



# MAIL HOSTING SERVICES PRODUCT TERMS

In addition to any other terms and conditions of Customer's Agreement with Rackspace, these Product Terms shall apply when Customer purchases Mail Hosting Services.

## 1. ADDITIONAL DEFINED TERMS.

**"Effective Date"** means the date on which Customer has submitted a signed Agreement for Mail Services and Rackspace has received Customer's payment for the first month's service.

**"Junk Mail"** means email that is captured by Rackspace's mail filter and other email that is reported by Customer 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 the 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 Customer selects, and (ii) availability of support 24 hours per day, seven days per week, year round.

## 2. MAIL HOSTING SERVICES.

**2.1. Administration:** Customer is responsible for administering the 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 the Mail Service for Customer there may be a delay between the date upon which Customer requests a change and the date upon which such change is applied. If Rackspace agrees to apply a custom transport rule to the Mail Service on Customer's behalf Customer agrees that Customer is responsible for the consequences of such custom transport rule.

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

**(A) Downtime.** The Mail Service shall be deemed available for the purposes of this SLA unless Customer is unable to send or receive mail as a result of a failure of the Mail Service ("**Downtime**"). Downtime does not exist if Customer is unable to send or receive mail as a result of a failure outside of Rackspace's reasonable control, such as Customer's connection to the Internet or Customer's systems. Rackspace shall perform maintenance on the Mail Services on a regularly scheduled basis within its published maintenance windows, which shall be announced on Rackspace's 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 shall make reasonable efforts to post an announcement on the system status page at least seven days in advance of the maintenance, but Rackspace does not guarantee such notice. Delivery delays are considered Downtime while mail is not being processed.

**(B) Credits.** If Rackspace fails to meet this SLA, Customer is eligible for a credit as follows:

**(i)** If the Downtime continues for five consecutive hours or more, Customer 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 Customer's mailboxes affected (the "**Maximum Credit**"); or

**(ii)** If the Downtime continues for less than five consecutive hours, then Customer may request a prorated portion of the Maximum Credit equal to the number of minutes of Downtime divided by five hours (300 minutes).

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

Customer shall request a credit through Customer's control panel within seven days following the end of the Downtime. Customer's request shall 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 Customer uses of the Mail Service was adversely affected. Rackspace shall apply any credit that is due against Customer's 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**"). **Customer acknowledges 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 shall use commercially reasonable efforts to deliver Customer's email messages. Third party filtering services may from time to time prevent successful delivery of Customer's messages.

**3.3. Customer hereby releases 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 Customer 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. Customer may adjust the storage capacity of Customer's individual mailboxes via the control panel, and it is Customer's obligation to monitor and adjust the storage capacity of individual mailboxes as needed. Enabling features of the Mail Services designed to prevent deletion of emails may cause Customer to consume increased storage capacity, may incur additional storage fees, and may fail if Customer does 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 Customer is using, deleted items may be recoverable in certain circumstances; Customer should contact Customer's Account Manager immediately if Customer believes deleted items need to be restored. 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).

**3.6. Email Sending and Receiving Limits.** Customer acknowledges 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 Customer. 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.** Customer may not send email to anyone with whom Customer does 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.** Customer may not use the Mail Services in a way that creates technical disturbances for other Rackspace customers or for the Rackspace systems generally.

**(A) 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. Customer may not use automated tools such as “Fetchmail” or “Microsoft Exchange Connector” to virtualize one mailbox into multiple mailboxes.

**(B) 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 Customer to use reasonable security precautions in light of Customer’s 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 Customer use.

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

**5.1. Migration Services.** At Customer’s request, Rackspace shall provide an advance estimate of fees based on the information Customer provides to us. Customer acknowledges that Rackspace’s fee shall be calculated on the basis of the actual number of mailboxes and amount of data migrated and may exceed the estimate. Customer acknowledges that after Rackspace begins the migration services Rackspace may discover technical limitations related to the configuration of Customer’s data that prevent us from successfully completing the migration. Rackspace shall not charge Customer a fee if Rackspace is unable to successfully migrate Customer’s data. Customer acknowledges that there is a **special risk** that data will be lost during a migration. Customer agrees that Customer shall create a reliable back up of all data to be migrated prior to the time that Rackspace begins the migration. Customer agrees that Rackspace is not liable to Customer for damages resulting from the loss or corruption of Customer’s data as part of the migration.

**5.2. Domain Name Services.** If Customer register, renew or transfer a domain name through Rackspace, Rackspace shall submit the request to its domain name services provider (the “**Registrar**”) on Customer’s 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. Customer’s use of domain name services is subject to the applicable legal terms of the Registrar posted on their website. Customer is responsible for closing any account with any prior reseller of or registrar for the requested domain name, and Customer is responsible for responding to any inquiries sent to Customer by the Registrar. Rackspace may make changes to DNS zones and records on Rackspace operated DNS servers as Rackspace deems necessary.

**5.3. Records Retrieval.** For Rackspace Email, Customer may recover deleted messages via the webmail interface for up to 14 days from the day deleted. Customer may also recover deleted mailboxes via the administrative control panel for up to 14 days from the day deleted. For Microsoft Exchange 2016, 2013 and

2010 Customer may recover deleted messages via Outlook or Outlook Web App for up to 14 days from the day deleted. For Microsoft Exchange 2007, Customer shall not be able to recover Customer's deleted mail. Customer is responsible for retrieving or backing up any mail data prior to Customer's termination of the Services or deletion of a mailbox.

**5.4. Archiving and Email Retention Services.** Archiving and email retention services shall capture only the email that Customer sends or receives after the date that the archiving or email retention services are implemented. Upon termination of Customer's account for Mail Services, or Customer's archiving or email retention service, **Rackspace shall destroy Customer's archived data** unless Customer has 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 Customer comply with various legal and regulatory requirements that may be applicable to Customer. Customer is responsible for understanding the legal and regulatory requirements applicable to Customer's business and for using the Services in a manner that complies with such requirements.

**5.6. Microsoft® Software.** In addition to the terms of Rackspace's Agreement, Customer's 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/microsoftlicensmobility.php](http://www.rackspace.com/information/microsoftlicensmobility.php) for use of Microsoft software on the Rackspace Cloud under the license mobility program, and (iii) any use restrictions on Customer's use of the Microsoft software as indicated in the Service Order/Services Description, such as a limitation on the number of users (a "SAL" license).

**5.7. Cloud Drive.** If Customer purchases Rackspace Email Plus, Customer's subscription includes access to the Cloud Drive & Documents & Spreadsheets functionality (collectively "**Cloud Drive**"). To enable Cloud Drive file synchronization to Customer's desktop, Customer shall be required to download and install a local software agent which is subject to an additional End User License Agreement (the "**Cloud Drive EULA**"). Customer's right to use Cloud Drive is subject to, and contingent on Customer's compliance with, the Cloud Drive EULA. Data selected for synchronization using the Cloud Drive agent shall be mirrored to a datacenter operated by Rackspace (the "**Target Site**"). If Customer terminates the Services or remove the data from the local instance of Cloud Drive, the data shall 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 Customer's removal of data from Customer's local instance of Cloud Drive. Cloud Drive data mirrored to the Target Site shall 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 Customer's allocated storage limit has been reached. Customer's storage limit shall be described in the Order, and new storage is not automatically provisioned when Customer reaches the storage limit. Customer's storage limit includes Customer's data as well as overhead space required for the Cloud Drive functionality (such as a trash folder and version history functionality). While Customer may use Cloud Drive as a backup service, Customer agrees that Customer shall maintain at least one additional current copy of the data stored in Cloud Drive other than at the Target Site, and understand that Customer is responsible for testing and monitoring the integrity of data stored at the Target Site using Cloud Drive. Rackspace warrant that the Cloud Drive Services shall conform to the documentation Rackspace provides either online or with the software. Customer's sole and exclusive remedy for Rackspace's breach of this warranty shall be a refund of the fees for the Email Plus Services for the billing period during which Customer notified us of the warranty claim.

**6. WIRELESS.** If Customer elects to use a BlackBerry™ wireless component of the Mail Service, Customer's 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"). Customer acknowledges that Rackspace does not have expertise or specialized training with respect to the wireless components, and agrees 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 shall 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.** Customer may terminate the Mail Hosting Services for convenience at any time on 30 days advance written notice. If Customer terminates for convenience, Rackspace shall refund any amount Customer prepaid for any period extending past Customer's committed term.

## **9. FEES.**

**9.1.** Rackspace may increase Rackspace's fees for Mail Services at any time by posting the new fees in the control panel or providing notice to Customer via ticket. Fee increases shall not be applied to Customer's 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 Customer purchases after a fee increase shall be charged at the new fees.

**9.2.** Recurring fees shall be billed in advance, either monthly, quarterly, or annually, as agreed. Non-recurring fees, such as migration services and records retrieval, shall 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) shall 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 Customer has arranged for payment by credit card, or direct debit or ACH, Rackspace may charge Customer's card or account on or after the invoice date. If Customer's undisputed payment is 15 days or more late Rackspace may suspend the Services and any other services Customer receives 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 shall 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 Customer for any cost or expense arising out of Rackspace's 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**"). Customer shall pay Rackspace the Tax that is due or provide Rackspace with satisfactory evidence of Customer's exemption from the Tax in advance of invoicing. Customer shall 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 Customer is legally required to withhold and remit to the applicable governmental or taxing authority ("**Local Withholding Taxes**"). Customer agrees to timely provide Rackspace with accurate factual information and documentation of Customer's payment of any such Local Withholding Taxes. Rackspace shall remit such cost to Customer in the form of a credit on Customer's outstanding account balance following receipt of sufficient evidence of payment of any such Local Withholding Taxes.

**10. ADDITIONAL SUSPENSION, TERMINATION AND INDEMNIFICATION GROUNDS.** Rackspace may suspend Customer's Mail Services or terminate the Agreement immediately and without notice if: (i) Rackspace reasonably believes that Customer's use of the Mail Service is being used in violation of the Agreement; (ii) Customer doesn't cooperate with Rackspace's reasonable investigation of any suspected violation of the Agreement; (iii) the Mail Service email address or related IP addresses are blacklisted by any third party, or Rackspace is retaliated against as a result of Customer's email, regardless of whether Customer is in breach of the AUP or other part of the Agreement, or are otherwise at fault; (iv) Rackspace receives excessive or repeated complaints from Customer's email recipients, regardless of whether Customer is in breach of this AUP or are otherwise at fault; (v) there is an attack on the Mail Service or the Mail Service is accessed or manipulated by a third party without Customer's consent, or there is another event for which Rackspace reasonably believes that the suspension of Mail Services

is necessary to protect the Rackspace network or Rackspace's other customers; or (vi) Rackspace is required by law, or a regulatory or government body to suspend the 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 Customer provide compelling evidence to the contrary. Customer's indemnity obligations under the Agreement shall, in addition to the other grounds stated, apply to any third party claim arising from Customer's use of the Mail Service.

## 11. PRIVACY.

**11.1. Content/Message Routing Data.** Customer email messages and other items sent or received via the Mail Service shall 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.** Rackspace's personnel shall not view the content of Customer's emails except as described in the Agreement. Customer agrees that Rackspace may (i) view and use the message routing data for Rackspace's general business purposes, including maintaining security and improving Rackspace's services and (ii) disclose message routing data to third parties in aggregate statistical form, provided that Rackspace does not include information that identifies Customer.

### 11.3. Mailbox & Content Access.

**(A)** Customer agrees that Rackspace's personnel may log into Customer's mailbox(es) for the following purposes:

- (i)** where Customer disputes Rackspace's logs, to ascertain whether a message sent from external mail servers has reached Customer's mailbox;
- (ii)** to troubleshoot issues, including mail send and receive errors;
- (iii)** to assist Customer in configuring the mailbox;
- (iv)** to attempt to perform restores where, for example, one or more messages or mailboxes have been deleted; and
- (v)** to help Customer set up mailbox folder permissions.

**(B)** Customer agrees that Rackspace's personnel may view the content of Customer's email and other items for the following purposes:

- (i)** where Rackspace's personnel log into Customer's mailbox(es) for the purposes stated in Section 11.3(A);
- (ii)** as necessary to respond to Customer's specific support request;
- (iii)** to ensure that backups are being performed properly;
- (iv)** as appropriate to the exercise of Rackspace's rights to use and disclose Confidential Information as described in the Agreement; and
- (v)** for Junk Mail, to improve Rackspace's email filter.

Rackspace 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.

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

Rackspace shall not employ technology to read Customer's email messages in order to target, display or send marketing ads based on the content of those email messages.

**11.4. Usage Data.** Rackspace may collect and store information related to Customer's use of the Services, such as use of SMTP, POP3, IMAP, and filtering choices and usage. Customer agrees that Rackspace may use this information for Rackspace's general business purposes and may disclose the information to third parties in aggregate statistical form, provided that Rackspace does not include any information that identifies Customer.

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

**12. DNS RECORDS.** Upon expiration or termination of the Agreement, Customer shall discontinue use of the Mail Services and point Customer's DNS records away from Rackspace systems.

**13. RESALE.** Customer 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>.