



Terms of Service

End User Agreement

Version: 2.0

Parties

This agreement governs the use of the Atmail webmail software platform, website and associated applications (**Software**) and is entered into between Atmail Pty Ltd ACN 088 876 733 (**Atmail**) and any person accessing and using the Software (**User**). By clicking 'I Agree' on this agreement or by using or continuing to use the Software the User accepts that this agreement applies to their use of the Software at all times.

Operative Provisions

1 Definitions and interpretation

1.1 Definitions

In this agreement, the following definitions will apply:

Account	means the account set up in the name of the User used to access the Software.
Atmail Content	means: <ol style="list-style-type: none">the Software;any data which provides descriptive, technical, statistical and other metadata type, non-Personal Information regarding the use of the Accounts; andany other software, information or materials in any form, developed, created or provided by Atmail or its Personnel in the course of providing the Software (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.

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.
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 control of Atmail and which causes a delay or failure in the provision of the Software, including but not limited to: <ul style="list-style-type: none">a. Software downtime due to maintenance or unexpected hardware, server or software issues or security breach;b. any act, delay or omission of the User or their agents or other third party which adversely affects Atmail's capacity to provide the Software;c. unavailability of, or unsuitability of personnel, facilities, materials or third-party software or services required for the Software;d. 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.
Intellectual Property Rights	means: <ul style="list-style-type: none">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; andb. 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.
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.

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.
Privacy Policy	means Atmail's privacy policy as amended from time to time, accessible via the Atmail Website.
Relevant Jurisdiction	means each jurisdiction which has a relevant connection between the User, Atmail and/or the provision of the Software, including but not limited, to Queensland, Australia.
Software	means the Atmail webmail software platform, website and associated applications.
Third Party Content	means any content provided by an entity or person other than Atmail which is accessible to the User via the Software or Account.
User Content	means any content in any form (including but not limited to, pictures, videos, written word and audio files) which the User (as the case may be) submits, posts, uploads, publishes, transmits, stores or otherwise handles in connection with the Software, or as a result of the Software being provided, and includes all Intellectual Property Rights therein.

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. 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 Availability of Software

2.1 The User acknowledges that:

- a. The User must create an Account to access the Software;
- b. Atmail is not responsible for verifying the underlying accuracy, truthfulness or completeness of any information provided by the User;
- c. Atmail's obligation to comply with all laws applicable to Atmail and the Software overrides Atmail's obligations to the User;
- d. User Content and other data generated in connection with the Software and Account will be collected and handled by Atmail in accordance with the Data Processing Policy and the Privacy Policy;
- e. 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;
- f. The compatibility of the Software and the specifications required to access the Software with certain devices may vary over time; and
- g. Atmail may, but is not obliged to, monitor the use of the Software by the User to assess compliance with this agreement;
- h. Atmail may remove User Content that violates this agreement, but is under no obligation to do so;
- i. With respect to Third Party Content:
 - i. Atmail is not responsible for any Third Party Content;
 - ii. The User accesses, uses and relies on any Third Party Content at its own risk;
 - iii. Third Party Content may be provided subject to terms and conditions set by that third party which the User is responsible for familiarising themselves with;
 - iv. Atmail does not endorse, control, sponsor or approve of any Third Party Content and does not warrant or represent that any Third Party Content is accurate, complete, reliable, safe to access or otherwise complies with this agreement.

3 User Obligations

3.1 The User must:

- a. comply with this agreement at all times;
- b. use the Software only for the purpose intended by Atmail;
- c. promptly provide Atmail with any information requested, where such request is made in connection with the provision of the Software;
- d. not use the Software or Account:

- v. to infringe or authorise the infringement of any Intellectual Property Rights or other rights of a third party;
 - vi. to store or distribute any illegal, or illegally obtained content;
 - vii. to circumvent any technological protection measure or to store or distribute any content which has been obtained via circumvention of any technological protection measure;
 - viii. in a manner which is contrary to Law;
 - ix. to gain access to any material without the permission of any relevant persons where such permission is required by Law;
 - x. to conduct illegal transactions;
 - xi. to circulate content that can damage, disrupt or compromise Atmail's hardware or that of any third party;
 - xii. 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;
 - xiii. to store or disseminate any material in breach of any Laws relating to censorship, email distribution or content regulation;
 - xiv. to create or distribute any spam or unsolicited commercial message or engage in any other unlawful marketing scheme;
 - xv. to produce an electronic address list using address harvesting software;
 - xvi. to acquire, supply or otherwise use an electronic address list which has been produced using address harvesting software;
 - xvii. in a manner intended or likely to create an unusual workload on any of the equipment used by Atmail in the course of providing the Software; or
 - xviii. in a manner which could adversely affect the provision of the Software or Atmail's ability to provide similar software or services to others in the course of its business;
- e. 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.

- f. 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;
- g. accept sole responsibility for the User Content;
- h. not upload or circulate via the Account any User Content which contains viruses, spyware or other harmful content;
- i. comply with the terms of the Data Processing Policy;
- j. ensure that any commercial electronic messages sent via the Account includes information about the individual or organisation who authorised the sending of the message;
- k. ensure that commercial electronic messages contain an easy to utilise, functional feature that allows recipients to unsubscribe from receiving similar messages in the future;
- l. keep secret each username and password used to access an Account;
- m. promptly advise Atmail of any unauthorised use of an Account;
- n. not allow use of an Account by a third party;
- o. not sell, transfer or otherwise assign the Account to a third party without Atmail's consent;
- p. assume full responsibility for any use of an Account by a third party;
- q. take all reasonable steps to ensure that all information provided to Atmail is true, accurate, complete, up to date and is not misleading;
- r. not deliberately withhold information relevant to the Software or this agreement, from Atmail;
- s. 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 User as necessary for Atmail to access and administer the Software if required;
- t. use the Software in accordance with Law;
- u. not use the Software with unsupported equipment, software, configurations or other conflicting services;
- v. 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 Software;
- w. 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;

- x. accept sole responsibility for any Loss arising from the User accessing, using or relying on any Third Party Content;
- y. not do anything which could interfere with or otherwise impair the regular functioning and performance of Atmail's business and the Software; and
- z. inform Atmail of any defects in the Software that are found by the User including but not limited to, exploitable or potentially exploitable security vulnerabilities.

4 Intellectual Property Rights

- 4.1 Subject to the terms of this agreement, Atmail agrees to provide to the User a limited, non-transferable, non-exclusive, revocable license to use the Software, via the Account, for the purposes contemplated by this agreement.
- 4.2 The User must not sub-licence its right to use the Software.
- 4.3 The User may install and operate one unique instance of the Software per Account.
- 4.4 Aside from the licence granted in clause 4.1, this agreement does not grant the User any other rights in the Software.
- 4.5 If, at any time the User is in breach of this agreement or where Atmail is otherwise permitted to do so by this agreement, Atmail may revoke, restrict or suspend the licence granted in clause 4.1 with or without notice to the User.
- 4.6 All right, title and interest in the Atmail Content is owned and retained by, and vests on creation in, Atmail.
- 4.7 The User 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 for the ongoing provision and improvement of the Software, for Atmail's research and data collection purposes and for monitoring compliance with this agreement. The User agrees not to enforce any moral rights in and to the User Content when used by Atmail under this clause.
- 4.8 The User warrants that it has all the rights, title and authority required to grant Atmail the licence in clause 4.7.

5 Suspension and Termination

- 5.1 Atmail may refuse, restrict, suspend or cancel an Account and access to the Software at its discretion, including, but not limited to, where:
 - a. a Delay Event occurs;
 - b. the User does not agree to, or fails to comply with this agreement or otherwise uses the Software in a manner which Atmail believes is inappropriate or unlawful.
- 5.2 Atmail will not be liable to a User for any Loss arising in connection with the suspension or termination of an Account.
- 5.3 The User may cease using the Software at any time by deleting or deactivating the Account.
- 5.4 Atmail may, but is not obliged to, retain back up copies of User Content after deactivation or deletion of an Account. The User is responsible for retaining their own copies of any User Content outside of the Software.

6 Disclaimer

- 6.1 To the maximum extent permitted by law, Atmail:
 - a. does not provide any guarantee or warranty or make any representation with respect to the Software except as expressly set out in this agreement;
 - b. disclaims, and the User 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 Software and the Account.
- 6.2 Where Atmail's liability under this agreement cannot be fully disclaimed, Atmail's liability for any loss or damage the User suffers as a result of the Software (howsoever caused, including by Atmail's negligence), is capped at the total amount paid by the User to Atmail in the 12 months prior to the Claim arising.
- 6.3 The cap in clause 6.2 applies to any single or cumulative claims by the User, and the User agrees that Atmail may plead this limitation of liability in defence to any claims the User may bring against Atmail for any such loss or damage.
- 6.4 This agreement does not purport to limit any non-waivable rights that the User may be entitled to by law.
- 6.5 Where permitted by law, Atmail limits its maximum liability, at Atmail's option, to the supply of the goods or services (as relevant) again or the payment of the cost of having the goods or services supplied again. This limitation only applies to guarantees under the *Competition and Consumer Act 2010* (Cth) of Australia.

7 Indemnities

- 7.1 The User 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 User;
 - b. unlawful act or omission of the User;
 - c. User Content; and
 - d. use of the Atmail Content by the User other than in accordance with this agreement.

8 Variations

- 8.1 The terms of this agreement may be varied by Atmail from time to time. The User is responsible for ensuring they review any changes to this agreement as they will apply to the User's continued use of the Software.

9 Contacting Atmail

- 9.1 If the User has any queries or complaints regarding the Software or this agreement, the User should contact Atmail directly via support@atmail.com.
- 9.2 The User agrees to allow Atmail up to 14 days to respond to a query or complaint prior to taking any other steps.

10 General

10.1 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.

10.2 Entire agreement

To the extent permitted by law, this agreement (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).

10.3 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.

10.4 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.

10.5 Survival

Clauses 1, 4.7, 6, 7 and 10 survive termination of this agreement.

10.6 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.

10.7 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.

10.8 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.

10.9 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.

10.10 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.

10.11 Assignment by the User

Unless expressly stated otherwise in this agreement, the User 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.

10.12 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 User hereby consents to Atmail transferring, disclosing or otherwise dealing with the User's Personal Information and User Content for the purpose of effecting the assignment, novation or other transfer of rights under this clause.

10.13 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.

10.14 Inconsistency

Where the Terms of Service - Provider apply to the User, the Terms of Service - Provider prevail to the extent of any inconsistency with this agreement.