

# Repsly, Inc.

## CUSTOMER TERMS OF SERVICE

Last Modified: September 24, 2021

The following CUSTOMER TERMS OF SERVICE, together with any executed purchase order referencing them (an “**Order**”), and any additional statements of work and other exhibits, schedules and addenda attached hereto or to an Order, combine to constitute an agreement (the “**Agreement**”) between Repsly, Inc., a Delaware corporation located at 55 Summer Street, 3<sup>rd</sup> Floor, Boston, MA 02110 (“**Repsly**” or “**we**”), and the customer identified in the Order (“**Customer**” or “**you**”). By executing the signature page to an Order, and in consideration of the mutual promises, intending to be legally bound, Repsly and Customer hereby agree as follows:

1. DEFINITIONS. Throughout this Agreement,
  - (a) the “**App**” refers to the iPhone, iPad or Android-based mobile or tablet application through which a User can perform field data collection, fill out purchase orders, capture electronic signatures, track expenses and communicate with other App Users; the App is designed and offered to you to allow you to collect information, transmit information to the Portal and receive information from the Portal;
  - (b) “**Content**” means all of the text, pictures, files, links, geolocation data, reports and other information or material posted, transmitted or stored by you and your Users through the Service;
  - (c) “**Malicious Code**” means viruses, worms, time bombs, Trojan horses, intentional disabling devices, and other harmful or malicious code, files, scripts, agents or programs;
  - (d) the “**Portal**” refers to the website, [www.repsly.com](http://www.repsly.com), through which we conduct the Service and your Users remotely access the Service through an interface provided by Repsly;
  - (e) a “**Reader**” is any User who reads Content through the Service;
  - (f) “**Renewal Term**” means the term of this Agreement described in Section 7(a).
  - (g) a “**Sender**” is a User who develops, posts or transmits any Content through the Service;
  - (h) the “**Service**” means the full suite of technologies and services that Repsly offers through the App and the Portal;
  - (i) “**Users**” means people who use the Service through the App or the Portal, including Readers and Senders; and
  - (j) “**Term**” means the term of this Agreement described in Section 7(a). Where the context allows, “Term” shall include any Renewal Terms.

Later in this Agreement, other words are capitalized (and shown in **bold** the first time they appear) to define terms with specific meanings when they are used again.

## 2. YOUR RIGHTS TO USE THE SERVICE; YOUR RESPONSIBILITY FOR YOUR ACTIVITIES AND YOUR CONTENT

- (a) The Order that that incorporates these Customer Terms of Service by reference sets forth all software-based Services that we have agreed to provide and you have agreed to purchase. During the Term, we will provide the non-exclusive right for the number of your authorized Users set forth in the Order to access and use the Service for your internal business purposes. See the Order for additional information and terms related to the Service. If the number of your actual Users exceeds the number set forth in the Order, we reserve the right to invoice you for the excess, pro rata over the remainder of the Term.
- (b) You acknowledge and agree that Repsly does not allow any illegal activities. You warrant that you and your Users will abide by all applicable local, state, national, and international laws and regulations and are solely responsible for all acts or omissions that occur under accounts or passwords provided to you, including the Content of your transmissions through the Service.
- (c) You agree to not use the Service, or permit your Users, to:
  - (i) Upload, link to, post, email, or otherwise transmit any Content that is unlawful, harmful, threatening, abusive, harassing, tortuous, pornographic, defamatory, vulgar, obscene, fraudulent, indecent, lewd, libelous, invasive of privacy or publicity rights, hateful, or racially, ethnically or otherwise objectionable;
  - (ii) Upload, link to, distribute or otherwise publish through the Portal any Content that would constitute, assist or encourage a criminal offense or harm minors in any way;
  - (iii) Impersonate any person or entity or falsely misrepresent your affiliation with any person or entity;
  - (iv) Share login credentials among Users;
  - (v) Upload, link to, post, email or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
  - (vi) Upload, link to, post, email or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party;
  - (vii) Interfere with or disrupt the Service or the Portal, or disobey any requirements, procedures, policies or regulations of networks connected to the Service;

- (viii) Upload, link to, post, email or otherwise transmit any material that contains software viruses, Trojan horses, worms, time bombs, cancelbots or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or intercept or expropriate any system, data or personal information;
  - (ix) Distribute or publish unsolicited promotions, advertising or solicitations for funds, goods or services, including junk mail and spam;
  - (x) Stalk or harass any other individuals;
  - (xi) Collect or store personal data about other Users, other than what the Users have made publicly available or consented to share for a valid legal purpose; or
  - (xii) Use any data mining, robots, or similar data gathering and extraction methods within the Portal.
- (d) You agree not to access the Service by any means other than through the Portal or the App.
- (e) You acknowledge and agree that it is your responsibility to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you operate.
- (f) You understand and agree that all information, data, text, software, music, sound, photographs, graphics, video, messages or other materials, whether publicly posted or privately transmitted, are the sole responsibility of the Sender from which such Content was originated. This means that you, not Replsly, are entirely responsible for all Content that you and your Users upload, post, email or otherwise transmit via this Service. Replsly does not control the Content posted via the Service, and as such, does not guarantee the accuracy, integrity, or quality of such Content. Each time you provide Content, you represent and warrant that you own or otherwise control the rights or have the necessary consents to do so, and you grant every User who is authorized by you or your employer to use the Service the right to download and use such Content. You understand that by using the Service, your Users may be exposed to Content that is offensive, objectionable, or indecent. Under no circumstances will Replsly be liable in any way for any Content, including, but not limited to, for any errors or omissions in any Content, or for any loss or damage of any kind incurred as a result of the use of any Content posted, emailed or otherwise transmitted via the Service. Replsly takes no responsibility and assumes no liability for any Content posted or uploaded by any User or third-party, or for any mistakes, defamation, slander, libel, omissions, falsehoods, obscenity, pornography, or profanity you may encounter. As a provider of interactive services, Replsly is not liable for any statements, representations or Content provided by its Users in any messages, advertisements or any other interactive areas of the Portal. Replsly cannot and does not edit, modify, or even proofread any Content originating from Senders other than itself.

- (g) You agree to indemnify and hold Repsly, and its subsidiaries, affiliates, directors, officers, agents, or other partners and employees harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of Content that your Users submit, post to or transmit through the Service, their use of the Service, their connection to the Service, their violation of this Agreement, or their violation of any rights of another. In the event that you have a dispute with one or more other users of the Service, you release Repsly (and our officers, directors, agents, subsidiaries, and employees) from claims, demands and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes.
- (h) We may immediately suspend or block all or part of the Service by sending you a written notice of suspension if we have the right to terminate this Agreement, in lieu of termination or prior to termination. Notwithstanding the foregoing, we will endeavor in good faith to provide you with advance notice of any suspension in accordance with the notice provisions herein, and we will provide you with notice of the suspension or termination as soon as it becomes practicable for us to do so.

### 3. REPSLY'S RIGHTS TO REMOVE AND DISCLOSE CONTENT

- (a) Repsly has the right, but not the obligation, to monitor the activity and Content associated with messages, advertisements and any other areas on the Portal. Although Repsly has no obligation to monitor the Portal, Repsly may investigate any violation of its policies pursuant to a complaint, or based upon its own discovery, and may take any action that it deems appropriate. Such action may include, but is not limited to, issuing warnings, suspension or termination of service, and/or removal of posted Content. Repsly reserves the right and has absolute discretion, to remove, screen, or edit and Content that violates its terms or is otherwise objectionable. Repsly also reserves the right to report any activity that it suspects violates any law or regulation to appropriate law enforcement officials, regulators, or other third parties.
- (b) To report any violation of Repsly's Terms of Use, you agree to contact us at [privacy@repsly.com](mailto:privacy@repsly.com).
- (c) You understand and agree that Repsly maintains the right to preserve Content and may also disclose Content if required by law or in good faith belief that such preservation or disclosure is reasonably necessary to comply with legal process, enforce this Agreement, respond to claims that any Content violates the rights of third-parties, or protects the rights, property, or personal safety of Repsly or its Users.

### 4. PROTECTION OF PASSWORDS

- (a) Repsly strictly prohibits the sharing of account passwords for the purpose of writing Content. You will take reasonable measures to ensure that your Users will not share their account password with any other individuals or allow any other individuals to write

any Content using their accounts. You also understand and agree that if your Users do share their account password or allow others to use their account, the account will become eligible for termination.

- (b) All parties involved should use caution and discretion before sharing any credit card information, passwords, account numbers, or any other relevant personal information. You acknowledge and agree that Replsly will not be held responsible or liable for any communications that arise between Senders and Readers from any use of the Service.

## 5. PAYMENT AND PAYMENT TERMS

- (a) Charges applicable to the Service are set forth in the Order. Unless additional Services are ordered, these charges will not change during the Term. You will pay the agreed fees on the schedule set forth in the Order. If you add Users during the Term or a Renewal Term in excess of the authorized number of Users set forth in all applicable Orders, a separate Order for the additional Users will be required, and you will be charged a pro-rata amount for the additional number through the remainder of the then-current subscription period.
- (b) If the applicable Order does not specify payment terms, we will invoice you (or we will charge your credit card in advance) for the first full year and annually thereafter during the Term and any Renewal Terms.
- (c) If you pay by credit card, you authorize us to charge your credit card or bank account for all fees payable during the Term and any Renewal Terms. You further authorize us to use a third party to process payments, and consent to the forwarding of your payment information to such third party processor in compliance with applicable legal standards. After termination of your account, we will not charge you again when the next monthly payment is due, but you will not be entitled to a refund for any pre-paid monthly fees. Delinquent charges (in the event that the credit card lender you selected refuses full payment) are subject to immediate suspension and/or termination without notice.
- (d) If you are paying by invoice, we will invoice you no more than forty-five (45) days before the beginning of the Term and each subsequent Renewal Term, and other times when fees are payable. All amounts invoiced are due and payable within thirty (30) days from the date of the invoice, unless otherwise specified in the Order.
- (e) You will keep your contact information, billing information and credit card information (where applicable) up to date. All payment obligations are non-cancelable and all amounts paid are non-refundable, except as specifically provided for in this Agreement.
- (f) You will pay any and all applicable sales, use and like taxes (excluding taxes on Replsly's income) which accrue as a result of a use of the Service by you or on your account. All payments must be made in United States Dollars or the equivalent in other currencies as agreed between the parties.

- (g) If any amount owing by you under this Agreement is 45 or more days overdue, we may, without limiting our other rights and remedies, suspend our Service to you until such amounts are paid in full. We will give you at least 14 days' prior notice that your account is overdue before suspending Service to you. We shall not exercise our rights to suspend the delivery of Service if you are disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute. You agree to reimburse Repsly for all reasonable costs (including attorneys' fees) incurred by Repsly in collecting late payments, including late payment charges, from you.

## 6. MODIFICATIONS TO SERVICE

- (a) The Service may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, or because of other causes beyond Repsly's reasonable control, but Repsly will use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled unavailability of the Service. Notwithstanding anything else in this Agreement or otherwise, Repsly may monitor your use of the Service and use your Content in an aggregate and anonymous manner, compile statistical and performance information related to the provision and operation of the Service, and may make such information publicly available, provided that such information does not incorporate your Content or identify your confidential information. Repsly retains all intellectual property rights in such aggregated information.
- (b) You acknowledge and agree that Repsly, in its sole discretion, may terminate a User's password, account (or any part thereof) or use of the Service, block or prevent future access to the Service, and remove and discard any Content within the Service at any time if you or your Users have violated or acted inconsistently with the nature of this Agreement. You agree that any such termination can be effected without any prior or written notice to you and that Repsly will not be held liable to you or any third-party for any termination of access to the Service.

## 7. TERM AND TERMINATION

- (a) Term of Agreement. This Agreement commences on the Effective Date and continues until the end of the term period as specified in the Order (the "**Term**"). Unless the Order specifies otherwise, the Term will automatically renew for an additional 12 months (a "**Renewal Term**") unless either party notifies the other party, no fewer than 30 days before the end of the then-current Term or Renewal Term, of its intention not to renew the Agreement.
- (b) Termination for Cause. Either party may terminate this Agreement (including the Data Processing Addendum) for cause: (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (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. If you terminate this Agreement for cause, Repsly shall return to you the unused portion of any prepaid fees. If Repsly terminates this Agreement for

cause, you will remain obligated to make all payments through the agreed term and Replsly will not be required to refund any prepaid fees.

- (c) Termination for Convenience. You may terminate the Agreement at any time for convenience, upon 30 days' prior written notice to Replsly, but you will remain obligated to make all payments through the agreed term and Replsly will not be required to refund any prepaid fees.
- (d) Return of Your Content. Upon request by you made within 60 days after the effective date of termination of the Services, we will make available to you for download your Content created during the Term of the project free of charge. After such 60-day period, we shall have no obligation to maintain or provide any of your Content and shall thereafter, unless legally prohibited, delete all of your Content in our systems or otherwise in our possession or under our control.
- (e) Surviving Provisions. Sections 2(e), 2(f), 2(g), 9, 10 and 13 shall survive any termination or expiration of this Agreement.

## 8. RESPECT OF COPYRIGHT AND OTHER PROPRIETARY RIGHTS

- (a) You acknowledge and agree that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that may or may not be protected by applicable intellectual property rights and other laws. Some of the information provided to you through the Service, by advertisers and other parties, may be protected by copyrights, trademarks, patents, service marks, or other proprietary rights and laws. You agree not to (or allow your Users or any third party to) copy, modify, create any derivative works of, reverse engineer or otherwise attempt to discover any source code, sell, assign, sublicense, grant a security interest in or otherwise transfer any right in the Service or the software that operates the Portal and the Service (the "**Software**"), in whole or in part. You may not copy any portion of the Portal for the purpose of developing any similar websites.
- (b) Except as expressly stated in this Agreement, you are not given any right or license in or under any patent, trademark, copyright, or proprietary right of Replsly or any third party. Elements of the Portal, including page headers, custom graphics, logos, sounds, images and button icons are protected by copyright, trademark, trade dress and other laws and may not be copied or imitated in whole or in part. You may not use, frame, or utilize framing techniques to enclose any Replsly trademark, logo, or other proprietary information (including the images and photographs found at the Portal, the content of any text and/or the layout or design of any page of the Portal) without Replsly's express written consent.
- (c) Replsly does not own any Content. Replsly will not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Content. In the event this Agreement is terminated (other than by reason of your breach), Replsly will make available to you a file of the Content if you so request at the time of termination. You agree that this is a reasonable form of transmission. Replsly reserves the right to

withhold, remove and/or discard Content without notice for any breach, including, without limitation, your non-payment.

- (d) You understand and agree that you will have no recourse against Repsly for any alleged or actual infringement or misappropriation of any proprietary right in any Content you submit to us.

9. OUR PROTECTION OF YOUR CONTENT

Repsly and Customer will each comply in all material respects with the Data Processing Addendum (including its annexes and other attachments) located at [www.repsly.com/legal](http://www.repsly.com/legal), which is referenced in and incorporated into the Order and made a part of the Agreement.

10. WARRANTIES AND LIMITATION OF LIABILITY

- (a) Our Warranties. We warrant that (i) we have validly entered into this Agreement and have the legal power to do so, (ii) we will at all times take appropriate measures, including implementing security controls, to ensure that in the course of providing the Service, we do not allow your systems or computing environment to be exposed to Malicious Code, provided it is not a breach of this warranty if you or your Users upload Content containing Malicious Code into the Service and you or your Users later download that Content containing Malicious Code, and (iii) we are the legal owner of and have full right, title and interest in the Service, and that the Service has been developed by us or we are currently the legal owner of distribution rights for the Service. For any breach of a warranty above, your exclusive remedy shall be as provided in Section 7(b) (Termination for Cause) above.

- (b) Your Warranties. You warrant that you have validly entered into this Agreement and have the legal power to do so

- (c) You expressly understand and agree that:

- (i) Except for the warranties provided in this Agreement, your use of the Service is at your sole risk and the Service is provided on an AS IS and AS AVAILABLE basis to the fullest extent permissible pursuant to applicable law. REPSLY EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

- (ii) Repsly makes no warranty that (1) the Service will meet your needs, (2) the Service will be uninterrupted, timely, secure, or error-free, (3) the results that may be obtained from the use of the Service will be accurate or reliable, (4) the quality of any products, services, information, or other material purchased or obtained by you through the Service will meet your expectations, (5) any errors in the Software

will be fixed, and (6) or that the Portal or the servers that make the Portal available are free of viruses or other harmful components.

- (iii) Any material downloaded or otherwise obtained through the use of the Service is done at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of any such material.
- (d) YOU EXPRESSLY UNDERSTAND AND AGREE THAT REPSLY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, CONTENT OR OTHER INTANGIBLE LOSSES (EVEN IF REPSLY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), RESULTING FROM: (1) THE USE OR THE INABILITY OF USE OF THE SERVICE, OR THE MATERIALS OR CONTENT ON THE SITE; (2) THE COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM ANY CONTENT, INFORMATION OR SERVICES PURCHASED OR OBTAINED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED INTO OR FROM THE SERVICE; (3) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OF CONTENT; (4) STATEMENTS OF CONDUCT OF ANY THIRD PARTY ON THE SERVICE; OR (5) ANY OTHER MATTER RELATING TO THE SERVICE. IN ADDITION, NEITHER PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE TOTAL AMOUNT REPSLY RECEIVED FROM YOU IN THE 12 MONTHS PRECEDING THE CLAIM.
- (e) Repsly will not be held liable for the consequences of any interruptions, errors, or loss of any data.
- (f) You acknowledge and agree that Repsly will not be held responsible or liable for any unlawful or otherwise improper acts performed by your authorized Users.
- (g) Some jurisdictions do not allow the exclusion of certain warranties, or the limitation or exclusion of liability for incidental, or consequential damages, accordingly, some of the above limitations of the sections above may not apply to you.

## 11. NOTICES

- (a) Except as explicitly stated otherwise, any notices should be sent to us by postal mail to:  

Repsly, Inc.  
55 Summer Street – 3<sup>rd</sup> Floor  
Boston, MA 02110
- (b) We will send our notices by email to the email address you specified in the Order. Notice will be deemed given 24 hours after sent, unless we are notified that the email

was returned to us “undeliverable.” Alternatively, we may give notice by certified mail, to the mailing address you provided during registration. In such cases, notice will be deemed given 3 days after the date of mailing.

## 12. INSURANCE

During the Term, each Party shall obtain and carry in full force and effect general liability, errors and omissions and product liability insurance in amounts which are reasonable and customary in the industry for similar products and services.

## 13. MISCELLANEOUS

- (a) Unless Customer notifies Replsly at [privacy@replsly.com](mailto:privacy@replsly.com) that the following permissions are not granted to Replsly, Replsly may use Customer's name and/logo to identify Customer as a Replsly customer of the Service, including without limitation, on Replsly's public website and marketing materials. Any such use shall be subject to Replsly's compliance with any written guidelines that Customer may deliver to Replsly regarding the use thereof. Customer hereby grants Replsly a non-exclusive, worldwide, royalty free and fully paid up right and license to utilize its name, logo, trade-marks and trade names for the purposes set forth above.
- (b) This Agreement (including the Order, the Data Processing Addendum, or DPA (which governs the use of personal data related to the Service and is an integral part of this Agreement) and all associated exhibit(s)) constitutes the entire agreement between you and Replsly. No oral or written information or advice given by Replsly, its agents or employees will create a warranty or in any way increase the scope of the warranties in this Agreement. There will be no force or effect to any different terms of any related purchase order or similar form even if signed by the parties after the Effective Date.
- (c) This Agreement will be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. The failure of a party to exercise or enforce any right or provision of this Agreement will not constitute a waiver of such right or provision. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.
- (d) A party is not liable under this Agreement for non-performance caused by events or conditions beyond that party's control (each, a “**Force Majeure Event**”) if the party makes reasonable efforts to perform. Either party may terminate this Agreement on written notice to the other party if the Force Majeure Event continues more than 30 days.
- (e) If any provisions of this Agreement is determined to be unlawful, void, or for any reason unenforceable, then that provision shall be deemed severable from this Agreement and shall not affect the validity and enforceability of the remaining provisions, and the parties nevertheless agree that the court should endeavor to give effect to the parties’

intentions as reflected in the provision, and that the other provisions of this Agreement remain in full force and effect.

- (f) Neither party hereto may assign or otherwise transfer this Agreement, in whole or in part, without the other party's prior written consent, except that either party may assign this Agreement without consent to a successor to all or substantially all of its assets or business. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null and void. Subject to the foregoing, this Agreement will be binding on the parties and their successors and assigns.
- (g) The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.
- (h) You acknowledge that the provisions, disclosures and disclaimers set forth above are fair and reasonable and your agreement to follow and be bound by them is not the result of fraud, duress or undue influence exercised upon you by any person or entity. Both parties agree that there are no representations, promises, warranties or undertakings by you or Replsly contrary to those set above.
- (i) This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.