

# Terms and Conditions

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## 1 GENERAL

- 1.1 These general terms and conditions ("Terms and Conditions") governs the provision and subscription of the Services ordered by the Customer in the Customer Agreement or corresponding binding agreement (hereby referred to as "Customer Agreement").
- 1.2 The Customer Agreement, appendices and/or any offers issued by Tribia and accepted by the Customer constitutes the agreement between the parties (collectively the "Agreement").
- 1.3 In the event of inconsistencies, the Customer Agreement prevails over the Appendices, and the Appendices shall have priority in the following order: 1) Data Processing Agreement 2) Terms and Conditions 3) Support Services 4) Privacy Policy 5) Security Statement, all with the exception that the Data Processing Agreement shall prevail at all times.

## 2 SUBSCRIPTION LICENSE

- 2.1 Subject to the terms and conditions in this Agreement, Tribia grants the Customer a non-exclusive, non-transferable and non-assignable, limited subscription license to access and use the Services.
- 2.2 The license granted in clause 2.1 is in all cases solely granted
  - (a) within the scope of and subject to the terms set out in the Customer Agreement,
  - (b) for the specific number of Permitted Users, project areas and/or project rooms if any, as set out in the Customer Agreement,
  - (c) for internal business purposes only, and
  - (d) during the term of the Agreement.
- 2.3 The Services may only be used by users that are approved by the Customer ("Permitted Users") and always provided that the Customer assumes full liability for their use of the Services.

## 3 SUBSCRIPTION AND SUPPORT & SLA

- 3.1 Subscription includes free updates and new software versions and releases of Services and any Documentation generally made available to customers by Tribia.
- 3.2 Subscription also includes fixes for the customized standard Services, applicable to Prosjekthotel only, and such fixes will normally be provided as part of the new versions. Any such new updates, new versions and releases are regarded as a part of the Services.
- 3.3 Subscription also includes general support in accordance with the support terms described in Support Services.
- 3.4 Subject to the terms of this Agreement, Tribia shall use commercially reasonable effort to:
  - (a) maintain the security of the Services in accordance with the Security Statement;
  - (b) provide regular (daily) backups for the Customer Data; and
  - (c) make the Service generally available at least 99,5 % of the time per month, except for:

- i. planned downtime as notified to Customer and
- ii. the downtime caused by circumstances beyond Tribia's reasonable control, including without limitation, force majeure, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems, telecommunications or network failures or delays, computer failures involving hardware or software not within Tribia's possession or reasonable control and acts of vandalism (including network intrusions and denial of service attacks). Customer is solely responsible for providing, at its own expense, all network access to the Services, including, without limitation, acquiring, installing and maintaining all telecommunications equipment, hardware, software and other equipment as may be necessary to connect to, access and use the Services.

#### **4 RESTRICTED USE OF THE SERVICES**

- 4.1 The Customer shall only use the Services for the agreed and intended use and in accordance with applicable laws and regulations and any documentation and other instructions from Tribia.
- 4.2 The Customer shall not use or permit or encourage a third party to use the Services in violation of this Agreement and shall be liable for any of its user's use of the Services. It is strictly prohibited to examine, copy, reproduce, translate, decompile, repair, reverse engineer or modify the Services.
- 4.3 The number of permitted users, project areas and/or project rooms agreed in the Customer Agreement may never be exceeded. The Customer shall immediately report to Tribia if the Customer needs to expand the number of permitted users project areas and/or project rooms.
- 4.4 If Customer wishes to increase the number of permitted users, project areas and/ or project rooms, Customer's Subscription Administrator must submit a new order to Tribia. Upon Tribia's approval of the order form, Tribia shall extend the license to the Service to the desired number of permitted users, project areas and/ or project rooms according to the new order. Customer will be responsible for any additional fees for additional permitted users, project areas and/ or project rooms, from the following month after the extension has been made available by Tribia.
- 4.5 If Customer wishes to reduce the number of permitted users, project areas and/ or project rooms, Customer's Subscription Administrator must submit a new order to Tribia. Upon Tribia's approval of the order form and subject to any minimum commitments agreed in the Customer Agreement, Tribia shall reduce the license to the Service to the desired number of permitted users, project areas and/ or project rooms according to the new order. The reduction will be made effective from the start of the first subsequent calendar month.

#### **5 FEES AND PAYMENTS**

- 5.1 The Customer shall pay Tribia the fees, charges and other amounts specified in the Customer Agreement. If the Parties have not agreed about any price in writing for a specific service or product Tribia's from time to time applicable standard fees and prices shall apply.
- 5.2 Any prices are exclusive of a) VAT and other applicable taxes and duties (which shall be paid by the Customer in the manner and at the rate prescribed by law), and b) , travel, hotel and subsistence costs of materials and external services (which may be charged to the Customer at cost unless the Agreement provides otherwise).

- 5.3 Tribia may at any time adjust any prices subject to changes in regulations, taxes, fees or similar circumstances beyond Tribia's control. Tribia may also adjust any prices for third party products or services in case such third party adjusts its prices.
- 5.4 Tribia may, annually as from the start of a new calendar year, adjust any prices in accordance with the changes in the Norwegian Consumer Price Index.
- 5.5 Tribia may adjust contents of services and adjust prices accordingly.
- 5.6 Any and all price adjustment shall have effect one (1) month after the date Tribia's notice was sent. Changes subject to 5.5 will have effect three (3) months after the date notice was sent.
- 5.7 Payment shall be made within thirty (30) days of the date of invoice. In case of late payment Tribia may, without prejudice to any other right or remedy available to Tribia, charge interest on the unpaid amount and collection charges in accordance with the applicable statutory rate. Tribia shall also have the right to a) decline to supply any Services to the Customer, b) cancel the Agreement or treat the Agreement as having been cancelled by the Customer, and c) claim compensation for any loss or damage of any kind due to such late payment and/or cancellation of Agreement.

## 6 CUSTOMER DATA

- 6.1 Tribia does not own any electronic data or information contained in any database, template or other similar documents submitted by Customer through the Service (the "Customer Data"). The Customer, not Tribia, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Tribia shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.
- 6.2 The Services may entail that Tribia processes personal data as described in the Customer Agreement, as a data processor, on behalf of the Customer, as a data controller. This is further described in the Data Processing Agreement and privacy policies of Tribia available at <https://www.tribia.com/no/avtalerogvilkar>, which are incorporated into this Agreement by reference.
- 6.3 Tribia and Customer have entered into the data processing agreement available at <https://www.tribia.com/no/avtalerogvilkar>. The Customer agrees and acknowledges that since the Services are provided to the Customer by Tribia, the data processing agreement is entered into with Tribia as data processor.
- 6.4 In connection with any personal data that is submitted to the Services, the Customer warrants that Customer owns or has the necessary licenses, rights, consents, and permissions to use any and all personal data to enable inclusion and use of the personal data in the manner contemplated by the Services.
- 6.5 Notwithstanding the above, the Customer agrees that Tribia may collect and use technical information (activity, feature, and usage pattern) gathered from the Customer and/or its users in order to facilitate and improve the functionality and identify support needs of the Services as well as improve the Services.

## **7** INTEGRATION API

- 7.1 A service API and API documentation is available as an additional service to the Customer and Customer integration parties for the development of integration solutions with Tribia's SaaS services.
- 7.2 The customer and integration partner are responsible for any use of the API and implementation thereof. Integration solutions between the Customer's platform and data on any services from Tribia's portfolio of services take place at the Customer's own risk.
- 7.3 By the use and ordering of API integration, you as a Customer accept that the integration partner receives access to your data, and that you are responsible for obtaining the necessary consents and entering into necessary agreements with integration partners and others to obtain and make use of such data.
- 7.4 Tribia can in no way be held responsible for the integration partner's use of such data, or for quality or accuracy of such data.
- 7.5 The customer can at any time instruct Tribia to stop access to the API. Tribia will stop access as soon as practicable possible.

## **8** INTELLECTUAL PROPERTY RIGHTS

- 8.1 Any and all intellectual property rights to the Services are owned by Tribia and, as the case may be, Tribia's suppliers. Except only as expressly stated herein, the Customer is not granted any license, right or franchise with respect of the Services or any part thereof.
- 8.2 Unauthorized use of the Services constitutes unlawful infringement of intellectual property rights and may lead to liability for damages and other remedies in accordance with the legislation in force and/or the Agreement

## **9** INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 9.1 Tribia undertakes to defend, indemnify and hold harmless the Customer from and against any and all damages, costs and expenses payable by the Customer incurred as a result of any claim, suit or proceeding brought against the Customer based on the allegation that the use of the Services constitutes an infringement of any intellectual property rights; provided that Tribia has been notified without undue delay in writing of such claim, suit or proceeding and that Tribia is given authority, reasonable information, and assistance (to a reasonable extent by the Customer and at Tribia's expense) to settle the claim or control the defence of any suit or proceeding.
- 9.2 If the Services becomes, or in Tribia's opinion is likely to become, the subject of any such claim, suit or proceeding as referred to in clause 8.1, Tribia shall, at its option and expense, either:
  - a. procure for the Customer the right to continue to use the Services in accordance with the Agreement;
  - b. replace the allegedly infringing parts of the Services with non-infringing equivalents;

- c. modify the Services so that it becomes non-infringing without detracting from function or performance; or
  - d. if in Tribia's opinion none of the possibilities set out above are commercially feasible, terminate the Agreement.
- 9.3 The obligations set forth in clauses 8.1 and 8.2 shall not apply if the claim is caused by, or results from:
- a. the Customer's combination or use of the Services with software, services, or products developed by the Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Services;
  - b. modification of the Services by anyone other than Tribia if the third-party claim would have been avoided by use of the unmodified Services;
  - c. the Customer continues the allegedly infringing activity after being notified thereof or after being provided modifications or replacements that would have avoided the alleged infringement; or
  - d. the Customer uses or has used the Services in a manner not in accordance with the Agreement or Tribia's written instructions.
- 9.4 The Customer shall indemnify and hold harmless Tribia from and against any and all damages, costs and expenses (including reasonable fees of attorneys and other professionals) incurred as a result of any claim, suit or proceeding brought against Tribia based on the allegation that the Customer's use of the Services constitutes an infringement of any third party rights, including but not limited to, if such claim results from:
- a. the Customer's combination or use of the Services with software, services, or products developed by the Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Services;
  - b. modification of the Services by anyone other than Tribia if the third-party claim would have been avoided by use of the unmodified Services; the Customer continues the allegedly infringing activity after being notified thereof or after being provided modifications or replacements that would have avoided the alleged infringement; or
  - c. the Customer uses or has used the Services in a manner not in accordance with the Agreement or Tribia's written instructions.

## **10 CONFIDENTIALITY**

- 10.1 The content of the Agreement shall at all times be kept strictly confidential and not be disclosed to any third party without the prior written consent of the other Party (such consent not to be unreasonable withheld).
- 10.2 All information, whether oral or written or in visual, electronic or tangible form, regarding or otherwise relating to a party, any of its affiliate or to any of their affairs or other business matters, shall at all times be kept strictly confidential and not be used for any other purpose than the performance or enforcement of the Agreement.
- 10.3 The restrictions in clause 9.1 and 9.2, respectively, shall not apply to information:
- a) that were already known to the Receiving Party or otherwise in its possession prior to the time of its disclosure;
  - b) that were obtained by the Receiving Party in good faith without restriction from a third party;

10.4 The party using or disclosing any information or documentations with reference to any of these exceptions bears the burden of proof to establish that the relevant exception applies.

## **11 LIMITATION OF LIABILITY**

- 11.1 Either Party shall in no event be liable for (i) any indirect, incidental, special, consequential, punitive or tort damages, nor (ii) for any loss of use or data, or production or for lost profits, savings or revenues of any kind (whether direct, indirect or consequential); no matter what theory of liability, even if the party has been advised of the possibility of such damages. In addition, in no event shall Tribia's total liability for all damages, losses and causes of action exceed an amount equivalent to the lowest of a) the amount paid or payable by Customer to Tribia for the type of Service causing the damage, loss or cause of action during one (1) year preceding the time of the event causing such damage, loss or cause of action, and b) EUR 100 000.
- 11.2 Any claim for compensation of any kind towards Tribia shall be notified to Tribia without undue delay and at latest three (3) months after the relevant Service was delivered by or from Tribia, unless a specific warranty given prescribe a longer period.
- 11.3 The limitation of liability set forth herein does not apply in case of willfull misconduct or gross negligence.

## **12 FORCE MAJEURE**

- 12.1 If and to the extent that either Party's performance of its obligations under the Agreement is impeded or made unreasonably onerous by circumstances beyond its reasonable control that it could not reasonably expected to have taken into account at the time the Agreement was entered into, or to have avoided or overcome the effects of, such Party shall be released from liability in damages and any other penalties for delay in performing or failure to perform such obligations.

## **13 TERM AND TERMINATION**

- 13.1 Subject to any agreed minimum subscription periods for the services set out in the Customer Agreement, the Agreement is valid until it is terminated by one of the parties without reason and with reason with 30 days' written notification. The termination becomes effective at the end of the month the termination is made. If any associated permitted users wish to extend the service period, they must enter into a separate agreement with Tribia.
- 13.2 Upon the termination if this Agreement for any reason: (a) any amounts owed to Tribia under this Agreement before such termination will become immediately due and payable; and (b) each party will return to the other all confidential of the other party in its possession or control. Customers access to or use of the Service will cease as of termination date. Customer agrees and accepts that Tribia will delete the Customer Data. Customer may request Tribia to make available such Customer Data in an agreed format on a time and material basis within a retention period of 30 days from termination date.
- 13.3 Notwithstanding termination or expiry of this Agreement, the rights and duties of the parties under Sections 7, 8, 9, 10, 11, 12, 13 and 14 will survive the termination or expiration of this Agreement.

## **14 DISPUTES AND GOVERNING LAW**

- 14.1 In the event that Tribia AB is the contracting party, then the following applies:

- 14.1.1 Any dispute, controversy or claim arising out of, or in connection with, the Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce. The place of arbitration shall be Gothenburg, Sweden. The language to be used in the arbitration proceeding shall be English (unless otherwise is agreed by the disputing Parties).
- 14.1.2 All arbitral proceeding conducted pursuant to clause 13, all information disclosed and all documents submitted or issued by or on behalf of any of the disputing parties or the arbitrators in any such proceedings as well as all decisions and awards made or declared in the course of any such proceeding shall be kept strictly confidential and may not be used for any other purpose than these proceedings or the enforcement of any such decision or award, nor be disclosed to any third part without the prior written consent of the party which the information relates.
- 14.1.3 Notwithstanding the foregoing, Tribia may take any legal action necessary at any competent court in the Customer's country of residence for collection of delayed payments. The parties do hereby accept that the jurisdiction of such court shall apply for such purpose.
- 14.1.4 The Agreement, including this clause 14, shall be governed by and construed in accordance with Swedish law.
- 14.2 In the event that Tribia AS is the contracting party, then the following applies:
- 14.2.1 Any dispute, controversy or claim arising out of, or in connection with, the Agreement, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the Norwegian Arbitration Act. The place of arbitration shall be Oslo, Norway. The language to be used in the arbitration proceeding shall be English (unless otherwise is agreed by the disputing Parties).
- 14.2.2 All arbitral proceeding conducted pursuant to clause 13, all information disclosed and all documents submitted or issued by or on behalf of any of the disputing parties or the arbitrators in any such proceedings as well as all decisions and awards made or declared in the course of any such proceeding shall be kept strictly confidential and may not be used for any other purpose than these proceedings or the enforcement of any such decision or award, nor be disclosed to any third part without the prior written consent of the party which the information relates.
- 14.2.3 Notwithstanding the foregoing, Tribia may take any legal action necessary at any competent court in the Customer's country of residence for collection of delayed payments. The parties do hereby accept that the jurisdiction of such court shall apply for such purpose.
- 14.2.4 The Agreement, including this clause 14, shall be governed by and construed in accordance with Norwegian law.

## **15 MISCELLANEOUS**

- 15.1 The Customer may not assign any of its rights or obligations under the Agreement without Tribia's prior written consent.
- 15.2 Tribia is entitled to sub-contract a third party to perform any of its obligations under the Agreement without the Customer's consent.

15.3 Changes and additions to the Agreement must be in writing and duly executed by the parties.

15.4 All correspondence and notifications pursuant to the Agreement shall be in writing.