
MESSAGEWARE DESKTOP PRODUCTS - SUBSCRIPTION LICENSE AGREEMENT

IMPORTANT: READ CAREFULLY - This software including any "online" or electronic documentation provided in connection herewith is subject to the terms and conditions of this agreement.

BY INSTALLING, COPYING OR OTHERWISE USING THE COMPONENTS, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT. IF RECIPIENT DOES NOT AGREE TO THESE TERMS AND CONDITIONS, DO NOT INSTALL, COPY OR USE THE SOFTWARE. IF RECIPIENT DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, CLICKING OR CAUSING THE "NO" BUTTON TO BE ACTIVATED WILL STOP THE INSTALLATION PROCESS.

THIS AGREEMENT is made as of the date of receipt of the Software, between Messageware Incorporated, an Ontario incorporated company ("Messageware") and you (the "Customer").

IN CONSIDERATION of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the parties hereto mutually agree as follows:

0. DEFINITIONS

"Activation Code" means an alphanumeric string that is used to register a software license

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control", for the purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interest of the subject entity.

"Customer" or "You" means the company or person or other legal entity for which you are accepting this Agreement, and Affiliates of that company or entity.

"Customer Number" means a number provided by Messageware to identify the Customer.

"License Key" or "License File" means an alphanumeric string or computer file that indicates the Software is licensed for use by a User with a specific email account.

"Mailbox" means a Microsoft Exchange mailbox associated with a specific email account.

"Software" means computer software, Messageware products, as set forth in Schedule A attached hereto and any related materials and any and all documentation provided in connection with such products including software enhancements and updates as provided by Messageware.

"Subscription" means a license to use the Software for a specific period of time.

"User" means a person authorized by the Company to use the Software.

1. PARTIES/OWNERSHIP. This Agreement is made between Customer and Messageware. Customer agrees to license the Software, being one of the specific software products listed in Schedule A for which Customer has received a Customer Number, and an Activation Code or License Key from Messageware. The Software includes any related materials and any and all documentation provided in connection therewith. Messageware is the developer of the Software and retains ownership of the Software, as well as all rights not expressly granted under this Agreement.

2. LICENSE AND PAYMENT.

- a) Each Software license is provided by Messageware to Customer as a User Subscription and may be used to interact with one Mailbox. Customer requires a separate license for each additional Mailbox that the Software is configured to interact with.
- b) Subject to the terms of this Agreement, Customer shall have a non-perpetual, non-exclusive, non-assignable, non-transferable, revocable license to install and use the Software until the expiry of the Subscription.
- c) All rights not granted herein are reserved to Messageware. Messageware and its suppliers, and related third parties, shall retain title and all ownership rights to the Software and this Agreement shall not be construed in any manner as transferring any rights of ownership to the Software or to the features or information therein. The Software is protected by copyright laws and international copyright treaties. The Software is licensed, not sold.
- d) Customer shall pay all fees specified in all Order Forms hereunder. Except as otherwise specified (i) fees are based on licenses ordered and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of paid Subscriptions cannot be decreased during the relevant Subscription term stated on the Order Form. Subscription fees are based on monthly periods that begin on the Subscription start date and each monthly anniversary thereof. Fees for each Subscription added in the middle of a monthly period will be charged for that full monthly period and the monthly periods remaining in the Subscription term.
- e) Unless otherwise stated in the Order Form, invoiced charges are due net 30 days from the invoice date. Such invoices shall be made in advance, either annually, or in accordance with any different billing frequency stated in the applicable Order Form. Customer is responsible for providing accurate billing and contact information to Messageware and notifying Messageware of any relevant changes to such information. If any invoiced amounts are not received by the due date, then at Messageware's discretion such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and we may condition future Subscription renewals and Order Forms on payment terms shorter than those specified in this section or the Order Form.
- f) If any amount owing by Customer under this or any other agreement is 30 or more days overdue or in the event of any other breach of this Agreement by Customer, Messageware may without limiting other rights and remedies, suspend use by the Customer of the Software. Messageware will provide at least 7 days prior notice that the Customer is in breach of this Agreement in accordance with the NOTICE clause of this Agreement.
- g) Subscriptions commence on the start date specified in the applicable Order Form and continue for the Subscription term specified therein. The per-unit pricing shall not increase by more than five per-cent per year. Except as otherwise specified in the applicable Order Form, the Subscription term is three months and automatically renews for an additional period of three months, unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant Subscription term.

3. ADDITIONAL RESTRICTIONS. Customer may not:

- a) reproduce, modify, translate, reverse engineer, decompile, disassemble, or in any manner decode the Software, in whole or in part;
- b) create derivative works based on the Software or information contained therein.
- c) rent, lease, sell, sublicense, assign, lend, or otherwise transfer the Software.

4. SUPPORT. Messageware shall

- a) Use its commercially reasonable efforts to correct problems associated with Customer's use of the Software.
- b) Make available to Customer, Software and related documentation updates as commercially released by Messageware. All updates, when delivered and all supplemental Software provided to Customer as part of the support services, if any, shall be deemed to be part of this Agreement.

5. COMPATIBLE MICROSOFT EXCHANGE VERSIONS. Each version of the Software is designed to operate with specific versions of Microsoft Exchange as set forth in Schedule A. The Software may not be compatible with different versions and future releases of Microsoft Exchange Server.

6. TERMINATION. This Agreement is effective until terminated in accordance with any of the terms and conditions of this Agreement. Customer may terminate this Agreement at any time by destroying all copies of the Software. Messageware may terminate this Agreement if Customer fails to comply with any of these terms and conditions. Any such termination by Messageware shall be in addition to and without prejudice to such other rights and remedies as may be available to Messageware, including injunction and other equitable remedies. Upon termination, Customer's license to use the Software shall terminate and Customer shall promptly return to Messageware, or certify destruction of, all full or partial copies of such Software and related materials provided by Messageware. Sections 2b to 15 herein shall survive termination of this Agreement.

7. CONFIDENTIALITY. The Software is proprietary and confidential to Messageware and its suppliers and related third parties. Customer agrees not to disclose or provide any of the Software, documentation, or any information relating to the Software and its operation to any third party except as expressly provided herein without Messageware's express written permission. However, Customer may disclose Confidential Information in accordance with judicial or other governmental order, provided Customer shall give Messageware reasonable notice prior to such disclosure and shall comply with any applicable protective order or equivalent. Customer shall not be liable to Messageware for such information which Customer can prove (1) is already known to Customer; (2) becomes publicly known through no wrongful act of Customer; (3) is rightfully received from a third party without similar restriction and without breach of this Agreement; or (4) is independently developed by Customer. This provision shall survive the termination or expiration of this Agreement.

With respect to technical information Customer provides to Messageware as part of the support services, Messageware and its suppliers may use such information for its business purposes, including for product support and development. Messageware and its suppliers will not utilize such technical information in a form that personally identifies Customer without Customer's prior written approval.

8. WARRANTIES

- a) LIMITED WARRANTY.
Messageware warrants that the Software will substantially conform to published specifications and to the related documentation, provided that it is used on the computer hardware and with the operating system and computer software for which it was designed. As Messageware's only responsibility and liability, and as CUSTOMER'S SOLE AND EXCLUSIVE REMEDY UNDER THIS WARRANTY, Messageware shall either (at its sole option) repair or replace the defective portion of the Software that does not meet the Limited Warranty, or terminate the Agreement without liability on the part of either Messageware or the Customer. THIS SHALL BE MESSAGEWARE'S ENTIRE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS WARRANTY.
- b) INTELLECTUAL PROPERTY WARRANTY AND INDEMNITY.
 - i. Messageware warrants that it owns all right, title and interest in and to the Software as delivered or has sufficient rights to grant the licenses herein granted and that to the best of its knowledge the Software

does not infringe upon the patents, copyrights, trade secrets or other intellectual property rights of others. Messageware shall indemnify and hold harmless Customer from and against any court awards, and settlement amounts, based on infringement or alleged infringement of any copyright, patent, trade secret or other intellectual property right by the Software, provided that Customer notifies Messageware of any such claim promptly in writing and allows Messageware to control the proceedings (provided always that Messageware is promptly and effectively defending such proceedings) and shall not make any admissions or enter into discussions or settlements with the third party without Messageware's prior consent in writing. Customer agrees to cooperate fully with Messageware during such proceedings.

- ii. This Section 8b shall not apply to the extent such action, claim or proceeding arises as a result of:
 - a. modification of the Software made by anyone other than Messageware, or
 - b. use of the Software otherwise than for its normal intended purposes, or not in accordance with its specifications, the terms of this Agreement or Messageware's instructions, or in combination, operation or use with any equipment or programs not supplied or approved by Messageware.
- iii. If the Software becomes, or in Messageware's opinion is likely to become, the subject of an action, claim or proceeding based on alleged infringement, then Messageware shall have the right to do any one or more of the following:
 - a. change all or any part of the Software in order to avoid any infringement, with such changes providing substantially the same functionality as the Software,
 - b. procure for the Customer the right to continue using the Software on substantially similar terms,
 - c. substitute other programs of substantially the same functionality, and on the terms and conditions contained in this Agreement, or
 - d. terminate this Agreement upon notice in writing, in which case Messageware shall refund any Subscriptions fees paid for any period following the date of such termination.
- iv. This Section 8b states the entire liability of Messageware to the Customer in respect of the infringement of the intellectual property rights of any third party and any warranty of title, quiet enjoyment or quiet possession.

c) **LIMITATION OF LIABILITY AND REMEDIES.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MESSAGEWARE OR ITS SUPPLIERS, RESELLERS, AND RELATED THIRD PARTIES, BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF MESSAGEWARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. THE ENTIRE LIABILITY OF MESSAGEWARE OR ANY OF ITS SUPPLIERS, RESELLERS, AND RELATED THIRD PARTIES, FOR ANY DAMAGES SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY THE CUSTOMER FOR THE LICENSE IN THE PRECEDING TWELVE MONTH PERIOD. THE FOREGOING LIMITATION, EXCLUSION AND DISCLAIMERS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE.

NOTWITHSTANDING ANYTHING TO THE FOREGOING IN THIS AGREEMENT, THE CUSTOMER HEREBY WAIVES, RELEASES AND FOREVER DISCHARGES MESSAGEWARE'S SUPPLIERS, RESELLERS, AND RELATED THIRD PARTIES, FROM ANY AND ALL ACTIONS, CAUSES OF ACTIONS, CLAIMS AND DEMANDS, FOR DAMAGES, LOSS OR INJURY TO THE CUSTOMER, HOWSOEVER ARISING IN CONNECTION WITH THIS AGREEMENT, AND THE CUSTOMER SPECIFICALLY AGREES NOT TO BRING ANY CLAIM AGAINST ANY THIRD PARTY THAT MAY CLAIM INDEMNITY OR RESPONSIBILITY FROM MESSAGEWARE.

- d) NO OTHER WARRANTIES AND DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFICALLY PROVIDED ABOVE, THE SOFTWARE IS PROVIDED "AS IS", WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MESSAGEWARE FURTHER DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, LACK OF VIRUSES, ACCURACY OR COMPLETENESS OF RESPONSES, WORKMANLIKE EFFORT AND LACK OF NEGLIGENCE. THE ENTIRE RISK ARISING OUT OF THE USE OR PERFORMANCE OF THE SOFTWARE AND DOCUMENTATION REMAINS WITH CUSTOMER.

9. HIGH RISK ACTIVITIES AND WARNING ON SUPPORTING TECHNOLOGY. THE SOFTWARE INTERACTS WITH MICROSOFT EXCHANGE AND OUTLOOK WEB TECHNOLOGY. THIS TECHNOLOGY AND THIS SOFTWARE ARE NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THESE TECHNOLOGIES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE. MESSAGEWARE AND ITS SUPPLIERS, RESELLERS, AND RELATED THIRD PARTIES, SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

10. GOVERNING LAW AND JURISDICTION. The parties agree that this Agreement shall be governed by the laws of the Province of Ontario and Customer further consents to the jurisdiction and venue of the courts of the Province of Ontario and the Supreme Court of Canada.

11. CISG. The parties hereto hereby agree that the application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement does not apply and is strictly excluded.

12. LEGAL FEES. In the event of any litigation or other dispute arising as a result of or by reason of this Agreement, the prevailing party in any such litigation or other dispute shall be entitled to, in addition to any other damages assessed, its reasonable legal fees, and all other costs and expenses incurred in connection with settling or resolving such dispute.

13. EXPORT RESTRICTIONS. Customer shall not export or re-export the Software to any country, person or entity, without Messageware's prior written consent.

14. NOTICE. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing by certified or registered mail, (iii) the second business day after mailing by nationally recognized overnight courier, (iv) the second business day after sending by confirmed facsimile, (v) the first business day after sending by email (provided email shall not be sufficient for notices of termination or indemnifiable claim). Billing-related notices shall be addressed to the relevant billing contact designated by Customer. All other notices to Customer shall be addressed to the relevant technical systems administrator designated by Customer.

15. ENTIRE AGREEMENT. It is understood that this Agreement is the complete and exclusive agreement between Customer and Messageware and supersedes any proposal or prior agreement or license, oral or written, and any other communications related to the subject matter of this Agreement. If one or more of the provisions of this Agreement is found to be illegal or unenforceable, this Agreement shall not be rendered inoperative but the remaining provisions shall continue in full force and effect. Customer acknowledges and agrees that although Customer may have its own standard terms and conditions of purchase, whether contained in any purchase order, acknowledgement form or other instrument, the terms and conditions of this Agreement shall supersede and take prevail over any such standard terms to the extent that they are additional, different, or conflict with this Agreement.

Any changes to the terms of this Agreement shall reference this Agreement and the specific terms amended, and shall be of no effect unless agreed to in writing by Messageware.

If you have any questions about this Agreement, write to Messageware at 6711 Mississauga Road, Suite 308, Mississauga, Ontario, Canada L5N 2W3 or call Messageware at (905) 812-0638.

Schedule A.

PRODUCTS:

For Microsoft Office 365, Microsoft Exchange Server 2016, and Microsoft Exchange Server 2013:

Messageware OWA Client Suite

Messageware ActiveSend

Messageware OWA Desktop