



The Nimbus Email Service (NES) End User License Agreement (EULA)

This Agreement specifies the terms under which you are allowed you to use our “Nimbus Email Service (NES)” services (referred to collectively as the “Subscription Service”).

License Terms

Introduction. Any services made available to Customer by CTEC under this Agreement may include, Subscription Services whether embedded in memory or made available via electronic delivery, are hereafter referred to as “Licensed Products”.

License. Subject to the terms and conditions of this Agreement, CTEC grants to Customer, during the applicable license term, a nontransferable, nonexclusive, worldwide license, subject to additional limitations set forth in this Section 1, to use the Licensed Products solely: (i) for internal purposes; (ii) in accordance with the Product license type (subscription basis) and user type (for which the applicable fees have been paid) as set forth in the Purchase Order

Ownership. The Products are proprietary to CTEC. Customer acknowledges and agrees that: (a) the Products are protected under U.S. and international copyright and other intellectual property laws; (b) CTEC retains all copyrights and other intellectual property rights in the Products; (c) there are no implied licenses under this license and any rights not expressly granted to Customer hereunder are reserved by CTEC; (d) Customer acquires no ownership or other interest (other than Customer license rights set forth above in Section 1.2) in or to the Licensed Products Customer agrees that any suggestions, comments or other feedback provided by Customer to CTEC to the Licensed Products (“Feedback”) shall not be deemed to constitute confidential information of Customer or impose any confidentiality obligations on CTEC shall be free to use, disclose, reproduce, license or otherwise distribute and exploit anonymized Feedback without any obligation, restriction or duty to account.

1. Agreement to EULA: By using the Subscription Service, you are consenting to be bound by this agreement. If you do not agree to be bound by this Agreement you may not use the Subscription Service.

2. Subscription Services License and Trademarks:

- a) You may use this Subscription Service for your internal use only, unless specifically licensed to do otherwise by CTEC.
- b) All rights not expressly granted by us in this Agreement are reserved. Without limiting the generality of the previous sentence, you may not (i) copy the Subscription Service (or any part of the Subscription Service), (ii) modify the Subscription Service or separate out any of its components for use with other software, (iii) transfer the Subscription Service to another person (except that you may transfer the Subscription Service in connection with a transfer of the computer on which it is used), (iv) decompile, disassemble, or otherwise reverse engineer or attempt to discover any underlying proprietary information



The Nimbus Email Service (NES) End User License Agreement (EULA)

of the Subscription Service, or (v) use the Subscription Service in any way that violates any applicable Federal, state, local, or international law or regulation.

c) You further acknowledge that “the Nimbus Email Service” and “NES” are our trademarks and that this license does not grant you any right whatsoever in these trademarks. For example, you have no right to use, copy, modify, or publicly display these trademarks, and you may not remove, alter, or delete such trademarks as are affixed by us to reports, documents, templates, screen shots, etc. generated through use of the Subscription Service. Finally, you may not assist or allow anyone to do anything that this Agreement prohibits you from doing.

d) You understand that the Subscription Service is licensed to you and not sold. We retain title to all intellectual property rights contained within or embodied by the Subscription Service.

3. Upgrades: You acknowledge that from time to time we may issue upgraded versions of the Subscription Service and may automatically download and electronically upgrade the version of the Subscription Service. This is done to maintain the security of the Subscription Service, upgrade the protocol, and upgrade Subscription Service features. You consent to such automatic upgrading, and agree that the terms and conditions of this Agreement will apply to all such upgraded versions. Any upgraded version of the Subscription Service will be subject to this Agreement.

4. Operation of the Nimbus Email Service and Your Information:

a) You agree that the NES Subscription Service may send and receive commands and data related to downloading of email from our servers.

b) The Nimbus Email Service may retain information regarding the transmission of email content similar to a normal web server. Such information may include IP Address, URL of the content retrieved, data and time, and file size. None of this information, however, is associated with any personally identifiable information.

c) As a condition to your using the Subscription Service, you agree not to (i) use the Subscription Service, or attempt to penetrate, modify or manipulate the Subscription Service in order to invade the privacy of, obtain the identity of, or obtain any personal information or Internet protocol addresses of, any end-user that has used the Subscription Service, or to modify, erase or damage any information contained on the computer of any end-user connected to CTEC or otherwise, and (ii) use any device, software or routine, or take any action whatsoever, to interfere or attempt to interfere with the proper working of our Subscription Service.

5. CTEC does not review or have any control over downloaded email content: If you choose to use any downloaded email, then your rights with respect to such downloaded email shall be a



matter between you and the email participants and such downloaded email content may be affected by other applicable policies and guidelines or by applicable law. CTEC disclaims any and all liability arising from, or in connection with, your download or use of any downloaded email, including but not limited to any and all responsibility for (i) the functionality, performance, truthfulness, accuracy, or completeness of any downloaded email, (ii) for any claims that such downloaded email infringes any copyright or other intellectual property right, misappropriates or violates any right of privacy or publicity, defames any person or business, or is obscene or otherwise offensive or inappropriate, and (iii) information that is gathered from you, if at all, by third party content providers before, during, or after your request to such content providers to download email.

6. Updates to the Terms of Use: You acknowledge that from time to time we may modify the terms governing your use of the Subscription Service. Notice of such updates will be provided by posting the effective date on the Subscription Service Terms of Use appearing on CTEC's Website. You consent to and agree to be bound by the current Terms of Use if you continue to use the Subscription Service after the effective date of such Terms of Use.

7. Disclaimers: The Subscription Service is provided "AS IS" without warranties of any kind, either express or implied. CTEC discloses all express and/or implied warranties, including, but not limited to, warranties of merchantability, fitness for a particular purpose, no infringement and title, and any warranties arising from a course of dealing, usage, or trade practice. The duration of any implied warranty that is not effectively disclaimed will be limited to the warranty period. CTEC does not represent or warrant that the Subscription Service or materials provided through use of the Subscription Service are accurate, complete, reliable, timely, secure, current, or error-free. Those who use this Subscription Service from other jurisdictions do so at their own risk and are responsible for compliance with local law.

8. Limitation of Liability:

a) You expressly acknowledge and agree that in no event shall CTEC, its officers, directors, shareholders, affiliates or licensors be liable for any special, punitive, incidental, consequential or exemplary damages, including but not limited to damages for loss of use, computer failure or malfunction, loss of goodwill, lost profits, loss of data or information, unauthorized access to and/or loss of your personally identifiable information, or any and all other commercial damages and losses, arising out of or in connection with the Subscription Service or its use or this Agreement, even if CTEC, its officers, directors, shareholders, affiliates or licensors have been advised of the possibility of such damages. Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

b) CTEC is not responsible for any problems or technical malfunction of any telephone network or lines, computer online systems, servers or providers, computer equipment,



The Nimbus Email Service (NES) End User License Agreement (EULA)

software, failure of any email or players due to technical problems or traffic congestion on the Internet or on the Software, including any injury or damage to users or to any person or computer related to or resulting from participation or downloading email in connection with the Subscription Service. Under no circumstances shall CTEC be responsible for any loss or damage, including personal injury or death, resulting from use of the Subscription Service or from the conduct of any users of the Subscription Service, whether online or offline.

c) You acknowledge and agree that the provisions under this Agreement that limit liability, disclaim warranties, or exclude consequential damages or other damages or remedies are essential terms of this Agreement that are fundamental to the parties' understanding regarding allocation of risk, and all of these provisions are also made on behalf of third parties that are authorized by CTEC to resell the Subscription Service and shall inure to their benefit. Accordingly, such provisions shall be severable and independent of any other provisions and shall be enforced as such, regardless of any breach or other occurrence hereunder. Without limiting the generality of the foregoing, you agree that all limitations of liability, disclaimers of warranties, and exclusions of consequential damages or other damages or remedies shall remain fully valid, effective and enforceable in accordance with their respective terms, even under circumstances that cause any exclusive remedy under this Agreement to fail of its essential purpose.

9. Proprietary Rights: CTEC retains all copyrights, trade secret rights, patents, trademarks, and any other proprietary rights covering or relating to the Subscription Service. You acknowledge that the Subscription Service includes or incorporates proprietary and confidential information belonging to CTEC.

10. Termination: We may terminate this Agreement at any time and without prior notice if you violate it. Our termination will not limit any of our other rights or remedies under this Agreement or at law or in equity. Any provision of this Agreement that by its sense and context is intended to survive termination of this Agreement will survive termination.

11. Governing Law: This Agreement and any and all claims relating to the Subscription Service shall be governed by the laws of the Commonwealth of Virginia, U.S.A. without regard to or application of choice of law rules or principles.

12. Export: You acknowledge that the Subscription Service is subject to United States export control laws, including but not limited to the export administration regulations. You will not export, re-export or divert the Subscription Service in contravention of those laws.

13. Electronic Contracts and Records: For all purposes under the Agreement and all other purposes under applicable law, an electronic communication of any kind shall be deemed (i) a "writing" and "written"; (ii) "signed"; and (iii) when printed from electronic files or records established and maintained in the normal course of business, an "original business record." You



expressly waive any right to object to the validity or enforceability of this Agreement or any other electronic communication on the ground that a “statute of frauds” or any other law requires that agreements be in writing or signed by the bound party. Electronic communications, if introduced as evidence in any proceedings, shall be admissible as between the parties to the same extent and under the same conditions as business records originated and maintained in paper form.

14. Severability and Waiver: If any provision of this Agreement is illegal or unenforceable under applicable law, the remaining provisions of this Agreement will remain valid and fully enforceable. No delay or failure to take action under these terms and conditions will constitute a waiver by CTEC unless expressly waived in writing by a duly authorized officer of CTEC.

15. Modification: You may not amend terms or conditions of this Agreement without the prior written consent of an authorized officer at CTEC. We may prospectively amend this Agreement at any time pursuant to Section 6. Updates to the Terms of Use. This is a License Agreement (the “Agreement”) for certain Subscription Service offerings owned by CTEC. By using the Subscription Service, or any modified version of the Subscription Service customized by CTEC or you, you agree to these terms.

Limited License: You have a non-exclusive, personal and non-transferable right and license to use the Subscription Service. The Subscription Service shall only be used in connection with your authorized use of CTEC’s services, and for no other purpose. CTEC shall have the right to modify the Subscription Service at any time within its discretion. Updated versions of the Subscription Service may be made available. You will ensure that anyone who obtains and uses the Subscription Service does so only in compliance with the terms of this Agreement. No right to sublicense is granted, and CTEC may terminate this license at any time upon notice to you. All other rights in and to the Subscription Service are hereby reserved.

Restrictions on Third Party Use, Reverse Engineering or Export: You may not use, copy, modify or distribute the Subscription Service except as provided in this Agreement. Except as set forth herein, neither you, nor your end-users, may decompile, reverse engineer, disassemble, modify, rent, lease, loan, distribute, sublicense, or create unauthorized derivative works from, the Subscription Service or transmit the Subscription Service over a network used or otherwise exported or re-exported (a) into (or to a national or resident of) a United States embargoed country or (b) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders. By using the Subscription Service, you represent and warrant that you are not located in, under control of, or a national or resident of any country or on any such list.

CTEC EXPRESSLY DISCLAIMS ALL WARRANTIES RELATED TO THE SUBSCRIPTION SERVICE, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CTEC DOES NOT WARRANT THAT THE FUNCTIONS



The Nimbus Email Service (NES) End User License Agreement (EULA)

CONTAINED IN THE SUBSCRIPTION SERVICE WILL MEET YOUR REQUIREMENTS, OR THAT THE OPERATION OF THE SUBSCRIPTION SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SUBSCRIPTION SERVICE WILL BE CORRECTED. FURTHERMORE, CTEC DOES NOT WARRANT OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR THE RESULTS OF THE USE OF THE SUBSCRIPTION SERVICE OR RELATED DOCUMENTATION IN TERMS OF THEIR CORRECTNESS, ACCURACY, RELIABILITY OR OTHERWISE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO PORTIONS OF THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

Limitation of Liability: In no event shall CTEC be liable to you for any damages exceeding any amount paid for the Subscription Service.

UNDER NO CIRCUMSTANCES, INCLUDING NEGLIGENCE, SHALL CTEC BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS LICENSE, INCLUDING, BUT NOT LIMITED TO, DAMAGES RESULTING FROM ANY LOSS OF DATA CAUSED BY THE SUBSCRIPTION SERVICE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS LIMITATION MAY NOT APPLY TO YOU.

Controlling Law and Severability: This Agreement shall be governed by the laws of the United States and those of the Commonwealth of Virginia. If for any reason a court of competent jurisdiction finds any provision, or portion thereof, to be unenforceable, the remainder of this Agreement shall continue in full force and effect.

Complete Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this Agreement will be binding unless in writing. Your rights under this Agreement will terminate automatically without notice if you fail to comply with any term(s) of this Agreement. You may continue to license the Subscription Service under this Agreement for so long as you are using CTEC's service, or as CTEC shall otherwise agree in writing. Upon termination, your end users will no longer have the right to integrate and use the Subscription Service.

CTEC Support Policy: In the event of a critical error or security issue CTEC may require customers to upgrade or patch a currently supported Subscription Service in order to keep their systems working properly. We will always work with customers to assist in the upgrade process but it will be the responsibility of customers to have a compliant Subscription Service and customers accept responsibility for running unsupported versions.