

NetSuite TribeHR Terms

These TribeHR Terms (the “**TribeHR Terms**”) are entered into by and between Oracle America, Inc. (“**Oracle**”) and the entity or person placing an order for the NetSuite TribeHR Service (as defined below) (“**you**” or “**Customer**”). These TribeHR Terms permit you to place orders for the TribeHR Service pursuant to an Estimate/Order Form and sets forth the terms and conditions under which the TribeHR Service will be delivered and the associated terms and conditions related to your use of the TribeHR Service.

The TribeHR Service (including any updates or upgrades subsequently provided by Oracle) and all associated purchases (for additional Employees, training, support and otherwise) procured from Oracle on the Estimate/Order Form shall be subject solely to the terms and conditions of these TribeHR Terms, and not the License or Subscription Services Agreement. Any implementation services listed on an Estimate/Order Form related to the TribeHR Service shall be subject solely to the terms and conditions of the Statement of Work between you and Oracle describing the implementation of the TribeHR Service (the “**SOW**”) and the Professional Services Agreement referenced by such SOW.

Each party expressly agrees that these TribeHR Terms are legally binding upon it. If you are agreeing to these terms on behalf of an entity, you represent and warrant that you are a duly authorized to enter into these TribeHR Terms. The rights granted under these TribeHR Terms are expressly conditioned on acceptance by such authorized personnel.

Background.

(a) Oracle markets and distributes the TribeHR Service.

(b) You wish to access and use the TribeHR Service and associated support and implementation services as set out in the Estimate/Order Form, and accept the rights to use the TribeHR Service subject to these TribeHR Terms.

1. Definitions.

“**Affiliate**” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with Oracle, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of Oracle, for so long as such control exists.

“**End User Limitations**” means any limitations on the use of the TribeHR Service set forth herein or as otherwise specified in an Estimate/Order Form or through the TribeHR Service, including, but not limited to: (i) restrictions on the number of Users or Employees, and (ii) restrictions on functionality based on the TribeHR Services package you obtain.

“**Employee**” means a record created in the TribeHR Service for an individual employee, consultant,

contractor or agent of Customer and/or Customer’s Affiliates.

“**Effective Date**” is the earlier of (a) Customer’s initial access to the TribeHR Service through any online provisioning, registration or order process or (b) the effective date of the first Estimate/Order Form referencing these TribeHR Terms.

“**Estimate/Order Form**” means an Oracle estimate, renewal notification or order form provided by Oracle and executed by Customer which references these TribeHR Terms.

“**Subscription Fees**” means the applicable standard recurring subscription fee for the Tribe HR Services or as mutually agreed upon in writing by the parties and set forth in an Estimate/Order Form. Subscription Fees are subject to change upon thirty (30) days prior notice from Oracle unless otherwise stated in an Estimate/Order Form.

“**TribeHR Service**” means Oracle’s on-line, web-based application as specified in the applicable Estimate/Order Form.

“**Users**” means individuals who are authorized by Customer to access and use the TribeHR Service, for whom subscriptions to such service have been procured, and who have been supplied user identifications and passwords by Customer (or by Oracle at Customer’s request). Users may include but are not limited to Customer’s and Customer’s Affiliates’ employees, consultants, contractors and agents.

2. Subscription Service. Subject to your compliance with these TribeHR Terms, including your payment of the Subscription Fees, Oracle shall make the TribeHR Service available to your Users for use:

- (a) online via the internet,
- (b) solely for your internal business purposes,
- (c) during the Term, and
- (d) in accordance with the applicable End User Limitations.

User accounts are for individual, named Users and cannot be shared or used concurrently or by more than one User. Employee records are for individual, named employees, consultants, contractors and agents at your organization and must accurately reflect the status of such individual (e.g. whether the individual is active, terminated or suspended).

3. Restrictions. You agree not to: (i) use the TribeHR Service except as expressly authorized in these TribeHR Terms and your Estimate/Order Form; (ii) use any device, software, or routine that (a) interferes with any application, function, or use of the TribeHR Service, or (b) is intended to damage, detrimentally interfere with, surreptitiously intercept, or expropriate any system, data, or communication;

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(iii) outsource, rent, resell, sublicense, time-share, or otherwise share the TribeHR Service with any third party including service bureau use; (iv) frame or mirror the login page for the TribeHR Service; (v) decompile, disassemble or reverse-engineer the underlying software that is part of the TribeHR Service or otherwise attempt to derive its source code; (vi) use the TribeHR Service either directly or indirectly to support any activity that is illegal; (vi) access the TribeHR Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes; or (vii) authorize any third parties to do any of the above. You shall ensure that any use of the TribeHR Service by your Users is in accordance with the terms and conditions of these TribeHR Terms.

4. THIS SECTION INTENTIONALLY LEFT BLANK

5. Payment. Customer must pay Oracle the applicable Subscription Fee in advance each month, unless different payment terms are specified in your Estimate/Order Form. If you add additional Users or Employees or upgrade your TribeHR Service package, your Subscription Fees will be adjusted to reflect such changes and you will be immediately charged the updated Subscription Fees at the date of such upgrade and again upon your next renewal. All fees payable are due within 30 days from the invoice date unless otherwise specified in Customer Estimate/Order. If applicable, you hereby authorize Oracle to automatically charge applicable Subscription Fees to the credit or debit card on your TribeHR Service account each month. Subscription Fees for renewals will be charged at Oracle's then-current rates unless otherwise specified on your Estimate/Order Form. All fees are non-refundable except as otherwise explicitly stated in the applicable Estimate/Order Form or these TribeHR Terms. No refunds will be given for partial months or for reduction in the number of Employees or the TribeHR Service package level. Oracle's fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). You are responsible for paying all Taxes, excluding only taxes based on Oracle's net income.

6. Term. These TribeHR Terms are effective on the Effective Date and continue in effect until expiration of all your subscriptions to the TribeHR Service (collectively, the "Term"), unless terminated earlier pursuant to these TribeHR Terms. The initial subscription term of the TribeHR Service shall continue for the term specified in the applicable Estimate/Order Form. Thereafter, the subscription term of the applicable TribeHR Service shall be renewed as set forth in subsequent Estimate/Order Forms (each successive renewal term, a "Renewal Term"). If Customer has not signed and delivered the Estimate/Order Form to Oracle regarding an upcoming Renewal Term prior to the expiration of the then current term, or if no term is specified on your original Estimate/Order Form, then you will have a month-to-month subscription to the TribeHR

Service which will automatically renew each month for an additional monthly term unless you properly terminate your account through the TribeHR Service by using the "Cancel My Subscription" tool from within the TribeHR Service (or as otherwise directed by Oracle in writing) prior to the expiration of the then current term. For clarity, you may not use this "Cancel My Subscription" option unless you have a month to month subscription.

7. Ownership. You agree that as between you and Oracle, all rights, title and interest in and to all intellectual property rights in the TribeHR Service are owned or held exclusively by Oracle or its licensors. Except as provided in these TribeHR Terms, the license granted to you does not convey any rights in the TribeHR Service, express or implied, or ownership in the TribeHR Service or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by Oracle. You may not delete or in any manner alter the copyright, trademark, and other proprietary rights notices appearing in or on the TribeHR Service as provided.

8. Your Responsibilities. You are responsible for compliance of your Users with these TribeHR Terms and for all activity occurring under your User accounts and will: (i) maintain the accuracy and completeness of the information you provide in your account registration, Estimate/Order Form, Employee counts and status and authorized Users; and (ii) notify Oracle immediately of any unauthorized use of any password or account or any other known or suspected breach of security. You are responsible for obtaining, maintaining, and supporting all internet access, computer hardware, and other equipment and services needed for its access to the TribeHR Service. As between the parties, you own all electronic data submitted to the TribeHR Service by you or your Affiliates or Users or collected on your or your Affiliate's behalf by the TribeHR Service (e.g. third-party data submitted in response to a job posting you make available through the TribeHR Service) ("**Customer Data**"). You are solely responsible and liable for the Customer Data and will procure all necessary rights and permissions to use Customer Data in connection with the TribeHR Service (including from your Users and such third-parties). Subject to these TribeHR Terms, you will have control over provisioning User access to the TribeHR Service. In addition, you control access to and management of your Customer Data, including access by third party service providers that you connect with or through the TribeHR Service or that you otherwise engage, enable or procure. Oracle shall act as your data processing agent by allowing the TribeHR Service to process your personal data only on behalf and in the interest of you and in accordance with your instructions and directions. This may include posting or making available Customer Data to third-party services (e.g. social networks) outside the TribeHR Service as directed by you or your Users. Oracle shall not be responsible for any third-party services you may use with or through the TribeHR Service, nor is Oracle responsible for any disclosure, modification or deletion of Customer

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Data resulting from access by such third-party services. Oracle may limit, substitute, change or eliminate any third-party services available through or used in conjunction with the TribeHR Service without liability. You must abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the TribeHR Service, including those related to United States and other applicable export regulations, data privacy, international communications and the transmission of technical or personal data. Neither the TribeHR Service nor the data accessed on the TribeHR Service may be exported or re-exported directly or indirectly by you or your Users in violation of any such export laws or used for any purposes prohibited by such export laws. In addition to your other obligations set forth herein, you specifically acknowledge and agree that: (i) Oracle is not acting on your behalf as a Business Associate or subcontractor (as such terms are used, defined, or described in the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA")); (ii) the TribeHR Service is not HIPAA-compliant; and (iii) you may not use the TribeHR Service in any manner that would require Oracle or the TribeHR Service to be HIPAA-compliant.

9. Oracle Responsibilities. Oracle will not use Customer Data for any purpose other than to exercise its rights and perform its obligations in providing the TribeHR Service and applicable services pursuant to these TribeHR Terms. Oracle may access your account and Customer Data as necessary to identify or resolve technical problems, determine the recurring subscription fees due to Oracle or in order to respond to complaints about the TribeHR Services. Notwithstanding any other provision, Oracle may disclose Customer Data if Oracle determine that such action is reasonably necessary: (a) to comply with the law, regulatory requirements, or legal or regulatory process; (b) to enforce these TribeHR Terms; (c) to respond to claims that you are using the TribeHR Services to perform or support activities that violate the law or the rights of third parties; (d) to the extent necessary, to contractors and infrastructure and service providers of Oracle; or (e) as otherwise directed by you or your Users.

10. Support. Support for the TribeHR Service is provided to paying Customers and is available via: (i) email to support@tribehr.com, (ii) twitter to @tribehr and (iii) support tickets submitted through <http://support.tribehr.com>. Support is subject to any applicable Oracle support policies and does not cover (and Oracle is not responsible for) issues arising from: (i) your equipment, software, network connections or other infrastructure; (ii) use of the TribeHR Service by you in a manner not consistent with its documentation, (iii) modifications to the TribeHR Service by any party other than Oracle, (iv) third party acts, services or systems or (v) general Internet problems, force majeure events or other factors outside of Oracle's reasonable control.

11. Scheduled Downtime. Oracle will use commercially reasonable efforts to pre-announce any scheduled downtime associated with upgrades and maintenance to the TribeHR Services via email communication or posted to the account administrator. The operation of and access to the TribeHR Services may be interfered with by numerous factors outside of Oracle's control and Oracle will not be liable for any such costs, losses, expenses, damages, or liabilities arising out of or related to any delay or failure in performance under these TribeHR Terms resulting directly or indirectly from causes beyond Oracle reasonable control.

12. Usage Data. In addition to certain information about you, including your account information, authorized User information, and services and support information, that is needed to provide you with the TribeHR Services, Oracle may maintain other information about you, including the duration and frequency of your use of the TribeHR Services, the pages viewed and searches performed, and other such anonymous usage data (collectively "**Usage Data**"). Oracle uses the Usage Data for internal business purposes only, including improving, testing and providing the TribeHR Services and additional services. Oracle may disclose Usage Data in aggregate form (e.g., data aggregated from your and other customers' use of the TribeHR Services, but does not identify you or any other customer) for promotion, statistical analysis, market analysis, financial analysis, and other such purposes.

13. Termination; Effects of Termination. Without limiting any other remedies available to it, Oracle may immediately suspend access to the TribeHR Service and/or terminate these TribeHR Terms (including all active subscriptions) if: (a) you breach any material provision of these TribeHR Terms that, (if it is capable of being cured) is not cured within thirty (30) days from written notice to you; (b) if Oracle reasonably concludes that the TribeHR Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or your use of the TribeHR Service is causing immediate, material and ongoing harm to Oracle or others; (c) Oracle determines that your actions are likely to cause legal liability for its suppliers and other customers or (d) Oracle provides you with at least thirty (30) days notice of non-renewal. Notwithstanding the above, with regard to any non-payment by you of any amount owed to Oracle, Oracle shall provide you two (2) delinquent notices with at least thirty (30) days time since the transmission of the first notice before suspending your access to and/or use of the TribeHR Service.

Upon any expiration or termination of these TribeHR Terms, or upon expiration of the Term, the rights granted hereunder will automatically terminate, and you may not continue to use the TribeHR Service. Additionally, with regard to any services, including professional services, Oracle reserves the right to stop work on any project that has undisputed invoices that are outstanding more than 45 days. Oracle will have no liability for any costs, losses,

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damages, or liabilities arising out of or related to termination of these TribeHR Terms. Except as otherwise expressly provided in these TribeHR Terms, Oracle may permanently delete the Customer Data after 30 days following termination or expiration of these TribeHR Terms. Oracle will not be liable in any way to you for any termination or suspension of access to the TribeHR Service or Customer Data or deletion of the Customer Data in accordance with these TribeHR Terms. The provisions of Sections 1, 5, 7, 13, 14, 15, 16, 17, 18 and 19 will survive termination or expiration of these TribeHR Terms.

14. Confidentiality.

"Confidential Information" means, except for set forth in the following paragraph, the terms of these TribeHR Terms, Customer Data, each party's proprietary technology, business processes and technical product information, designs, issues, all communication between the parties regarding the TribeHR 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 Usage Data.

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 these TribeHR Terms or as directed by the other party (including disclosure of Customer Data to third-party services as directed by you or your Users); (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 TribeHR 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 these TribeHR Terms. Either party may disclose Confidential Information to the extent that such disclosure is permitted by law or order of a court or other governmental authority or regulation.

15. No Warranty. Oracle does not offer human resources, financial, accounting or legal advice. The TribeHR Service may provide general information about the possible use of the TribeHR Service or related industry principles or standards, but such general information is intended for informational purposes only, and is not intended to be relied upon as professional legal, regulatory or other advice. The TribeHR Services are provided "AS IS" and the entire risk as to satisfactory performance, accuracy, and effort is with you. Oracle and its suppliers do not warrant that the operation of the TribeHR Service will be error free or uninterrupted. ORACLE AND ITS SUPPLIERS HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. TribeHR Services are not within the scope of Oracle's SSAE 16 (SOC1) / ISAE 3402 Type II Report.*

*or similar third party audit to an established industry standard selected by Oracle.

16. Limitation of Liability. IN NO EVENT SHALL ORACLE'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU TO ORACLE FOR THE RELEVANT TRIBEHR SERVICE IN THE THREE (3) MONTHS PRIOR TO THE DATE THE CLAIM AROSE. IN NO EVENT SHALL ORACLE AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THESE TRIBEHR TERMS OR THE TRIBEHR SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE TRIBEHR SERVICE, OR FOR ANY INFORMATION OBTAINED FROM OR THROUGH THE TRIBEHR SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT (OR SUCH PARTY'S LICENSORS) HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Modifications; Discontinuation of TribeHR Service.

a. To the Service. Oracle may make modifications to the TribeHR Service or particular components of the TribeHR Service from time to time and will use commercially reasonable efforts to notify you of any material modifications. Oracle reserves the right to discontinue offering the TribeHR Service at the conclusion of your then current subscription term for such TribeHR Service. Oracle shall not be liable to you nor to any third party for any modification of the TribeHR Service as described in this Section.

b. To Applicable Terms or Subscription Fees. Oracle may update or revise these TribeHR Terms or change

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Subscription Fees from time-to-time. Oracle will notify you of such modifications by either sending an email to your notification email address or posting a notice in the administrator's instance of your account or through the TribeHR Service. Any such modifications will be effective as of the next renewal date for your TribeHR Service subscription. You may have to click through the modified TribeHR Terms to show your acceptance. If you do not agree to the modified TribeHR Terms, your sole remedy will be to choose not to renew your account, in which case the post-termination procedures in Section 13 will apply.

18. Governing Law and Jurisdiction. These TribeHR Terms are governed by the substantive and procedural laws of the State of California and each party agrees to submit to the exclusive jurisdiction of, and venue in, the courts in San Francisco or Santa Clara counties in California in any dispute arising out of or relating to these TribeHR Terms. The Uniform Computer Information Transactions Act does not apply to these Terms of Service.

19. General. The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by these TribeHR Terms. If any portion hereof is found to be void or unenforceable, the remaining provisions of these TribeHR Terms shall remain in full force and effect. Neither party shall be liable for any loss or delay (including failure to meet the service level commitment) resulting from any force majeure event, including, but not limited to, acts of God, fire, natural disaster, terrorism, labor stoppage (other than those involving Oracle employees), internet service provider failures or delays, civil unrest, war or military hostilities, criminal acts of third parties, and any payment date or delivery of Service date shall be extended to the extent of any delay resulting from any force majeure event. You may not assign these TribeHR Terms, in whole or in part, without Oracle's prior written consent; provided however, that you may assign these TribeHR Terms without Oracle's consent, in connection with a merger, acquisition, or sale of all or substantially all of your assets, provided that you provide Oracle with prior notice. Any attempt to assign these TribeHR Terms other than as permitted above will be null and void. These TribeHR Terms and any Estimate/Order Forms constitute the complete and exclusive understanding and agreement between the parties regarding the TribeHR Service and supersede all prior or contemporaneous agreements, emails, or understandings, written or oral, relating to their subject matter, including any different or additional terms and conditions stated by you in connection herewith in a purchase order or otherwise. Except as provided in Section 17(b) (To Applicable Terms or Subscription Fees), Any waiver, modification or amendment of any provision of these TribeHR Terms will be effective only if in writing and signed by a duly authorized representative of the party against whom such provision shall be applied. In the event

of a conflict between these TribeHR Terms and a valid Estimate/Order Form signed or accepted by you, the terms shall apply in the following order of precedence: (1) Item Description in an Estimate/Order Form; (2) these TribeHR Terms; (3) pre-printed terms on the Estimate/Order Form. These TribeHR Terms have been written in the English language. You waive any rights you may have under the law of your country to have these TribeHR Terms written in the language of that country.