

# MAIL HOSTING SERVICES PRODUCT TERMS

## 1. ADDITIONAL DEFINED TERMS

**"Effective Date"** means the date on which you have submitted a signed Agreement for Mail Services and we have received your payment for the first month's service.

**"Junk Mail"** means email that is captured by our mail filter and other email that is reported by you to Rackspace as undesirable.

**"Mail Service" or "Mail Services"** means the Rackspace Email, Email Plus, Microsoft Hosted Exchange, and/or other email service described in your Agreement, plus Support, as defined below. Mail Services does not include any mail applications that Rackspace licenses for use on a Hosted System.

**"Sensitive Data"** means any: (i) personally identifiable information or information that is referred to as personal data (including sensitive personal data), PII (or other like term) under applicable data protection or privacy law and includes information that by itself or combined with other information can be used to identify a person, (ii) trade secrets, (iii) financial records (iv) other sensitive, regulated, or confidential information.

**"Support"** means (i) management of the Mail Service by a customer care team that includes individuals trained in the system you select, and (ii) availability of support twenty-four (24) hours per day, seven days per week, year round.

## 2. MAIL HOSTING SERVICES

**2.1 Administration.** You are responsible for administering your Mail Service, including adding mailboxes, adding wireless or other service components, adding storage capacity, managing settings, and configuring spam filters unless Rackspace agrees in writing to administer such changes and features. If Rackspace agrees make changes to your Mail Service for you there may be a delay between the date upon which you request a change and the date upon which such change is applied. If Rackspace agrees to apply a custom transport rule to your Mail Service on your behalf you agree that you are responsible for the consequences of such custom transport rule.

**2.2 Service Level Agreement ("SLA").** Your Mail Service will be available 100% of the time in a given calendar month, excluding maintenance.

**2.2.1 Downtime.** Your Mail Service shall be deemed available for the purposes of this SLA unless you are unable to send or receive mail as a result of a failure of your Mail Service ("**Downtime**"). Downtime does not exist if you are unable to send or receive mail as a result of a failure outside of Rackspace's reasonable control, such as your connection to the Internet or your systems. Rackspace will perform maintenance on the Mail Services on a regularly scheduled basis within its published maintenance windows, which will be announced on our system status page (<http://status.apps.rackspace.com>). Rackspace may also perform unscheduled emergency maintenance if needed to address new security threats or other non-routine events. Delays that may occur while the Mail Service makes planned transitions between redundant system elements is considered maintenance. If Rackspace expects any maintenance to take more than 20 minutes, it will make reasonable efforts to post an announcement on the system status page at least 7 days in advance of the maintenance, but we do not guarantee such notice. Delivery delays are considered downtime while mail is not being processed.

**2.2.2 Credits.** If Rackspace fails to meet this SLA, you are eligible for a credit as follows:

- (i) if the Downtime continues for 5 consecutive hours or more, you may request a credit equal to the monthly recurring fee for the affected Mail Service (Rackspace Email, Microsoft Exchange, BlackBerry Enterprise Server or ActiveSync) multiplied by the percentage of your mailboxes affected (the "**Maximum Credit**"); or
- (ii) If the Downtime continues for less than 5 consecutive hours, then you may request a prorated portion of the Maximum Credit equal to the number of minutes of Downtime divided by 5 hours (300 minutes).

You are not entitled to a credit (i) if you are in breach of the Agreement (including your payment obligations to us) at the time of the occurrence of the event giving rise to the credit until you have cured the breach; (ii) if the event giving rise to the credit would not have occurred but for your breach of the Agreement; or (iii) for any Mail Services that are terminated or removed by you during an affected month.

You must request a credit through your control panel within 7 days following the end of the Downtime. Your request must describe the Downtime, including the specific Mail Service affected, the start and end time of the Downtime, a percentage or list of mailboxes affected, and specifically how your use of the Mail Service was adversely affected. Rackspace will apply any credit that is due against your next invoice for the Mail Services.

The maximum total credit(s) for failure to meet any applicable SLA for any calendar month shall not exceed 100% of the then current monthly recurring fee for the Mail Services.

### **3. LIMITATIONS ON MAIL SERVICES**

**3.1 Filtering.** Rackspace provides certain services designed to filter unwanted incoming email, such as spam, phishing scams, and email infected with viruses and designed to filter outgoing email, such as email containing certain Personal Data (the "**Filtering System**"). **You acknowledge that the technological limitations of such filtering services will likely result in the capture of some legitimate email, and the failure to capture some unwanted email, including email infected with viruses or containing Sensitive Data. Email that is quarantined by the Filtering System is excluded from the SLA.**

**3.2 Delivery Failures.** Rackspace will use commercially reasonable efforts to deliver your email messages. Third party filtering services may from time to time prevent successful delivery of your messages.

**3.3 You hereby release Rackspace and its employees, agents, suppliers, and affiliates from any liability or damages arising from the failure of the Filtering System to capture unwanted email or from the capture of legitimate email; or from a failure of your email to reach its intended recipient as a result of a filtering service used by the recipient or the recipient's email service provider.**

**3.4 Memory Limitations.** Mail that exceeds the storage limit when received may be permanently lost. You may adjust the storage capacity of your individual mailboxes via the control panel, and it is your obligation to monitor and adjust the storage capacity of individual mailboxes as needed. Enabling features of your Mail Services designed to prevent deletion of emails may cause you to consume increased storage capacity, may incur additional storage fees, and may fail if you do not have adequate storage capacity. An individual email message that exceeds the per-message size limit of 50MB (including attachments) may also be permanently lost.

**3.5 Exchange Backups.** Depending on the version of Exchange you are using, deleted items may be recoverable in certain circumstances; you should contact your Account Manager immediately if you believe you need to restore deleted items. Rackspace makes

no representation that it can recover deleted items. Data on backups may be retrieved only for a limited number of days, and backups may not contain a copy of every item that is sent, received or stored (see Section 5.3 *Records Retrieval*).

**3.6 Email Sending and Receiving Limits.** You acknowledge that the Mail Services are not designed for sending and receiving a high volume of email messages. Rackspace may limit the number of email messages that a customer may send and receive and the number of recipients per email message sent over a given time period, as determined by Rackspace in its reasonable discretion. Rackspace reserves the right to make changes to such limits at any time without prior notice to you. Attempts to circumvent these limits by using multiple accounts or by other means shall constitute a material breach of the Agreement.

**3.7 Unsolicited Mail.** You may not send email to anyone with whom you do not have a pre-existing relationship unless the recipient has published or otherwise provided his or her email address in a manner which implies consent to receive email.

**3.8 System Abuse.** You may not use the Mail Services in a way that creates technical disturbances for other Rackspace customers or for the Rackspace systems generally.

**3.8.1 No Shared Mailboxes.** Each mailbox may be used by one natural person at a time. Attempts to log into a single mailbox simultaneously from more than one computer are prohibited. You may not use automated tools such as “Fetchmail” or “Microsoft Exchange Connector” to virtualize one mailbox into multiple mailboxes.

**3.8.2 Automated Use.** Mailboxes are not designed for automated use, such as sending email from web servers, or receiving email from automated programs and such use is not Supported.

**4. CUSTOMER SECURITY OBLIGATIONS.** The Agreement requires you to use reasonable security precautions in light of your use of the Services. This includes using a desktop virus scanner and firewall on computers that are connected to the Internet, and encrypting any Sensitive Data transmitted to or from, or stored on, the Rackspace Services, servers, email boxes, or storage devices you use.

## **5. ADDITIONAL SERVICE TERMS.**

**5.1 Migration Services.** At your request, we will provide an advance estimate of fees based on the information you provide to us. You acknowledge that our fee will be calculated on the basis of the actual number of mailboxes and amount of data migrated and may exceed the estimate. You acknowledge that after we begin the migration services we may discover technical limitations related to the configuration of your data that prevent us from successfully completing the migration. We will not charge you a fee if we are unable to successfully migrate your data. You acknowledge that there is a **special risk** that data will be lost during a migration. You agree that you will create a reliable back up of all data to be migrated prior to the time that we begin the migration. You agree that we are not liable to you for damages resulting from the loss or corruption of your data as part of the migration.

**5.2 Domain Name Services.** If you register, renew or transfer a domain name through Rackspace, Rackspace will submit the request to its domain name services provider (the “**Registrar**”) on your behalf. Rackspace’s sole responsibility is to submit the request to the Registrar. Rackspace is not responsible for any errors, omissions or failures of the Registrar. Your use of domain name services is subject to the applicable legal terms of the Registrar posted on their website. You are responsible for closing any account with any prior reseller of or registrar for the requested domain name, and you are responsible for responding to any

inquiries sent to you by the Registrar. Rackspace may make changes to DNS zones and records on Rackspace operated DNS servers as we deem necessary.

**5.3 Records Retrieval.** For Rackspace Email, you will be able to recover deleted messages yourself via the webmail interface for up to 14 days from the day deleted. You will also be able to recover deleted mailboxes yourself via the administrative control panel for up to 14 days from the day deleted. For Microsoft Exchange 2016, 2013 and 2010 you will be able to recover deleted messages yourself via Outlook or Outlook Web App for up to 14 days from the day deleted. For Microsoft Exchange 2007, you will not be able to recover your deleted mail. You are responsible for retrieving or backing up any mail data prior to your termination of the Services or deletion of a mailbox.

**5.4 Archiving and Email Retention Services.** Archiving and email retention services will capture only the email that you send or receive after the date that the archiving or email retention services are implemented. Upon termination of your account for Mail Services, or your archiving or email retention service, **we will destroy your archived data** unless you have made other arrangements with us. In-Place Hold as a means to store mail from multiple users or entities is prohibited.

**5.5 Compliance.** Certain Rackspace Mail Services features are designed to help you comply with various legal and regulatory requirements that may be applicable to you. You are responsible for understanding the legal and regulatory requirements applicable to your business and for using the Services in a manner that complies with such requirements.

**5.6 Microsoft® software.** In addition to the terms of our Agreement, your use of any Microsoft® software is governed by: (i) Microsoft's license terms that appear at <http://www.rackspace.com/information/legal/microsoftlicenseclient.php>, for client or redistributable software, (ii) Microsoft's license terms at [www.rackspace.com/information/microsoftlicensemobility.php](http://www.rackspace.com/information/microsoftlicensemobility.php) for use of Microsoft software on the Rackspace Cloud under the license mobility program, and (iii) any use restrictions on your use of the Microsoft software as indicated in your Service Order/Services Description, such as a limitation on the number of users (a "SAL" license).

**5.7 Cloud Drive.** If you purchase Rackspace Email Plus, your subscription includes access to the Cloud Drive & Documents & Spreadsheets functionality (collectively "**Cloud Drive**"). To enable Cloud Drive file synchronization to your desktop, you will be required to download and install a local software agent which is subject to an additional End User License Agreement (the "**Cloud Drive EULA**"). Your right to use Cloud Drive is subject to, and contingent on your compliance with, the Cloud Drive EULA. Data selected for synchronization using the Cloud Drive agent will be mirrored to a datacenter operated by Rackspace (the "**Target Site**"). If you terminate the Services or remove the data from the local instance of Cloud Drive, the data will be removed from the Target Site. Rackspace may be unable to retrieve any data stored at the Target Site following termination of this Agreement, the Email Plus Services, or your removal of data from your local instance of Cloud Drive. Cloud Drive data mirrored to the Target Site will be encrypted by Rackspace at rest. Large datasets may not properly synchronize or mirror to the Target Site with Cloud Drive, and Rackspace may implement maximum sync size restrictions without prior notice as reasonably required to maintain the Cloud Drive functionality. Syncing will stop when your allocated storage limit has been reached. Your storage limit will be described in your Order, and new storage is not automatically provisioned when you reach your storage limit. Your storage limit includes your data as well as overhead space required for the Cloud Drive functionality (such as a trash folder and version history functionality). While you may use Cloud Drive as a backup service, you agree that you will maintain at least one additional current copy of the data stored in Cloud Drive other than at the Target Site, and understand that you are responsible for testing and monitoring the integrity of data stored at the Target

Site using Cloud Drive. We warrant that the Cloud Drive Services will conform to the documentation we provide either online or with the software. Your sole and exclusive remedy for our breach of this warranty will be a refund of the fees for the Email Plus Services for the billing period during which you notified us of your warranty claim.

**6. WIRELESS.** If you elect to use a BlackBerry™ wireless component of your Mail Service, your use of such wireless component shall be governed by the additional terms at <http://www.rackspace.com/information/legal/wirelessmsa.php> (the “**Wireless License Terms**”). You acknowledge that Rackspace does not have expertise or specialized training with respect to the wireless components, and agree that Rackspace's support obligation with respect to these components is limited to such efforts as may be reasonably expected of technicians having generalized knowledge and training in information technology systems. **The wireless components of the Mail Service contain "strong encryption" that is controlled for export by law.**

**7. TERM.** The initial term of the Mail Hosting Services begins on the Effective Date and continues for the period stated in the order. Upon expiration of the initial term the order will automatically renew for successive renewal terms of one month each unless and until one of us provides the other with 30 days advance written notice of non-renewal.

**8. TERMINATION FOR CONVENIENCE.** You may terminate the Mail Hosting Services for convenience at any time on 30 days advance written notice. Rackspace may terminate its provision of the Mail Hosting Services for convenience at any time on 120 days advance written notice. If you terminate for convenience, we will refund any amount you prepaid for any period extending past your committed term.

#### **9. FEES.**

**9.1** We may increase our fees for Mail Services at any time by posting the new fees in the control panel or providing notice to you via ticket. Fee increases will not be applied to your Mail Services purchased prior to the time of the fee increase until at least 45 days after the date the new fees are first published, but any new Mail Services you purchase after a fee increase will be charged at the new fees.

**9.2** Recurring fees will be billed in advance, either monthly, quarterly, or annually, as agreed. Non-recurring fees, such as migration services and records retrieval, will be billed monthly in arrears. Fee changes due to changes in the services (e.g. increase or decrease in number of mailboxes or amount of storage, addition or deletion of wireless service components) will be effective either: (i) as of the date of the change to the service, with a prorated amount due for any partial month, or (ii) as of the beginning of the next calendar month, at Rackspace's option.

**9.3** Fees are due within 30 days from the invoice date. If you have arranged for payment by credit card, Rackspace may charge your card on or after the invoice date. If your undisputed payment is 15 days or more late Rackspace may suspend the Services and any other services you receive from Rackspace on written notice. Rackspace shall undertake collection efforts prior to suspension. Invoices that are not disputed within 120 days of the invoice date are conclusively deemed accurate. Fees must be paid in the currency identified on the Service Order/Services Description. Rackspace may charge interest on overdue amounts at the greater of 1.5% per month or the maximum legal rate, and may charge you for any cost or expense arising out of our collection efforts.

**9.4 Taxes.** All amounts due to Rackspace under the Agreement are exclusive of any value added, goods and services, sales, use, property, excise and like taxes, import duties and/or applicable levies (collectively, “**Tax**”). You must pay Rackspace the Tax that is due or provide Rackspace with satisfactory evidence of your exemption from the Tax in advance of

invoicing. You must provide Rackspace with accurate and adequate documentation sufficient to permit Rackspace determine if any Tax is due. All payments to Rackspace shall be made without any withholding or deduction for any taxes except for withholding (or similar) taxes imposed on income that may be attributable to Rackspace in connection with its provision of the Services that you are legally required to withhold and remit to the applicable governmental or taxing authority (“**Local Withholding Taxes**”). You agree to timely provide Rackspace with accurate factual information and documentation of your payment of any such Local Withholding Taxes. Rackspace shall remit such cost to you in the form of a credit on your outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes.

## **10. ADDITIONAL SUSPENSION, TERMINATION AND INDEMNIFICATION GROUNDS**

We may suspend your Mail Services or terminate the Agreement immediately and without notice if: (i) we reasonably believe that your use your Mail Service is being used in violation of the Agreement; (ii) you don’t cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) your Mail Service email address or related IP addresses are blacklisted by any third party, or Rackspace is retaliated against as a result of your email, regardless of whether you are in breach of the AUP or other part of the Agreement, or are otherwise at fault; (iv) we receive excessive or repeated complaints from your email recipients, regardless of whether you are in breach of this AUP or are otherwise at fault; (v) there is an attack on your Mail Service or your Mail Service is accessed or manipulated by a third party without your consent, or there is another event for which we reasonably believe that the suspension of Mail Services is necessary to protect the Rackspace network or our other customers; or (vi) we are required by law, or a regulatory or government body to suspend your Mail Services. Complaints from email recipients and third party abuse agencies (e.g. SpamHaus or Spamcop) shall be deemed proof of the facts stated therein unless you provide compelling evidence to the contrary.

Your indemnity obligations under the Agreement shall, in addition to the other grounds stated, apply to any third party claim arising from your use of the Mail Service.

## **11. PRIVACY**

**11.1 Content/Message Routing Data.** Your email messages and other items sent or received via the Mail Service will include: (i) the content of the communication (“**content**”), and (ii) certain information that is created by the systems and networks that are used to create and transmit the message (the “**message routing data**”). The content includes things like the text of email messages and attached media files. The message routing data includes information such as server hostnames, IP addresses, timestamps, mail queue file identifiers, and spam filtering information, and is generally information that would not exist but for the fact that the communication was made via email.

**11.2 Content Privacy.** Our personnel will not view the content of your emails except as described in the Agreement. You agree that we may (i) view and use the message routing data for our general business purposes, including maintaining security and improving our services and (ii) disclose message routing data to third parties in aggregate statistical form, provided that we do not include information that identifies you.

### **11.3 Mailbox & Content Access.**

11.3.1 You agree that our personnel may log into your mailbox(es) for the following purposes:

- i. where you dispute our logs, to ascertain whether a message sent from external mail servers has reached your mailbox;
- ii. to troubleshoot issues, including mail send and receive errors;
- iii. to assist you in configuring your mailbox;

- iv. to attempt to perform restores where, for example, one or more messages or mailboxes have been deleted; and
- v. to help you set up mailbox folder permissions.

11.3.2 You agree that our personnel may view the content of your email and other items for the following purposes:

- i. where our personnel log into your mailbox(es) for the purposes stated in section 11.3.1, above;
- ii. as necessary to respond to your specific support request;
- iii. to ensure that backups are being performed properly;
- iv. as appropriate to the exercise of our rights to use and disclose Confidential Information as described in the Agreement; and
- v. for Junk Mail, to improve our email filter.

We may share the content of any Junk Mail with independent third party abuse agencies and trade groups for the purpose of assisting in industry initiatives to control undesirable email.

You acknowledge that Rackspace is required to establish an abuse@[yourdomain].com and postmaster@[yourdomain].com address for each of your domains. Rackspace personnel will review the content of all mail received at these addresses. You may configure your Mail Service such that mail is not received at these addresses but is instead forwarded to someone within your organization.

We will not employ technology to read your email messages in order to target, display or send marketing ads based on the content of those email messages.

**11.4 Usage Data.** We may collect and store information related to your use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. You agree that we may use this information for our general business purposes and may disclose the information to third parties in aggregate statistical form, provided that we do not include any information that identifies you.

**11.5 Changes to Privacy Terms.** We may change Subsection 11.3 (*Our Limited Right to View and Use Your Content*) under the same procedures described in the *Changes to the Acceptable Use Policy* section of the AUP.

**12. DNS RECORDS.** Upon expiration or termination of the Agreement, you must discontinue use of the Mail Services and point your DNS records away from Rackspace systems.

**13. RESALE.** You may not resell the Mail Services without Rackspace's prior written consent, and then subject to the Reseller Addendum at <http://www.rackspace.com/information/legal/reselleraddendum.php>.