



MASSACHUSETTS MEDICAL SOCIETY

MassMed Email Service

Terms of Service and Acceptable Use Policy

July 1, 2018 Version

1. MassMed Email Service

- a. Your use of the MassMed Email Service (which explicitly does not include other services provided to you by the Massachusetts Medical Society) is subject to these Terms of Service ("Terms") between you and the Massachusetts Medical Society ("MMS"), whose principal place of business is at 860 Winter Street, Waltham MA, 02451.

2. Accepting the Terms

- a. In order to use the MassMed Email Service, you must agree to the Terms. You may not use the MassMed Email Services if you do not accept the Terms.
- b. You accept the Terms by using the MassMed Email Service. You understand and agree that MMS will treat your use of the MassMed Email Service as acceptance of the Terms from that point onward.
- c. Before you continue, you should print or save a copy of these Terms.

3. Provision of the MassMed Email Service by MMS

- a. You acknowledge and agree that MMS may disable and delete your account without prior notice to you at MMS's sole discretion.

Without limiting MMS's rights to disable or delete your account for any reason or no reason, MMS will automatically disable your account if you respond and provide your personal or login information to a "phishing" email, or allow malware or spyware onto the system. Upon your third infraction, MMS will delete your account.

- b. You acknowledge and agree that if MMS disables your account, you may be prevented from accessing the MassMed Email Service, your account details, or any files or other content which may be contained in your account.
- c. You acknowledge and agree that MMS limits your storage space for email to 2 Gigabytes.

4. Use of the MassMed Email Service by you

- a. In order to access the MassMed Email Service, you may be required to provide information about yourself (such as identification or contact details). You agree that any information you provide will be accurate, correct, and up to date.
- b. You agree to use the MassMed Email Service only for purposes permitted by the Terms and by any applicable, law, regulation or accepted practice or guideline in the relevant jurisdiction (including any laws regarding the export of data or software from and to the United States and other relevant countries).
- c. You agree that you will access the MassMed Email Service via devices, operating systems, software and applications that remain current with contemporary security requirements and that meet the minimum standards for maintaining the interface with MassMed Email Service. Neither MMS nor its email hosting provider shall be

responsible for your inability to access the Services if they are generally accessible on the web via an appropriate browser and operating system.

- d. You agree that you will not engage in any activity that interferes with or disrupts the MassMed Email Service (or the servers and networks which are connected to the MassMed Email Service)
 - e. You agree that you are solely responsible for (and that MMS has no responsibility to you or any third party for) any breach of your obligations under the Terms and for the consequences (including any loss which MMS may suffer) of any such breach.
- 5. Your passwords and account security**
- a. You agree and understand that you are responsible for maintaining the confidentiality of passwords associated with any account you use to access the MassMed Email Service.
 - b. Accordingly, you agree that you will be solely responsible to MMS for all activities that occur under your account.
 - c. If you become aware of any unauthorized use of your password or of your account, you agree to notify MMS promptly at 781-434-7321 or massmedsupport@mms.org.
 - d. For its part, MMS agrees to take reasonable care to maintain the security of your account. However, you acknowledge that the internet is inherently unstable and prone to security breaches, and that it is impossible to prevent all data theft. MMS is therefore not responsible for any unauthorized access to your account.
- 6. Privacy and your personal information**
- a. For information about MMS's data protection practices, please read our privacy policy found at www.massmed.org/privacy-policy/. This policy explains how MMS treats your personal information, and protects your privacy, when you use the MassMed Email Service.
 - b. You agree to the use of your data in accordance with the privacy policies of the MMS and our hosting provider, if any.
- 7. Content in the MassMed Email Service**
- a. You understand that all information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) which you may have access to through your use of the MassMed Email Service are the sole responsibility of the person or entity from which such content originated. All such information is referred to below as the "Content."
 - b. MMS reserves the right (but shall have no obligation) to pre-screen, review, flag, filter, modify, refuse or remove any or all Content. MMS may apply tools that filter out certain Content (e.g., a SPAM filter).
 - c. You understand that by using the MassMed Email Service, you may be exposed to Content that you may find offensive, indecent, or objectionable and that, in this respect, you use the MassMed Email Service at your own risk.
 - d. You agree that you are solely responsible for (and that MMS has no responsibility to you or any third party for) any Content that you receive, create, transmit or display while using the MassMed Email Service, and for the consequences of your actions (including any loss or damage which MMS may suffer) by doing so.
- 8. Proprietary rights**
- a. You acknowledge and agree that nothing in these Terms gives you a right to use any MMS trade name, trade mark, logo, service mark, domain name, or other distinctive brand features.
 - b. Other than the limited license set forth below, MMS acknowledges and agrees that it obtains no right, title or interest from you under these Terms, in or to any Content that

you submit, post, transmit or display on or through the MassMed Email Service, including any intellectual property rights which may exist in that Content. You agree that you are responsible for protecting and enforcing those rights, and that MMS has no obligation to do so on your behalf.

- c. You agree that you will not remove, obscure or alter any proprietary rights notices (including copyright and trademark notices) which may be affixed to or contained within the MassMed Email Service.
- d. You agree that, in using the MassMed Email Service, you will not use any trademark, service mark, trade name, or logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names, or logos.

9. Content license from you

- a. You retain copyright and any other rights you already hold in Content which you submit, post, or display on or through the MassMed Email Service. You license MMS to use Content you submit, post, or display on or through the MassMed Email Service, for the purpose of providing the MassMed Email Service.
- b. You understand that MMS, in performing the required technical steps to provide the MassMed Email Service to you, may (i) transmit or distribute your Content over various public networks and in various media; and (ii) make such changes to your Content as are necessary to conform and adapt that Content to the technical requirements of connecting networks, devices, services, or media. You agree that this license shall permit MMS to take these actions.
- c. You confirm and warrant that you have the rights, power, and authority necessary to grant the above license.

10. Ending your status as a MassMed Email Service User

- a. These Terms will continue to apply until terminated either by you or by MMS as set out below.
- b. If you want to terminate these Terms, you may do so by (a) notifying MMS at any time, and (b) closing your account for the MassMed Email Service, if such an option is available to you (otherwise, MMS will close your account upon receipt of your notification).
- c. MMS may terminate your status as a MassMed Email Service user at any time if:
 - i. You have breached any provision of these Terms (or have acted in a manner which clearly shows that you do not intend to, or are unable to, comply with the provisions of these Terms);
 - ii. MMS is required to do so by law;
 - iii. You are no longer a member of the MMS; or
 - iv. MMS chooses to do so.
- d. When these Terms come to an end, all of the legal rights, obligations and liabilities expressed herein shall terminate, except those which, by their nature, are designed to continue after the expiration.

11. EXCLUSION OF WARRANTIES

- a. YOU EXPRESSLY AGREE AND UNDERSTAND THAT YOUR USE OF THE MASSMED EMAIL SERVICE IS AT YOUR SOLE RISK AND THAT **THE MASSMED EMAIL SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE."**
- b. IN PARTICULAR, MMS DOES NOT WARRANT OR REPRESENT THAT:

- i. YOUR USE OF THE MASSMED EMAIL SERVICE WILL MEET YOUR REQUIREMENTS
 - ii. YOUR USE OF THE MASSMED EMAIL SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR; OR
 - iii. ANY INFORMATION OBTAINED BY YOU AS A RESULT OF YOUR USE OF THE MASSMED EMAIL SERVICE WILL BE ACCURATE OR RELIABLE
- c. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE MASSMED EMAIL SERVICE IS DONE AT YOUR OWN DISCRETION AND RISK; THE MMS IS NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE, OR ANY LOSS OF DATA, THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.
- d. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM MMS OR THROUGH OR FROM THE MASSMED EMAIL SERVICE SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THESE TERMS.
- e. MMS FURTHER EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

12. LIMITATION OF LIABILITY

- a. YOU EXPRESSLY UNDERSTAND AND AGREE THAT MMS SHALL NOT BE LIABLE TO YOU FOR:
 - i. ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES WHICH MAY BE INCURRED BY YOU.
 - ii. ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY YOU, INCLUDING BUT NOT LIMITED TO, LOSS OR DAMAGE AS A RESULT OF:
 - 1. ANY CHANGES WHICH MMS MAY MAKE TO THE MASSMED EMAIL SERVICE, OR FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE MASSMED EMAIL SERVICE OR ANY FEATURE(S) WITHIN THE MASSMED EMAIL SERVICE;
 - 2. THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH YOUR USE OF THE MASSMED EMAIL SERVICE;
 - 3. YOUR FAILURE TO PROVIDE MMS WITH ACCURATE ACCOUNT INFORMATION;
 - 4. YOUR FAILURE TO KEEP YOUR PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL.
- b. THE LIMITATIONS ON LIABILITY IN THIS PARAGRAPH 12 SHALL APPLY WHETHER OR NOT MMS HAS BEEN ADVISED OF, OR SHOULD HAVE BEEN AWARE OF, THE POSSIBILITY OF ANY SUCH LOSSES ARISING.

13. Copyright and trademark policies

- a. MMS responds to notices of intellectual property infringement and reserves the right to terminate the accounts of repeat infringers.

14. Changes to these Terms

You understand and agree that if you use the MassMed Email Service after the date on which the Terms have changed, MMS will treat your use as acceptance of the updated Terms.

15. General legal terms

- a. In using the MassMed Email Service, you might use a service, download a piece of software, or purchase goods which are provided by another person or company. Your use of these services, software, or goods may be subject to separate terms between you and the company or person concerned. If so, these Terms do not affect your legal relationship with these other companies or individuals.
- b. You agree that MMS may provide you with notices relating to the MassMed Email Service or these Terms by telephone, email, regular mail, fax, personal conversation, web site posting, or otherwise.
- c. You agree that MMS's failure at any point to exercise any of its rights under these Terms or at law does not constitute a waiver of that right.
- d. If any court of law rules that any provision of these Terms is invalid, then that provision will be removed from the Terms without affecting the rest of the terms.
- e. The Terms, and your relationship with MMS under the Terms will be governed by the law of the Commonwealth of Massachusetts without regard to its conflicts of laws provisions. You and MMS agree to submit to the jurisdiction of the courts located within the Commonwealth of Massachusetts to resolve any legal matter arising from the Terms or the MassMed Email Service.
- f. This Agreement is between you and MMS, and the benefits and obligations of this Agreement are not intended to inure to the benefit of any third party.

16. EMAIL SERVICE ADVISORIES

- a. As a courtesy, MMS may, from time to time, send announcements regarding your MassMed Email Service account and whether there might have been any recent phishing, spoofing, or other inappropriate activity with respect to your account. MMS explicitly disclaims any obligation to send such an announcement.
- b. **MassMed Email Service accounts are provided for personal use only. MassMed Email Service is not compliant with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and therefore should not be used to transmit or receive protected health information.**
- c. MMS cannot guarantee that any information passing over the internet or through MMS's systems will remain private or confidential. Therefore, you should not transmit confidential information through the MassMed Email Service.
- d. **MMS reserves the right to monitor email and other transmissions as necessary to provide the MassMed Email Service, and to protect MMS rights and property. MMS will not disclose any such information, other than: (A) to operate MMS's system, (B) pursuant to a court order, subpoena, or similar legal mandate, or (C) on the advice of counsel.**

- 17. Other Terms. Our email hosting provider also has terms of service that will apply to you. Please see APPENDIX A to these Terms for more information.

APPENDIX A to MassMed Email Terms of Service (Selected terms from the Acceptable Use Policy)

This Appendix describes terms of our email hosting provider that will be relevant to the users of the MassMed Email Service. It is current as of June, 2018. Updates to the underlying terms may occur, and MMS has no responsibility to inform you (the user) of those updates. This appendix provides links to the terms if you wish to review them yourself. You are solely responsible for being aware of any changes in the terms and complying with those changed terms as they apply to you. MMS takes no responsibility for informing you of changes, or facilitating your compliance with the terms.

Some of the Service Terms of our email hosting provider, Rackspace, will affect your experience of the MassMed Email Service. You may find those terms at <https://www.rackspace.com/information/legal/mailterms> and the Privacy Policy at <https://www.rackspace.com/information/legal/privacystatement>. In particular, MMS believes these provisions will be most relevant to your user experience:

1. **Maintenance Downtime.** Your access to the system will not be uninterrupted, as the system will be down for maintenance from time to time, within Rackspace's published maintenance windows, which will be announced on its 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. 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.
2. **Filtering.** Some emails you send or receive may be filtered as spam, viruses, or phishing attempts. Conversely, some spam, viruses, or phishing attempts may evade the hosting provider's filters. 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.
3. **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.
4. You hereby **release** MMS and Rackspace and their 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.
5. **Memory Limitations.** Mail that is too big, or would cause your mailbox to become too big, may be permanently lost without being delivered to your mailbox. Mail that exceeds the storage

limit when received may be permanently lost. An individual email message that exceeds the per-message size limit of 50MB (including attachments) may also be permanently lost.

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. Attempts to circumvent these limits by using multiple accounts or by other means shall constitute a material breach of the Agreement.
7. **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.
8. **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.
9. **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.
10. **YOUR 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.

Additionally, the Rackspace Acceptable Use Policy governs your use of the MassMed Email Service. That policy provides as follows:

Inquiries regarding this policy should be directed to abuse@rackspace.com.

Abuse

You may not use Rackspace's network or Services to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including:

- Any activity or conduct that is likely to be in breach of any applicable laws, codes or regulations, including data protection and privacy laws and laws relating to unsolicited commercial electronic messages;
- Use of an internet account or computer without the owner's authorization;
- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network;
- Monitoring data or traffic on any network or system without the express authorization of the owner of the system or network;

- Introducing intentionally, knowingly or recklessly, any virus or other contaminating code into the Services;
- Collecting or using information, including email addresses, screen names or other identifiers, by deceit, (such as, phishing, Internet scamming, password robbery, spidering, and harvesting);
- Use of any false, misleading, or deceptive TCP-IP packet header information in an email or a newsgroup posting;
- Distributing software that covertly gathers or transmits information about a user;
- Distributing advertisement delivery software unless: (i) the user affirmatively consents to the download and installation of such software based on a clear and conspicuous notice of the nature of the software, and (ii) the software is easily removable by use of standard tools for such purpose included on major operating systems (such as Microsoft's "add/remove" tool);
- Any conduct that is likely to result in retaliation against the Rackspace network or website, or Rackspace's employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS);
- Any activity intended to withhold or cloak identity or contact information, including the omission, deletion, forgery or misreporting of any transmission or identification information, such as return mailing and IP addresses;
- Interference with service to any user of the Rackspace or other network including, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks;
- Any action which directly or indirectly results in any of our IP space being listed on any abuse database (i.e. Spamhaus);
- Conducting any gambling activity in violation of any required licenses, codes of practice, or necessary technical standards required under the laws or regulations of any jurisdiction in which your site is hosted or accessed; or
- Any action that is otherwise illegal or solicits conduct that is illegal under laws applicable to you or to Rackspace.

Offensive Content

You may not publish, transmit or store on or via the Services any content or links to any content that Rackspace reasonably believes:

- Constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, non-consensual sex acts, or otherwise unlawfully exploits persons under 18 years of age;
- Publish, transmit or store any content or links to any content that is excessively violent, incites violence, threatens violence, contains harassing content or hate speech, creates

a risk to a person's safety or health, or public safety or health, compromises national security or interferes with an investigation by law enforcement;

- Is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes;
- Is defamatory or violates a person's privacy; or
- Is otherwise malicious, fraudulent, morally repugnant.

Live Events

You may not use your Rackspace services to stream live sex acts of any kind, even if the content would otherwise comply with the AUP.

No High Risk Use

You may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, you may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation or nuclear or chemical facilities.

These policies apply to messages sent using the Services, or to messages sent from any network by you or any person on your behalf that directly or indirectly refer the recipient to a site hosted via the Services. In addition, you may not use a third party e-mail service that does not practice similar procedures for all its customers. These requirements apply to distribution lists created by third parties to the same extent as if you created the list.

Newsgroup, Chat Forums, Other Networks

You must comply with the rules and conventions for postings to any bulletin board, chat group or other forum in which you participate, such as IRC and USENET groups including their rules for content and commercial postings. These groups usually prohibit the posting of off-topic commercial messages, or mass postings to multiple forums.

Export Control

The Services may not be used in violation of export laws, controls, regulations or sanction policies of the United States or your applicable jurisdiction. The Services may not be used by persons, organizations, companies or any such other legal entity or unincorporated body, including any affiliate or group company, which is involved with or suspected of involvement in activities or causes relating to: illegal gambling; terrorism; narcotics trafficking; arms trafficking or the proliferation, development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles; in each case including any affiliation with others whatsoever who sponsor or support the above such activities or causes.

Intellectual Property and Other Proprietary Rights

You may not use our Services in a manner that infringes on or misappropriates the rights of a third party in any work protected by copyright, trade or service mark, invention, or other intellectual property or proprietary information. For example:

- You may not use the Services to download, publish, torrent, distribute, use, or otherwise copy in any manner any text, music, software, art, image, or other work protected by copyright law unless you have permission from the owner of the work to use or copy the work in that manner, or you are otherwise permitted by established intellectual property law to copy or use the work or rights in that manner;
- You may not use the Services to publish content intended to assist others in defeating technical copyright protections; and
- You may not display another person's trademark without permission.

In addition, you may not use the Services to publish another person's trade secrets, or to publish information in violation of a duty of confidentiality. It is Rackspace's policy to terminate the services of customers who are repeat infringers in appropriate circumstances.

Cooperation with Investigations and Legal Proceedings

If we are legally required to permit any relevant authority to inspect your content, you agree we can do so.

We may, without notice to you, report to the appropriate authorities any conduct by you that we believe violates applicable law, and provide any information we have about you, or your users or your traffic and cooperate in response to a formal request from a law enforcement or regulatory agency investigating any such activity, or in response to a formal request in a civil action that on its face meets the requirements for such a request.

Changes to the AUP

The Internet is still evolving, and the ways in which the Internet may be abused are also still evolving. Therefore, we may from time to time amend this AUP to further detail or describe reasonable restrictions on your use of our Services by publishing a revised version of the AUP at <http://www.rackspace.com/information/legal/aup>.

Consequences of Violation of AUP

If you breach the AUP we may suspend or terminate your Services.