

**Tribe Dynamics**  
**Terms of Use**  
**Web Applications**

**Last Modified: August 1, 2020**

These Terms of Use govern access to and use of the Tribe Dynamics internet-hosted community management applications (the “**Service(s)**”) made available by TRIB3.com, Inc., dba Tribe Dynamics (“**Tribe Dynamics**”) to its customers who agree to the terms below. These Terms are legally binding on any individual user of the Service and any corporation or other entity on whose behalf the Service is used (“**Customer**”). Capitalized terms not otherwise defined herein will have the meaning given to them in Section 13 (Definitions) below.

**1. Service; Access; Restrictions; Support.**

**1.1 Service Orders.** These terms are incorporated into any statement of work, order form, engagement agreement, or similar terms (“**SOW**”) signed or otherwise accepted by Tribe Dynamics and Customer that describes certain details of Customer’s access to the Service, including the fees to be paid by Customer for such access, if any, and the period of service subscription to which Customer has committed, if any. Customer may purchase products and services other than the Services under an SOW. In the event of any conflict between these terms and the terms of an applicable SOW, the terms of the SOW will prevail to the extent of such conflict. These terms and any applicable SOW are collectively referred to herein as this “**Agreement**.” These terms apply whether or not Customer has entered into an SOW.

**1.2 Access and Use.** Customer and its Users may access and use the Service during the Service Term only for Customer’s internal business purposes.

**1.3 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 protocols used by Tribe Dynamics, including Secure Socket Layer (SSL) protocol or other protocols accepted by Tribe Dynamics, and to follow logon procedures for services that support such protocols. Tribe Dynamics assumes no responsibility for the reliability or performance of any connections as described in this Section.

**1.4 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.

**1.5 Passwords, Communications.** User logins are for designated Users and may not 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 of its 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 Tribe Dynamics 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.

**1.6 Customer’s Lawful Conduct.** 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.

**1.7 Restrictions.** Customer shall not license, sell, rent, lease, transfer, assign, distribute, host, or otherwise commercially exploit the Service except as expressly permitted by Tribe Dynamics. 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. 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. Customer agrees not to access the Service by any means other than through the interfaces that are provided by Tribe Dynamics. Customer shall not “mirror” or “frame” any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. In addition, Customer agrees 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. Any action or breach by any User shall be deemed an action or breach by Customer.

**1.8 Fees and Payment.** Customer will pay fees as set forth in an applicable SOW or as otherwise obligated. Unless otherwise stated in an SOW: (a) payments to Tribe Dynamics are due no later than 30 days after the date of invoice and all amounts are expressed in and all payments will be made in United States Dollars and (b) all fees are exclusive of all applicable taxes, levies, or duties, and Customer will be responsible for payment of all such taxes, levies, or duties, excluding taxes based solely on Tribe Dynamics’s income. This Agreement and Client’s access to the Service may be suspended or terminated if Customer fails to make timely payment of fees when due. Unpaid amounts may be subject to interest at the lesser of one and one-half percent (1.5%) per month or the maximum permitted by law plus collection costs, including reasonable attorney fees. Suspension will not relieve Customer’s obligation to pay amounts due. If a Service subscription or services program with a committed term is purchased by Customer, or a fee commitment is otherwise made by Customer, under an SOW or otherwise, then Customer will pay fees for the entire subscription or program term or fees in the entire committed amount, regardless of actual Service usage.

**1.9 Notices.** Tribe Dynamics may send Customer, in electronic form, information about the Service, additional information, and information the law requires us to provide. Tribe Dynamics may provide required information to Customer by email at the address you specified when you signed up for the Service or by access to a website identified by Tribe Dynamics. Notices emailed to Customer will be deemed given and received when the email is sent. If Customer does not consent to receive notices electronically, Customer may not use the Service. Customer may provide legal notice to Tribe Dynamics via email to [legal@tribedynamics.com](mailto:legal@tribedynamics.com), with a duplicate copy sent via registered mail, return receipt requested, to the following address: Four Embarcadero Center, Suite 780, San Francisco, CA 94111. Any such notice, in either case, must specifically reference that it is a notice given under this Agreement.

**1.10 Support.** Tribe Dynamics may provide Customer with Help Documentation and other online resources to assist Customer in its use of the Service.

**2. Confidentiality.** For purposes of this Agreement, “**Confidential Information**” means non-public Customer Data, the terms of each SOW, each party’s non-public proprietary technology, business processes, product information, designs, and communication between the Parties regarding the Service, and any other non-public

information that is clearly identified as confidential information in writing at the time of disclosure. Notwithstanding the foregoing, Confidential Information will not include information that: (a) is generally known to the public; (b) becomes known to the general public without fault of the receiving party; (c) 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 (d) is independently developed by the receiving party without reference to the Confidential Information. Each party agrees: (i) 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 the disclosing party and (ii) to protect the confidentiality of Confidential Information 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 required by law or order of a court or other governmental authority or regulation.

### **3. Data and Ownership.**

**3.1 Customer Data.** As between Tribe Dynamics and Customer, all title and intellectual property rights in and to the Customer Data is owned exclusively by Customer. Customer acknowledges and agrees that Tribe Dynamics, 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.

**3.2 Aggregated Data.** All other provisions of this Agreement notwithstanding, Tribe Dynamics may collect and aggregate data derived from the operation of the Service ("**Aggregated Data**"), and Tribe Dynamics may use and disclose such Aggregated Data for purposes of operating its business, monitoring performance of the Services, and improving the Services. Use and disclosure of Aggregated Data by Tribe Dynamics will not reveal any Customer Data, Customer Confidential Information, or personally identifiable information of Users.

**3.3 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 Tribe Dynamics 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, Tribe Dynamics 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 Tribe Dynamics.

**4. Limited Performance Warranty.** Tribe Dynamics 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 Tribe Dynamics will not materially decrease the functionality of the Service. In the event of a breach of the foregoing warranty, Customer's exclusive remedy shall be to request Tribe Dynamics assistance through the Tribe Dynamics support programs available to Customer under an SOW.

**5. Disclaimer of Warranties.** EXCEPT AS STATED IN SECTION 4 ABOVE, TRIBE DYNAMICS 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 4 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY TRIBE DYNAMICS. 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.

**6. Limitations of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL TRIBE DYNAMICS, 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 TRIBE DYNAMICS HAS BEEN ADVISED AS TO THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF TRIBE DYNAMICS 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 CUSTOMER 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 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 Tribe Dynamics to assume any further liability other than as set forth herein, such fees would of necessity be set substantially higher.

**7. Indemnification.** To the extent permitted by law, Customer will defend and hold Tribe Dynamics 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 this Agreement, including any claim that Customer Data infringes any copyright, trademark, trade secret, privacy, or publicity rights of a third party. Tribe Dynamics will reasonably notify Customer of any such claim or demand that is subject to an indemnification obligation.

**8. 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. Tribe Dynamics does not have any control or influence over these pages or their content. As such, Customer hereby acknowledges and agrees that (i) Tribe Dynamics has no responsibility or liability with respect to such pages and (ii) Customer is solely responsible for a Users' interactions with Facebook, Twitter, LinkedIn, other Service users, and any other third parties not under Tribe Dynamics's control.

**9. Term and Termination.** Unless otherwise stated in an SOW, and unless terminated as set forth herein, this Agreement will continue during the Service Term. Either party may terminate this Agreement in the event of breach of a material term by giving the breaching party 30 days written notice of termination, unless the breaching party cures such breach within such period. Either party may immediately terminate this Agreement by delivering written notice to the other party upon the occurrence of any of the following events: (a) a receiver is appointed for either party or its property; (b) either party makes a general assignment for the benefit of its creditors; (c) either party commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within 60 days; or (d) either party is liquidated or dissolved. Upon expiration or termination of this Agreement, Customer's right to access and use the Service will immediately terminate, Customer will immediately cease all use of the Service, and each party will return and make no further use of data, materials, or other items (and all copies thereof) belonging to the other party. Tribe Dynamics may destroy or otherwise dispose of any Customer Data in its possession. The rights and obligations of Tribe Dynamics and Customer contained in Sections 2 (Confidentiality), 3 (Data and Ownership), 5 (Disclaimer), 6 (Limitation of Liability), 7 (Indemnification), 9 (Term and Termination), 12 (Miscellaneous) and 13 (Definitions) will survive any expiration or termination of this Agreement.

**10. Suspension/Termination.** Unless otherwise agreed by Tribe Dynamics in an SOW, if Customer is using the Service on a free-of-charge or evaluation basis, Tribe Dynamics may suspend or terminate Customer's access to the Service at any time for any reason (or no reason). In any event, Tribe Dynamics 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 Tribe Dynamics, its customers, or the public in general without incurring liability of any kind. For example, Tribe Dynamics may suspend or terminate Customer's access to or use of the Service for: (a) the actual or suspected violation of this Agreement; (b) the use of the Service in a manner that may cause Tribe Dynamics 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 Tribe Dynamics's determination, the suspension might be indefinite or Tribe Dynamics has elected to terminate Customer's access to the Service, Tribe Dynamics 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.

## **11. Modification.**

**11.1 To the Service.** Tribe Dynamics 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. Tribe Dynamics reserves the right to discontinue offering the Service at the expiration or termination of Customer's then-current SOW. Tribe Dynamics shall not be liable to Customer or any third party for any modification of the Service.

**11.2 To Applicable Terms.** If Tribe Dynamics makes a material change to these terms, then Tribe Dynamics will post these changes to <https://cdn.trib3.com/legal/tos.pdf> and update the "Last Modified" date above. Tribe Dynamics 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 Tribe Dynamics in writing within thirty days after receiving notice of the change. If Customer notifies Tribe Dynamics 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. Upon renewal, the most current version of these Terms posted on our website will apply.

## **12. Miscellaneous.**

**12.1 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 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.

**12.2 Governing Law and Forum.** 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.

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

**12.4 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, Tribe Dynamics 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 Tribe Dynamics 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.

**12.5 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.

**12.6 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.

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

### **13. 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 interest (but only as long as such person or entity meets these requirements). **“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 Tribe Dynamics’s online applications that include or refer to these Terms or that are identified in an SOW, but excluding Third Party Applications and implementation or other professional 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.

**“Service Term”** means the period(s) of Service access specified in an SOW. If an SOW does not state a period of Service access, the Service Term is monthly. If no SOW is entered into, the Service Term is the period that Tribe Dynamics makes the Service available to Customer in its sole discretion. If a Service subscription or services program with a committed term is purchased by Customer, then such committed term is the Service Term.

**“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 access to a Service have been procured, and who have been supplied user identifications and passwords by Customer (or by Tribe Dynamics

at Customer's request). Users may include but are not limited to Customer's and Customer's Affiliates' employees, consultants, contractors and agents.