RIGHTS LEGEND

Use, duplication or disclosure is subject to Scalix's and its licensors' standard commercial license terms and for non-DOD Departments and Agencies of the U.S. Government, the restrictions as set forth in FAR 52.227-19(c)(1-2)(Jun 1987).

Scalix, Inc.
149 Madison Avenue
Suite 302
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This Agreement will be governed in all respects by the laws of the State of New York, without application of its conflicts of laws principles, and without regard to the provisions of any state Uniform Computer Information Transactions Act or similar federal or state laws or regulations. Exclusive jurisdiction and

venue of any actions arising out of, or relating to or in any way connected with this Agreement, its negotiation or termination, or the Scalix Enterprise Edition Software, Scalix Small Business Edition Software or Documentation provided or to be provided by Scalix, will be in New York County, New York if in state court, and in the Southern District of New York if in Federal Court. In any litigation in which the parties are adverse, the parties agree to waive their respective rights to a trial by jury. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended.

This Agreement may be amended only by a written document signed by both parties that specifically references this Agreement. No purchase order or other document that purports to modify or supplement this Agreement will add to or vary the terms of the Agreement, and all proposed variations or additions (whether submitted by Scalix or Customer) are deemed material and objected to unless otherwise agreed to in a writing signed by both parties.

The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will not be deemed to be terms of limitation.