

TRIB3.com, Inc.  
928 Greenwich St.  
San Francisco, CA 94133

## Terms of Service for TRIB3 Applications

**1. ATTENTION! THE FOLLOWING TERMS AND CONDITIONS WILL BE LEGALLY BINDING ON CUSTOMER UPON SIGNING UP FOR TRIB3'S SERVICES. CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE THUS EXECUTING THE AGREEMENT.**

**2. Terms of Service.** Customer acknowledges and agrees to the following terms of service, which together with the terms of the TRIB3 Subscription Services Agreement entered into between Customer and TRIB3, shall govern Customer's access and use of the Service (the "Agreement"), which consists of tools and resources to manage social media marketing programs. Capitalized terms not otherwise defined herein shall have the meaning given to them in Section 9 (Definitions) below. In addition, Customer agrees that unless explicitly stated otherwise, any new features that augment or enhance the Service, and/or any new service(s) subsequently procured by the Customer will be subject to this Agreement.

**2.1. Customer Must Have Internet Access.** DSL, cable or another high speed Internet connection is required for proper transmission of the Service. Customer is responsible for procuring and maintaining the network connections that connect the Customer network to the Service, including, but not limited to, "browser" software that supports protocol used by TRIB3, including Secure Socket Layer (SSL) protocol or other protocols accepted by TRIB3, and to follow logon procedures for services that support such protocols. TRIB3 is not responsible for notifying Customer of any upgrades, fixes or enhancements to any such software, or for any compromise of data transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned or operated by TRIB3. TRIB3 assumes no responsibility for the reliability or performance of any connections as described in this Section.

**2.2. Accuracy of Customer's Contact Information.** Customer shall provide accurate, current and complete information on Customer's legal business name, address, and email address, and maintain and promptly update this information if it should change.

**2.3. Users: Passwords, Access, And Notification.** User logins are for designated Users and cannot be shared or used by more than one User, but any User login may be reassigned to another User as needed. Customer will be responsible for the confidentiality and use of User's passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. TRIB3 will act as though any Electronic Communications it receives under Customer's passwords, user name, and/or account number will have been sent by Customer. Customer shall use commercially reasonable efforts to prevent unauthorized access to or use of the Service and shall promptly notify TRIB3 of any unauthorized access or use of the Service and any loss or theft or unauthorized use of any User's password or name and/or Service account numbers.

**2.4. Customer's Lawful Conduct.** The Service allows Customer to send Electronic Communications directly to TRIB3 and to third parties. Customer shall comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Customer shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Customer represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Customer shall not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Customer will not send any Electronic Communication from the Service that is unlawful, harassing, libelous,

defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Customer agrees not to access the Service by any means other than through the interfaces that are provided by TRIB3. Customer shall not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Customer will not in any way express or imply that any opinions contained in Customer's Electronic Communications are endorsed by TRIB3. Customer shall ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement, including but not limited to those Users that are contractors and agents, and Customer's Affiliates. Any action or breach by any of such contractors, agents or Affiliates shall be deemed an action or breach by Customer and Customer waives all of those defenses that Customer may have as to why Customer should not be liable for Customer's contractors', agents' or Affiliates' acts, omissions and noncompliance with this Agreement.

**2.5. Transmission of Data.** Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to use of the Service. Customer expressly consents to TRIB3's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by TRIB3. Customer further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. TRIB3 is not responsible for any Electronic Communications and/or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by TRIB3, including, but not limited to, the Internet and Customer's local network.

**2.6. Service Level.** TRIB3 makes no warranty of the Service's uptime. See section 3 for applicable warranties.

**2.7. TRIB3's Support.** As part of the Service, TRIB3 will provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service. Customer acknowledges that TRIB3 has extensive experience helping Customers improve utilization and realization of benefits of the Service, and that not following the advice of TRIB3 and/or not engaging TRIB3 in helping may substantially limit Customer's ability to successfully utilize the Service or to enjoy the power and potential of the Service.

**2.8. Confidentiality.** For purposes of this Agreement, "Confidential Information" shall include the terms of this Agreement, Customer Data, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the Parties regarding the Service and any information that is clearly identified in writing at the time of disclosure as confidential. Notwithstanding the foregoing, Confidential Information shall not include information which: (1) is known publicly; (2) is generally known in the industry before disclosure; (3) has become known publicly, without fault of the Receiving Party; (4) the Receiving Party becomes aware of from a third party not bound by non-disclosure obligations to the Disclosing Party and with the lawful right to disclose such information to the Receiving Party; or (5) is aggregate data regarding use of TRIB3's products and services that does not contain any personally identifiable or Customer-specific information.

**Each party agrees:** (a) to keep confidential all Confidential Information; (b) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Customer; (c) to protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own (at all times exercising at least a reasonable degree of care in the protection of such Confidential Information, including but not limited to inputting credit card data and social security numbers only in the fields designated for such data in the Service) and to make Confidential Information available to authorized persons only on a "need to know" basis. Either party may disclose Confidential Information on a need to know basis to its contractors and service providers who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services in connection with the performance of this Agreement. Notwithstanding the foregoing, this Section will not prohibit the disclosure of Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

**2.9. Notices.** TRIB3 may send you, in electronic form, information about the Service, additional information, and information the law requires us to provide. We may provide required information to you by email at the address you specified when you signed up for the Service or by access to a website that we identify. Notices emailed to you will be deemed given and received when the email is sent. If you don't consent to receive notices electronically, you must stop using the Service. You may provide legal notice to us via email to legal@trib3.com, with a duplicate copy sent via registered mail, return receipt requested, to the following address: TRIB3, 928 Greenwich St., San Francisco, California 94133. Any such notice, in either case, must specifically reference that it is a notice given under these Terms.

**2.10. Ownership of Customer Data.** As between TRIB3 and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that in connection with Service, TRIB3 as part of its standard Service offering makes daily backup copies of its databases containing Customer Data in Customer's account and stores and maintains such data for a period of time consistent with standard business processes, which period shall not be less than one year.

**2.11. TRIB3 Intellectual Property Rights.** Customer agrees that all rights, title and interest in and to all intellectual property rights in the Service are owned exclusively by TRIB3 or its licensors. Except as provided in this Agreement, the license granted to Customer does not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. In addition, TRIB3 shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, and perpetual license to use or incorporate into the Service any suggestions, enhancement requests, recommendations or other feedback provided by Customer, including users, relating to the operation of the Service. Any rights not expressly granted herein are reserved by TRIB3. Customer agrees not to display or use the TRIB3 Marks in any manner without TRIB3's express prior written permission. However, if you are a paying customer, be assured that such consent is easily obtained. The trademarks, logos and service marks of Third Party Application providers ("Marks") are the property of such third parties. Customer is not permitted to use these Marks without the prior written consent of such third party which may own the Mark.

**2.12. Dispute Resolution.** Each party agrees that before it or any employee, agent or representative of the party files a claim or suit with a federal or state agency or court or other public forum, it shall provide thirty (30) days prior written notice to the other and that, within such thirty (30) day period (or longer, if extended by mutual desire of the parties), authorized representatives of the parties shall meet (or confer by telephone) at least once in a good faith attempt to resolve the perceived dispute.

**3. Warranty of Satisfaction.** TRIB3 warrants that the Service will achieve in all material respects the satisfaction of the Customer during the Subscription period. However, the Customer's sole and exclusive remedy for TRIB3's breach of this warranty shall be that Customer shall be entitled to terminate the Agreement and receive a refund of the subscription fees paid under the Agreement for its use of the Service for that month. The warranty set forth in this Section 3 are made to and for the benefit of Customer only. Such warranty shall only apply if the applicable Service has been utilized in accordance with this Agreement and applicable law.

**4. Disclaimer of Warranties.** EXCEPT AS STATED IN SECTION 3 ABOVE, TRIB3 DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND CUSTOMER'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY TRIB3. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. EXCEPT AS STATED IN SECTIONS 2.6 AND 3 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CUSTOMER'S PURPOSES.

**5. Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL TRIB3, ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS BE LIABLE FOR (A): ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, REVENUE, GOODWILL, USE OR CONTENT) HOWEVER CAUSED, UNDER ANY THEORY OF LIABILITY, INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, WARRANTY, NEGLIGENCE OR OTHERWISE, EVEN IF TRIB3 HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF TRIB3 AND ITS AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR LICENSORS, RELATING TO THE SERVICES WILL BE LIMITED TO THE GREATER OF AN AMOUNT EQUAL THREE MONTHS OF YOUR SERVICE FEE FOR THE SERVICE OR FIVE DOLLARS (\$5.00). THE LIMITATIONS AND EXCLUSIONS ALSO APPLY IF THIS REMEDY DOES NOT FULLY COMPENSATE YOU FOR ANY LOSSES OR FAILS OF ITS ESSENTIAL PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES. IN SUCH AN EVENT THIS LIMITATION WILL NOT APPLY TO YOU TO THE EXTENT PROHIBITED BY LAW. The parties acknowledge that the limitations set forth in this Section are integral to the amount of fees charged in connection with making the Service available to Customer and that, were TRIB3 to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

**6. Indemnification.** To the extent permitted by law, You will defend TRIB3 against any cost, loss, damage, or other liability arising from any third party demand or claim that your use of the Service, in breach of these Terms violates applicable law or these Terms. TRIB3 will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

**7. Third Party Disputes.** As mentioned above, the Service is an application that helps manage social media marketing programs for use with platforms such as Facebook, Twitter, or LinkedIn. The Service contains links to Facebook, Twitter and LinkedIn webpages. TRIB3 does not have any control or influence over these pages or their content. As such, Customer hereby acknowledges and agrees that (i) TRIB3 has no responsibility or liability with respect to such pages and (ii) Customer is solely responsible for a User's interactions with Facebook, Twitter, LinkedIn, other Service users, and any other third parties not under TRIB3's control.

**8. Suspension/Termination.** You may stop using the Services at any time. We reserve the right, to temporarily suspend or terminate your access to the Service at any time in our sole discretion, with or without cause, and with or without notice, without incurring liability of any kind. For example, we may suspend or terminate your access to or use of the Service for: (a) the actual or suspected violation of these Terms; (b) the use of the Services in a manner that may cause TRIB3 to have legal liability or disrupt others' use of the Services; (c) the suspicion or detection of any malicious code, virus or other harmful code by you or in your account; (d) scheduled downtime and recurring downtime; (e) unplanned technical problems and outages. If, in TRIB3's determination, the suspension might be indefinite and/or TRIB3 has elected to terminate your access to the Service, TRIB3 will use commercially reasonable efforts to notify you through the Service. You acknowledge that if your access to the Service is suspended or terminated, you may no longer have access to any data that is associated with the account.

In addition to other termination provisions, if your account is not currently subject to a paid subscription plan with us, we at our discretion may terminate your account if: (a) you do not engage in any activity in your account within thirty (30) days after becoming a Registered User, or (b) you do not engage in any activity in your account for any period of one-hundred and twenty (120) consecutive days. In the event of such termination, any data associated with the account will be lost.

**9. Modification; Discontinuation of The Service.**

**9.1 To the Service.** TRIB3 will make many modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Customer of any material modifications. TRIB3 reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. TRIB3 shall not be liable to Customer nor to any third party for any modification of the Service as described in this Section 8.1.

**9.2 To Applicable Terms.** If TRIB3 makes a material change to any applicable URL Terms, then TRIB3 will notify Customer by either sending an email to the notification email address or posting a notice in the Administrator's instance of Customer's account. If the change has a material adverse impact on Customer and Customer does not agree to the change, Customer must so notify TRIB3 via legal@trib3.com within thirty days after receiving notice of the change. If Customer notifies TRIB3 as required, then Customer will remain governed by the URL Terms in effect immediately prior to the change until the end of the then current term for the affected Service. If the affected Service is renewed, it will be renewed under TRIB3's then current URL Terms.

#### **10. Definitions.**

**"Customer Data"** means all electronic data or information submitted to the Service by Customer or its Affiliates.

**"Electronic Communications"** means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

**"Help Documentation"** means the online help center documentation describing the Service features.

**"Service"** collectively, TRIB3's online application (the **"TRIB3 Service"**) or TRIB3's Professional Services (the **"TRIB3 Engage Service"**) as described in the applicable Help Documentation, but excluding Third Party Applications and implementation services.

**"Third Party Applications"** means online, Web-based applications or services and offline software products that are provided by third parties, and interoperate with the Service.

**"Users"** means individuals who are authorized by Customer to use the Service, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by TRIB3 at Customer's request). Users may include but are not limited to Customer's and Customer's Affiliates' employees, consultants, contractors and agents.

**"URL Terms"** means the terms with which Customer must comply, which are located at a URL and referenced in this Agreement.