



## TERMS OF USE

**Overview:** Welcome to **MedMessage**! These Terms of Use (“Terms of Use”) and the **MedMessage** Regulations (as defined below) govern your massage therapy sessions (collectively “Sessions” and individually a “Session”) with **MedMessage** and your use of our service. As used in these Terms of Use, the following terms have the indicated meanings (respectively):

- a. “you,” “your” and “the Client” (and similar variations) each means you as a Client of **MedMessage** pursuant to these Terms of Use and the **MedMessage** Regulations;
  - b. “**MedMessage**” means **MedMessage, LLC**, an Ohio limited liability company d/b/a “**MedMessage**”, and “us” and “our” (and similar variations) each means **MedMessage**; and
  - c. “**MedMessage**” service, “**MedMessage** services,” “our service,” or “the service” (and similar variations) each collectively means the **MedMessage** online store and the services provided by **MedMessage** in or for your Sessions, each pursuant to and in accordance with these Terms of Use and the **MedMessage** Regulations.
1. **Acceptance of Terms of Use.** By using the **MedMessage** service or any part thereof, you accept, consent and agree to these Terms of Use and the **MedMessage** Regulations (as defined below) and thereby agree and covenant to **MedMessage** that you will fully perform and comply with your obligations in or under these Terms of Use and the **MedMessage** Regulations. If you do not agree to these Terms of Use, then do not use the **MedMessage** service. These Terms of Use include our policies and procedures for compliance with the Health Insurance Portability and Accountability Act (collectively, the “HIPAA Policy”), as discussed further below.
  2. **Changes to Terms of Use.** **MedMessage** may, from time to time, change these Terms of Use, including the HIPAA Policy. Such revisions shall be effective immediately; provided however, for existing members, such revision shall, unless otherwise stated, be effective 30 days after posting.
  3. **Privacy.** Personally identifying information is subject to our HIPAA Policy, the terms of which are incorporated herein. Please request a copy of our HIPAA Policy and review it to understand our practices regarding compliance with the Health Insurance Portability and Accountability Act.
  4. **Communication Preferences.** By using the **MedMessage** service, you consent to receiving electronic communications from **MedMessage** relating to your account. These communications may involve sending emails to your email address provided during registration, or posting communications on the **MedMessage** website and may include notices about your account (e.g., payment authorizations, change in password or Payment Method, confirmation e-mails and other transactional information) and are part of your relationship with **MedMessage** and these Terms of Use. You agree that any notice, agreements, disclosure or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. You should maintain copies of electronic communications by printing a paper copy or saving an electronic copy. You also hereby consent to receiving certain other communications from us, such as newsletters about new **MedMessage** features and content, special offers, promotional announcements and customer surveys via email or other methods. If you no longer want to receive certain non-transactional communications, please send an email or letter to **MedMessage** so stating.

## 5. Cancellation, Session Policies and Payment Policies

### a. Session Cancellation Policy:

**A SCHEDULED SESSION WILL BE CHARGED AGAINST YOU (WITHOUT REFUND) IF YOU CANCEL OR DO NOT ATTEND (COLLECTIVELY, A “CANCELLATION”) A SCHEDULED SESSION WITHOUT MEDMESSAGE’S RECEIPT FROM YOU, AT LEAST 12 HOUR PRIOR NOTICE BY EMAIL OR TEXT MESSAGE OF SUCH CANCELLATION** (collectively, “Session Cancellation Policy”). You must initial your attendance at a Session after each Session, on the **MedMessage** package log. Your initials after the first Session acknowledges your understanding of this policy.

### b. Session Policies:

#### Definitions of MedMessage Session length.

Half Session: Approximately thirty (30) minutes

Full Session: Approximately sixty (60) minutes

Max Session: Approximately ninety (90) minutes (Massage therapy sessions only)

- i. Your initial Session will require your filling out a Health History form that will be retained by **MedMessage**. Our HIPAA Policy form, detailing our obligation to maintaining your health confidentiality, will be given to you at this time. It is your responsibility to inform your therapist of any changes that occur in your health which may or affect the Session(s). Subject to the terms of our Session Cancellation Policy, upon your initial interview with the therapist, if the **MedMessage** therapist determines that massage therapy is contraindicated for you, a full refund will be credited to your credit card account for any charges by **MedMessage** for such Session.
- ii. Your purchase of a Session means you agree to follow these Terms of Use and **MedMessage**’s rules and regulations as then in effect and as amended from time to time, whether such rules and regulations are stated in these Terms of Use or in other separate documents that **MedMessage** may adopt or enact from time to time (collectively and as may be amended by **MedMessage** from time to time in **MedMessage**’s sole and exclusive discretion, the “**MedMessage** Regulations”). Your noncompliance with any of the **MedMessage** Regulations will result in **MedMessage** having the right and option to refuse service to you without any refund of amounts paid by you.
- iii. **MedMessage** reserves the right to amend and modify these Terms of Use, the **MedMessage** Regulations and/or **MedMessage**’s pricing, at any time upon providing reasonable notice thereof.
- iv. **MedMessage** is not responsible for any lost or stolen personal property.
- v. A \$50.00 service charge will be assessed for returned checks due to insufficient funds, closed accounts, or credit cards due to unavailable credit line, or similar circumstances.

- c. **Payment Policies.**
- i. **NO REFUNDS. ALL PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS.**
- ii. **Payment Methods.** If a payment from you is not successfully received, processed and credited to **MedMassage** (whether due to expiration, insufficient funds or otherwise), you remain responsible for any uncollected amounts.

6. **MedMassage Service**

- a. We reserve the right in our sole and absolute discretion to make changes from time to time and without notice in how we offer and operate our service.
- b. You agree to use the **MedMassage** service in accordance with all applicable laws, rules and regulations, including public performance limitations or other restrictions on use of the service or content therein.
- c. We may terminate or restrict your use of our service, without compensation or notice if you are, or if we suspect that you are: (i) in violation of any of these Terms of Use and/or the **MedMassage** Regulations and/or the **MedMassage** Agreement (as defined below), or (ii) engaged in illegal or improper use of the service.

7. **Disclaimers of Warranties and Limitations on Liability**

- a. **THE MEDMESSAGE SERVICE ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND.**
- b. **TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, IN NO EVENT SHALL MEDMESSAGE, OR ITS MEMBERS, EMPLOYEES OR AGENTS BE LIABLE (JOINTLY OR SEVERALLY) TO YOU FOR PERSONAL INJURY OR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER.**
- c. **TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, YOU REPRESENT AND WARRANT TO MEDMESSAGE THAT YOU UNDERSTAND AND FULLY APPRECIATE THE RISK OF INJURY INHERENT IN THE SESSIONS, ACUPUNCTURE, MASSAGE THERAPY AND THE MEDMESSAGE SERVICES. TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, IN CONSIDERATION OF MEDMESSAGE GRANTING THE SESSIONS AND THE MEDMESSAGE SERVICES TO YOU, AND FOR OTHER GOOD AND VALUABLE CONSIDERATION THE RECEIPT, SUFFICIENCY AND ADEQUACY WHEREOF BEING HEREBY ACKNOWLEDGED, YOU, FOR AND ON BEHALF OF YOURSELF AND YOUR EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS, DOHEREBY FULLY AND FOREVER SURRENDER, RELEASE, ACQUIT, DISCHARGE, WAIVE, HOLD HARMLESS AND INDEMNIFY MEDMESSAGE AND MEDMESSAGE’S MEMBERS, MANAGERS, EMPLOYEES, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS, FROM ANY AND ALL DAMAGES, CLAIMS, DEMANDS, INJURIES, LIABILITIES, LOSSES, ACTIONS, CAUSES OF ACTION, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEYS’ FEES) OF WHATSOEVER KIND AND/OR NATURE, AT LAW AND/OR IN EQUITY, WHETHER KNOWN OR UNKNOWN, RELATED TO AND/OR ARISING FROM, IN ANY MANNER: (1) ANY AND ALL TRANSACTIONS, INTERACTION, RELATIONSHIPS OR COURSE OF CONDUCT WITH MEDMESSAGE AND/OR MEDMESSAGE’S THERAPISTS, MEMBERS, MANAGERS, EMPLOYEES, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS; (2) ANY AND ALL OF THE ACTS AND/OR OMISSIONS OF MEDMESSAGE AND/OR MEDMESSAGE’S THERAPISTS, MEMBERS, MANAGERS, EMPLOYEES, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS; AND/OR (3) ANY LOST PROFITS, DOWN-TIME OF ANY FACILITY OR ANY**

**PORTION THEREOF, OR CONSEQUENTIAL DAMAGES OF ANY TYPE OR NATURE (HEREINAFTER THE FOREGOING SHALL BE COLLECTIVELY REFERRED TO HEREIN AS THE “WAIVER AND RELEASE”). TO THE EXTENT PERMISSIBLE UNDER APPLICABLE LAWS, YOU HEREBY REPRESENT AND WARRANT TO MEDMESSAGE THAT YOU ACKNOWLEDGE AND AGREE THAT THIS WAIVER AND RELEASE IS A SPECIFIC PRECONDITION TO YOUR RECEIPT OF THE MEDMESSAGE SERVICES; THAT YOU HAVE READ AND UNDERSTAND THIS WAIVER AND RELEASE; AND THAT YOU ACCEPT AND GRANT THIS WAIVER AND RELEASE TO MEDMESSAGE FULLY AND VOLUNTARILY ON BEHALF OF YOURSELF AND YOUR HEIRS, EXECUTORS, ADMINISTRATORS, LEGAL REPRESENTATIVES, AGENTS, SUCCESSORS AND ASSIGNS. IN THE EVENT THAT ANY OF THE TERMS OR PROVISIONS OF THIS WAIVER AND RELEASE SHALL, TO ANY EXTENT, BE FOUND BY A COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE, THEN THE REMAINING TERMS AND PROVISIONS OF THIS WAIVER AND RELEASE SHALL NOT BE AFFECTED THEREBY AND EACH TERM AND PROVISION OF THIS WAIVER AND RELEASE SHALL REMAIN AND BE VALID AND SHALL BE ENFORCED TO THE FULLEST EXTENT, OR TO THE FULLEST LESSER EXTENT, AS PERMITTED BY LAW.**

**d. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES. THEREFORE, SOME OF THE ABOVE LIMITATIONS IN THIS SECTION MAY NOT APPLY TO YOU.**

**e. NOTHING IN THESE TERMS OF USE SHALL AFFECT ANY NON-WAIVABLE STATUTORY RIGHTS THAT APPLY TO YOU.** If any provision or provisions of these Terms of Use shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full force and effect.

8. **Governing Law.** These Terms of Use and the **MedMessage** Agreement shall each be governed by and construed in accordance with the laws of the State of Ohio without regard to conflict of laws provisions. You may also be entitled to certain consumer protection rights under the laws of your local jurisdiction. The Uniform Electronic Transaction Act as then in effect in the State of Ohio (including, but not limited to, Ohio Revised Code Section 1306.01 through 1306.23, as amended), shall apply to these Terms of Use, the **MedMessage** Agreement and the MedMessage Regulations.
9. **Use of Information Submitted.** **MedMessage** is free to use any feedback, comments, endorsements, thank you’s, information, ideas, concepts, reviews, or techniques or any other material contained in any communication you may send to us (collectively, “Feedback”), without further compensation, acknowledgement, permission, consent or payment to you for any purpose whatsoever. In addition, you agree not to enforce any “moral rights” in and to the Feedback, to the extent permitted by applicable law. Should you send any unsolicited materials or ideas, you do so with the understanding that no additional consideration of any sort will be provided to you, and you are waiving any claim against **MedMessage** and its affiliates regarding the use of such materials and ideas, even if material or an idea is used that is substantially similar to the material or idea you sent.
10. **Entire Agreement.** These Terms of Use are hereby incorporated into each and every agreement between you and **MedMessage** for the purchase of any and all **MedMessage** services, as if these Terms of Use are reproduced therein in full, and hereinafter the MedMessage Regulations and these Terms of Use, shall be collectively referred to as the “**MedMessage** Agreement.” The **MedMessage** Agreement contains the entire understanding of you and **MedMessage** concerning the subject matter thereof, and there are no promises, agreements, conditions, understandings, warranties or representations (oral or written, express or implied)

regarding the subject matter of the **MedMessage** Agreement other than as set forth in the **MedMessage** Agreement. Any and all prior agreements with respect to the subject matter of the **MedMessage** Agreement are hereby revoked and forever terminated. **MedMessage** Agreement is, and is intended by you and **MedMessage** to be, an integration of any and all prior agreements or understandings (oral or written) with respect to the subject matter of the **MedMessage** Agreement, and the **MedMessage** Agreement shall not be amended or modified except upon the written agreement of **MedMessage**. The terms and provisions of the Agreement shall survive the delivery and/or completion of any and all MedMessage services. YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ THESE TERMS OF USE, UNDERSTAND THE **MEDMESSAGE** AGREEMENT, AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THE **MEDMESSAGE** AGREEMENT.

11. **Notices.** All notices required or permitted to be given under or pursuant to these Terms of Use and/or the **MedMessage** Regulations, shall be by email and shall be deemed to have been fully given upon date that the email is sent to the specified email address for the party. Notices to you shall be sent to the email address that you have provided to **MedMessage** . Notices to **MedMessage** shall be sent to: message@mmcleveand.com net. Any party may, by email to the other party, change the email address for notices to be sent to such party.
12. **Miscellaneous.** The failure of a party to insist, in any one or more instances, upon performance of any of its terms or conditions of the **MedMessage** Agreement, shall not be construed as a waiver or relinquishment of any rights granted hereunder or the future performance of any such term, covenant or condition. In the event that any of the terms or provisions of the **MedMessage** Agreement shall, to any extent, be found by a court of competent jurisdiction to be invalid or unenforceable, then the remaining terms and provisions of the **MedMessage** Agreement shall not be affected thereby, and each term and provision of the MedMessage Agreement shall remain and be valid and shall be enforced to the fullest extent, or to the fullest lesser extent, as permitted by law. Except as herein expressly provided, the rights and remedies provided herein shall be cumulative and the exercise thereof by **MedMessage** shall be without prejudice to the enforcement of any other right or remedy authorized by law, equity and/or the **MedMessage** Agreement, against you. The **MedMessage** Agreement shall be binding on and inure to the benefit of the parties to the **MedMessage** Agreement and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns. The use of any gender herein shall be deemed to be or include the other genders and the use of the singular shall be deemed to be or include the plural (and *vice versa*), whenever appropriate. From time to time, without any further consideration, each party shall execute and deliver to the other party such additional documents and/or instruments as may be reasonably necessary to consummate the transactions contemplated by the **MedMessage** Agreement.