

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

Terms of Service for TRIB3 Applications

1. ATTENTION! THE FOLLOWING TERMS AND CONDITIONS ARE LEGALLY BINDING ON ANY INDIVIDUAL USER OF TRIB3 SERVICES AND ANY CORPORATION OR OTHER ENTITY ON WHOSE BEHALF THE SERVICES ARE USED ("**CUSTOMER(S)**"). CUSTOMER SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE USING TRIB3 SERVICES AND BEFORE ENTERING INTO ANY STATEMENT OF WORK ("**SOW**") WITH TRIB3.

2. Terms of Service. Customer agrees to the following terms of service (these "**Terms**"). From time to time, Customer may enter into one or more Statements of Work that identify a particular Service that Customer is permitted to access and use. This Agreement governs Customer's access and use of Services as they may be updated from time to time by TRIB3. Capitalized terms not otherwise defined herein shall have the meaning given to them in Section 11 (Definitions) below. In the event of any conflict between these Terms and the terms of any SOW, the terms of such SOW will prevail to the extent of such conflict.

2.1 Access and Use. Customer and its Users may access and use the Services during the Subscription Term only for Customer's internal business purposes.

2.2 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 assumes no responsibility for the reliability or performance of any connections as described in this Section.

2.3 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.

2.4 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. 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 or Service account numbers of which it becomes aware.

2.5 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. Customer shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Service. Customer shall not modify, make derivative works of, disassemble, reverse compile or reverse engineer any part of the Service. Customer shall not access the Service in order to build a similar or competitive service.

2.6 Restrictions. Except as expressly stated herein, no part of the Service may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means. Customer will not send any Electronic Communication from the Service or utilize the Service in any way that is (a) unlawful, harassing, libelous, defamatory or threatening, (b) that is harmful to minors in any way, or (c) that is in violation of any law, regulation, or obligations or restrictions imposed by any third party. 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. Any action or breach by any Users authorized by Customer shall be deemed an action or breach by Customer. In addition, Customer agree not to use the Service to: (i) upload, transmit, or distribute any computer viruses, worms, or any software intended to damage or alter a computer system or data; (ii) send unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other form of duplicative or unsolicited messages, whether commercial or otherwise; (iii) harvest, collect, gather or assemble information or data regarding other users, including e-mail addresses, without their consent; (iv) interfere with, disrupt, or create an undue burden on servers or networks connected to the Service or violate the regulations, policies or procedures of such networks; (v) attempt to gain unauthorized access to the Service, other computer systems or networks connected to or used together with the Service, through password mining or other means; (vi) harass or interfere with another user’s use and enjoyment of the Service; or (vi) introduce software or automated agents or scripts to the Service so as to produce multiple accounts, generate automated searches, requests and queries, or to strip, scrape, or mine data from the Service.

2.7 Transmission of Data. The technical processing and transmission of Customer’s Electronic Communications is fundamentally necessary to use the Service. Customer consents to TRIB3’s interception and storage of Electronic Communications and 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 or operated by TRIB3. 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 or Customer Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned or operated by TRIB3, including, but not limited to, the Internet and Customer’s local network.

2.8 Service Level. TRIB3 makes no warranty of the Service uptime in these Terms. See section 3 for warranties applicable to the Services.

2.9 TRIB3’s Support. TRIB3 may provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service.

2.10 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 as confidential information in writing at the time of disclosure. Notwithstanding the foregoing, Confidential Information shall not include information which: (a) is generally known to the public; (b) becomes known to the general public without fault of the receiving party; (c) of which the receiving party becomes aware 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 (d) is independently developed by the receiving party without reference to the Confidential Information.

Each party agrees: (i) to keep confidential all Confidential Information; (ii) 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; and (iii) 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). Either party may disclose Confidential Information on a

need to know basis to its employees, 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.

2.11 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.

2.12 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, has no obligation to make backup copies of Customer Data. Customer is solely responsible for backing up Customer Data.

2.13 Aggregated Data. All other provisions of these Terms notwithstanding, TRIB3 may collect and aggregate data derived from the operation of the Service ("**Aggregated Data**"), and TRIB3 may use and disclose such Aggregated Data for purposes of operating its business, monitoring performance of the Services, and improving the Services. TRIB3's use and disclosure of Aggregated Data will not reveal any Customer Data, Client Confidential Information, or personally identifiable information of Users.

2.14 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 expressly provided in this Agreement, no rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto are licensed or transferred. 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.

2.15 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. Limited Performance Warranty. TRIB3 warrants that, during the period that Customer is authorized to access and use a Service, the Service will perform materially in accordance with the Help Documentation, and TRIB3 will not materially decrease the functionality of the Service. In the event of a breach of the foregoing warranty, Customers exclusive remedy shall be to request TRIB3 assistance through the TRIB3 support programs available to Customer under an SOW.

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 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 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 CUSTOMER'S SERVICE FEE FOR THE SERVICE OR FIVE DOLLARS (\$5.00). THE EXISTENCE OF MULTIPLE CLAIMS WILL NOT INCREASE SUCH LIMIT. 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, Customer will defend and hold TRIB3 harmless against any cost, loss, damage, or other liability arising from any third party demand or claim based on a claim that Customer's use of the Service violates applicable law or these Terms, including any claim that Customer Data infringes any copyright, trademark, trade secret, privacy, or publicity rights of a third party. TRIB3 will reasonably notify you of any such claim or demand that is subject to your indemnification obligation.

7. Third Party Platforms. The Service may help manage social media marketing programs for use with platforms such as Facebook, Twitter, or LinkedIn. The Service may contain 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 Service at any time. Unless otherwise agreed by TRIB3 in an SOW, if Customer is using the Service on a free-of-charge or evaluation basis, TRIB3 may suspend or terminate Customer's access to the Service at any time for any reason (or no reason). In any event, TRIB3 reserves the right to temporarily suspend or terminate Customer's access to the Service at any time in its reasonable discretion with or without notice for purposes of protecting the interests of TRIB3, its customers, or the public in general without incurring liability of any kind. For example, we may suspend or terminate Customer's access to or use of the Service for: (a) the actual or suspected violation of these Terms; (b) the use of the Service in a manner that may cause TRIB3 to have legal liability or disrupt others' use of the Service; (c) the suspicion or detection of any malicious code, virus or other harmful code; (d) scheduled downtime and recurring downtime; and (e) unplanned technical problems and outages. If, in TRIB3's determination, the suspension might be indefinite or TRIB3 has elected to terminate Customer's access to the Service, TRIB3 will use reasonable efforts to notify Customer through the Service. If Customer's access to the Service is suspended or terminated for any reason, Customer may no longer have access to data that is associated with its Service account.

9. Modification.

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 reasonable efforts to notify Customer of any material modifications. TRIB3 reserves the right to discontinue offering the Service at the expiration or termination of Customer's then-current SOW. TRIB3 shall not be liable to Customer nor to any third party for any modification of the Service.

9.2 To Applicable Terms. If TRIB3 makes a material change to these 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 these Terms in effect immediately prior to the change until the end of the term of the then-current SOW. If the affected Service is renewed, it will be renewed under the most current version of these Terms.

10. Miscellaneous.

10.1 Assignment. Neither party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the other party's prior written consent. The foregoing notwithstanding, either party may assign this Agreement in its entirety (including all SOWs) to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without the other party's consent, provided the assignee has agreed to be bound by all of the terms of this Agreement and all fees owed to the other party are paid in full. If a party is acquired by, sells substantially all its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement upon written notice.

10.2 This Agreement and any disputes arising out of or related hereto will be governed by and construed in accordance with the laws of the State of California, without giving effect to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. With respect to all disputes arising out of or related to this Agreement, the parties consent to the exclusive jurisdiction and venue in the courts located in San Francisco, California (if State Court) or the Northern District of California (if federal court). Either party may seek injunctive or other emergency relief in any competent court.

10.3 Independent Contractors. The parties are independent contractors. No joint venture, partnership, employment, or agency relationship exists between Customer and TRIB3 as a result of this Agreement or use of the Services.

10.4 U.S. Government End Users. If Customer is a branch agency or instrumentality of the United States Government, the following provision applies. If Customer is the U.S. Federal Government, TRIB3 provides the Services, including related software and technology, in accordance with the following: Government technical data and software rights related to the Services include only those rights customarily provided to the public as defined in this Agreement. This customary access right and license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with TRIB3 to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights, must be included in any applicable contract or agreement.

10.5 Waiver. The failure of a party to enforce any right or provision in this Agreement will not constitute a waiver of such right or provision unless in writing. No modification hereof will be effective unless in writing and signed by both parties.

10.6 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

10.7 Entire Agreement; Execution. This Agreement comprises the entire agreement between Customer and TRIB3 and supersedes all prior or contemporaneous proposals, quotes, negotiations, discussions, or agreements, whether written or oral, between the parties regarding its subject matter.

11. Definitions.

“Affiliates” means with respect to a party, any entity that controls, is controlled by, or is under common control with such party, where “control” means ownership of fifty percent (50%) or more of the outstanding voting securities (but only as long as such person or entity meets these requirements).

“this Agreement” means these Terms collectively with any SOW entered into by the parties.

“Customer Data” means all electronic data or information submitted to the Service by Users.

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

“Help Documentation” means the online help center documentation describing the Service features.

“Service(s)” means TRIB3’s online applications that include or refer to these Terms or that are identified in an SOW, but excluding Third Party Applications and implementation services.

“Statement of Work” or **“SOW”** means the mutually-executed written statements of work or project plans that include important terms governing use of Services, for example, designation of the particular Service that Customer is permitted to access and use, the term of such permitted access and use, and the fees paid for such access and use.

“Subscription Term” means the period(s) of Service access specified in an SOW. If an SOW does not state a period of Service access, the Subscription Term is monthly and terminable by either party upon the conclusion of any calendar month with at least five days’ notice to the other party. If no SOW is entered into, the Subscription Term is the period that TRIB3 makes the Service available to Customer in the sole discretion of TRIB3.

“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.