

# Terms of Use for ATTENDANCE GIRITON

Operated by GIRITON Systems s.r.o.

Effective from August 1, 2014

Version no. 2015.04

## 1. Introductory Provisions

### 1.1. Provider

1.1.1 The Provider is GIRITON Systems s.r.o., with head office at Hornosušská 1399/4b, 73564 Havířov - Prostřední Suchá, Czech Republic. VAT CZ28652240, registered in Czech Republic under no. 28652240 in the commercial register maintained by the Regional Court in Ostrava, Section C, File no. 37041.

1.1.2 Provider's contact information:

- a) Mailing address: Podnikatelský inkubátor VŠB, Studentská 6202/17, 708 00 Ostrava-Poruba, Czech Republic,
- b) E-mail address: giriton@giriton.cz

1.1.3 The Provider is a legal entity which operates and expands the attendance system ATTENDANCE GIRITON generally defined in Article 1.2 of these Terms of Use.

### 1.2. ATTENDANCE GIRITON System

1.2.1 The ATTENDANCE GIRITON attendance system is a software service that allows to monitor, record, and evaluate employees' attendance and is further specified on the Provider's website.

1.2.2 The Provider enables third parties to use the system ATTENDANCE GIRITON via remote access to the Provider's server on which the ATTENDANCE GIRITON system is located.

## 2. Definition of Terms

2.1.1 Application – the ATTENDANCE GIRITON information system as specified in Article 1.2 of these Terms;

2.1.2 Application Period of Use – the period for which all agreed Application functions as listed on <https://giriton.com/> are available to the Client;

2.1.3 Authorized Person – such person as specified by the Client upon registration who is authorized to access Help Desk;

2.1.4 Client – a natural or legal entity which has electronically entered into Contract of Use of the ATTENDANCE GIRITON system with the Provider;

2.1.5 Client's E-mail Address – the e-mail address as entered by the Client during order completion and as specified in the My Account section where it can be changed;

2.1.6 Contract – Contract of Use of the ATTENDANCE GIRITON system made electronically between the Provider and the Client;

2.1.7 Contracting Parties – the common name for the Provider and the Client who have entered into the Contract;

2.1.8 Help Desk Support – a service designed to meet all operational incidents reported by the Client;

2.1.9 My Account Section – administration interface made available to the contracted Client through which the Client may specifically log in to the Application, perform setup, save contact or billing information;

2.1.10 Order – a draft contract, made electronically by the Client;

2.1.11 Price – the price charged by the Provider for the use of the Application; the individual components, amount, and method of determining the price are listed in the Price List;

2.1.12 Price List – the Provider's price list, the current version of which is published on <https://giriton.com/>;

2.1.13 Provider – GIRITON Systems s.r.o., as specified in Article 1.1 of these Terms;

2.1.14 Terms – Terms of Use for ATTENDANCE GIRITON.

## **2.2. Client Registration**

- 2.2.1 Using the Application is conditional among other things on Contract conclusion and Client registration within filling out the Order. The Client is obliged to provide so-called required data on filling the Order; the registration cannot be completed without this data.
- 2.2.2 The Client – natural person – will provide his name and surname, the Client – legal entity – will provide company name, both will provide a login name, e-mail address, telephone number, and password.
- 2.2.3 The Client is obliged to inform the Provider of any change of data immediately after the change occurs. The customer is not allowed to remove the contact information entered during the registration or to provide false or misleading information. Should the Client fail to fulfill his obligation, his access to the My Account section may be blocked. Provider's claim for damages under the applicable laws of the Czech Republic remains unaffected.
- 2.2.4 The Client has access to his data and may amend or supplement it.
- 2.2.5 In order to ensure both Clients and third parties the highest degree of legal certainty, newly registered Clients are verified based on their registration and draft Contract by contact on the data provided. Similarly, existing Client contact information is verified to ensure it is up to date.
- 2.2.6 The Client agrees to receive commercial communications from the Provider. This consent is revocable at any time, whether for individual type of communication or all commercial communication.
- 2.2.7 The Client acknowledges that in order to ensure safety of provided Services, the Provider shall at any Client request or communication require authorization of contact person as listed during registration or changes thereto – i.e. entering valid contact information and, if necessary, passwords. The Provider will not deal with unauthorized persons (i.e. persons not listed by the Client during registration or later in the registration form) or respond to their inquiries or requests for information and is not in default due to a refusal to communicate with an unauthorized person nor is he responsible for damages arising to the Client in this context.

## **3. Concluding the Contract, Activation, Application Operation**

### **3.1. Order, Contract of Use of the ATTENDANCE GIRITON system and Terms of Use**

- 3.1.1 The Client and the Provider shall conclude the Contract of Use of the ATTENDANCE GIRITON system electronically. The Client will register via the registration form on the website <https://giriton.com/> (i.e. Order) and will send an Order which has the effect of sending a draft Contract.
- 3.1.2 Sending the Order is conditional on accepting these Terms which are an integral part of the Contract concluded between the Provider and the Client and regulate mutual rights and obligations of the Contracting Parties under the Contract.
- 3.1.3 The contract is concluded at the moment when the Provider activates the Client's access to My Account and informs the Client thereof by delivering confirmation of access to the My Account section including the access password to the Client's e-mail address.
- 3.1.4 The Provider reserves the right
  - a) To contact the Client by telephone before activating access to My Account in order to verify the information provided in the registration form and/or
  - b) To refuse to conclude the Contract without reason.
- 3.1.5 Unless differing understandings are expressly stated in the Contract or validity of certain provisions of these Terms is eliminated or otherwise modified by the Contract or other express agreement between the Provider and the Client, these Terms of Use apply to relations between the Contracting Parties.

### **3.2. Subject of the Contract**

- 3.2.1 Under the conditions stipulated in the Contract and these Terms, the Provider undertakes:
  - a) To place the Application on the Provider's server (also in a data hosting center), establish access to the Application for the Client and activate the Application,
  - b) To provide authorization to exercise the right to use the Application to the Client is entitled (license),
  - c) To perform ongoing Application maintenance for the duration of the Contract (patches, updates),

d) To perform localization of potential operational incidents and their removal and solutions for the duration of the Contract.

3.2.2 The subject of the Contract is not and the Provider does not provide activities and services not mentioned explicitly in the Contract or the Terms, although they may be essential for proper functionality of the Application, especially telecommunications services or Internet connection, the installation of common operating systems on Client's local computers or servers, direct end-user support to the Client in the form of consultations, etc.

3.2.3 The Client undertakes to pay to the Provider the Price in the amount and under the conditions specified in Article 5 of the Terms and agrees to negotiated cooperation.

### **3.3. Application Activation and Access to My Account**

3.3.1 Should the Provider accept the Order,

a) He will e-mail certification of Contract conclusion to the Client.

### **3.4. Application Installation and Operating Conditions**

3.4.1 The Provider is required to make the Application located on the Provider's server (also in a data hosting center) available to the Client.

3.4.2 To ensure proper operation of the Application, the Client is furthermore required to fulfill the following obligations:

a) Providing internet connectivity allowing Application users to connect to the Application's web site.

3.4.3 The Client acknowledges that requirements for the minimum recommended configuration or Internet connection may increase, among others, in connection with the number of bit rates or technology development and increasing demands on hardware capacity and Internet connection speed.

### **3.5. Training, Documentation**

3.5.1 The Application is included with user documentation in electronic form, accessible in the Application.

3.5.2 Client employees' training is not part of Provider performance.

### **3.6. Providing Data Space, Passwords**

3.6.1 The Provider undertakes to provide the Client sufficient data space for data storage operated within the Application on the Provider's server (also in a data hosting center). Price for provision of data space to maintain essential functions of the Application is included in the Price under these Terms, in case of high demands on data space the price for data space may be charged individually upon agreement between the Client and the Provider.

3.6.2 The Client is obliged to keep the passwords to the Application in secret and to treat them as confidential. The Provider is not responsible for the disclosure of passwords, which are in saved in the Application in an encrypted form.

### **3.7. Data Backup, Data Handling, Personal Data**

3.7.1 The Provider does not operate with Client data including personal data except storing them on the Provider's server or in a data hosting center, he especially does not infringe, modify, or disclose the data to third parties (excluding their access to public authorities in accordance with the law), unless the Contracting Parties agree otherwise.

3.7.2 If, in connection with the conclusion of the Contract, the Provider should process personal data provided to him by the Client via the Application, the sole purpose of dealing with such personal data is storage and the possibility of making it available to the Client.

3.7.3 For the purpose of Client data security against unauthorized or accidental access, the Provider applies adequate and appropriate technical and organizational measures that are continuously updated. Technical measures include the application of technology to prevent unauthorized access to Client data by third parties. Organizational measures are a set of rules of conduct of Provider's employees and are part of internal regulations of the Provider, who for safety reasons deems them confidential. Should the Provider's servers be located in a data center operated by a third party, the Provider ensure that the technical and organizational measures be put in place with that provider.

3.7.4 The Provider undertakes to place all Client data only on servers located in the European Union or countries

ensuring the protection of personal data in a manner equivalent to the protection provided by the laws of the Czech Republic (i.e. safe harbor). Other obligations of the Provider under the relevant legislation for the protection of personal data or other data regulated by legislation are not affected by this stipulation.

3.7.5 The Provider hereby declares that he announced to the Office for Personal Data Protection the processing of personal data and is registered with the Office for Personal Data Protection as a data administrator under registration number .....

### **3.8. Reference**

3.8.1 The Provider is entitled to disclose information about the Customer having used or using Provider's products or services in his information and advertising materials or reference sheets.

3.8.2 Method of Reference shall not reduce the Client's good name.

## **4. License Agreement**

### **4.1. The contents of the Application licensing and limiting the scope of the license**

4.1.1 The Provider hereby grants the Client license, i.e. the right to use the application, under the following conditions:

- a) The license is concluded as non-exclusive;
- b) The time scope of the license: for the duration of the Contract; the license is subject to due payment of the Price and compliance with license conditions, i.e. quantitative scope of the license and compliance with Client obligations under the Terms.
- c) The territorial range of the license: unlimited.

4.1.2 The quantitative scope of the license (number of licenses) is limited by the number of active users of the Client, according to individual limits of the number of persons included in the Application as listed on <https://giriton.com/>. The Client is entitled to change the scope of the license.

### **4.2. Provider's Copyright Protection**

4.2.1 The provider puts the application in the form of its implementation on his own server or on a server in a data hosting center. The Provider will not disclose any copies of the Application to the Client. The Client is not entitled to the application source codes.

4.2.2 Remuneration for the license is included in the agreed price.

4.2.3 The Client is not authorized without the express consent of the Provider to grant a sub-license, assign the rights to the Application or make it available in any other way than as is clear from its normal use, not even to the person in a group with the Client within the meaning of the provision of Par. 79 Act no. 90/2012 Coll., on business corporations. Negotiations on the basis of which the Client allows a third party to work with the Application, i.e. other legal entity or natural person, with the exception of employees of the Client, shall be considered violation of this Article.

4.2.4 The Client is not entitled to decompile the Application or various computer programs contained within the Application for other processing, translation, reproduction or modification to the Application or to decompile or disassembly other than that to which he is entitled pursuant to the provisions of Par. 66 of the Copyright Act.

4.2.5 The service and all its parts, such as texts, code, design, user interface, application, website, or information architecture are exclusive property of the Provider and may not be used, copied, abused, re-sold or reproduced without the express written consent of the Provider.

4.2.6 In the event of infringement of the Provider's copyright, the time scope of the license will terminate no later than the date on which the Client despite prior written notice of the Provider does not refrain from unjustifiable interference with these rights in the deadline specified in the notice, otherwise, without delay.

### **4.3. Other Copyright Works**

4.3.1 These conditions also apply to other copyright works provided for the use of the Client or made on the basis of the Contract (user documentation, processing or editing of the Application, making other software).

## **5. Help Desk Support**

**5.1.** The Contracting Parties agree that communications between the Contracting Parties will be carried out via e-mail communication between [giriton@giriton.cz](mailto:giriton@giriton.cz) and the Client's address as specified in the My Account section called Help Desk Support. This does not affect the right of the Contracting Party concerned to send information, notifications, and other acts in the form of e-mail, unless expressly stated in these Terms of Use.

**5.2.** The Client acknowledges that all operational incidents or other requirements must be addressed through Help Desk Support only. In the event of a dispute between the Contracting Parties, communications within Help Desk Support will be crucial for assessment; with regard to his operational capabilities, the Provider can not take other forms of communication (phone, fax, ...) into consideration.

**5.3.** Both Contracting Parties are obliged to promptly notify in writing the other Party of any changes to the contact information provided in the Contract or Terms of Use.

## **6. Duration of the Contract, Price and Payment Terms**

### **6.1. Application Period of Use and Duration of Contract**

6.1.1 The Provider may allow access to the Application for the first 30 days FREE OF CHARGE.

6.1.2 The User is not allowed to maintain multiple accounts in the free version.

6.1.3 The Provider shall make the application available no later than the first day following the month when the Contract was concluded.

6.1.4 Application Period of Use is the time during which the application is made available to the Client in its entirety provided the Price has been duly paid.

### **6.2. Price**

6.2.1 The Price for the use of the Application, including providing service support to the extent of Article 5 is listed in the current Price List, which is available on <https://giriton.com/>. The price also includes royalties to the Provider for license provision.

6.2.2 The Price is derived from the number of Application users.

6.2.3 Unless otherwise specified, the fees and charges stated in the Contract, these Terms and other annexes to the Contract are quoted excluding VAT, which is charged separately in the amount determined by current legislation.

### **6.3. Invoicing and Payment Terms**

6.3.1 The customer is obliged to pay the Price via bank transfer for the previous calendar month.

6.3.2 The Provider will generate an invoice no later than the 15th day of the calendar month for the previous month and send it to the e-mail address of the Client. The invoice has a due date of 14 days after the invoice date.

### **6.4. Mutual Provisions**

6.4.1 The Client is obliged to pay duly and on time by transfer to the bank account of the Provider listed on the invoice. The Client's financial obligation is fulfilled on the day the payment is credited to the Provider's account (as opposed to the date of transfer from the Client's account).

6.4.2 The Client is obliged to keep their billing information updated via My Account.

### **6.5. Client Arrears**

6.5.1 The Client acknowledges that the Provider shall send invoices for the Service electronically with a due date of 14 days within sending.

6.5.2 In case the Client is late in payment or part thereof, the Provider is entitled to suspend Client's access to the Application until the outstanding amount is paid, without the Client's claims for damages and/or contractual penalties arising from such Provider's conduct that is not the Provider's delay and which can not be considered operational incident. The Provider's right to Price for that period and interest on late payment is not affected by this arrangement.

6.5.3 If the Client's access to the Application is suspended, the Provider is obliged to restore the Client's access to the Application and all of its contracted functions within 48 hours from the time that the amount owed is credited to the Provider's account.

## **7. Liability, Confidentiality**

### **7.1. Liability for Legal Defects**

- 7.1.1 The Provider is responsible for the Application and its individual parts or components installed on Client's computers (client workstations) are not encumbered by third party rights.
- 7.1.2 The Provider does not accept responsibility for the compliance of requirements of the generated data and print reports with valid and effective legislation and it is only up to the Client to ensure their completeness and flawlessness.
- 7.1.3 Should it transpire that any author's work provided to the Client or made on the grounds of the Contract has been burdened with rights of third parties, the Provider is obliged in his own name to deal with such claims at his own expense. The Client is obliged to notify the Provider of any third party claim arising from legal defects without undue delay; in the event of litigation, the Client shall ensure proper and careful management of such dispute and to take all necessary steps to ensure that his rights have not been challenged because of lack of procedural defense. In the event of litigation, the Provider agrees to provide all necessary assistance upon the Client's notice.

### **7.2. Material Responsibility**

- 7.2.1 The Client acknowledges that the Provider shall not be liable for any special, indirect, incidental, or consequent damages including, without limitation, lost income or lost profits, damage to privacy or name that would result from the use and/or unavailability of the Service.
- 7.2.2 The Service is provided as is. Its provision is dependent on the availability of a number of third party services. If there is a Service outage for reasons of malfunctioning of third party services, this situation is considered force majeure. It is not in the Provider's power to accept responsibility for these outages.
- 7.2.3 The Provider is not liable for damage caused by Application downtime or for operational incidents of the Application should these be caused by the Client, by third parties or by circumstances excluding liability. The Provider is not liable for damage caused particularly
  - a) By operational incidents caused by changes in the system environment made by the Client or a third party;
  - b) By entering incorrect data into the Application by the Client, Client's incorrect procedure when entering information or files into the Application;
  - c) By failure to meet minimum system or other requirements for Application operation;
  - d) By infecting the Client's local network or the Client's computers by computer viruses (spyware, malware etc.), or by hacker attack or other similar external attack;
  - e) By damage caused by malfunction of hardware, the operating system or the Client's network;
  - f) By violation by the Client of laws governing the handling of personal data, method of employee control and other legislation relating to the use of the Application;
  - g) By demonstrable leak of passwords to third parties caused by the Client;
  - h) By the unavailability of data and denial of access to the Application due to the Client's delay with the fulfillment of financial obligations, or in other cases stipulated in these Terms.

## **8. Termination**

### **8.1. Methods of Termination**

- 8.1.1 The Contract expires or is terminated:
  - a) By notice within the User's Account, with a notice period of up to one month, with the notice period beginning on the date of receipt of notice. The notice shall be sent in writing by letter or e-mail from the addresses listed in the Contact Persons section to the Provider's address or by termination in the My Account section;
  - b) By withdrawal from the Contract.

### **8.2. Withdrawal from the Contract**

- 8.2.1 Each Party may terminate the Contract on grounds of substantial breach of obligation by the other

Contracting Party, in particular:

- a) Due to the Client's delay in payment of the Price or part thereof for over 14 days;
  - b) For failure to provide necessary cooperation by the Client, if this prevents the Provider from fulfillment of obligations under the Contract or endangers the safety of operation of the Application had the Client been notified in writing and given reasonable time to remedy;
  - c) The Provider reserves the right to immediately suspend the provision/use of the Service or to terminate the Contract without notice, especially but not only in cases of suspected overload of any part of the Service, safety intrusion, disruption of running of applications, efforts for reverse engineering, third party data acquisition, or any other threat to the Service;
  - d) Due to breach of any part of the Terms by the Client;
  - e) Should any Client account remain inactive for a period of 6 months;
  - f) The Provider reserves the right to suspend the operation of any user account or to withdraw from the contract 30 days after the notice is sent to the e-mail address specified in the My Account section.
- 8.2.2 Notice of withdrawal must be sent to the other Contracting Party by e-mail from or to the address specified in the My Account section and is effective on the date of its departure or on a later date as specified in the written notice of withdrawal.

### **8.3. Contract Settlement**

- 8.3.1 Should the Contract expire by withdrawal, the Client is not entitled to a refund of payment for services performed properly by the Provider under the Contract.
- 8.3.2 Given that the Client has access to any data stored within the Application, which are in commonly used formats, the Provider is not obliged to provide cooperation to migrate this data to a new information system of the Client or to provide the Client with other cooperation relating to the transition to a new system.
- 8.3.3 The Contracting Parties have agreed that the Provider shall after expiry of the Additional Period of 30 days delete (remove) all Client data, which to termination date are stored on the provider's server (also in data hosting centers) or other data carriers. The Client takes this into account and notes that such deleted data can not be restored.
- 8.3.4 Should the Client be interested in obtaining data stored in the Application, he needs to order such migration of data with the Provider no later than 15 days before the date of termination. This is a paid service.

## **9. Final Provisions**

- 9.1. The contractual relationship arising from this contract is governed by Czech law, particularly the provisions of Act no. 89/2012 Coll., The Civil Code and Act no. 121/2000 Coll., The Copyright Act. All disputes, discrepancies, or claims arising from these Terms or in connection therewith shall be subject to the jurisdiction of courts in the Czech Republic.
- 9.2. In case of dispute resolution between the Provider and the User, the Provider and the User have agreed under Par. 89a, Act no. 99/1963 on the territorial jurisdiction of the court of first instance as follows: the Municipal court in Ostrava shall decide disputes between parties under district competency. The Regional Court in Ostrava shall decide disputes between parties under regional competency.
- 9.3. Should these Terms be in a language other than Czech, in case of doubt, ambiguity, or possible double interpretation Terms in the Czech language are always binding.
- 9.4. The Contract is concluded electronically. Terms of Use are available in the My Account section on <https://giriton.com/>. Concluded Contracts are archived electronically by the Provider and are not accessible.
- 9.5. The Provider is entitled to unilaterally change these Terms to a reasonable extent, including the Price List. The Provider is obliged to notify the Client via e-mail to the Client's e-mail address of the fact that these Terms were changed at least 15 days before the new version of the Terms comes into effect. The Client has the right to refuse changes to the Terms by sending notice by letter or e-mail to the Provider's address or by terminating in the My Account section; the notice period is agreed in duration corresponding to the number of days remaining until the expiry of the Application Period of Use. If the Client does not reject changes to the Terms, of which he has been duly notified, the contractual relationship follows the new version of the Terms as communicated to the Client.