

Last updated 06 May 2020

Mail Manager Software Licence and Services Agreement

This Software Licence and Services Agreement (“**Agreement**”) is a legal agreement between you (“**you**”) and MailManager Limited (“**Mail Manager**”, “**we**” or “**us**”), whose registered office is at 13 Fitzroy Street, London, W1T 4BQ, United Kingdom, for the licensed use of the Mail Manager computer software (“**Software**”) and the associated materials made available on our website to explain the functionality and how the Software should be used (“**Documentation**”).

BY [CLICKING THE ACCEPT BUTTON] OR ORDERING OR DOWNLOADING THE SOFTWARE FROM OUR WEBSITE YOU AGREE TO THE TERMS OF THIS AGREEMENT, WHICH WILL BIND YOU AND YOUR EMPLOYEES AND REPRESENTATIVES. THIS AGREEMENT INCLUDES LIMITATIONS ON OUR LIABILITY IN CLAUSE 10. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, WE WILL NOT AGREE TO LICENCE THE SOFTWARE AND DOCUMENTATION TO YOU AND YOU MUST DISCONTINUE ANY ORDERING OR DOWNLOADING PROCESS THAT YOU HAVE INITIATED.

OUR PRIVACY POLICY (<https://www.mailmanager.com/privacy/>) EXPLAINS HOW WE USE PERSONAL DATA PROVIDED THROUGH OUR WEBSITE OR TO PROVIDE THE SOFTWARE OR SERVICES.

1. FREE TRIAL

- 1.1. If we offer and you accept a free trial of the Software, we will licence the Software to you subject to the terms of this Agreement on a trial basis and without charge until the earlier of the end of the free trial period or you ordering a paid version of the Software.
- 1.2. We may notify you of additional terms and conditions applicable to a free trial and you accept such terms and conditions shall be legally binding.
- 1.3. You agree and acknowledge that during a free trial the Software is licensed “as-is” and without any warranty and we may at our sole discretion terminate a free trial at any time.

2. LICENCE

- 2.1. Subject to the terms of this Agreement and payment of all agreed licence fees (“**Licence Fee(s)**”), we grant you a non-exclusive and non-transferable licence to download, install and use the Software solely for your internal business purposes.
- 2.2. You acknowledge that the Software includes some “**Third Party Components**” that are licensed under “open source” or “free software” licenses as defined by the Open Source Initiative (<http://opensource.org>) or the Free Software Foundation (<http://www.fsf.org>) (collectively “**FOSS Licences**”). You may review a list of the Third Party Components and associated FOSS Licences on our website or using the about function in the Software. To the extent stated in any applicable FOSS Licence, the terms of such licenses will apply in lieu of the licence terms of this Agreement. To the extent the terms of any FOSS License prohibit any of the restrictions in this Agreement with respect to such Third Party Components, such restrictions will not apply to such Third Party Components.
- 2.3. If you have purchased a “**Fixed Licence**” you must not use the Software on more than the total number of central processing units (“**CPU(s)**”) agreed between you and us as part of your order and each activated CPU will be treated as a licence session against your total number of approved licence sessions.
- 2.4. If you have purchased a “**Network Licence**” you may only permit use of the Software by the total number of concurrent users agreed between you and us as part of your order and each concurrent user of the Software will be treated as a licence session against your total number of approved licence sessions. You may only enable multiple users to share the Software via remote access or computer virtualisation applications if the number of sessions at any one time is equal to or less than the total number of your approved licence sessions.
- 2.5. The Software may be licenced on a **Perpetual** or a **Subscription** basis and the term of your licence will be as agreed between you and us during your order. If your license is a Subscription it may be on:
 - (a) a monthly basis, in which case your Subscription commences on the date of your order and continues for that calendar month and for each successive calendar month thereafter unless and until terminated in accordance with Clause 9; or
 - (b) an annual basis, in which case your Subscription commences on the date of your order and continues for 12 calendar months and for each successive 12 calendar month period thereafter unless and until terminated in accordance with Clause 9; or
 - (c) a 36 month basis, in which case your Subscription commences on the date of your order and continues for 36 calendar months and for each successive 36 calendar month period thereafter unless and until terminated in accordance with Clause 9.

- 2.6. You must only use the Documentation to support your use of the Software and make such copies of the Documentation as is reasonably required for this purpose. You must only use the Software in accordance with the Documentation.
- 2.7. We may make available to you from time to time free fixes and patches correcting errors in the Software. All free fixes and patches when delivered and installed, shall become part of the Software and shall be subject to this Agreement.

3. INTELLECTUAL PROPERTY RIGHTS

- 3.1. We are licensing the Software and Documentation to you in accordance with this Agreement. We do not sell the Software or Documentation to you and we remain the owners of the Software and Documentation at all times. You acknowledge that the copyright, patents, trademarks and all other intellectual property rights in the Software and Documentation are owned by us and remain our property or the property of our suppliers. We will have and retain all ownership rights in all work developed or created by us during the performance of any Fast-Track Services.
- 3.2. You shall not obtain any rights in the Software other than those expressly granted in this Agreement. We will own any suggestions, enhancement requests, recommendations or other feedback provided by you relating to the Software or Fast-Track Services.

4. RESTRICTIONS ON USE AND YOUR OBLIGATIONS

- 4.1. Except as expressly permitted by this Agreement or authorised in writing by a director of Mail Manager, you shall not, nor permit others to:
 - (a) use, copy, modify, create derivative works from or distribute the Software, any part of it, or any copy, adaptation, transcription, or merged portion of it, except to the extent that the foregoing acts are permitted by law;
 - (b) decode, reverse engineer, disassemble, decompile or otherwise translate or convert the Software or any part of it, except to the extent that the foregoing acts are permitted by law;
 - (c) exploit or sell the Software commercially;
 - (d) use the Software in any country that is not stated in the billing address submitted by you to us at the time of purchase;
 - (e) make alterations to or modifications to the Software or incorporate the Software into programs not provided by us;
 - (f) transfer, loan, lease, assign, charge, rent, or otherwise sub-license the Software or this Agreement;
 - (g) use the Software in any manner that infringes our intellectual property or other rights or those of any other party;
 - (h) remove or alter any copyright, proprietary or similar notices from the Software (or any copies of it); or
 - (i) operate the Software or any part of it for the benefit of or on behalf of any third party, including by way of application service provider services, internet service provider services, timesharing arrangements, outsourcing services or bureau services.
- 4.2. You undertake to
 - a) maintain hardware and software that meets the minimum system requirements stated in the Documentation;
 - b) supervise and control use of the Software and ensure that the Software is used by your employees and representatives in accordance with the terms of this Agreement;
 - c) use the Software in accordance with all applicable laws and regulations, including but not limited to applicable technology control or export laws and regulations; and
 - d) keep the Software secure and maintain accurate and up to date records of the number and locations of all copies of the Software.

5. SOFTWARE WARRANTIES

- 5.1. We warrant that the Software will perform substantially in accordance with the “**Specification**” found at <https://www.mailmanager.com/terms/specification/> for a period of 90 days from the installation of the Software (“**Warranty Period**”). If, within the Warranty Period, you notify us in writing of any defect or fault in the Software as a result of which it fails to perform substantially in accordance with the Specification, we will, at our sole option and as your sole and exclusive remedy, either repair or replace the Software, provided that you make available all the information that may be necessary to help us to remedy the defect or fault, including sufficient information to enable us to recreate the defect or fault. This warranty does not apply to any defect or fault in the Software caused by any third party software or resulting from use of the Software in breach of the terms of this Agreement.
- 5.2. We do not warrant that:
 - (a) the operation of the Software will be uninterrupted or error-free; or
 - (b) the Software will meet your particular requirements, whether or not those requirements have been made known to us.

- 5.3. You acknowledge that you have an option to obtain information and test the Software's suitability prior to purchase and it is your responsibility to confirm before purchase that the Software is suitable for your purposes.

6. FAST-TRACK SERVICES

- 6.1 We provide "**Fast-Track Services**" as a pre-paid package and as described in the specification sheet found at <https://www.mailmanager.com/support/fast-track/>. If you purchase Fast-Track Services the start, duration and charges for the services will be as agreed between you and us as part of your order. We warrant that we will perform the Fast-Track Services with reasonable skill and care and in accordance with good industry practice. As your sole and exclusive remedy and our entire liability for any breach of this warranty, we will re-perform the Fast-Track Services or, if we are unable to do so, refund the fees paid for the affected Fast-Track Services.

7. SUPPORT

- 7.1. The following support terms only apply when purchasing Software direct from us. If you purchase the Software through a reseller, then any support services will be provided by the reseller and subject to the reseller's terms and conditions.
- 7.2. In this Agreement "**Support**" means the following:
- (a) the provision of new versions or releases of the Software containing an enhancement or improved functionality as determined by us. All new versions and updates, when delivered and installed, shall become part of the Software and shall be subject to this Agreement.
 - (b) technical advice on the use of the current and immediately preceding release of the Software, delivered by such means as we deem appropriate at the time. This may include but is not restricted to, telephone, email and Internet based communication. In order to provide a flexible service, we reserve the right to change our Support delivery methods without notice. In respect of such Support:
 - i. we shall endeavour to respond to your query within one working day; however, in giving a response, it may not be possible to provide a solution to the problem; and
 - ii. if an issue cannot be resolved by first line support it will be escalated to second line support. We will use reasonable endeavours to keep your Contact informed of progress throughout this process. If second line support cannot resolve the issue then it will be passed to our development staff. When a problem is considered business critical, we will use reasonable endeavours to issue an emergency patch to resolve the problem.
- 7.3. If you have a Subscription package we will provide you with Support for the duration of your Subscription provided you are current on all Licence Fee payments. If you have a Perpetual package we will provide you with Support for a period of 1 year or 3 years (in each case the "Perpetual Support Period") as agreed during your order. If you have a Perpetual package you may request an extension to the Perpetual Support Period which we may agree to provide subject to your payment of additional Support fees. On-site installation or on-site support shall be subject to additional fees.
- 7.4. You shall nominate one or two persons to be the point of contact (the "**Contact**") for any Support requested. Support will only be provided to the Contact and you must ensure that the Contact is a competent and knowledgeable user of the Software.
- 7.5. In providing Support you agree to provide information regarding the query including, but not limited to, description of symptoms and software logs, without charge.
- 7.6. When appropriate, we may ask to securely connect to your computer systems. Such access will be under your supervision and you may terminate the session at any time. You are responsible for undertaking regular updates and back-ups of all your data, including before the provision of any Support or remote access.
- 7.7. We may elect to discontinue Support at any time upon written notice to you and the provision of a pro-rata refund of any unused Support fee.
- 7.8. We are not obliged to provide Support in respect of the following:
- (a) malfunction or defect of hardware or operating system software;
 - (b) negligence by you;
 - (c) your not maintaining a system meeting the minimum system requirements identified in the Documentation;
 - (d) a point of Contact is deemed by us to be insufficiently competent with the Software for the issue to be tackled effectively; or
 - (e) where the problem is caused by any third-party software or applications.

8. PAYMENT

- 8.1. The following payment terms only apply when purchasing Software direct from us. Purchases via a reseller or any entity other than us will be subject to that entity's payment terms and conditions.
- 8.2. The Licence Fees and any fees for Support, Fast-Track Services, travel and expenses are as agreed between you and us during as part of your order. All Licences Fees are based on license sessions purchased and not actual usage and payment obligations are non-cancellable and fees non-refundable. All sums payable under this Agreement are exclusive of VAT or any relevant local sales taxes, for which you shall be responsible. Payment obligations are non-cancellable and, except as expressly provided in this Agreement, upon payment all payments made by Customer are non-refundable.
- 8.3. Payments due for (i) the Licence Fee for a Perpetual Licence, (ii) the Licence Fee for a Subscription package on an annual or 36 month basis, (iii) an extension of a Perpetual Support Period, (iv) the provision of Fast-Track Services, (v) travel and expenses; will be made in full by valid credit card at the time of placing the order or by invoice in accordance with Clause 8.5.
- 8.4. The Licence Fee for a Subscription package on a monthly basis is due in accordance with the billing periods agreed between you and us as part of the order and you must provide valid payment details to be debited in accordance with the billing amounts and periods at the time of placing the order. Payment methods are:
- (a) a valid credit card – first payment taken at time of placing the order and then recurring in accordance with the billing period agreed; or
 - (b) automatic payment from a bank account (UK only) – at the time of placing the order you will complete a continuous direct debit mandate authority. We will invoice you at the agreed billing periods for Licence Fees and take this amount from your nominated bank account via direct debit on the date agreed in the direct debit documentation.
- 8.5. Payment by Invoice:
- (a) Payment by invoice of any amount owed by you to us pursuant to this Agreement shall be made within thirty (30) days following invoice from us. In the event any overdue amount owed by you is not paid following ten (10) days' notice from us, then you shall pay in addition a late payment charge at the rate of 3% per month on any overdue amount.
 - (b) Invoices are produced electronically and will be sent by email. We do not provide printed invoices.
- 8.6. If you wish to purchase additional licences the following shall apply:
- (a) Licences for a Subscription package: we shall pro-rata these to the term of your existing Subscription and you shall pay any change in Subscription Licence Fees in accordance with Clause 8.3 or 8.4 (as applicable).
 - (b) Perpetual licences: we will advise you of the cost to purchase the licences and any additional cost to align all Perpetual licences to a single renewal date for your Support period and you shall pay such charges in accordance with Clause 8.3.
 - (c) All licences will be issued with the same Licence key identifier unless :
 - i. you have a mixture of supported and unsupported licences.
 - ii. you have a mixture of licence types.
- 8.7. You shall permit us to inspect and have access to any premises (and to the computer equipment located there) at or on which the Software is being kept or used, and have access to any records kept in connection with this Agreement, for the purposes of ensuring that you are complying with the terms of this Agreement, provided that we give reasonable advance notice to you of such inspections, which shall take place at reasonable times.
- 8.8. We reserve the right to change prices at any time for a new perpetual licences or maintenance renewals.
- 8.9. We reserve the right to increase the price of subscription services within the period of an existing contract.

9. TERMINATION

- 9.1 The Agreement will commence on the date agreed between you and us as part of your order. Except as otherwise agreed in writing during an order, a Subscription licence will automatically renew for additional periods equal to the current term, unless either party gives the other written notice of non-renewal at least 14 days before the end of the then current term. We will provide you with written notice of any alternative pricing applicable to a renewal term at least 30 days before the end of the current term and such alternative pricing will then apply to the renewal term unless you give notice of non-renewal in accordance with this clause.
- 9.2 Each of us may terminate the Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period; (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.

- 9.3 On expiry or termination of this Agreement, you shall cease all use of the Software and shall promptly return or, at our option, destroy all copies of the Software (including any Documentation) in your possession or control.
- 9.4 All terms which by their nature should survive termination or expiry of this Agreement, including but not limited to clauses 3, 4, 10, 11, 18 and 20, shall survive.

10. LIABILITY

- 10.1. We shall not be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connect with this Agreement for any of the following types of loss or damage even if we have been advised of the possibility of such loss or damage:
- (a) indirect or consequential loss;
 - (b) loss of profits, revenue, contracts or anticipated savings;
 - (c) loss arising out of any delay or loss of time; or
 - (d) loss or damage arising from loss, damage or corruption of any data.
- 10.2. We shall not be liable for any defect or loss to the extent it results from:
- (a) use of the Software otherwise than in accordance with its Documentation and this Agreement;
 - (b) any modification of the Software not carried out or authorised in writing by us;
 - (c) failure of electric power or environmental control systems; or
 - (d) failure of hardware, software or other products or services not supplied by us or any other matter beyond our reasonable control.
- 10.3. Without prejudice to Clause 10.1 and 10.2, our total liability under or in connection with this Agreement whether in contract, tort (including negligence) or otherwise, shall be limited to 100% of the Licence Fee paid over the prior 12 months in respect of the Software giving rise to the liability.
- 10.4. Nothing in this Agreement shall limit or exclude either party's liability for death or personal injury caused by negligence, fraudulent misrepresentation or anything else which cannot be excluded or limited at law.
- 10.5. Except as expressly provided herein, all other conditions, warranties or other terms which might have effect between the parties or be implied or incorporated into this agreement or any collateral contract, whether by statute, common law or otherwise, are hereby excluded, including the implied conditions, warranties or other terms as to satisfactory quality, fitness for purpose and the use of reasonable skill and care.

11. CONFIDENTIALITY

Each party undertakes that it will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law, or any legal or regulatory authority, any confidential information concerning the business or affairs of the other party which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

12. FORCE MAJEURE

Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the reasonable control of the affected party.

13. NO WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of the party under this Agreement.

14. SEVERABILITY

If it is held under any enactment or rule of law that any provision of this Agreement is determined to be illegal, void or otherwise ineffective in whole or in part then all other parts and the other terms and conditions of this Agreement shall continue in full force and effect as if the ineffective part were excluded.

15. PUBLICITY

We may, without your prior written consent show on our website and in customer presentations that we are providing software or services to you. We may not without your prior written consent use your name in any paid advertising.

16. ENTIRE AGREEMENT

- 16.1. This Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements oral or written save any expressly agreed terms that have been signed by an authorised representative of both parties.
- 16.2. We may revise the terms and conditions of this Agreement if required by a change in applicable law or regulation. Continued use of the Software after any such changes shall constitute your consent to such changes. You can review the most current version of the terms and conditions of the Agreement at any time at: <https://www.mailmanager.com/terms>

17. VARIATION

- 17.1. A purported variation of this Agreement is not effective unless in writing signed by an authorised senior representation of both parties.
- 17.2. You can not reduce the number of licences within the term of the contract.

18. NOTICES

- 18.1. Any notice or consent required or given under this Agreement shall be in writing, in English, either personally delivered or sent by email, or by first class post, and sent to the registered address of the receiving party or such other address as such party may from time to time designate by notice to the other party.
- 18.2. Communications shall be deemed to have been received as follows:
 - (a) (if sent by post) three business days after posting;
 - (b) (if delivered by hand) on the day of delivery, if delivered at least two hours before the close of normal business hours on a business day, and otherwise on the next business day;
 - (c) (if sent by email) upon receipt of an acknowledgement email confirming the receipt of the email message, if received at least two hours before the close of business hours on a business day, and otherwise on the next business day. An automatic reply shall not be deemed as the acknowledgement of an email message

19. THIRD PARTY RIGHTS

The parties do not intend that any term of this Agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Agreement.

20. LAW

- 20.1. This Agreement shall be governed by and construed in accordance with English law.
- 20.2. The English courts shall have exclusive jurisdiction to determine any disputes which may arise out of, under, or in connection with this Agreement.