

Terms of Service

The Receptionist Terms of Service

Updated: July 2016

BEFORE USING LOS TRIGOS, INC. DBA THE RECEPTIONIST'S SERVICE (AS DEFINED BELOW), PLEASE CAREFULLY READ THESE TERMS OF SERVICE ("TERMS"). BY USING THE SERVICE, YOU AGREE TO COMPLY WITH AND BE BOUND BY THESE TERMS.

AS USED HEREIN, "CUSTOMER" MEANS THE PARTY IDENTIFIED AS THE CUSTOMER OR CLIENT ON AN ACCOUNT REGISTRATION FORM OR ORDER FORM PURSUANT TO WHICH THE CUSTOMER RECEIVES ACCESS TO THE SERVICE (THE "ORDER"). THESE TERMS ARE INCORPORATED BY REFERENCE INTO EACH ORDER AND GOVERN CUSTOMER'S USE OF THE SERVICE.

THESE TERMS, TOGETHER WITH THE ORDER AND ANY EXHIBITS, ATTACHMENTS OR OTHER DOCUMENTS INCORPORATED HEREIN BY REFERENCE, CONSTITUTE A BINDING AND EXECUTED WRITTEN AGREEMENT BETWEEN CUSTOMER AND THE RECEPTIONIST ("AGREEMENT"). THE AGREEMENT IS EFFECTIVE UPON YOUR INITIAL ACCESS TO THE SERVICE.

1. The Service.

- 1. Access and Availability.** Subject to Customer's compliance with the Agreement (including payment of applicable fees due, in the case of paid features or services), The Receptionist grants Customer a limited, revocable, non-transferable, non-exclusive right for it and its authorized number of Users to access and use the Service from and at one physical address during the Subscription Term solely for Customer's internal business purposes (the "Subscription"). Customer's Subscription is not dependent on any future functionality or features (or any public comments or other disclosure made by The Receptionist with respect thereto). "Service" means the particular service features and offerings made available to Customer by The Receptionist based on the applicable subscription chosen by Customer (including in the case of free trials or "freemium" offerings), whether (i) online at <https://www.TheReceptionist.com> (or at such other designated URL as The Receptionist may assign from time-to-time), (ii) through software applications or (iii) through any other means made available by The Receptionist; including, in each case, all components thereof, on an individual and collective basis). "Users" means employees, contractors and agents of Customer or its affiliates who receive access to the Service from or through Customer. Subscriptions are limited to one physical address only. An additional Subscription is required for each additional physical address. Customer will remain principally responsible and liable for all acts and omissions of such Users and will cause such Users to comply with the provisions of this Agreement.
- 2. Subscription Term.** Unless otherwise set forth in an Order, Customer's initial subscription term for the Service commences on the date on which Users receive access to the Service (the "Subscription Start Date"). The Subscription will (except as otherwise provided in the following Section 1(c)) continue for the period specified in the Order (the "Initial Subscription Term") and will automatically renew for successive periods of equal duration (each, a "Renewal Term") at The Receptionist's then-current rates unless either party gives the other party written notice of termination at least 30 days prior to the end of the Initial Subscription Term or the Renewal Term then in effect. The Initial Subscription Term plus all Renewal Terms are referred to herein as the "Subscription Term".

3. Free Trials and Freemium Services. The Receptionist may, from time-to-time and in its sole discretion, make available to customers free trials of Services or “freemium” versions of limited Services. In such cases, where Customer’s subscription version and Subscription Term are not set forth in an Order, the Subscription Term shall be (a) 14 days, in the case of free trials, and (b) in perpetuity, in the case of freemium Services; provided always, however, that The Receptionist reserves the right to modify or cancel adjust such offerings from time-to-time in its sole discretion upon advance notice to customers. Free trials and freemium Services are offered “as-is” without warranty of any kind, and The Receptionist assumes no risks, indemnity obligations or liabilities to Customer in connection therewith. At the end of any free trial, or at any other time in the course of a free trial or freemium Service use, Customer may elect to convert to a paid subscription at The Receptionist’s then-current rates upon notice to The Receptionist.

2. Customer Content, Conduct and Use.

1. Customer Content; Upload Restrictions. As between the parties, Customer will retain all right, title and interest in and to all data, information, and other materials in any format or media uploaded by Customer, Users or any other end users of the Service with whom Customer interacts, such as visitors checking in at Customer’s facilities (collectively, “Customer Content”). Customer is solely responsible and liable for ensuring Customer has all necessary rights, permissions and licenses in the Customer Content to provide it to The Receptionist and use it in association with the Service. Customer hereby grants to The Receptionist a non-exclusive, transferable, worldwide right during the Subscription Term to use the Customer Content solely for purposes of providing the Services to Customer. The Receptionist may also use certain Customer Content (e.g., aggregated, anonymous data) in accordance with its Privacy Policy, as may be amended from time-to-time and is incorporated herein by reference. The Receptionist will not be responsible or liable for the contents or accuracy of Customer Content in any respect.
2. Compliance. Customer is responsible for (i) all activities that occur with respect to the Customer and User accounts, (ii) its and its Users’ use of the Service and compliance with this Agreement, and (iii) all Customer Content and other data uploaded, stored or accessible by Customer or its Users via or on the Service. Customer and its Users will comply with all applicable laws in connection with the use of the Service.
3. Restrictions. Customer and its Users will use the Service in accordance with The Receptionist’s documentation and this Agreement and will not:
 1. tamper with or circumvent the security of the Service or access accounts or data not associated with Customer;
 2. attempt to probe, scan or test the vulnerability of the Service, breach the security or authentication measures of the Service or attempt to render any part of the Service unusable;
 3. distribute, license, sell or otherwise commercially exploit the Service for the benefit of a third party, or make the Service (including any evaluation version) available to a third party other than as contemplated in this Agreement;
 4. use or access the Service to develop a product or service that is competitive with The Receptionist’s products or services or otherwise copy any ideas, features, functions or graphics of the Service;
 5. reverse engineer, decompile, disassemble, translate or seek to obtain the source code of the Service, or modify or create a derivative work of the Service or any related documentation;
 6. remove or obscure any product identification, proprietary, copyright or other notices contained in the Service or related documentation; or
 7. disclose (whether orally or in writing) information or analysis regarding the specifications or performance of the Service (including benchmark tests).

4. **Communications.** Customer will be responsible and liable for the content of all communications sent to third parties using the Service. Customer will not use the Service to communicate any message or material that (i) is libelous, harmful to minors, obscene or constitutes pornography; (ii) infringes the intellectual property rights of any third party or is otherwise unlawful; or (iii) could give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law.
5. **Suspension.** In the event of any breach or threatened breach of this Agreement by Customer or any Users (including non-payment of fees), without limiting The Receptionist's other rights and remedies, The Receptionist may immediately suspend Customer's access to the Service until the breach is cured or The Receptionist reasonably believes there is no longer a threatened breach. The Receptionist may also suspend (or terminate) the Service if required or believed to be required pursuant to court order or developments in applicable laws or regulations.
6. **Suggestions.** Customer hereby grants to The Receptionist a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into The Receptionist's website or Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer (including Users) to The Receptionist that is related to its website or Service.

3. Confidentiality; Security

1. **Scope.** "Confidential Information" means all information of a party ("Disclosing Party") disclosed or made available to the other party ("Receiving Party") that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure.
2. **Restrictions.** The Receiving Party will: (i) not use the Disclosing Party's Confidential Information for any purpose other than exercising its rights or performing obligations under this Agreement; (ii) not disclose such Confidential Information to any person or entity, other than its (a) employees who have a "need to know" for the Receiving Party to exercise its rights or perform its obligations hereunder and (b) professional advisers, and actual or prospective investors, provided that such employees, investors, acquirers and professional advisers are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 3; and (iii) use reasonable measures to protect the confidentiality of such Confidential Information.
3. **Exceptions.** If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, to the extent permitted by applicable law, it will first give written notice of such requirement to the Disclosing Party, and permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further, this Section 3 will not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.
4. **Equitable Relief.** The Receiving Party acknowledges that unauthorized disclosure of Confidential Information could cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law or equity.

5. **Data Security.** Notwithstanding the foregoing, to the extent that any Customer Content uploaded to the Service constitutes Confidential Information, The Receptionist will be deemed to have complied with and discharged its obligations under this Section 3 by handling, processing and safeguarding such Customer Content in accordance with its Privacy Policy (as may be amended from time-to-time and which is incorporated herein by reference).

4. **Fees; Interest; Taxes.**

1. Customer will pay to The Receptionist all of the fees specified in the Order, in United States currency, unless otherwise specified in the Order. Except as expressly set forth to the contrary in the Agreement, all payment obligations are non-cancellable and all amounts paid The Receptionist are non-refundable. Fees will be invoiced in advance in accordance with the terms of the Order. Unless otherwise stated in the Order, all fees are due within 30 days from the invoice date. Unpaid invoices are subject to a late payment charge of 1.5% per month on any outstanding balance or the maximum permitted by law, whichever is lower, plus all reasonable expenses and fees of collection.
2. Except in the case of free trials of the Service and freemium offerings, the Service requires a valid credit card at the time of registration. The Receptionist uses a third-party service provider to process Customer's credit card payments and does not store, process or otherwise use any of Customer's credit card information. Customer's credit card transactions are solely between Customer and the applicable third-party service provider.
3. All amounts payable hereunder are exclusive of any sales, use and other taxes or duties, however designated (collectively "Taxes"). Customer will be solely responsible for payment of all Taxes, except for those taxes based on the income of The Receptionist. Customer will not withhold any Taxes from any amounts due The Receptionist. If The Receptionist pays any such taxes on behalf of Customer, Customer will reimburse The Receptionist for such payments.

5. **Proprietary Rights.**

This Agreement is not an agreement for the sale or license of any software or other intellectual property right. Customer acknowledges that the Service contains copyrighted and proprietary products and materials. The Receptionist and The Receptionist's licensors solely and exclusively retain all right, title and interest in and to the Service and related support, documentation and professional services deliverables, and all related and underlying software, interfaces, databases, data models, structures, non-Customer-specific data, aggregated statistical data, technology, reports and other intellectual property, plus all intellectual and other proprietary rights therein or thereto (all of the foregoing, the "The Receptionist IP"). Except for the Subscription granted hereunder, Customer has no right, title or interest in, and The Receptionist reserves all rights to, The Receptionist IP.

6. **Termination.**

1. **Term and Termination.** This Agreement will be effective during the Subscription Term, unless earlier terminated as allowed in the Agreement. Unless otherwise stated in the Order, this Agreement may only be terminated by a party upon written notice to the other party (i) if the other party breaches a material term of this Agreement that is uncured within 30 days after receipt of notice of such breach; (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (ii) immediately in the event of a material breach by the other party of Section 2 of these Terms; (ii) as expressly allowed elsewhere in the Agreement; or (iv) if The Receptionist decides (in its sole discretion) to temporarily or permanently discontinue the Service to its general customer base.

2. **Outstanding Fees.** Customer will pay all fees owed to The Receptionist that have accrued up until the effective date of termination of this Agreement in accordance with the Agreement. If Customer terminates this Agreement pursuant to Section 6(a), The Receptionist will refund Customer a prorated amount equal to the pre-paid Subscription Fees covering the whole months that would have remained, absent such early termination, in Customer's Subscription Term following the effective date of such early termination.
3. **Effect of Termination.** Upon any termination of this Agreement, Customer will immediately cease all use of and access to the Service and delete (or, at The Receptionist's request, return) all related documentation, passwords and access codes and any other The Receptionist Confidential Information in its possession. The Receptionist will have no liability for any suspension or termination of Customer's access to the Service, or any termination of this Agreement, provided that it is conducted in accordance with the terms of this Agreement. Upon written request by Customer made within 10 days after termination, The Receptionist will provide Customer with temporary access to the Service solely for Customer to retrieve its Customer Content, but not any other purpose. After such 10-day period, The Receptionist will have no obligation to maintain or provide access to such Customer data or Customer Content and will thereafter, unless legally prohibited and except for archival backup purposes, have the right to delete all such Customer data and Customer Content in its possession or control. Sections 3, 4, 5, 6, 8, 9 and 10 of these Terms will survive any termination or expiration of this Agreement.

7. **Warranties.**

1. **Corporate Authority.** Each party represents and warrants that it has the legal power and authority to enter into this Agreement, and that the Order is entered into by an employee or agent of such party with all necessary authority to bind such party to the terms and conditions of this Agreement (including these Terms).
2. **Functionality Warranty.** Except in the case of free trials of the Service and freemium offerings, in which case The Receptionist makes no warranties of any kind with respect to the quality or conformity of the Service, The Receptionist warrants that during the Subscription Term, the Service will operate in substantial conformity with the then-current version of the applicable documentation provided by The Receptionist. As its sole obligation and Customer's sole and exclusive remedy for any breach of the foregoing warranty, The Receptionist shall use reasonable efforts to correct any error in the operation of the Service of which Customer notifies The Receptionist with 30 days after the occurrence of such breach and, if The Receptionist cannot correct such error, then Customer may terminate this Agreement upon thirty (30) days' notice to The Receptionist.
3. **Disclaimer.** EXCEPT FOR THE WARRANTIES CONTAINED IN THIS SECTION 7, (I) THE SERVICE, SUBSCRIPTION AND ALL OTHER THE RECEPTIONIST PRODUCTS AND SERVICES ARE PROVIDED "AS IS", AND (II) THE RECEPTIONIST, ON BEHALF OF ITSELF AND ITS LICENSORS AND SUPPLIERS, SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT AND FITNESS FOR ANY PURPOSE, IN EACH CASE TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE WARRANTIES CONTAINED IN THIS SECTION ARE SOLELY TO AND FOR THE BENEFIT OF CUSTOMER AND NO OTHER THIRD PARTY. THE RECEPTIONIST WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY DELAYS, INTERRUPTIONS, DELIVERY OR SERVICE FAILURES, OR ANY OTHER PROBLEMS OR DAMAGES ARISING FROM CUSTOMER'S USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS OR ANY OTHER SYSTEMS.

8. **Limitations of Liability.**

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, INCLUDING LOSS OF BUSINESS, GOODWILL, PROFITS, DATA, SALES OR REVENUE, WORK STOPPAGE OR COMPUTER FAILURE OR MALFUNCTION, IN EACH CASE WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR THE RECEPTIONIST'S INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL THE RECEPTIONIST'S OR ANY OF ITS LICENSORS' AND SUPPLIERS' TOTAL, CUMULATIVE LIABILITY RELATED TO OR ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, NEGLIGENCE OR TORT, EXCEED THE TOTAL FEES PAID BY THE CUSTOMER FOR THE RIGHT TO ACCESS AND USE THE SERVICE UNDER THIS AGREEMENT DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OR ACT GIVING RISE TO THE CAUSE OF ACTION. MULTIPLE CLAIMS WILL NOT ENLARGE THIS LIMIT. THIS SECTION 8 WILL APPLY TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW.

9. Indemnities.

1. By The Receptionist. Except in the case of free trials or freemium Services, if any action is instituted by a third party against Customer based upon a claim that the Services, as provided, infringes a United States patent, copyright or trademark, then The Receptionist will defend such action at its own expense on behalf of Customer and will pay all damages attributable to such claim which are finally awarded against Customer or paid in settlement of such claim. The Receptionist may, at its option and expense, and in addition to defending Customer as set forth in the previous sentence, as Customer's exclusive remedy hereunder: (a) procure for Customer the right to continue using the Service; (b) replace or modify the Service so that it is no longer infringing but continues to provide comparable functionality; or (c) terminate this Agreement and Customer's access to the Service and refund any amounts previously paid for the Service attributable to the remainder of the then-current term of this Agreement. The Receptionist will have no liability to Customer for any infringement action that arises out of a breach of the terms and conditions of this Agreement by Customer or of the use of the Service (i) after it has been modified by Customer or a third party without The Receptionist's prior written consent, or (ii) in combination with any other service, equipment, software or process not provided by The Receptionist where the combination is the basis for the infringing activity. THIS SECTION SETS FORTH THE ENTIRE OBLIGATION OF THE RECEPTIONIST AND CUSTOMER'S EXCLUSIVE REMEDY AGAINST THE RECEPTIONIST OR ANY OF ITS SUPPLIERS FOR ANY INFRINGEMENT CLAIM.
2. By Customer. Customer shall indemnify and hold The Receptionist, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or related to Customer's or User's use of the Service or the Customer Content (including The Receptionist's use thereof in accordance with this Agreement).
3. Procedure. A party seeking indemnification under this Section 9 will (a) give written notice of the claim promptly to the other party; (b) give the other party sole control of the defense and settlement of the claim, except that the indemnified party's consent shall be required for an admission of the indemnified party's fault or requirement for the indemnified party to take remedial actions; and (c) provide to the other party all available information and assistance.

10. Miscellaneous.

1. Relationship of Customer and The Receptionist. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency

created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

2. **Modifications and Waiver.** No modification of, amendment or addition to this Agreement is valid or binding unless set forth in writing and fully executed by both parties hereto. Any waiver of any right or remedy under this Agreement must be in writing and signed by each party. No delay in exercising any right or remedy will operate as a waiver of such right or remedy or any other right or remedy. A waiver on one occasion will not be construed as a waiver of any right or remedy on any future occasion.
3. **Assignment.** This Agreement and any rights or obligations hereunder may not be assigned, sublicensed or otherwise transferred by either party without the prior written consent of the non-assigning party, except that either party may assign or transfer this Agreement upon a change of control of a party, a sale of all or substantially all assets of that party, or by operation of law by providing the non-assigning party with prior written notice thereof provided that the assignee agrees in writing to be bound by all terms and conditions of this Agreement.
4. **Governing Law.** This Agreement and any claim, controversy, right, obligation, or dispute arising under or related to this Agreement, the relationship of the parties, and the interpretation and enforcement of the rights, performance obligations, and duties of the parties will be governed by and construed in accordance with the laws of the Colorado USA, without regard to conflicts of laws principles. The parties agree that the provisions of the United Nations Convention on Contracts for the International Sale of Goods do not apply to this Agreement. The parties irrevocably and unconditionally agree to the exclusive jurisdiction of the state courts in Denver County and the federal courts in the City of Denver, USA. The parties waive any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.
5. **Notices.** Any notices under this Agreement will be in writing and sent via certified or registered mail, return receipt requested, or by overnight courier service.
6. **Severability.** If any provision of this Agreement is held to be unenforceable or illegal by a court of competent jurisdiction, such provision will be modified to the extent necessary to render it enforceable, or will be severed from this Agreement, and all other provisions of this Agreement will remain in full force and effect.
7. **Force Majeure.** Neither party to this Agreement will be liable to the other for any failure or delay in performance by circumstances beyond its control, including, acts of God, fire, labor difficulties, failure of suppliers or licensors, Internet or telecommunication disruptions, governmental action or terrorism, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.
8. **Entire Agreement; Interpretation.** This Agreement (which consists of the Order, these Terms and any attachments or documents incorporated herein by reference) constitutes the entire agreement and sets forth the entire understanding between the parties hereto with respect to Customer's Subscription to the Service described in the Order, and supersedes all prior agreements and discussions with respect thereto. In the event of an inconsistency between the terms and conditions of these Terms and the Order, the terms of the Order will govern. The Receptionist hereby rejects any different or additional terms of a Customer purchase order or other ordering document, all of which such terms are hereby deemed null and void. Headings contained in this Agreement are inserted for convenience of reference only and will not in any way define or affect the meaning or interpretation of any provision of this Agreement.