



Terms of Service

Version: 2.2

Parties

Atmail	Atmail Pty Ltd ACN 088 876 733
Customer	the entity identified as the customer in the Order Form

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

In this agreement, the following definitions will apply:

Account	means a sub-licence to use the Software, as granted to an End User by the Customer pursuant to this agreement for no longer than the Term and which is restricted by the terms of the End User Agreement.
ActiveSync Mailbox	means an account maintained by the Software that is activated or otherwise enabled for storage or synchronization of any personal information management (PIM) information such as e-mail, calendar, contacts or tasks using the ActiveSync Protocol. For the avoidance of doubt, each unique Inbox supported by the Software will constitute a separate ActiveSync Mailbox.
ActiveSync Protocol	means the Microsoft Exchange ActiveSync Protocol.
ActiveSync Protocol Terms	means the terms set out in Schedule 2.
Overage Fee	means an amount which is a pro rata calculation of the Additional User Fee from the date the licence key for the Overage Account is provided until the end of the Current Term.
Additional Fees	means the fees for any Additional Services.
Additional Services	means any services to be provided to the Customer which are outside of the scope of the Services.
Additional User Fee	means the fee per Overage Account as specified in the Order Form.

Atmail Content	means: <ul style="list-style-type: none">a. the Software;b. any data which provides descriptive, technical, statistical and other metadata type, non-Personal Information regarding the use of the Accounts; andc. any other software, information or materials in any form, developed, created or provided by Atmail or its Personnel in the course of providing the Services (except to the extent any open source or third party owned software is incorporated); including all Intellectual Property Rights therein.
Atmail Website	means the website accessible via https://www.atmail.com/ as amended from time to time.
Business Day	means a day other than that which is a Saturday, Sunday or public holiday in Brisbane, Queensland.
Category	means a type of Account as specified the Order Form.
Claim	means any claim, counterclaim, demand, cause of action or proceedings (whether based in contract, tort or statute) and any defence to a claim, counterclaim, demand, cause of action or proceedings.
Commencement Date	means the first date that the Services will be provided as specified in this agreement, or as notified to Atmail by the Customer as stated on the Order Form.
Confidential Information	means all information in relation to a party (Discloser) which: <ul style="list-style-type: none">a. is by its nature confidential;b. the Discloser indicates is confidential; orc. the receiving party (Recipient) ought to know is confidential; other than information that the Recipient can establish:<ul style="list-style-type: none">a. was in the public domain when it was given to the Recipient;b. becomes, after being given to the Recipient, part of the public domain, except through disclosure contrary to this agreement;c. was in the lawful knowledge and possession of the Recipient before it was disclosed to the Recipient, or was otherwise developed independently by the Recipient without reference to or use of any of the Discloser's Confidential Information; ord. was lawfully received by the Recipient from another entity having the unrestricted legal right to disclose that information without requiring the maintenance of confidentiality.
Corporations Act	refers to the <i>Corporations Act 2001</i> (Cth) of Australia.
Costs	means any costs incurred by Atmail in the course of providing the Services or Additional Services, whether on behalf of the Customer or otherwise.
Current Term	has that meaning given to it in clause 15.2.
Data Processing Policy	means Atmail's data processing policy as published on the Atmail Website and amended from time to time.
Delay Event	means an event which is beyond the reasonable control of Atmail and which causes a delay or failure in the performance of Atmail's obligations under this agreement, including but not limited to: <ul style="list-style-type: none">a. any act, delay or omission of the Customer or their agents or other third party which adversely affects Atmail's capacity to provide the Services;b. unavailability of, or unsuitability of personnel, facilities, materials or third-party software or services required for the

Services where Atmail has taken all reasonable steps to find suitable replacements; or

- c. inclement weather, power failure, earthquake, cyclone, fire, explosion, flood, landslide, lightning storm, war, invasion, pandemic, sabotage, malicious damage, terrorism or civil unrest, order of any government or government authority or change to legislation, strikes or other industrial disputes.

Dependencies	means the necessary minimum requirements of the Customer or an End User's software, hardware, configuration and environment (including third-party services) which must be met in order for the Services to be provided, as advised by Atmail from time to time.
End User	means an individual who has been allocated an Account by the Customer.
End User Agreement	means the agreement accessible via the Atmail Website as varied by Atmail from time to time.
Fees	means, as applicable, all amounts payable by the Customer under this agreement, including but not limited to the: <ul style="list-style-type: none"> a. Licence Fee; b. Overage Fees; c. Additional Fees; and d. Costs.
Initial Term	means the term specified as such in this agreement, commencing from the Commencement Date.
Insolvency Event	means any of the following events occurring in relation to a party: <ul style="list-style-type: none"> a. if an application is filed for the winding up of the party (winding up application) and the winding up application is not dismissed or withdrawn within five Business Days of that application being filed; b. if an order is made for the winding up of the party and the winding up is not stayed indefinitely or terminated within five Business Days of the winding up order being made; c. if the party's shareholders pass a resolution for its winding up; d. if a receiver, receiver and manager, controller (as defined in section 9 Corporations Act), or similar person is appointed to, or the holder of a Security Interest takes (or appoints an agent to take) possession of, any property of the party; e. if a provisional liquidator is appointed to the party; f. if: <ul style="list-style-type: none"> i. the party is placed into administration (as defined in section 9 Corporations Act) or enters into a deed of company arrangement (as defined in section 9 Corporations Act); or ii. the party or any other person takes any step towards placing the party into administration or towards entering into a deed of company arrangement; g. if the party: <ul style="list-style-type: none"> i. advises the other party that it is financially unable to proceed with or meet any of its obligations under this document;

- ii. without the written consent of the other party, suspends payment of its debts;
- iii. ceases or threatens to cease to carry on all or a material part of its business;
- iv. is or states that it is unable to pay its debts as and when they fall due and payable; or
- v. is taken to fail to comply with a statutory demand under section 459F Corporations Act;
- h. if the party, without the consent of the other party:
 - i. begins negotiations with one or more of its creditors seeking a general readjustment or rescheduling of its indebtedness to one or more of its creditors;
 - ii. takes any steps toward entering into, or enters into, any compromise or arrangement with one or more of its creditors under part 5.1 Corporations Act; or
 - iii. makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors;
- i. if the party:
 - iv. commits an act of bankruptcy under section 40 Bankruptcy Act; or
 - v. is made bankrupt;
- j. if the party becomes or takes any step that could result in the party becoming an insolvent under administration (as defined in section 9 Corporations Act);
- k. if the party enters into or takes any step that could result in the party entering into a personal insolvency agreement under part X Bankruptcy Act;
- l. if the party enters into or takes any step that could result in the party entering into a debt agreement under part IX Bankruptcy Act;
- m. if execution is levied against the party by a creditor;
- n. if any matter relating to the party becomes subject to a direction under, or has effect as if it were a direction under, section 14 Australian Securities and Investment Commission Act 2001 (Cth), or to an investigation under, or taken to be under, Australian Securities and Investment Commission Act 2001 (Cth); or
- o. if any event happens in Australia or any other country or territory in respect of a party that is similar to any of the events or circumstances referred to in this definition, unless:
 - i. the event takes place as part of a solvent reconstruction, amalgamation, merger or consolidation on terms approved by the other party before it takes place; and
 - ii. the implementation of the reconstruction, amalgamation, merger or consolidation complies with the terms of the approval.

Intellectual Property
Rights

means:

- a. all present and future industrial, intellectual or proprietary rights conferred by statute, at common law or in equity anywhere in the world, whether issued or pending,

registered or unregistered, including all forms of copyright, patents, trademarks, algorithms, designs, trade secrets, inventions, discoveries, know-how, confidential information, plant varieties and circuit layouts, including any modifications, adaptations and improvements thereto; and

- b. all statutory and common law rights including the right to sue for damages and other remedies against third parties for infringement or misuse of the related intellectual property, whether or not the infringement or misuse took place before the date of this agreement and retain all amounts recovered in any action (whether as to damages, or following an account of profits or on any other basis) obtained as a result of any such action.

Law	means the laws and regulations in each Relevant Jurisdiction.
LEADR	means the LEADR Resolution Institute ACN 008 651 232.
Licence Fee	means the fees for the Nominated Product, as specified in the Order Form, subject to variation pursuant to this agreement.
Loss	includes losses, damages, costs (including legal costs), expenses and liabilities, however arising (regardless of whether those losses were foreseeable or not), including, but not limited to, special, indirect, punitive, unascertainable, contingent, prospective and consequential losses or damages, loss of profits, loss of savings, loss of income or revenue, loss in connection with revenue not meeting targets or certain levels, loss in connection with uptime or availability of internet connectivity or the ability of third parties to access a website, loss of opportunity or loss due to loss or corruption of data.
Monthly Debit Date	means the date which is 30 days after the Commencement Date and on that same date in each subsequent calendar month during the Term, subject to variation in accordance with this agreement.
Nominated Product	means the product specified in the Order Form.
Order Form	means, in order of precedence: <ol style="list-style-type: none"> a. this agreement; b. a purchase order form provided by Customer to Atmail; or c. the online Order Form accessible via the Atmail Website, as completed and submitted to Atmail by the Customer.
Payment Method	means the payment method nominated in the Order Form.
Personal Information	means any information or opinion relating to or about an identified or identifiable natural person or about an individual who is reasonably identifiable.
Personnel	means any person or entity who Atmail employs or engages as an agent, contractor or otherwise, to provide the Services.
Privacy Policy	means Atmail's privacy policy as amended from time to time, accessible via the Atmail Website.
Quota	means the maximum number of Accounts for a Category available to the Customer at any one time as part of the Nominated Product,

as specified in the Order Form, subject to variation pursuant to this agreement.

Recruitment Fee	means liquidated damages in an amount equal to: <ul style="list-style-type: none"> d. one year's salary (at the rate most recently paid by Atmail) of that person (if an employee); or e. the total of all amounts paid by Atmail to that person in the preceding 12 months (if a contractor).
Relevant Jurisdiction	means each jurisdiction which has a relevant connection between the Customer, Atmail and/or the provision of the Services, including but not limited, to Queensland, Australia.
Renewal Date	means the first day of each Renewed Term.
Renewed Term	has that meaning given to it in clause 15.2.
Restraint Period	means each of the following: <ul style="list-style-type: none"> a. the period starting when this agreement is executed and ending 18 months from the date this agreement is terminated; b. the period starting when this agreement is executed and ending 12 months from the date this agreement is terminated; c. the period starting when this agreement is executed and ending 6 months from the date this agreement is terminated.
Services	means, where the Nominated Product is: <ul style="list-style-type: none"> a. the 'Cloud Hosted Product - Software Access, Cloud Storage and the Essential Support Package as those terms are defined in Schedule 1; b. the 'On Premises Product' - Software Access and the Self Help Support Package as those terms are defined in Schedule 1; c. the 'Platinum Support Package' – Support services in addition to the Essential Support Package as those terms are defined in Schedule 1, subject to variation pursuant to this agreement.
Tax	any forms of taxation and statutory, governmental, state, federal, provincial, local, government or municipal charges, duties, imposts, contributions, levies, withholdings or liabilities wherever chargeable and whether arising under Australian law or any other jurisdiction; and any penalty, fine, surcharge, interest, charges or costs relating thereto.
Term	means the term of this agreement, being the Initial Term and any Renewed Term, unless terminated earlier pursuant to this agreement.
User Content	means any content in any form (including but not limited to, pictures, videos, written word and audio files) which the Customer or an End User (as the case may be) submits, posts, uploads, publishes, transmits, stores or otherwise handles in connection with the Services, or as a result of the Services being provided, and includes all Intellectual Property Rights therein.

Software means the software specified as such in the Order Form, subject to variation under this agreement.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- a. words denoting any gender include all genders;
- b. headings are for convenience only and do not affect interpretation;
- c. the singular includes the plural and vice versa;
- d. any schedule or annexure attached to this agreement forms part of it;
- e. a reference to a party includes its legal personal representatives, successors and permitted assigns;
- f. except where specified otherwise herein or in the Order Form, a reference to an amount means that amount in US dollars;
- g. a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- h. a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- i. unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar inclusive expressions; and
- j. a reference to this agreement means this agreement and includes any variation or replacement of this agreement.

2 Formation of Agreement

- 2.1 The Customer and Atmail enter into, and agree to be bound by this agreement upon:
 - a. the Customer completing and submitting an Order Form to Atmail; and
 - b. Atmail accepting and processing the Order Form and notifying the Customer of that acceptance.

3 Services

- 3.1 Atmail will provide the Services to the Customer throughout the Term on the terms set out in this agreement.
- 3.2 The Customer may request that Atmail provide Additional Services from time to time.
- 3.3 If Atmail agrees to provide Additional Services, Atmail will provide the Customer with notice of the scope of the Additional Services and of any Additional Fees which Atmail notifies are payable in advance.
- 3.4 The terms of this agreement will apply to any Additional Services, in addition to and subject to any other terms which Atmail advises the Customer will apply to the Additional Services.

4 Software Access

- 4.1 The Software is initially distributed in evaluation mode, which allows limited functionality. The Customer may activate the full production mode of the Software for an Account by entering a valid licence key which will be supplied by Atmail as part of the Services.
- 4.2 The Customer must ensure that the Quota is not exceeded during the Term.
- 4.3 If the Customer or an End User has multiple Inboxes, each Inbox is a separate Account and each count towards the Quota for the relevant Category.
- 4.4 The Customer is responsible for allocating Accounts and determining what Category will apply to an Account, prior to allocating that Account.
- 4.5 During the Term, Atmail may (but is not obliged to):
 - a. monitor the use of the Software by the Customer or End Users to assess compliance with this agreement;
 - b. refuse or cancel an Account at its discretion, where the Customer or End User does not agree to, or fails to comply with the End User Agreement, breaches a term of this agreement or otherwise uses the Software in a manner which Atmail reasonably believes is inappropriate; and
 - c. monitor compliance with the Quota and provide feedback on how many Accounts the Customer has allocated at any time.

- 4.6 The Customer may, at any time during the Term, by notice to Atmail (including via the Software) increase the Quota by purchasing additional Accounts for a Category (**Overage Account**).
- 4.7 Any requirements specified in the Order Form as to the minimum number of Overage Accounts which may be purchased will apply to the Customer.
- 4.8 Any Account activated by the Customer will count towards the Quota regardless of whether it has become archived, dormant, deactivated, suspended, restricted or is otherwise unused during the Term.
- 4.9 The Customer or End Users may use the ActiveSync Protocol solely with Accounts which are activated, via licensing, with this capability, subject to compliance with the ActiveSync Protocol Terms.
- 4.10 Except where clause 4.9 applies, and despite any other term of this agreement to the contrary, the Customer and End Users must not make use of any ActiveSync Mailbox or any part of the Software which uses the ActiveSync Protocol during the Term.

5 Payment Terms

- 5.1 In consideration for the provision of the Services, the Customer must pay to Atmail the Licence Fee.
- 5.2 In addition to the Licence Fee, the Customer must pay to Atmail any Overage Fees, Additional Fees and all Costs.
- 5.3 The Customer must pay the Fees within 14 days of Atmail issuing a tax invoice for the relevant Fees.
- 5.4 Atmail will issue tax invoices for the Fees as follows:
 - a. where the Nominated Product is the 'On Premises Product', Atmail will issue a tax invoice for the Licence Fee on the Commencement Date and each Renewal Date for a minimum of one year in advance;
 - b. where the Nominated Product is the 'Cloud Hosted Product', Atmail will issue a tax invoice for equal monthly instalment payments of the Licence Fee on the Commencement Date and each Monthly Debit Date in advance of providing the Services;
 - c. Atmail will issue a tax invoice for any Additional Fees and Costs on the date which the relevant Additional Fees and Costs have been incurred, unless Atmail advises that the Additional Fees will be payable as an adjustment to the Licence Fee, in which case they will be invoiced as part of the Licence Fee accordingly;
 - d. Overage Fees will be payable as an adjustment to the Licence Fee, and will be invoiced accordingly. However, where the Nominated Product is the 'On Premises Product', Atmail may also issue a tax invoice for the relevant Overage Fees on the date the Overage Accounts are requested pursuant to clause 4.6.
- 5.5 The Customer authorises Atmail to charge the Customer the Fees via the Payment Method on each date which a tax invoice is issued pursuant to clause 5.4 (**Payment Date**).
- 5.6 Atmail may vary the Payment Date without notice at times to account for:
 - a. public holidays;
 - b. variations between the number of days in a month (i.e. to process a payment due on the 31st on the 30th for 30 day months);
 - c. leap years; or
 - d. to re-attempt charging the Payment Method where a previous attempt has been unsuccessful.
- 5.7 Atmail will seek the Customer's consent prior to incurring any Costs.
- 5.8 Each tax invoice issued by Atmail must be paid by the Customer in cleared funds in accordance with the details on the relevant tax invoice.
- 5.9 In addition to the Fees, the Customer is liable for any bank transfer fees, currency exchange fees, taxes, duties, dishonour fees and any other amounts payable to a third party as a result of the Customer's payment of the Fees.
- 5.10 The Customer must pay all Fees without deduction, set off or counterclaim.
- 5.11 The Customer will not receive any refund or discount to the Fees where the number of Accounts allocated by the Customer during the Term is less than the Quota.

6 GST

- 6.1 Terms in this clause have the same meaning as given to them in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
- 6.2 Unless otherwise specified in this agreement, all Fees are quoted exclusive of GST.
- 6.3 Fees incurred in connection with the provision of the Services are generally subject to GST if there is a sufficient connection with Australia. If so, Atmail is required to remit GST and Atmail will charge the applicable GST in addition to the GST exclusive amount of those Fees.
- 6.4 Atmail will provide the Customer with a Tax Invoice for any Supply which attracts GST.

7 Tax

- 7.1 Except under this clause 7, the consideration for any supply made under or in connection with this document does not include any forms of Tax.
- 7.2 If a supply made under or in connection with this document is a supply which attracts Tax, then before the time any part of the consideration for the supply is payable, the Customer must inform Atmail of the Tax payable and must at the time any part of the consideration for the supply is payable, the Customer must pay an amount equal to the total Tax for the supply, in addition to and in the same manner as the consideration otherwise payable under this document for that supply.
- 7.3 If the Customer fails to notify Atmail of the Tax, the Customer will be responsible for the Tax and indemnifies Atmail from and against any liability arising in connection with the relevant Tax.
- 7.4 If the Customer is required by law to withhold any amount payable to Atmail under this agreement on account of Tax, the Customer must, upon withholding that amount, remit to Atmail all documentation Atmail requires to claim any foreign tax credit or other credit with respect to the withheld amount.

8 Availability of Services

- 8.1 The Customer acknowledges that:
 - a. Atmail will determine which Personnel will provide the Services, at its discretion;
 - b. Where the Software is provided in evaluation mode, it must be used by the Customer solely for the purpose of assessing the suitability of the Software for the Customer and the End User's future use;
 - c. Any information provided by the Customer which is inaccurate, incomplete or which is not provided to Atmail within a reasonable time of request, could have a material effect on the Services or may result in Additional Fees applying;
 - d. Atmail is not responsible for verifying the underlying accuracy, truthfulness or completeness of any information provided by the Customer;
 - e. Atmail's obligation to comply with all laws applicable to Atmail and the Services overrides Atmail's obligations to the Customer; and
 - f. User Content and other data generated in connection with the Services will be collected and handled by Atmail in accordance with the Data Processing Policy and the Privacy Policy.
- 8.2 The Customer authorises Atmail and its Personnel to act as the Customer's agent during the term where strictly necessary to provide the Services.
- 8.3 The Customer acknowledges that:
 - a. Atmail may modify and update the Software from time to time for any reason, including but not limited to improving the functionality and appearance of the Software or to create additional features or extensions;
 - b. Atmail will take reasonable steps to advise the Customer in advance of any update that may substantially alter the functionality, reporting capability or general experience of using the Software;
 - c. The compatibility of the Software and the specifications required to access the Software with certain devices may vary over time.

9 Customer Obligations

9.1 The Customer must:

- a. comply with this agreement at all times during the Term;
- b. promptly provide Atmail with any information requested, where such request is made in connection with the provision of the Services;
- c. not, and ensure that the End Users do not, use the Services or any part thereof:
 - i. to infringe or authorise the infringement of any Intellectual Property Rights or other rights of a third party;
 - ii. to store or distribute any illegal, or illegally obtained content;
 - iii. to circumvent any technological protection measure or to store or distribute any content which has been obtained via circumvention of any technological protection measure;
 - iv. in a manner which is contrary to Law;
 - v. to gain access to any material without the permission of any relevant persons where such permission is required by Law;
 - vi. to conduct illegal transactions;
 - vii. to circulate content that can damage, disrupt or compromise Atmail's hardware or that of any third party;
 - viii. in any manner which is in breach of any Law whether civil or criminal, including Laws related to fraud, cybercrime, sedition, harassment, sexual harassment, defamation, stalking, nuisance or assault;
 - ix. to store or disseminate any material in breach of any Laws relating to censorship, email distribution or content regulation;
 - x. to create or distribute any spam or unsolicited commercial message or engage in any other unlawful marketing scheme;
 - xi. to produce an electronic address list using address harvesting software;
 - xii. to acquire, supply or otherwise use an electronic address list which has been produced using address harvesting software;
 - xiii. in a manner intended or likely to create an unusual workload on any of the equipment used in the course of providing the Services; or
 - xiv. in a manner which could adversely affect the provision of the Services or Atmail's ability to provide similar services to others in the course of its business;
- d. except where permitted by law, not:
 - i. attempt to reverse engineer any licence key provided by Atmail;
 - ii. attempt to produce or use any counterfeit licence key to access the Software;
 - iii. modify any part of the Software to enable it to operate without a valid licence key or otherwise tamper with the licensing component of the Software;
 - iv. attempt to reverse engineer, decompile, disassemble or otherwise attempt to derive or access the source code, techniques, processes, algorithms, know-how or any other information (as applicable) from the Software;
 - v. modify, create derivatives of or improvements to, decompile or otherwise attempt to access or extract the source code of the Software without Atmail's permission;
 - vi. copy, archive, download, reproduce, distribute, sell, syndicate, broadcast, display, perform or otherwise use the Software other than as permitted by this agreement.
- e. not, and ensure that the End Users do not, create or circulate User Content that Atmail reasonably determines is:
 - i. illegal, threatening, defamatory, discriminatory, hateful, obscene, profane, graphically violent or pornographic or which incites violent or dangerous activities;
 - ii. misleading or which forms part of an attempt to impersonate another or an attempt to collect the Personal Information or financial details of a person without their consent or is otherwise used for a misleading or fraudulent purpose;
- f. accept responsibility for the User Content;
- g. comply with the terms of the Data Processing Policy;

- h. ensure that any commercial electronic messages sent via the Services include information about the individual or organisation who authorised the sending of the message;
- i. ensure that commercial electronic messages contain an easy to utilise, functional feature that allows recipients to unsubscribe from receiving similar messages in the future;
- j. keep secret each username and password used to access the Services;
- k. assume full responsibility for any use of an Account by a third party;
- l. ensure that all End Users and any other third parties comply with this agreement to the extent it applies to them as a user of the Services;
- m. provide accurate and complete responses to any questions asked by Atmail and provide any instructions requested, within a reasonable timeframe;
- n. take all reasonable steps to ensure that all information provided to Atmail is true, accurate, complete, up to date and is not misleading;
- o. comply with all Dependencies;
- p. assume responsibility for ensuring compliance with the Quota and providing Atmail with evidence of same on request;
- q. develop an in-house management system for validation of Account usage by End Users and providing Atmail with evidence of same on request;
- r. ensure it has adequate backups of all data to which Atmail will have access during the Term and ensure that it is able to restore such backups in the event of any data becoming corrupted;
- s. not engage in any misleading conduct, or make any misleading or deceptive statement or representation to any person as to the Services or warrant to any person that the Services will achieve any particular outcome;
- t. not hold out to any person that it is a representative of or is otherwise associated with Atmail;
- u. ensure that it promptly updates Atmail if any information which it has previously provided to Atmail, including its contact details and Payment Method, changes;
- v. not deliberately withhold information relevant to the Services or this agreement, from Atmail;
- w. provide all assistance reasonably requested by Atmail to enable it to effectively carry out its obligations under this agreement, including, but not limited, providing all access codes, usernames and passwords known by the Customer as necessary for Atmail to access and administer the Services if required;
- x. immediately inform Atmail if it becomes aware of any information or change in its circumstances that may:
 - i. significantly affect or alter the provision of the Services; or
 - ii. reasonably be expected to adversely affect Atmail's reputation if Atmail continued to provide the Services to the Customer or its End Users;
- y. use the Services in accordance with Law and Atmail's reasonable instructions;
- z. ensure that each Account is properly activated during the Term using a valid licence key provided by Atmail;
- aa. not remove any proprietary notices or labels from the Software;
- bb. not use the Software with unsupported equipment, software, configurations or other conflicting services;
- cc. not do, cause or authorise the doing of anything which may adversely affect or jeopardise the validity of Atmail's Intellectual Property Rights in the Nominated Product or the Software;
- dd. not do or say anything harmful to the reputation of Atmail, its Personnel and its business or which may lead a person to cease, curtail or alter the terms of its dealings with Atmail;
- ee. not do anything which could interfere with or otherwise impair the regular functioning and performance of Atmail's business and the Services; and
- ff. promptly inform Atmail of any defects in the Software that are found by the Customer or reported by an End User, including but not limited to, exploitable or potentially exploitable security vulnerabilities.

10 Intellectual Property Rights

- 10.1 Subject to the terms of this agreement, Atmail agrees to provide to the Customer as part of the Services, a limited, non-transferable, non-exclusive license to use the Software during the Term for the purposes contemplated by this agreement.
- 10.2 The Customer must not sub-licence its right to use the Software other than to allocate Accounts to End Users, provided that the Quota is not exceeded at any time.
- 10.3 The Customer or its End Users may install and operate one unique instance of the Software per Account.
- 10.4 Aside from the licence granted in clause 10.1, this agreement does not grant the Customer any other rights in the Software.
- 10.5 If, at any time during or after the Term, the Customer is in breach of this agreement, Atmail may revoke, restrict or suspend the licence granted in clause 10.1 by notice to the Customer.
- 10.6 All right, title and interest in the Atmail Content is owned and retained by, and vests on creation in, Atmail.
- 10.7 The Customer retains all right, title and interest which it holds in the User Content and grants Atmail a perpetual, transferable, irrevocable, non-exclusive, royalty free licence to use, modify, reproduce, publish, adapt, display, distribute and transmit the User Content in connection with the provision of the Services and for any other purpose contemplated by this agreement.
- 10.8 The Customer warrants that it has all the rights, title and authority required to grant Atmail the licence in clause 10.7.

11 Audit

- 11.1 Atmail may audit the Customer's compliance with this agreement, in particular to determine whether the Customer has paid the correct amounts to Atmail in respect of the Fees (**Audit**).
- 11.2 An Audit may be carried out upon Atmail giving the Customer at least seven days notice. The Audit may be carried out by Atmail or a third party auditor selected by Atmail (**Auditor**).
- 11.3 The Customer must, at its cost, provide all reasonable assistance to the Auditor in carrying out the Audit. In particular, the Customer must provide the Auditor with access to all documents and other information relevant to the Audit and a secure working area (with secure storage and a telephone line with national and international dialling access) in which the Auditor can carry out the Audit and store their working papers during the Audit.
- 11.4 Where the Auditor's report indicates an underpayment between the amounts which have actually been paid by the Customer and the amounts which ought to have been paid by the Customer under this agreement, the Customer must pay Atmail the amount of that underpayment, as determined by the Auditor, within 14 days of a notice from Atmail setting out the Auditor's findings and requesting that payment.
- 11.5 Where the Auditor's report indicates an underpayment of 5% or more between the amounts which have been paid by Customer and the amounts which ought to have been paid by Customer under this agreement, the Customer must pay Atmail its reasonable costs of conducting the Audit, otherwise those costs must be borne by Atmail.

12 Confidential Information

- 12.1 Subject to clause 12.2, Atmail must:
 - a. keep any Confidential Information relating to the Customer (**Customer Confidential Information**) confidential at all times;
 - b. not use the Customer Confidential Information other than for the purpose of exercising its rights and performing its obligations under this agreement;
 - c. only use any Personal Information within the Customer Confidential Information in accordance with the Privacy Policy and the Data Processing Policy.
- 12.2 Atmail may disclose the Customer Confidential Information:
 - a. where consent to do so is received from the Customer;
 - b. as necessary to carry out the Services or any Additional Services;
 - c. to its Personnel, officers, professional advisers or agents and its related bodies corporate who have a need to know the Customer Confidential Information and have agreed to maintain confidentiality of the Customer Confidential Information; or

- d. to the extent required by law or to defend Atmail's rights.
- 12.3 The Customer must:
 - a. keep any Confidential Information relating to Atmail (**Atmail Confidential Information**) confidential at all times;
 - b. not use or disclose Atmail Confidential Information other than for the purpose of exercising its rights and performing its obligations under this agreement.
- 12.4 If the parties have executed a separate confidentiality or non-disclosure agreement, then, except to the extent of inconsistency (in which case the terms of this agreement take priority), the obligations in this agreement are in addition to and run in parallel with the obligations in the separate agreement.

13 Warranties

- 13.1 The Customer warrants and represents to Atmail, and acknowledges that Atmail has entered into this agreement in reliance on, the following:
 - a. there is no circumstance which would make this document, or any transaction contemplated by it void, voidable or unenforceable;
 - b. the Customer has read, understood and had the opportunity to obtain independent legal advice in relation to this agreement;
 - c. the Customer will perform its obligations under this agreement;
 - d. the Customer has the power, capacity and authorisations necessary to enter into this agreement; and
 - e. the Customer has had sufficient opportunity to make enquiries, prior to entering into this agreement, to satisfy themselves that the Services are suitable for the Customer's purposes and objectives.

14 Suspension

- 14.1 Atmail may suspend or restrict the Services where:
 - a. the Customer fails to meet any of its obligations under this agreement, including where any payment to Atmail is overdue (in addition to any other rights Atmail may have);
 - b. a Delay Event occurs, in which case:
 - i. Atmail must promptly provide the Customer with details of the Delay Event and how long Atmail anticipates it will continue for;
 - ii. Atmail will not be liable to the Customer, or in breach of its obligations under this agreement where a breach arises due to, or in connection with the Delay Event;
 - iii. any party may terminate the agreement by notice to the other parties if the Delay Event subsists continuously for 14 days or more; or
 - c. the parties otherwise agree in writing to the suspension or restriction.
- 14.2 Any suspension or restriction of the Services pursuant to this clause 14 which arises due to an act or omission of the Customer does not suspend the Customer's payment obligations under this agreement.

15 Term & Renewal

- 15.1 This agreement commences on the Commencement Date and continues for the Term unless earlier terminated pursuant to this agreement.
- 15.2 Unless either party provides the other party with notice that it does not wish to renew the term of this agreement at least 14 days before the end of the Initial Term or any subsequent term (**Current Term**), this agreement will automatically renew at the end of the Current Term for the same period of time as the Initial Term (**Renewed Term**).

16 Termination

- 16.1 Without limitation to its rights against the Customer, Atmail may terminate this agreement immediately if the Customer commits any of the following acts of default:

- a. fails to pay any amount payable to Atmail under this agreement when due;
 - b. suffers an Insolvency Event;
 - c. engages in any act or omission which:
 - i. is illegal or which Atmail reasonably considers is unethical; or
 - ii. is likely to damage the reputation of, or result in a Claim against Atmail or its Personnel;
 - d. breaches a term of this agreement that cannot be remedied; or
 - e. breaches a term of this agreement (other than a breach under clause 16.1(a) to 16.1(d)) and fails to remedy that breach within 14 days of receiving notice to do so from Atmail.
- 16.2 The Customer may terminate this agreement immediately if Atmail commits any of the following acts of default:
- a. breaches a term of this agreement that cannot be remedied; or
 - b. breaches a term of this agreement (other than a breach under clause 16.2(a)) and fails to remedy that breach within 30 days of receiving notice to do so from the Customer.

17 Effect of termination

- 17.1 On and from the effective date of termination of this agreement:
- a. Atmail will cease providing the Services to the Customer;
 - b. Atmail may withhold and retain possession of any information or property it holds of the Customer or End Users until any outstanding Fees are paid to Atmail as required by law;
 - c. Atmail may issue tax invoices for any Services provided up to the effective date of termination;
 - d. all outstanding tax invoices issued by Atmail become due and payable immediately;
 - e. the Customer will not be entitled to any refund of any Fees paid unless required by law or Atmail agrees otherwise;
 - f. the Customer consents to Atmail providing the Customer's Personal Information to a credit rating agency where this agreement is terminated for default under clause 16.1(a);
 - g. subject to clause 17.1(b) and any retention requirement imposed by law, each party must, within 14 days of the effective date of termination of this agreement, deliver up to the other party all of the Confidential Information held, of that other party; and
 - h. the Customer must cease to use, and deliver up to Atmail (or destroy, upon request by Atmail), all Atmail Content in the possession of the Customer, within 7 days of the effective date of termination of this agreement; and
 - i. where applicable, Atmail will not be required to provide the Customer with any assistance to migrate its User Content from Atmail's servers unless Atmail agrees to do so as an Additional Service.

18 Disclaimer

- 18.1 To the maximum extent permitted by law, Atmail:
- a. does not provide any guarantee or warranty or make any representation with respect to the Services or the Nominated Product except as expressly set out in this agreement;
 - b. disclaims, and the Customer agrees to release Atmail, its officers and Personnel from, all liability for any Claim or Loss howsoever arising directly or indirectly in connection with the Services or the Nominated Product.
- 18.2 Where Atmail's liability under this agreement cannot be fully disclaimed, Atmail's liability for any loss or damage the Customer suffers as a result of the Services (howsoever caused, including by Atmail's negligence), is capped at the total Fees paid by the Customer in the 6 months prior to the Claim arising.
- 18.3 The cap in clause 18.2 applies to any single or cumulative claims by the Customer, and the Customer agrees that Atmail may plead this limitation of liability in defence to any claims the Customer may bring against Atmail for any such loss or damage.

19 Restraint

- 19.1 The Customer must not during each Restraint Period:
- a. induce, solicit or canvass, approach or accept any approach from, any person who was at any time during the six month period ending on the date on which this agreement is terminated, an employee, contractor or agent of Atmail;
 - b. seek to engage or engage the services of any employee or agent of Atmail; or
 - c. induce or help to induce an officer or employee of Atmail to leave their office or employment.
- 19.2 If a Customer engages an employee or agent of Atmail during the Restraint Period, the Customer must pay a Recruitment Fee to Atmail within 30 days of receiving a tax invoice for the Recruitment Fee from Atmail.
- 19.3 The parties agree:
- a. the restraints in clause 19.1 are separate from one another and if any of them is unenforceable the rest are unaffected;
 - b. that any combination of the acts referred to in clause 19.1 is unfair and calculated to damage Atmail and its business; and
 - c. that each of the restraints in clause 19.1 is reasonable in its extent (as to duration, geographical area and restrained conduct) considering the interests of each party to this document and goes no further than is reasonably necessary to protect the interests of Atmail's business (including the goodwill thereof).

20 Indemnities

- 20.1 The Customer indemnifies and holds harmless Atmail, its officers and Personnel from and against any Claim or Loss which Atmail suffers or incurs arising directly or indirectly out of, or in connection with any:
- a. breach of this agreement by the Customer or an End User;
 - b. unlawful act or omission of the Customer or an End User;
 - c. use of the Atmail Content by the Customer or an End User other than in accordance with this agreement;
 - d. Claim arising in connection with an act or omission of the Customer when using the Services; and
 - e. reliance on or use by Atmail of the User Content or any misleading, false or incomplete information provided by the Customer.

21 Variations

- 21.1 The terms of this agreement may be varied:
- a. by written agreement between the parties; or
 - b. by Atmail, provided that the Customer receives notice of any proposed change to a material term of the agreement at least 14 days before the change becomes effective (**Effective Date**).
- 21.2 The Effective Date for any increase to the Fees pursuant to clause 21(b) will be (at Atmail's option):
- a. the next Renewal Date; or
 - b. the date which is at least 14 days after Atmail gives the Customer notice of the variation, provided that the Customer is given the opportunity to terminate this agreement prior to the Effective Date.

22 Dispute Resolution

- 22.1 If a dispute arises in relation to the rights and obligations of the parties under this agreement (other than where a right of termination has arisen pursuant to clause 16.1), (the **Dispute**), the party raising the Dispute, must, in the first instance, provide the other party with details of the Dispute (**Dispute Notice**).
- 22.2 The parties must use their best endeavours and act in good faith to attempt to resolve the Dispute within 30 days from receipt of the Dispute Notice (**Dispute Period**).

- 22.3 Each party must ensure that a senior representative with authority to settle the Dispute on behalf of that party is available for negotiation at all reasonable times during the Dispute Period.
- 22.4 Where a Dispute remains unresolved at the conclusion of the Dispute Period, each party must subsequently endeavour to settle the Dispute by mediation. Such mediation must be conducted:
- a. in accordance with the LEADR Mediation Rules, in Brisbane, Qld, Australia;
 - b. by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of the expiry of the Dispute Period, by a person appointed by the Chair of LEADR or the Chair's designated representative.
- 22.5 Negotiations between the parties under this clause 22 are made on a "without prejudice" basis; and cannot be tendered or referred to in evidence in any judicial or quasi-judicial proceedings without the consent of the party making the relevant statement.
- 22.6 The parties must follow the steps set out in this clause 22 prior to initiating legal proceedings or taking action in any other forum in relation to the Dispute.
- 22.7 Nothing in this clause 22 prevents either party seeking urgent interlocutory relief from a court in relation to any breach or potential breach of an obligation of confidentiality or in relation to any other matter of urgency.

23 Notices

- 23.1 Notices given under this agreement:
- a. must be in writing and in clearly readable English;
 - b. must be signed by the party giving or making it (or signed on behalf of that party by its authorised representative); and
 - c. may be delivered to a party by hand or by email to that party's address or email address as shown in this agreement or to such other address or person as a party may specify by notice given in accordance with this clause, or with respect to the Customer, an email address specified in the Order Form or allocated to the Customer as part of the Services.
- 23.2 A notice is taken to be duly given and received:
- a. if delivered by hand, when delivered; or
 - b. if delivered by email, when sent, provided the sender has not received notice of any failure of the notice to be delivered.
- 23.3 Despite clause 23.2, notices received after 5 pm in the place of receipt or on a non-Business Day are taken to be received at 9 am on the next Business Day.

24 General

- 24.1 **Relationship between the parties**
Nothing in this agreement will constitute the parties as employer and employee, agent and principal, partners or otherwise. Unless expressly stated otherwise in this agreement, nothing renders a party liable for the acts or omissions of any other party and nothing gives either party the ability to act or incur liability on behalf of the other party.
- 24.2 **Entire agreement**
To the extent permitted by law, this agreement (and the Order Form and any other document to the extent it is expressly incorporated herein) records the entire agreement between the parties in relation to its subject matter. It supersedes all prior contracts, arrangements, understandings or negotiations by, or between, the parties in relation to the subject matter of this agreement (including, but not limited to any email correspondence or other informal correspondence between the parties).
- 24.3 **Consent**
Except to the extent the context requires otherwise, where an act, right or obligation under this agreement is subject to the consent of a party, it may grant or withhold that consent in its sole discretion and is not required to provide a reason for that grant or withholding.
- 24.4 **Further assurance**

Each party must (at its own expense) do all things that any other party reasonably requires of it to give the other party the full benefit of any obligations owed to the other party and expressed in this agreement.

24.5 Counterparts

This agreement and any variation of this agreement may be executed and take effect in two or more counterparts (including electronically exchanged counterparts), each of which when taken together, will constitute one and the same instrument.

24.6 Survival

Clauses 1.1, 10.7, 11, 18, 19, 20, 23, 24 survive termination of this agreement.

24.7 No waiver

The failure, delay or omission by a party to exercise, or to partially exercise, a right, power or remedy under this agreement does not operate as a waiver of that right, power or remedy. A party which exercises, or partially exercises, a right, power or remedy maintains its right to further exercise the same right, power or remedy or to exercise another right, power or remedy. A party waives a right, power or remedy only by explicitly doing so in a written notice to the other party and the waiver is strictly limited to the matters specified in the notice.

24.8 Non-exclusivity

The parties acknowledge that this agreement does not establish any exclusive relationship between the parties. Each party is free to deal with third parties in respect of any services similar to the services contemplated by this agreement.

24.9 Cumulative rights

The rights, powers, authorities, discretions and remedies of a party under this agreement do not exclude any other right, power, authority, discretion or remedy.

24.10 Severability

If any provision of this agreement is determined by a court or other competent tribunal or authority to be illegal, invalid or unenforceable then:

- a. where the offending provision can be read down so as to give it a legal, valid and enforceable operation of a partial nature it must be read down to the extent necessary to achieve that result;
- b. where the offending provision cannot be read down then that provision must be severed from the agreement in which event, the remaining provisions of this agreement operate as if the severed provision had not been included; and
- c. the legality, validity or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction is not affected,

but only to the extent that is consistent with giving substantial effect to the intentions of the parties under this agreement.

24.11 Governing law and jurisdiction

This agreement is governed by the law of Queensland, Australia. Each party submits to the jurisdiction of the courts in Queensland in connection with matters concerning this agreement.

24.12 Assignment by the Customer

Unless expressly stated otherwise in this agreement, the Customer must not assign, transfer, novate, dispose of, declare a trust over or otherwise create an interest in its rights under this agreement without the prior written consent of Atmail.

24.13 Assignment by Atmail

Atmail may assign, transfer, novate, dispose of, declare a trust over or otherwise create an interest in its rights (or any part thereof) under this agreement at any time and the Customer hereby consents to Atmail transferring, disclosing or otherwise dealing with the Customer and its End User's Personal Information and User Content for the purpose of effecting the assignment, novation or other transfer of rights under this clause.

24.14 Sub-Contracting

Atmail may, from time to time, sub-contract any part of its obligations under this agreement to third parties at its own expense.

Schedule 1: Description of Products and Services

Services

Software Access

- Access to the Software for Accounts (mailboxes) up to the Quota;
- The functionality of an Account is determined by its Category or account type;
- Accounts can be held by the Customer or its End Users;
- Customers can manage the Accounts of its End Users through the interface provided.

Cloud Storage

- A cloud-based email facility which hosts Accounts of the Customer and its End Users up to the Quota;
- Each Account is allocated 10 GB of email storage space on the cloud facility, with a size limit per email message sent or received by the Account of 32 MB; and is provided in accordance with the Service Level Agreement specified in Schedule 3 of this agreement.
- The functionality of an Account is determined by its Category or account type;
- Accounts can be held by the Customer or its End Users;
- Customers can manage the Accounts of its End Users through the interface provided.

Support Package

- Access to documentation, online help, professional staff and services to assist with resolving Customer queries or issues in relation to the Services;
- Support package services are provided in accordance with the Service Level Agreement in Schedule 4 of this agreement;
- Customers can choose from the support packages described below, Self Help, Essential Support or Platinum Support.
- Cloud customers have Essential support included in with their licenses unless otherwise specified.

Support Package:	Self Help	Essential Support	Platinum Support
Pricing	Included	23% of list price (minimum US\$495 per year)	35% of list price (minimum US\$9,995 per year)
Document library	✓	✓	✓
Administrative help (licenses, billing, etc)	✓	✓	✓
Portal Access	✓	✓	✓
Business Hours Support	✗	✓	✓
24 * 7 Support	✗	✗	✓
Tracked support requests	✗	✓	✓
Support for product branding	✗	✓	✓
Application and product support	✗	✓	✓
Priority 1 incident response time	✗	2 hours (business hours)	30 Minutes (24 x 7 x 365)
Priority 1 remote access diagnosis	✗	✗	✓

Phone support for critical issues including outages	x	x	✓
Priority 2 response time	x	1 business day	2 hours (business hours)
Priority 2 remote access diagnosis	x	x	✓
Priority 3/4 response time	x	2 business days	1 business day
Security risk notification	x	✓	✓
Security risk mitigation (pre-rectification)	x	✓	✓
Named support manager	x	x	✓
Quarterly service review	x	x	✓
Annual review meeting	x	x	✓

Professional Services

Atmail offer professional services for one off or ongoing specific projects. The minimum engagement is for one day with engagements billed in one day increments. Typical examples of professional services are email platform setups or migrations.

For clarity and to assist in interpreting these service offerings, support services are limited generally to diagnosis and fault rectification advice. Accessing a Customer platform for the purposes of tuning, efficiency, aesthetics or implementation of rectification advice requires a professional services engagement.

Schedule 2: ActiveSync Terms of Use

Operative Provisions

1. The Customer may use up to the Quota of ActiveSync Mailboxes.
2. The provision of ActiveSync Mailboxes to the Customer is for the sole purpose of allowing the Software to interoperate with ActiveSync Devices.
3. The Customer's use of each ActiveSync Mailbox is subject to the following conditions:
 - a. no distribution license or other rights are provided to the Customer other than as expressly granted in the Terms of Service agreement;
 - b. use of the Software is:
 - i. limited to internal use by the Customer as part of the hosting of the Software for the sole purpose of providing access by ActiveSync Devices to the ActiveSync Mailboxes of End Users maintained by the Software; and
 - ii. conditional on the annual royalties due under Atmail's confidential patent licence agreement in relation to the Microsoft Exchange ActiveSync Protocol being paid by Atmail;
 - c. the Customer must ensure that End Users agree to and are bound by the following condition on their right to access and use the Software:

"The provision of this service to you does not grant, and you do not receive, any rights under any Microsoft intellectual property with respect to any device or software that you use to access this service."
4. Atmail has the right, to the extent legally permissible, to audit the Customer for compliance with the terms of this section.
5. The Customer will maintain accurate and adequate books and records related to their compliance during each ActiveSync Royalty Period with all terms and conditions of this Schedule (collectively, "Audit Information") until the date that is three years from the end of the last ActiveSync Royalty Period.
6. If required by Atmail, the Customer will provide access to Audit Information to a nationally recognized independent certified public accountant ("Auditor") selected by Atmail and approved by the Customer (such approval not to be unreasonably delayed or withheld), for the purposes of conducting an audit of the Customer's compliance with this Schedule.
7. The Customer must be given at least 30 days notice of any audit and the access will be limited to those portions of the Audit Information necessary to verify the Customer's compliance with this Schedule.
8. The Auditor will use reasonable and customary care to protect the confidentiality of Audit Information.
9. Audits will be conducted during regular business hours at the Customer's facilities. The Auditor may be escorted by the Customer's personnel when on the Customer's premises and will not unreasonably interfere with the Customer's normal course of business.

10. Following conclusion of the audit, the Auditor will provide both Atmail and the Customer with a report of the results of the audit.
11. Audits will not be performed more than once every 12 months, unless an audit discloses a Material Discrepancy, in which case follow-up audits may be conducted until the Material Discrepancy has been resolved. The Customer will pay Atmail's reasonable costs of any audit(s) that reveal a Material Discrepancy within 30 days of receipt of an invoice for such costs; otherwise, Atmail will be responsible for the costs.
12. Atmail may audit the Customer's compliance with this Schedule and, in particular to determine whether the Customer has paid the correct amounts to Atmail in respect of the ActiveSync Mailboxes by giving at least 7 days' notice in writing to Customer. Such an audit may be carried out by Atmail or a third party auditor.
13. The Customer must, at its cost, provide all reasonable assistance to the auditor in the conduct of the audit. In particular, the Customer must provide the auditor with access to all documents and other information relevant to the conduct of the audit; and a secure working area with secure storage and a telephone line with national and international dialling access in which the auditor can carry out the audit and can store working papers.
14. Where an auditor's report indicates an underpayment between the amounts which have been paid by Customer and the amounts which ought to have been paid by Customer in respect of the ActiveSync Mailboxes during any period, the Customer must pay Atmail the amount of that underpayment, as determined by the auditor, within 14 days of a notice from Atmail setting out the Auditor's findings and requesting that payment.
15. Where an Auditor's report indicates an underpayment of 5% or more between the amounts which have been paid by Customer and the amounts which ought to have been paid by Customer in respect of the ActiveSync Mailboxes during any period, the Customer must pay Atmail its reasonable costs of conducting the Audit, otherwise those costs must be borne by Atmail.

Definitions

Capitalised terms in this Schedule have the meanings given to them in the table below and otherwise have the meaning given to them in the Terms of Service.

ActiveSync Device	means a phone, personal digital assistant or similar hand-held device authorized and licensed by Microsoft to use the ActiveSync Protocol that wirelessly accesses the Internet to synchronize and display PIM Information. ActiveSync Devices do not include servers, desktop computers, or laptop computers.
ActiveSync Implementation	means those portions of the Software that: <ol style="list-style-type: none"> a. implement the ActiveSync Protocol in accordance with the relevant technical documentation; and b. interoperate wirelessly with ActiveSync Devices using that protocol.
ActiveSync Necessary Claims	means the claims of a patent or patent application that an entity owns or has the right to sublicense without a fee and that are necessarily infringed by implementing the ActiveSync Protocol in

accordance with the relevant technical documentation in order to interoperate with ActiveSync Devices. ActiveSync Necessary Claims do not include any claims to any underlying or enabling technology that may be used or made available in connection with the ActiveSync Protocol or an ActiveSync Implementation, or to any implementation of technical documentation, specifications or technologies that are merely referred to in the body of the relevant technical documentation.

ActiveSync Royalty Periods

means periods of twelve consecutive calendar months commencing on the Commencement Date, except that the last royalty period shall end on the day upon the last of the ActiveSync Necessary Claims expires.

Material Discrepancy

means:

- a. with respect to fees in respect of ActiveSync Mailboxes, the greater of 5% or \$10,000 when compared to the amount that was reported during the period subject to audit; and/or
- b. with respect to other terms of this Schedule or the Terms of Service, material non-compliance with any other material terms.

Schedule 3: Cloud Service Level Agreement

During the Term of the applicable Atmail Cloud Email Service Agreement (the “Agreement”), the web user interface for the Service will be operational and available to Customer at least 99.9% of the time in any calendar month (the “Atmail Cloud Email Service SLA”). If Atmail does not meet the Atmail Cloud Email Service SLA, and Customer has complied with its obligations under the Agreement, Customer will be eligible to receive the Service Credits set out below. This Attachment A sets out Customer’s sole and exclusive remedy for any failure by Atmail to meet the Atmail Cloud Email Service SLA.

Service Credits available in respect of a calendar month are determined by the Monthly Uptime Percentage in accordance with the following table:

Monthly Availability Percentage	Days of Service Added to the End of the Service Term
More than 99.9%	0
99.0 to 99.9%	3
95.0 to 99.0%	7
Less than 95%	15

Definitions

The following definitions shall apply to the Atmail cloud email service SLA.

- **Downtime** means if the Service is not available for the whole of a given minute, that minute is a minute of Downtime. Downtime does not include any period in which: (i) Atmail was unable to perform its obligations under this Agreement as a result of factors outside the reasonable control of Atmail within the meaning of section 9.9 of the body of the Agreement; or (ii) Customer’s equipment or third-party equipment contributed to the lack of availability of the Service.
- **Covered Services** means the Atmail Calendar, Atmail SMTP, Atmail POP3/IMAP, Storage, Push and Webmail components of the Service. This does not include the external third-party provided functionality, such as but not limited to: real-time-blacklists (RBL), domain name service based block lists (DNSBL), anti-spam components of the Service or any component specifically excluded in the documentation for the Service.
- **Monthly Uptime Percentage** for a calendar month means total number of minutes in that calendar month minus the number of minutes of Downtime suffered in that calendar month, divided by the number of minutes in that calendar month.
- **Scheduled Maintenance** means advertised downtime accumulating to a maximum of two (2) hours per month.
- **Support Level** means Corporate Support included as per Support Program.

Claiming a Service Credit

If Customer is eligible to claim a Service Credit with respect to a particular calendar month, Customer must notify Atmail in writing within thirty (30) days from the end of that calendar month. If Customer fails to notify Atmail within the allotted timeframe, Customer will receive no Service Credit for that particular month, regardless of the figure determined by the table above.

Maximum Service Credit

The aggregate maximum number of Service Credits to be issued by Atmail to Customer for all Downtime that occurs in a single calendar month shall not exceed fifteen (15) days of Service added to the end of Customer's term for the Service (or the value of 15 days of service in the form of a monetary credit to a monthly billing on Customer's account). Service Credits may not be exchanged for, or converted to, monetary amounts except as provided for herein.

Schedule 4: Support Services

During the term of the agreement Atmail will provide the Customer with support services according to the support package purchased by the Customer. Target response times are defined by the support package in schedule 1 above. Target resolution times are shown below but are guidelines for informational purposes and not guaranteed service levels. Atmail will provide technical support via online support tickets in the first instance. Technical support includes remote troubleshooting capabilities, installation and upgrade assistance and basic usability assistance. Remote troubleshooting capabilities may be delivered via telephone and secure online software at Atmail's discretion. Atmail will periodically release maintenance versions of the software it provides to add functionality and address issues and problems. These versions will be made available to Customers who are licenced to use the same base version as the maintenance release during the term of the agreement.

For example, a Customer licenced to use Atmail 7.3 will be entitled to access, install and use the maintenance release Atmail 7.4 during the term of the agreement.

Business Hours Support

Some support functions are limited to business hours. Business hours are defined as 8am to 6pm Australian time (AEST), business days.

Atmail may act on support requests outside of these hours at its discretion.

Severity Definitions

Atmail will prioritise and respond to support requests in accordance with the severity of the incident and the response times specified in the support agreement, or if no specific agreement is in place, the response times indicated in Schedule 1 above.

The incident or problem severity are generally defined by the extent of the Customers impacted and significance of the incident.

	Users impacted:	Most	Some	One
Incident Urgency				
High (i.e. Outage or partial outage)		Severity 1	Severity 2	Severity 3
Normal (i.e. Service still functions but not optimally)		Severity 2	Severity 3	Severity 4
Low (i.e. minor look and feel issues, request for advice)		Severity 3	Severity 4	Severity 4

Some specific urgency examples are given here to aid in interpreting this document.

Urgency Level	Example
High	<ul style="list-style-type: none"> • A complete service outage; • Problems with a high visibility to Customer's Users, having a major impact on the delivery of services, such as page serving unavailable to ALL Customer's Users for 15 consecutive minutes or more. • Results are materially and adversely different from those described in the product definition, documentation and specifications and affect a majority of Customers.
Normal	<ul style="list-style-type: none"> • A problem exists which can be circumvented or does not affect normal operations but is detectable by Customer's Users, such as in the case of whole or part of a default or selectable module being unavailable; • Results are materially different from those described in the product definition, documentation and specifications; • A significant degradation of the Service occurs.
Low	<ul style="list-style-type: none"> • A problem with no visibility to Customer's Users; • An isolated problem resulting from end-user misconfiguration; • A problem resulting from issues with the end-user's connective services; • General Usage Questions; • Notifications; • Feedback

All support requests will be assessed by Atmail Support to determine its severity and impact. Atmail shall determine at its sole discretion and in good faith, the severity, priority and appropriate response to a service request.

Support Process

In all instances the Customer should take all reasonable steps to resolve the issue before contacting Atmail.

Unless otherwise specified, on premises Customers are expected to have access to their own professional and competent IT staff or contractors who can investigate, diagnose and resolve most platform and application issues. Atmail reserve the right to withdraw support services from Customers who Atmail considers are using the service in manner contrary to the spirit of the service.

When a problem or incident is not able to be rectified by the Customer, the Customer should log a support request through the Atmail support portal. Where this is not possible Customers may log support requests via email. For Platinum Support Customers a phone number will be provided for severity 1 incidents.

NOTE: Self Help Customers are only entitled to request administrative support in accordance with Schedule 1 above.

When a support ticket is submitted the client will receive an initial response via email to confirm that the issue has been received and assigned to a support specialist.

Atmail will work with the Customer and provide progress updates, as appropriate according to the severity of the issue, until the issue is resolved.

At Atmail's sole discretion, Atmail may offer to access the Customers system remotely to investigate, diagnose a problem or incident with a view to offering rectification advice. The Customer must agree to this in writing on each separate occasion that remote access is considered appropriate.