In Touch - Terms and Conditions

1 PREAMBLE

1.1 Company provides the "In Touch" IT-platform which supports and offers End User oriented online services, including High Speed Internet Access (HSIA), TV, video-on-demand (VOD), booking (for restaurants etc.), concierge, news, and venue information, and enables Customers to tailor its supply of such services accessible to End Users through a number of Touch Points by selection of a range of Company authorized Apps. The Services are based on and delivered by use of cloud technology.

1.2 Buyer wishes as an independent contractor to offer the Services to Customers and has therefore entered into a separate Project Order / Order Confirmation with Company to that effect (the "Contract") and, subject hereto, one or more Customer specific Project Orders of which these Terms and Conditions are an inherent and integrated part.

1.3 The Contract together with a Project Order, including these Terms and Conditions, constitute the entire agreement regarding the Services between the Parties and replaces all other prior agreements, representations, warranties and understandings with respect to the Services.

1.4 If a Project Order includes delivery of hardware and related services such delivery shall not be regulated by these Terms and Conditions but shall be subject solely to the "TRIAX – terms and conditions of sale" applicable at the time of signature of the Project Order.

2 DEFINITIONS

2.1 Capitalized terms, unless otherwise defined herein, shall have the meaning specified in this Section 2 (Definitions):

"App"	means each of the functionality packages at any time defined and offered by Company to Buyer for resale to Customers, e.g. High Speed Internet Access (HSIA), TV, video-on-demand (VOD), booking (restaurants etc.), concierge, news, and venue information, within a specific geographic territory.
"App Shop"	means the online facility made available by Company for acquisition of individual Apps by Buyer or Customer.
"Buyer"	means the legal or physical person who purchases the Services from Company for resale to Customers subject to a Contract and Project Order.
"Company"	means TRIAX A/S, Danish company registration (CVR) no. 29 11 95 11
"Contract":	means the Project Order / Order Confirmation with schedules agreed between Company and Buyer regulating Buyer's general right to resell Services as an independent contractor, excluding any Project Orders, the Terms and Conditions, and the "TRIAX – terms and conditions of sale".
"Customer":	means a customer, including such customer's affiliates, of Buyer purchasing the Services for its use, e.g. hotels, conference operators and other hospitality operations.
"Data Controller"	means Customer.
"Effective Date"	means the date specified in Section 16.1.
"End User"	means the actual end user for whom the Services are intended and are to be used, i.e. the client or employee of Customer.
"Fees"	means any and all fees payable for the Services according to a Project Order, including these Terms and Conditions.
"Locations"	means the Customer's locations from which the Services shall be available.
"Party"	means either Company or Buyer, respectively.
"Parties"	means Company and Buyer together.
"Project Order"	means a quotation for delivery of specified Services and/or hardware prepared by Company and signed by the Buyer, including these Terms and Conditions and/or the "TRIAX – terms and conditions of sale" as applicable.
"Service":	means the In Touch-platform and one or more Apps available to Customer and/or End Users available on the "In Touch"-platform and via select Touch Points under the applicable Project Order.
"Terms and Conditions"	means these "In Touch - Terms and Conditions" as amended from time to time.
"Touch Points"	means a user interface presented by use of a hardware device enabling access to the "In Touch"-platform and the Services, e.g. through in-room TV, hand held devices, and digital signage and other display devices.

3 SCHEDULES

Schedule 1	Data Processing Agreement
Exhibit 1	Types of personal data and data subjects
Exhibit 2	Sub-data processors
Schedule 2	Support and maintenance

4 RELATION OF THE PARTIES

4.1 Buyer acknowledges and agrees to be an independent contractor acting in its own name and at its own risk and Buyer shall remain an independent contractor for the term of the Contract and any Project Orders. Neither Party are and shall not become or in any way be construed as employees, representatives, agents or joint venture participants of the other Party.

4.2 Buyer's relation to Customers shall be the business of Buyer only and Buyer shall not be entitled in any way and whether directly or indirectly to commit Company without Company's prior written consent either through signature of a Project Order or otherwise.

4.3 Buyer shall ensure Customer's acceptance of and compliance with any and all terms and conditions, including such set out in the Contract, the Project Order and these Terms and Conditions, required for (i) Buyer's fulfilment of its obligations under the Contract, e.g. Sections 7.2, 15.1, and (ii) efficient protection of any and all of Company's rights and business, e.g. Sections 7.6, 12.3, and 12.4. Further, Company shall be entitled to enforce such relevant terms of the Contract directly against Customer, including in the event of Customer's infringement of intellectual property rights. Buyer shall on request cooperate with Company to the extent required to ensure Customer's compliance.

5 RELATION TO END CUSTOMERS

5.1 Buyer acknowledges that Company irrespective whether specific sales are made through App Shop or otherwise has not and shall not have any relation to or obligations directly towards Customers, End Users or any third parties engaged by Buyer. Accordingly, any and all obligations in relation to Company's delivery of Services are solely towards and can only be enforced by Buyer in accordance with the rights and obligations of the Contract and the applicable Project Order.

6 APPLICATION OF TERMS AND CONDITIONS

6.1 These Terms and Conditions shall apply to any and all sales of Services by Company to Buyer and shall take precedent over all other terms and conditions set out in, referred to, offered or relied on by Buyer whether in negotiation or at any stage in the dealings between the Parties, including any terms or conditions which Buyer purports to apply under any Project Order, confirmation, specification or other document. Further, the Sections set out in these Terms and Conditions shall in the event of conflict take precedent over any regulation set out in Schedule 1 (Data Processing Agreement).

6.2 Any variation to these conditions and any warranties or representations made by Company in relation to the Services shall have no effect unless expressly agreed in writing and signed by Company as part of the Contract. Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Company which is not set out in the Contract.

6.3 Each request for Services or acceptance of a Project Order quotation submitted by Buyer to Company shall be deemed to be an offer to buy Services subject to these Terms and Conditions.

6.4 No order placed by Buyer shall be deemed to be accepted by Company until a written acknowledgement of the order is issued by Company or (if earlier) Company effectively initiates delivery of the requested Services to Buyer or Customer.

6.5 Buyer shall ensure and shall be responsible and liable for:

i. that the contents, including specification of Services, of a Project Order are complete and accurate;

ii. that any and all information, documentation and integrations to Customers systems required for Company's preparation and delivery of the Services to Customer is provided, sufficiently described and available in due time for Company to comply with any obligations of a Project Order; and

iii. any authorization of Customer and Customer personnel to purchase Services from Company and for payment of any such Services ordered by Customer or Customer personnel irrespective of the means of such purchase.

6.6 Any quotation for delivery of Services from Company is valid for a period of ninety (90) days from issue date, provided that Company has not withdrawn such quotation prior hereto.

7 DESCRIPTION OF SERVICES

7.1 Company shall deliver the Services set out in and according to agreed Project Orders.

7.2 Company reserves the right to amend the Services with no less than thirty (30) days

prior written notice to Buyer.

7.3 Buyer accepts that provision of any services or deliverables, including installation and implementation, required for the successful delivery of the Services to Customers and End Users which are not specified to be delivered by Company according to a Project Order are the sole responsibility of Buyer.

7.4 All samples, performance figures, drawings, descriptive matter, specifications and advertising material issued by Company and any descriptions or illustrations contained in Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract and does not constitute a sale by sample.

7.5 Buyer shall make no Services developed by third parties available through the "In Touch"-platform unless to the extent specifically approved in writing by Company.

7.6 For the avoidance of doubt, Company shall in no event be obligated to comply with any regulatory requirements, e.g. logging of data or security requirements, except to the extent specifically agreed in a Project Order.

8 DELIVERY AND ACCEPTANCE

8.1 Company shall ensure that the agreed Services are available to Buyer on the Locations and at the date and time and according to any agreed service level agreement set out in the applicable Project Order. Services shall be considered available if no error or defect in the Services for which Company is responsible exists.

8.2 Buyer shall without undue delay and no later than seven (7) days after the agreed delivery date submit to Company a written acceptance of delivery of the Services. If Buyer has not in writing either accepted or rejected delivery of the Services within seven (7) days Buyer shall be considered to have accepted delivery of the Services without reservations.

8.3 If Buyer rejects delivery of the Services due to an error or defect for which Company is liable Company shall without undue delay in Company's discretion and as the sole remedy available to Buyer either:

  i. remedy the Services; or

  ii. issue a credit note at the pro rata rates paid for the term in which the Services are not available.

9 SUPPORT AND MAINTENANCE

9.1 Company shall in relation to the Services provide the support and maintenance services set out in and subject to these Terms and Conditions, including Schedule 2 (Support and maintenance).

10 FEES AND PAYMENT TERMS

10.1 Unless otherwise agreed in a Project Order the Fees for the Services shall be according to Company's standard Fees available at Company's website http://www.TRIAX.com/ or App Shop.

10.2 The Fees for the Services shall be exclusive of any value added tax and other applicable taxes such to be paid by Buyer in full.

10.3 Unless otherwise agreed in a Project Order the Services, except any Services based on time and material, shall be invoiced monthly in advance. Payment for any Services based on time and material shall be invoiced monthly in arrears. Payment shall be made no later than fourteen (14) days after the date of the invoice.

10.4 No payment shall be deemed to have been received until Company has received cleared funds.

10.5 All payments payable to Company under a Project Order shall become due immediately on its termination despite any other provision.

10.6 Buyer shall make all payments due under a Project Order in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless Buyer has a valid court order requiring an amount equal to such deduction to be paid by Company to Buyer.

10.7 If Buyer fails to pay Company any sum due pursuant to a Project Order, Buyer shall be liable to pay interest to Company on such sum from the due date for payment at the monthly rate of two per cent (2 %) per annum, accruing on a daily basis until payment is made.

11 SUB-SUPPLIERS

11.1 Company shall be entitled to use sub-suppliers for the performance of the Contract or any Project Order. Company shall be liable for sub-suppliers to the same extent as for Company's own acts and omissions.

12 INTELLECTUAL PROPERTY RIGHTS

12.1 Company and any third parties, respectively, retains and acquires any and all ownership to and intellectual property rights in the Services, any software, and material, including rights to sell, copy, reproduce, exhibit, transmit, distribute, broadcast or otherwise exploit the Services.

12.2 Buyer receives a non-exclusive limited right for the term of the Contract to resell and offer the Services to Customers subject to Project Orders. Buyer acquires no and shall not be entitled to seek other right, title or interest in the Services.

12.3 If a third party submits a claim for infringement of intellectual property rights against Buyer, Customers or End Users, Buyer shall immediately notify Company in writing hereof. Company shall at Company's discretion be entitled to assume control of the infringement case. Buyer shall not be entitled to enter into negotiations or settle any dispute with third parties without Company's prior written consent and Company shall not be liable to indemnify Buyer in the event such consent has not been obtained prior to settlement.

12.4 If a third party submits a claim for infringement of intellectual property rights Company may at its sole discretion remedy the infringement by (i) acquiring the necessary rights for Buyer's, Customer's and End User's continued use of the Services, (ii) replacing the infringing component or Service with a non-infringing component or Service, or (iii) providing a service similar to the infringing Service. If the infringement cannot be remedied without significant cost Company may without further notice choose to terminate the relevant Services and affected parts of the Contract for convenience. The above shall be the sole remedy available to Buyer and End Users in the event of infringement of intellectual property rights.

13 WARRANTIES

13.1 COMPANY PROVIDES OR ASSUMES NO WARRANTIES WHETHER EXPRESS OR IMPLIED IN RELATON TO SERVICES UNDER ANY PROJECT ORDER AND COMPANY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING ANY IMPLIED WARRANTY OF TITLE, MERCHANTABILITY, NONINFRINGEMENT, OR OF FITNESS FOR A PARTICULAR PURPOSE.

13.2 Buyer warrants that:

  i. any and all Customers accepts and adheres to the regulation of the Contract as set out in Section 4.3.

  ii. any rights relevant for Company to ensure compliance with the Contract and protect Company's rights are accepted and effectively incorporated in a valid agreement between Buyer and Customer and such rights can be enforced by both Buyer and Company in relation to Customers and End Users;

  iii. Customers and End Users are precluded through contract from making or maintaining any requirement, request, complaint, right, or claim directly against Company in relation to the Services, the delivery hereof or any obligation of Company in relation hereto (except to the extent set out in applicable mandatory law); and

  iv. Company shall only respond to and be liable towards Buyer, including in relation to requirements, requests, complaints, rights, or claims from Customers and End Users, to the extent set out in the Project Order, including these Terms and Conditions, or otherwise specifically agreed in writing by the Parties.

13.3 Buyer shall ensure that an identical stipulation on warranties as set out in this Section 13 apply in relation to Customers and End Users. For the avoidance of doubt Buyer's breach of warranties shall constitute material breach of affected Project Orders.

13.4 With respect of this Section 13, all warranties, conditions and other terms implied by statute or law are, to the fullest extent permitted by law, excluded from the Contract.

14 CONFIDENTIAL INFORMATION

14.1 Buyer shall not, without the prior written consent of Company, disclose to any third party any information or material regarding Company's business, marketing efforts, applied technology, know how, or other information not intended for distribution or specifically marked as confidential which has been supplied or disclosed by Company to Buyer. Buyer shall not copy nor reproduce any such information or material and shall return the supplied information and material to Company upon request.

15 DATA PROCESSING

15.1 Buyer shall ensure that the Data Processing Agreement set out in Schedule 1 (Data Processing Agreement) is entered without any alterations and in writing between Buyer and Customer prior to initiation of delivery of the Services to Customer.

15.2 Pursuant to the Data Processing Agreement in Schedule 1 (Data Processing Agreement) between Buyer and Customer, Buyer must execute a data processing agreement in which any sub-data processor undertakes vis-à-vis Buyer as data processor for Customer to be bound by back-to-back terms with respect to the requirements under the Data Processing Agreement (the "Sub-processing Agreement").

15.3 When Company processes personal data as part of the provision of Services Company operates as sub-data processor for Customer as Data Controller. Buyer operates as data processor.

15.4 Company's processing of personal data as sub-data processor is covered by the Data Processing Agreement between Customer and Buyer. Company shall, thus, be subject to the rights and obligations, which applies to Buyer as data processor pursuant to the Data Processing Agreement.

15.5 Company shall act on instructions from Buyer. Buyer will provide such instructions and carry out audits, including inspections, pursuant to applicable regulation on behalf of Customer within the scope of the Data Processing Agreement.

15.6 Buyer will inform Customer that Company will process personal data as sub-data processor and that Company will enter into the rights and obligations, which applies to Buyer as data processor pursuant to the Data Processing Agreement.

16 TERM AND TERMINATION

16.1 The Project Order shall enter into force on the date of signature ("Effective Date") and shall, unless otherwise mutually agreed in the Project Order or in the annual assessment discussions, be automatically prolonged every twelve (12) months and continue in effect until terminated according to these Terms and Conditions.

16.2 Either Party may unless otherwise agreed in the Project Order terminate any Project Order for convenience with a ninety (90) days prior written notice, however, with effect no earlier than thirty six (36) months from the Effective Date.

16.3 Either Party may terminate the Project Order in whole or in part for cause in the event and to the extent the other Party is in material breach of the Project Order. Bankruptcy, insolvency or liquidation of either Party shall constitute a material breach.

16.4 Irrespective of any minimum contract term stipulated in Section 16.2 the Parties agree to enter into good faith negotiations to amend or terminate the Project Order in whole or in part if continuation of the Project Order due to exceptional events have incurred or will incur significant costs on either Party.

17 LIABILITY AND LIMITATION OF LIABILITY

17.1 The Parties shall be liable in accordance with Danish law, subject to the deviations set out in the Project Order or these Terms and Conditions, including this Section 17.

17.2 Company shall be liable for Buyer's loss only to the extent attributable to Company and subject to any limitations of liability.

17.3 Company shall not be liable for any indirect, special, incidental, punitive or consequential loss or damage irrespective of whether such loss is suffered by Buyer, Customers, End Users or any third parties, including but not limited to pure economic loss, loss of revenue, loss of profits, loss of business, operating loss, internal costs, loss of data, retrieval and restoration of data, or depletion of goodwill (howsoever caused) which arise out of or in connection with the Contract or any Project Order.

17.4 Buyer shall in no event be entitled to claim for any damages or loss caused by Buyer's, Customer's or End User's unauthorized or not intended use of the Services, including software and Apps.

17.5 Company shall not be liable for third party apps or services facilitated by Buyer or Customer irrespective of Company's approval hereof.

17.6 Buyer shall indemnify and hold harmless Company from any and all:

   i.   claims made by Customers, End Users or third parties with respect to Customers' or End Users' use of the Services directly against Company irrespective of the basis hereof (not limiting Buyer's right to recourse subject to any limitations in the Project Order, including these Terms and Conditions);

   ii. claims regarding infringement of third party intellectual property rights for which Buyer, Customer or End Users are liable; and

   iii. loss due to Buyer's breach of confidentiality as set out in Section 14.

17.7 Company's aggregate liability for loss, damages, penalties, service level credits, proportionate reduction of fees, fines or compensation in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Project Order irrespective of whether the loss is suffered by Buyer, Customers, End Users or any third parties, shall be limited to an amount equal to the aggregate Fees paid by Buyer under the Project Order in the twelve (12) months preceding the event giving raise to the claim (less any such amounts already paid or payable by Company under the Project Order in question).

17.8 Company shall in the event of direct claims against Company from Customers, End Users or third parties, including public authorities, and to the maximum extent not precluded under mandatory law be entitled to recourse against Buyer for amounts paid or payable due to such claims which exceed the limitation of liability set out in Section 17.7. This Section does not imply a deviation to Section 5.1.

18 ASSIGNMENT

18.1 Company may assign the Contract or any part of it, including individual Project Orders, to any third party.

18.2 Buyer shall not be entitled to assign the Contract or any part of it, including Project Orders, without the prior written consent of Company.

19 FORCE MAJEURE

19.1 Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the Services provided to Buyer (without liability to Company) if Company is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of Company including, but not limited to, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a period in excess of 180 days, Buyer shall be entitled to terminate the Contract for convenience.

20 GENERAL

20.1 Each right or remedy of Company under the Contract is without prejudice to any other right or remedy of Company whether under the Contract or otherwise.

20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to such extent be deemed severable and the remaining provisions of the Contract shall continue in full force and effect.

20.3 Failure or delay by Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

20.4 Any waiver by Company of any breach of, or any default under, any provision of the Contract shall not be deemed a waiver of any subsequent breach or default and shall in no way affect any other terms of the Contract.

21 CHOICE OF LAW AND VENUE

21.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of the kingdom of Denmark, and the Parties submit to the exclusive jurisdiction of the Danish courts.

22 COMMUNICATIONS

22.1 All written communications shall be sent as registered mail or via e-mail according to the contact information set out in the Project Order.

22.2 Communications shall be deemed to have been received:

   (a) if sent as registered mail, two (2) days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

   (b) if sent e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

22.3 Communications addressed to Company shall be marked for the attention of the Managing Director.

22.4 Irrespective of the above Company shall be entitled to communicate to Buyer or Customer by use of Company's system management tool made available to Buyer and Customers. Any communication shall be considered received by and binding upon Buyer and Customer and having full discharge for Company when Company publishes the communication via the system management tool.