

## End User License Agreement

Welcome to ChiaraMail. By downloading the Envelope-Content Splitting (ECS) Extension software accompanying this end user license agreement (this "Agreement") and provided by ChiaraMail Corporation and/or its affiliates (collectively, "ChiaraMail") and installing and/or using such software, local computer files installed or utilized by the installer application and any application program interfaces, license keys, and patches, updates, upgrades, improvements, enhancements, fixes and revised versions of any of the foregoing that may be and/or accessing the content server, or any copies of the foregoing made by you (the foregoing is collectively, referred to as the "ChiaraMail Software"), the content included therein and the Documentation (defined below), you agree to the terms and provisions of this Agreement.

The individual ("you") clicking on the "I Agree" button below, or running, installing, downloading or otherwise using the ChiaraMail Software and Documentation, agrees to be bound by the terms of this Agreement. If you disagree with any of the terms below, ChiaraMail does not grant you a license to use the ChiaraMail Software and asks that you not download the ChiaraMail Software.

BY CLICKING YOUR ACCEPTANCE OF THIS AGREEMENT OR BY INSTALLING OR USING THE CHIARAMAIL SOFTWARE, YOU ACKNOWLEDGE THAT YOU HAVE READ ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM.

ChiaraMail reserves the right to update and change, from time to time, this Agreement and all documents incorporated by reference. You can always find the most recent version of this Agreement [here](#). ChiaraMail may change this Agreement by posting a new version and notifying you. Your use of the ChiaraMail Software after such change means that you have read, understand and accept such changes.

### 1. Licensed Uses and Restrictions.

By accepting the terms of this Agreement, you represent to ChiaraMail that you are at least 18 years old. The ChiaraMail Software, the contents included therein and any ChiaraMail published documentation and user manual accompanying delivery of the ChiaraMail Software ("Documentation") are owned by ChiaraMail, or ChiaraMail's licensors and content and data providers ("ChiaraMail Licensors"). In consideration of your agreement to abide by this Agreement, ChiaraMail grants to you a worldwide (except as limited below), non-exclusive, non-transferable, non sub-licenseable license to install and run the ChiaraMail Software, in object code format only, on a non-commercial basis during the Term (defined below) on the terms and conditions set forth herein. This Agreement defines legal use of the ChiaraMail Software, including all updates, revisions, substitutions and copies thereof. All rights not expressly granted to you are reserved by ChiaraMail or their respective owners. Except as expressly set forth herein: no right or license is granted hereunder, express or implied or by way of estoppel, to any intellectual property rights and your acceptance of this Agreement and use of the ChiaraMail Software does not convey or imply the right to use the ChiaraMail Software in combination with any other information or products. As between ChiaraMail and you, ChiaraMail retains all right, title and interest in and to the ChiaraMail Software, which right include, but are not limited to, patent, copyright, moral, trademark, trade secret and all other intellectual property rights.

a. You may install and personally use the ChiaraMail Software and any updates provided by ChiaraMail (in its sole discretion) in object code form on a personal computer owned or controlled by you and may use the ChiaraMail Software for your own noncommercial use or benefit. The Term of this Agreement shall commence on the date that you click "I Accept" or the date that you install the ChiaraMail Software, whichever occurs first, and automatically terminate on the date this Agreement is terminated by either party. You may terminate the Agreement by discontinuing use of the ChiaraMail Software and by destroying all your copies of the applicable ChiaraMail Software. To uninstall the ChiaraMail Software, please refer to the Documentation. Following your completion of the uninstall process, the ChiaraMail Software will be uninstalled and will no longer be visible when you restart your client. ChiaraMail may terminate Agreement at any time, effective immediately upon delivering written notice of publication to you or posting a written notice of termination on the ChiaraMail website located at

<http://www.chiaramail.com> (the "Site"). In addition to the foregoing, this Agreement shall terminate automatically if you violate any term of this Agreement.

b. YOU ACKNOWLEDGE THAT YOU ARE RECEIVING LICENSED RIGHTS ONLY. YOU MAY NOT:

- (i) copy the ChiaraMail Software, except for your own personal use.
- (ii) decompile, reverse engineer, disassemble, modify, rent, lease, loan, distribute, or create derivative works (as defined by the U.S. Copyright Act) or improvements (as defined by U.S. patent law) from the ChiaraMail Software or any copy or portion thereof.
- (iii) incorporate the ChiaraMail Software into any computer chip or the firmware of a computing device manufactured by or for you.
- (iv) use the ChiaraMail Software in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement.
- (v) use the ChiaraMail Software to operate nuclear facilities, life support, or other mission critical application where human life or property may be at stake. You understand that the ChiaraMail Software is not designed for such purposes and that its failure in such cases could lead to death, personal injury, or severe property or environmental damage for which ChiaraMail is not responsible.
- (vi) use or export the ChiaraMail Software in violation of applicable U.S. laws or regulations.
- (vii) sell, lease, loan, distribute, transfer, or sublicense the ChiaraMail Software or access thereto or derive income from the use or provision of the ChiaraMail Software, whether for direct commercial or monetary gain or otherwise, without ChiaraMail's prior, express, written permission.
- (viii) use the ChiaraMail Software to distribute unsolicited e-mail (spam).
- (ix) use the ChiaraMail Software to send e-mail using an e-mail address other than the one(s) for which you have registered using the ChiaraMail registration process.

## **2. Ownership and Relationship of Parties.**

The ChiaraMail Software is protected by copyrights, trademarks, service marks, international treaties, and/or other proprietary rights and laws of the U.S. and other countries. You agree to abide by all applicable proprietary rights laws and other laws, as well as any additional copyright notices or restrictions contained in this Agreement. ChiaraMail and the ChiaraMail Licensors own all rights, title, and interest in and to their applicable contributions to the ChiaraMail Software. This Agreement grants you no right, title, or interest in any intellectual property owned or licensed by ChiaraMail, including (but not limited to) the ChiaraMail Software and ChiaraMail trademarks, and creates no relationship between yourself and the ChiaraMail Licensors, or between you and ChiaraMail other than that of ChiaraMail to licensee.

## **3. Support and Software Updates.**

ChiaraMail may elect to provide you with customer support and/or software upgrades, enhancements, or modifications for the ChiaraMail Software (collectively, "Support"), in its sole discretion, and may terminate such Support at any time without notice to you. ChiaraMail may change, suspend, or discontinue any aspect of the ChiaraMail Software at any time, including the availability of any ChiaraMail Software feature, database, or content. ChiaraMail may also impose limits on certain features and services or restrict your access to parts or all of the ChiaraMail Software or the Site without notice or liability.

#### 4. Fees and Payments; Privacy Policy; Termination of Access.

ChiaraMail reserves the right to charge fees for future use of or access to the ChiaraMail Software or the ChiaraMail services and the Site (collectively, "ChiaraMail Software Services") in ChiaraMail's sole discretion. If ChiaraMail decides to charge for the ChiaraMail Software Services, will be notified of such change. ChiaraMail may (in its sole discretion) offer the ChiaraMail Software for sale or lease.

It is your sole responsibility to maintain a backup of all of that content. In particular, if you have leased space on the ChiaraMail content server and decide at some point to terminate that lease, any content occupying the leased space may be deleted from the content server. Our [Privacy Policy](#) the terms of which are incorporated herein, includes information regarding the transmission, storage, retention and sharing of information you provide in utilizing the ChiaraMail Software.

We reserve the right to terminate accounts where we have reason to believe the email address associated with the account has been terminated or is no longer in use, **including when service emails sent by ChiaraMail to the email address associated with the account bounce or are otherwise returned as undeliverable. You own the content of your emails and as part of the ChiaraMail Software Services we make efforts to preserve your access to that content. However, if your account is terminated for any reason, you may lose access to content you have sent or received using the ChiaraMail Software Services.** Where reasonably possible, we will attempt to give you reasonable advance notice prior to terminating your account.

#### 5. Disclaimer of Warranties by ChiaraMail.

USE OF THE CHIARAMAIL SOFTWARE, THE SITE AND/OR DATA ACCESSED THROUGH THE CHIARAMAIL SOFTWARE IS AT YOUR SOLE RISK. ANY MATERIAL OR SERVICE DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE CHIARAMAIL SOFTWARE IS DONE AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD AND/OR USE OF ANY SUCH MATERIAL OR SERVICE.

CHIARAMAIL, ITS OFFICERS, DIRECTORS, EMPLOYEES, CONTRACTORS, AGENTS, AFFILIATES, AND ASSIGNS (COLLECTIVELY, "CHIARAMAIL ENTITIES") AND CHIARAMAIL LICENSORS DO NOT REPRESENT THAT THE CHIARAMAIL SOFTWARE OR ANY DATA ACCESSED THEREFROM IS APPROPRIATE OR AVAILABLE FOR USE OUTSIDE THE UNITED STATES.

THE CHIARAMAIL ENTITIES AND CHIARAMAIL LICENSORS EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE CHIARAMAIL SOFTWARE, DOCUMENTATION AND ANY DATA ACCESSED THEREFROM, OR THE ACCURACY, TIMELINESS, COMPLETENESS, OR ADEQUACY OF THE CHIARAMAIL SOFTWARE, DOCUMENTATION AND ANY DATA ACCESSED THEREFROM, INCLUDING THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CHIARAMAIL IS PROVIDING THE CHIARAMAIL SOFTWARE TO YOU "AS IS".

THE CHIARAMAIL SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. CHIARAMAIL SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. IF THE CHIARAMAIL SOFTWARE OR ANY DATA ACCESSED THEREFROM PROVES DEFECTIVE, YOU (AND NOT THE CHIARAMAIL ENTITIES OR THE CHIARAMAIL LICENSORS) ASSUME THE ENTIRE COST OF ALL REPAIR OR INJURY OF ANY KIND, EVEN IF THE CHIARAMAIL ENTITIES OR CHIARAMAIL LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH A DEFECT OR DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW RESTRICTIONS ON IMPLIED WARRANTIES SO SOME OF THESE LIMITATIONS MAY NOT APPLY TO YOU.

#### **6. Limitation of Liability.**

THE CHIARAMAIL ENTITIES AND CHIARAMAIL LICENSORS WILL NOT BE LIABLE TO YOU FOR CLAIMS AND LIABILITIES OF ANY KIND ARISING OUT OF OR IN ANY WAY RELATED TO THE USE OF THE CHIARAMAIL SOFTWARE BY YOURSELF OR BY THIRD PARTIES, TO THE USE OR NON-USE OF ANY BROKERAGE FIRM OR DEALER, OR TO THE SALE OR PURCHASE OF ANY SECURITY, WHETHER SUCH CLAIMS AND LIABILITIES ARE BASED ON ANY LEGAL OR EQUITABLE THEORY.

THE CHIARAMAIL ENTITIES AND CHIARAMAIL LICENSORS ARE NOT LIABLE TO YOU FOR ANY AND ALL DIRECT, INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR COST OF SUBSTITUTE GOODS OR SERVICES ARISING OUT OF OR RELATED TO ANY THIRD-PARTY SOFTWARE, ANY DATA ACCESSED THROUGH THE CHIARAMAIL SOFTWARE, YOUR USE OR INABILITY TO USE OR ACCESS THE CHIARAMAIL SOFTWARE, OR ANY DATA PROVIDED THROUGH THE CHIARAMAIL SOFTWARE, WHETHER SUCH DAMAGE CLAIMS ARE BROUGHT UNDER ANY THEORY OF LAW OR EQUITY. DAMAGES EXCLUDED BY THIS CLAUSE INCLUDE, WITHOUT LIMITATION, THOSE FOR LOSS OF BUSINESS PROFITS, INJURY TO PERSON OR PROPERTY, BUSINESS INTERRUPTION, LOSS OF BUSINESS OR PERSONAL INFORMATION. SOME JURISDICTIONS DO NOT ALLOW LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THIS RESTRICTION MAY NOT APPLY TO YOU.

CHIARAMAIL MAY CHANGE OR DISCONTINUE ANY ASPECT OR FEATURE OF THE CHIARAMAIL SOFTWARE OR THE USE OF ALL OR ANY FEATURES OR TECHNOLOGY IN THE CHIARAMAIL SOFTWARE AT ANY TIME WITHOUT PRIOR NOTICE TO YOU, INCLUDING, BUT NOT LIMITED TO, CONTENT, HOURS OF AVAILABILITY.

#### **7. Indemnification.**

You agree to indemnify and hold the ChiaraMail Entities harmless from any claim or demand, including reasonable attorneys' fees, made by any third party in connection with or arising out of your use of the ChiaraMail Software, your violation of any terms or conditions of this Agreement, your violation of applicable laws, or your violation of any rights of another person or entity.

#### **8. Government End Users.**

If the ChiaraMail Software and Documentation are supplied to or purchased by or on behalf of the United States Government, then the ChiaraMail Software is deemed to be "commercial software" as that term is used in the Federal Acquisition Regulation system. Rights of the United States shall not exceed the minimum rights set forth in FAR 52.227-19 for "restricted computer software." All other terms and conditions of this Agreement apply.

#### **9. Controlling Law.**

This Agreement and the relationship between you and ChiaraMail is governed by the laws of the State of California without regard to its conflict of law provisions. You and ChiaraMail agree to submit to the personal and exclusive jurisdiction of the courts located within the county of Contra Costa, California. The United Nations Convention on the International Sale of Goods does not apply to this Agreement.

#### **10. No General Waiver; Severability.**

The failure of ChiaraMail to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of this Agreement is found by a court of

competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of this Agreement remain in full force and effect.

#### **11. Complete Agreement.**

This Agreement constitutes the entire understanding between the parties respecting use of the ChiaraMail Software, superseding all prior agreements between you and ChiaraMail. You may not assign or otherwise transfer this Agreement without ChiaraMail's prior written consent. ChiaraMail may assign this Agreement to any person or entity upon notice to you. This Agreement shall be binding upon and inure to the benefit of the parties' successors and permitted assigns. Except as explicitly stated otherwise or required by law, you shall provide any notices to ChiaraMail by commercial courier service or by certified mail, postage prepaid and return receipt requested, to ChiaraMail Corp., 62 Lenox Road, Kensington, CA 94707, and notices shall be deemed delivered when received. ChiaraMail shall provide notices to you at the email address that you provide to ChiaraMail, and such notice shall be deemed delivered 24 hours after the email is sent, unless ChiaraMail receives notice that the address is invalid or the email has otherwise failed to reach the destination email address within such period, in which case ChiaraMail shall use commercially reasonable efforts to send you notice by mail.

#### **12. Surviving Provisions.**

Sections 1.b, 2, and 4 through 12, will survive any termination of this Agreement.