



AutoClerk® Terms of Use

This AutoClerk Terms of Use agreement (“Agreement”) governs your use of the AutoClerk myHMS hosted application as a Property Management System (“Service”). By accepting this Agreement, either by clicking the Service’s button labeled “Login & Accept Terms of Use” indicating your acceptance or by executing a Purchase Order that references this Agreement, you agree to the terms of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind such entity and its affiliates to these terms and conditions, in which case the term “Customer” shall refer to such entity and its affiliates. If you do not have such authority, or if you do not agree with these terms and conditions, you must not accept this Agreement and may not use the Service. This Agreement was last updated on January 26, 2017. It is effective between Customer and AutoClerk, Inc. (“AutoClerk”) as of the date of you accepting this Agreement.

NOW THEREFORE it is agreed as follows:

- 1.1. Customer is hereby granted a non-exclusive, non-transferable limited license to access and use the Service during the term of this agreement. Grant of such license does not create, grant or in any way vest in Customer any right, title or interest in any software or other intellectual property comprised in the Service other than the license to use the same in connection with the Service.
- 1.2. Customer will make payments to AutoClerk as specified in this agreement.
- 1.3. Customer acknowledges that (a) it is not possible for AutoClerk to guarantee that the Service will be available or will function properly at all times and (b) from time to time the Service will not be available at all because of the need to conduct routine or non-routine maintenance. AutoClerk will use reasonable efforts to ensure that, where possible, downtime will be scheduled with Customers in advance. Customer will be notified in advance of any maintenance that is to be scheduled on a regular basis. AutoClerk guarantees 99.0% up time for its systems exclusive of regularly scheduled maintenance, but makes no warranty on the client’s hardware or its connections to the Internet.
- 1.4. Electronic data uploaded to the Service by Customer (“Content”) will be backed up daily. Content that is backed up will be stored until the next daily backup.
- 1.5. Support will be provided by telephone twenty-four hours a day, seven days every week. Typically Customer will receive an initial response within thirty minutes during hours between 9:00 a.m. and 5:00 p.m. PT Monday through Friday and within two hours at all other times. AutoClerk will use reasonable efforts to solve all issues immediately but Customer recognizes that (a) at certain times, for reasons that may be outside the control of AutoClerk, demand for Customer support may exceed its availability and (b) particularly complex issues may require a higher degree of support from that which can be provided by such first response and this may take longer to provide.
- 1.6. AutoClerk may use Customer’s names and logo (including the name and logo of properties managed by Customer) in print or online advertising, press releases or publicity. The Customer may use the trade name

“AutoClerk” and the AutoClerk logo, and the name “myHMS,” when identifying or advertising that the Customer uses the Service. These rights cease on the termination of this Agreement.

1.7. The Service requires high-speed Internet access and a currently supported web-browser. It is the responsibility of the Customer to ensure that Customer’s equipment will achieve effective connectivity.

1.8. It is Customer’s sole responsibility to provide current and accurate information regarding Customer’s cancellation policies, minimum stay requirements, rates, availability, amenities, location, or any other information that may reflect the current positioning of the Customer’s properties through the use of the Service. Should Customer fail to provide such information, AutoClerk will not be held responsible for any liability or other expense arising from such action or failure to act, and Customer will indemnify AutoClerk for any claim, loss, liability or expense incurred (including attorney’s fees and expenses) resulting there from.

1.9. Standard reports will be available on-line that can be accessed by Customer during the term of this Agreement. Customized reporting can be made available to Customer at a cost to be determined by AutoClerk and Customer.

2.1. Customer will be billed monthly. Fees are exclusive of federal, state or local sales, use or other tax.

2.2. Fees are due by Customer to AutoClerk by credit card payment, or Automated Clearing House (ACH) transfer within thirty (30) days of the invoice date.

2.3. All transactions under this Agreement are payable in U.S. funds to AutoClerk’s office in California. All amounts over thirty (30) days past due shall bear interest from the date due at 1.5% of the outstanding balance or a \$50.00 late fee (whichever is greater) billed monthly. If the invoice is over 60 days past due, Customer’s use of the Service will be suspended and subject to a \$500.00 reinstatement fee and potential termination.

2.4. Any fees AutoClerk incurs in the collecting of past due amounts including attorney fees, expenses and court costs shall be the responsibility of Customer.

2.5. AutoClerk reserves the right to change the fees during the term of the Agreement. Thirty (30) days advance written notice will be provided to Customer regarding any such change. No refunds of any amounts will be paid to Customer in the event of termination of this Agreement.

2.6. Term. This Agreement shall have an initial term of one (1) year and shall automatically renew for additional one (1) year periods unless either party shall notify the other, in writing ninety (90) days prior to the anniversary date of this agreement, of its intention not to renew. Notwithstanding the foregoing, AutoClerk has the right to terminate this Agreement for cause at any time for any of the following reasons:

2.6.1 Customer account becomes delinquent more than 60 days past due;

2.6.2 Any act or omission of Customer, which, in the opinion of AutoClerk, damages or may damage AutoClerk, its reputation, or its marketability.

2.6.3 Customer fails to maintain adequate operating standards.

2.6.4 AutoClerk receives multiple complaints regarding the condition of the property owned or operated by Customer.

2.6.5 Noncompliance with this Agreement by Customer.

2.7. Termination. Termination by AutoClerk pursuant to 2.6.1 shall be following three (3) days' written notice. Termination by AutoClerk pursuant to 2.6.2 – 2.6.5 shall be following thirty (30) days written notice. This Agreement will not be terminated if the cause for termination is corrected within the thirty (30) day or the three (3) day written notice period, whichever is applicable. Upon termination for any reason, all Content will be immediately and irrevocably deleted from the Service. Customer's obligation to make payment through the date of termination will survive termination.

2.8. Early Termination. If, for any reason other than material breach of this Agreement, the Customer requests termination of this Agreement prior to completion of any one-year term of this Agreement, and provided that AutoClerk agrees to early termination of this Agreement, the following early termination penalty fee shall be paid by Customer to AutoClerk prior to AutoClerk releasing Customer from its obligations under this Agreement: Average monthly subscription fee paid by Customer to AutoClerk from the inception of the Customer's use of the Service times the number of months remaining in the Agreement's term. Regardless of the number of months remaining in the term of this Agreement, the fee paid to AutoClerk by the Customer shall be a minimum of six (6) months average fee.

2.9. Acceptable Content Policy. Customer covenants to AutoClerk that Customers will not (1) transmit content that is, or that AutoClerk considers in its sole discretion to be unlawful, libelous, defamatory, pornographic or otherwise inappropriate or offensive; (2) post or disclose any personally identifying information or private information about children or any third parties without their consent (or their parents' consent in case of a child under 13 years of age); (3) display material that sexually exploits persons under 18 years of age; (4) sell or promote any products or services that are unlawful in the location at which the content is posted or received; (4) promote, solicit or participate in pyramid or ponzi schemes; (6) introduce viruses, worms, trojan horses and/or harmful code on the Internet; (7) impersonate any other person, including but not limited to, a AutoClerk official, expert or bulletin board leader, guide or host; and (8) post any content that would infringe or misappropriate in any way or violate any copyright, patent, trademark, service mark, trade name, trade secret or other intellectual property right of any third party. AutoClerk complies with the federally mandated take down/put back procedures prescribed by Section 512 of the Digital Millennium Copyright Act (17 U.S.C. Sec. 512) in connection with infringement claims involving content supplied by customers. Violation of this policy may result in immediate termination of the Service. AutoClerk reserves the right to modify this Acceptable Content Policy.

2.10. Indemnity. Subject to the limitation of liability and damages set forth in 2.11 below, Customer will indemnify, defend, and hold harmless AutoClerk, its officers, directors, agents, and employees from and against any and all claims, losses, damages, suits, judgments, costs and expenses (including without limitation, litigation costs and reasonable attorney's fees) arising out of or relating to (i) Customer's performance, nonperformance, or improper performance of the provisions of this Agreement, (ii) any claim of libel, infringement of intellectual property rights concerning or arising from the Content, (iii) the business and operations of Customer, or (iv) any error in representing, listing or printing Content.

2.11. Limitation Of Liability. AutoClerk makes no warranty, express or implied including any warranties of merchantability and fitness for a particular purpose with respect to the Service provided hereunder. In no event shall AutoClerk be liable for any lost revenue, profits, consequential or special damages or claims of third parties arising from the Service provided herein. In no event shall AutoClerk liability whether in tort (including negligence), contract or otherwise exceed the total fees paid by Customer to AutoClerk under this Agreement during the Twelve (12) months preceding the event giving rise to such liability.

2.12. Fees And Expenses: Customer shall be responsible for reasonable expenses incurred by AutoClerk in enforcing the terms of this Agreement, including, but not limited to, attorney's fees, collection and other

costs. The provisions of this Paragraph shall not limit other remedies available to AutoClerk nor shall the provisions of this Paragraph be impaired by termination of this Agreement.

2.13. Security. In connection with the use of the Service, Customer will be provided with passwords that will permit persons designated by Customer to access Content and/or to use the Service. Customer is solely responsible for devising and implementing appropriate security arrangements regarding authorized use of such passwords. Customer acknowledges that it is responsible for delivery, entry, maintenance, timeliness and accuracy of all Content or data input into the Service and that AutoClerk is not responsible or liable for any such data or Content including, without limitation, any inaccuracies therein or for any actions taken or admitted to be taken by Customer in reliance thereon. AutoClerk has partnered with Shift4 Corporation (Shift4) and other 3rd Party Processing Entities (PPE) to ensure the Service's data center does not store, process or transmit Sensitive Credit Card Information. Sensitive Credit Card Information includes the Card Number or PAN, Card Swipe information and Security code such as the CVV, which is usually included on the reverse of a Credit Card. To use this Service the Customer must at minimum contract with Shift4 (or PPE) to obtain a Shift4 Account (or PPE Account) to allow Customer to use Shift4 (or PPE) security services. A Shift4 Account for only tokenization purposes can be obtained by Customer directly from Shift4 or through the AutoClerk Master Account. Customer may optionally extend their contract with Shift4 (or PPE) to provide gateway services to enable the Service to be integrated with Customer's preferred Merchant Processor in North America. Shift4 (or PPE) will charge Customer for these extended services. Customer understands that in order for the Service to be secure Customer must ensure that Sensitive Credit Card Information is only entered in data entry screens that have been designed to hold this information. If Customer opts to use the Service's Central Reservation System (CRS) interface then Customer agrees to have the Customer's Central Reservation Service Provider to deliver all CRS reservations to the Shift4 4Res™ proxy gateway (or PPE proxy gateway) for the purpose of performing True Tokenization® (or PPE tokenization) of all Sensitive Credit Card Information before the reservation is delivered to the Service's data center. Entering Card Holder Information in ways other than documented within the myHMS or Shift4 User information or PPE User information is a violation of Payment Card Industry Data Security Standards, PCI DSS for which Customer would be responsible for all penalties.

2.14. Force Majeure. Neither party will be in breach of its obligations under this agreement (other than an obligation to make payment) if performance of such obligations is prevented, delayed or made impractical by any cause beyond its reasonable control including but not limited to acts or omissions of the other party, terrorism, acts of God, government act or failure of the Internet, natural disasters or storms, embargo, riots, sabotage, labor shortage/disputes, fire, political strife, failure or delay of transportation, interruption or interference with third party telephone or other communication service, default by suppliers or unavailability of parts or for any actions taken or admitted to be taken by Customer in reliance thereon.

2.15. Disclaimers. AutoClerk makes no representation or warranty to Customer with respect to the Service except as expressly stated herein. Except as aforesaid, AutoClerk disclaims all express or implied warranties including, without limitation, all implied warranties arising from course of dealing or course of performance. AutoClerk makes no representation or warranty as to the merchantability or fitness of the Service for any particular purpose. AutoClerk does not warrant that the Service will be uninterrupted, error free or completely secure. AutoClerk does not and cannot control the flow of data to or from the website from which the Service is provided or other portions of the Internet. Such flow depends in large part on the performance of Internet services provided or controlled by third parties. At times, actions or inactions caused by these third parties can produce situations in which AutoClerk or Customer's connections through the Internet (or portions thereof) may be impaired or disrupted. Although AutoClerk will use commercially reasonable efforts to take actions it deems appropriate to remedy and avoid such events, AutoClerk cannot guarantee that they will not occur. Accordingly, AutoClerk disclaims any and all liability resulting from or related to such events.

2.16. Successors And Assigns. Each of the covenants, terms and provisions contained herein shall be binding upon and shall inure to the benefit of the successors and permitted assigns of the parties hereto.

2.17. Miscellaneous. (a) This Agreement contains the entire agreement of the parties hereto and supersedes any prior written or oral agreements between the parties. This agreement is made under and will be governed by and construed in accordance of the laws of the State of California. (b) The waiver of any breach or default of this agreement will not constitute a waiver of any subsequent breach or default and will not act to amend or negate the rights of the waiving party. (c) In the event of any provision of this agreement is held by tribunal of competent jurisdiction to be contrary to law, the remaining provisions of this agreement will remain in full force and effect. (d) Customer may not assign its rights or delegate its duties under this agreement either in whole or in part without the prior written consent of AutoClerk. AutoClerk may assign this agreement in whole or in part and may delegate its obligations as it thinks fit provided that such assignment or delegation shall not relieve AutoClerk of any obligations to Customer hereunder. (e) This agreement constitutes the entire agreement between the parties relating to the provision of the Service and supersedes and replaces any and all prior or contemporaneous discussions, negotiations, understandings and agreements, written or oral, regarding the same. (f) In the event of any conflict between the terms of this agreement and any purchase order executed by AutoClerk and the Customer, the terms of the purchase order shall prevail. (g) All obligations and responsibilities of the parties relating to licensing and protection of intellectual property and confidential information shall survive the termination of this agreement and shall remain enforceable by either party.