

TRICENTIS CUSTOMER SERVICE TERMS AND CONDITIONS

1. SCOPE AND DEFINITION

- 1.1. Scope.** These Tricentis Customer Service Terms and Conditions shall apply to the provision of Services and Deliverables to Customer as set forth on the applicable Order.
- 1.2. Definitions.** Capitalized terms not otherwise defined shall have the meaning set forth in this section.
- 1.2.1. **"Affiliate"** means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by an entity with an ownership of more than 50% of the voting shares.
- 1.2.2. **"Agreement"** means these Tricentis Customer Service Terms and Conditions, the applicable Order and any schedule and appendices thereto executed by the parties.
- 1.2.3. **"Company"** means the entity identified in the Order, which provides the Products in accordance with the terms of this Agreement.
- 1.2.4. **"Confidential Information"** means any data or information that is disclosed to one party ("**Recipient**") by the other party ("**Discloser**") and not generally publicly available in whatever form, whenever and however disclosed, including but not limited to the Products and Documentation, including all data, code, techniques, algorithms, methods, logic, architecture, know-how, and designs embodied or incorporated therein, client lists, information security plans, business continuity plans, trade secrets and proprietary information, personal identifiable data or any data or information which is either identified as confidential, or which by its nature a reasonable business person would consider to be proprietary or confidential.
- 1.2.5. **"Customer"** means the entity identified in the Order, to whom the Products are provided.
- 1.2.6. **"Customer Material"** means any work, material, content, code or data provided to Company by Customer in connection with the providing by Company of the Products.
- 1.2.7. **"Deliverable"** means any work or material (including software, reports, test cases, flow charts or documentation) delivered to Customer pursuant to this Agreement as described in or pursuant to the Order.
- 1.2.8. **"Documentation"** means the documentation, explanatory documents, notes and/or handbooks that describe the Products provided by Company to Customer.
- 1.2.9. **"Fee"** means any fees which Customer is required to pay in accordance with this Agreement.
- 1.2.10. **"Intellectual Property Rights"** or **"IP Rights"** mean any worldwide common law and statutory rights, whether arising under the applicable law or any other state, country, jurisdiction, government, or public legal authority, associated with (i) patents, utility models, and invention disclosures and applications therefor, (ii) trade secrets, or proprietary information, (iii) copyrights; (iv) trademarks and service marks, (v) industrial designs, (vi) all rights in databases and data collections; (vii) all economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, or perfect or any similar or equivalent rights to any of the foregoing, provided those rights or applications for any of those rights (where such applications can be made) are capable of protection in the applicable jurisdiction.
- 1.2.11. **"Order"** means the order form, or any other document as agreed by the parties, specifying the Products as well as Fees and additional conditions.
- 1.2.12. **"Products"** mean collectively the Services and/or Deliverables provided by Company to Customer as identified in the Order.
- 1.2.13. **"Services"** mean services performed to Customer pursuant to and as described in the Order not being Deliverables.
- 1.2.14. **"Term"** means the duration of Customer's rights to be provided with the Products as set forth in the Order.

2. IP RIGHTS

- 2.1. Ownership.** Company retains all rights, title, and interest, including all IP Rights, in and to the Products and its Confidential Information and Customer shall retain all rights, title, and interest in and to the Customer Materials and its Confidential Information. The Products are made available on a limited license or access basis, and no ownership right is conveyed to Customer, irrespective of the use of terms such as "purchase" or "sale". Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Products. Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Company by implication or otherwise.
- 2.2. Customer Material.** For the sole purpose of providing the Products, Customer hereby grants to Company and its Affiliates and subcontractors a worldwide, non-exclusive, revocable license to use Customer Materials during the Term. Customer shall ensure that its use of the Products and all Customer Materials are at all times compliant with applicable local, state, federal and international laws and regulations.

3. PROVISION AND USAGE OF PRODUCT

- 3.1. Providing of Services and Usage Rights of Deliverables.** Subject to payment by Customer of the Fees and subject to continuous compliance with the Agreement, Company shall perform the Services onsite or remote and/or shall provide the Deliverables as described in the Order on a time and material basis, unless otherwise agreed in the Order and Company grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to use the Products in accordance with this Agreement and the Documentation.
- 3.2. Right to Replace and Request Personnel.** Company shall be permitted, from time to time, to remove and replace any one or more Company personnel performing Services hereunder so long as any Company personnel removed are replaced by a Company personnel is trained and experienced so as to perform with capability equal to the Company personnel removed.

4. FEES

- 4.1. Payment.** Except as otherwise set forth in the Order, Fees are due and payable thirty (30) days after Customer's receipt of an undisputed invoice. Invoices are deemed to be accepted if not disputed in writing within ten (10) days after receipt. Customer shall provide Company with accurate billing and contact information and notify Company of any changes to such information.
- 4.2. Interest.** If any sum payable under this Agreement is not paid when due, without prejudice to Company's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Company, both before and after any judgment at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. In the event Customer in good faith disputes any amount due under any invoice issued by Company, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute.
- 4.3. Taxes.** Company or the GSA Schedule Contract reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).
- 4.4. Expenses.** Except as otherwise set forth in the Order, Customer shall reimburse Company for actual travel and living expenses of its personnel engaged in the performance of the Services at locations other than Company facilities, together with other out-of-pocket expenses incurred in connection with performance of the Service in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. Company shall adhere to any travel policy reasonably promulgated by Customer.

5. REPRESENTATION, WARRANTY LIABILITY AND INDEMNITY

- 5.1. Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. WARRANTY.** Company warrants to Customer that the Services will be performed in a professional and workmanlike manner, and the Deliverables will conform in all material respects to the Documentation or specifications set forth in the Order for a period of ninety (90) days after the completion of the Services and delivery of the Deliverables. If Customer performs itself, or retains a third party to perform, any services that interface or interact with the Product, Customer warrants to Company that such services will be performed in a professional manner and Customer shall remain solely responsible and liable at all times for the actions of such third parties as though it were the actions of Customer itself. Customer warrants the accurateness and completeness of all information supplied by it to Company during the provision of the Services.
- 5.3. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN 5.1 (WARRANTY) AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED BY COMPANY "AS IS", AND NEITHER COMPANY NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, USAGE, TRADE CUSTOM, ACCURACY, OR OUT OF TITLE, COURSE OF DEALING, PERFORMANCE OR OTHERWISE. COMPANY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING TO THE PRODUCTS INCLUDING, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THE COMPANY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY USE OR PERFORMANCE OF THE PRODUCTS.
- 5.4. LIABILITY.**
- 5.4.1.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY OTHER THAN SUBSECTION 5.4.2 BELOW AND TO THE EXTENT PERMITTED BY APPLICABLE LAW REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS (I) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, FOR ANY CONSEQUENTIAL SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, ANY LOSS OF REVENUES OR PROFITS, LOSS OF GOODWILL, LOSS OF OR INACCURATE DATA, LOSS OF USE, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY COST OF COVER ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) EACH PARTY'S AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT WILL BE LIMITED TO THE VALUE OF SERVICES OR DELIVERABLES ACTUALLY PERFORMED PURSUANT TO THE ORDER THAT IS THE SUBJECT OF SUCH CLAIM.
- 5.4.2.** THE PROVISIONS OF SUBSECTION 5.4.1 SHALL NOT APPLY FOR A BREACH OF SECTIONS 2.1 (OWNERSHIP), 3 (PROVISION AND USAGE OF PRODUCT), 5.3 (WARRANTY), 6 (CONFIDENTIALITY), AMOUNTS OWED BY CUSTOMER, PERSONAL OR PROPERTY DAMAGE, INCLUDING DEATH, BODILY INJURY OR DAMAGE TO HEALTH CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE.
- 5.4.3.** THE PARTIES AGREE THAT THIS SECTION REFLECTS A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES IN LIGHT OF THE TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREUNDER.
- 5.5. RESERVED.**
- 6. CONFIDENTIAL INFORMATION**
- 6.1. Confidentiality Obligations.** Except as otherwise set forth in a separate Non-Disclosure Agreement, during the Term and five (5) years thereafter, the Recipient shall (i) use Confidential Information solely for performing its obligations or exercising its rights under this Agreement, (ii) keep all Confidential Information in strict confidence; and (iii) not disclose, cause or permit disclosure of the Confidential Information to any third party, except as permitted under this Agreement.

Specifically, the Recipient shall limit disclosure of any Confidential Information to its directors, officers, employees, Affiliates, agents, or representatives (collectively "**Representatives**") that have a "need to know" in order to carry out the purpose set forth above and ensure that such Representatives have signed an agreement containing disclosure and use provisions similar to those set forth herein. The Recipient shall be held responsible to the same standard of care as it applies to its own confidential information, which shall not be less than reasonable care. The Recipient is responsible for any breach of this Agreement by any of its Representatives.

6.2. Exceptions. Confidential Information shall not include information that the Recipient can demonstrate (i) was in the Recipient's possession prior to disclosure hereunder; (ii) is or becomes publicly available through no fault of or failure to act by the Recipient in breach of this Agreement; (iii) was rightfully known by the Recipient prior to disclosure of such information by the Discloser to the Recipient; (iv) was independently developed by the Recipient without any use of or access to the Confidential Information; and (v) is required to be disclosed by a judicial or governmental order, and Discloser has been given timely notice (if legally permissible) of such order so that Discloser may seek an injunction or protective order. If only particular parts or aspects of Confidential Information become subject to any of the foregoing exceptions, all other portions or aspects shall remain subject to this Agreement.

7. DATA PRIVACY AND IT-SECURITY

7.1. Personal Data. Each party warrants that it shall use, collect, store and/or process personal identifiable data or personal information as defined under and in accordance with any applicable privacy laws ("**Personal Data**").

7.2. Data Collection. Each party acknowledges it is necessary for the cooperation to exchange and allow the use of the other party's contact information relating to their respective Representatives for (i) invoicing, billing and other business inquiries, (ii) contract and customer management and (iii) order fulfillment and deliveries to Customer ("**Contact Data**") and hereby authorizes such exchange, use and processing of Contact Data by the receiving party or its respective Affiliates. Each party agrees that it shall process Contact Data as a controller (where this concept is under the applicable law), in compliance with all applicable privacy laws and regulations and their respective privacy policies and in a safe and secure manner preventing unauthorized access, use or disclosure use of Contact Data only for the purposes outlined herein.

7.3. Data Processing. It is under Customer's sole discretion and Company has no control over the nature, scope, or origin of, the data processed by the Products and Customer shall have sole responsibility for the adequacy, relevancy, accuracy, quality, and legality of it. Customer shall not use any Personal Data in connection with, to input into and process while using the Products. In no event shall Customer use sensitive Personal Data, such as information on health, sexual orientation, political orientation, race, etc. Neither Party authorizes any exchange, use or processing of other Personal Data (other than Contact Data).

7.4. Security. Each Party will use adequate contractual and technical mechanisms to protect any data of the other party received by it. Customer acknowledges that use of the Product necessarily involves transmission of Customer Material over networks that are not owned, operated or controlled by Company, and Company is not responsible for any Customer Material's lost, altered, intercepted or stored across such networks. Company cannot guarantee that its security procedures will be error-free, that transmissions of Customer Material will always be secure or that unauthorized third parties will never be able to defeat Company security measures or those of Company's third-party hosting providers. Customer is solely responsible for maintaining the security of its customer system. Company assumes no responsibility or liability for Customer Material.

8. TERM AND TERMINATION

8.1. Term. This Agreement shall remain in effect for the Term of each underlying Order, unless terminated earlier in writing pursuant to the terms of this section.

8.2. Termination for Breach. When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Company shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.

8.3. Reserved.

8.4. Effect of Termination. Expiration or termination of this Agreement will not relieve any party of its obligations to pay any amounts accrued or otherwise owed under this Agreement. Upon termination of this Agreement, rights granted to Customer hereunder shall terminate and Customer shall not use the Products, and Company shall have no further obligation to provide the Products. In addition, no later than ten (10) calendar days after termination, each party shall return or certify destruction of all Confidential Information in its possession or control to the other party, if so requested. Any provision that is intended to continue after termination shall not be affected by the termination of this Agreement.

9. MISCELLANEOUS

9.1. Notices. All notices shall be in writing and addressed to the office location of the parties as set out in the Order or to such address as either party may later provide in writing to the other party by certified or registered mail, courier or email or through Customer's account.

9.2. Publicity. For marketing and promotional purposes, Customer agrees that Company may identify Customer in Company's promotional, marketing or other materials and refer to Customer by name, trade name as applicable to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Customer hereby grants to Company a license to use Customer's name and applicable trademarks in accordance with this section to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

9.3. Non-Solicitation. During the term of this Agreement and for one year thereafter, neither party will solicit any of the other party's employees or contractors to leave their current employment or engagement with the other party. The placement of general employment solicitations and advertisements in public media (e.g. newspapers, company website postings, internet recruiting sites), or the engagement of a recruiting firm who solicits the other party's employees as part of a general solicitation effort, without any direction from the hiring party to solicit individuals from such other party, will not constitute a breach of the terms of this section.

9.4. Reserved.

9.5. Exports. Customer shall comply with all applicable export trade control laws, rules, and regulations with respect to its use of the Product, including but not limited to International Traffic in Arms Regulations of the U.S. State Department, the Export Administration Regulations promulgated by the U.S. Department of Commerce or sanction regulations of U.S. Treasury Department and shall comply with all restrictions imposed pursuant thereto with respect to complying with prohibitions of trade or transactions with persons or entities whom or which may be sanctioned or blocked by virtue of being subject of an order, directive, proclamation, regulation or otherwise listed as a blocked, barred, suspended, sanctioned or prohibited person identified by such agencies and departments. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Product without Company's prior written consent and license as may be required by the export trade control laws of the U.S. Customer agrees to notify Company promptly if Customer may be in non-compliance with this section.

9.6. No Waiver. A party's failure or delay in exercising any of its rights shall not constitute a waiver of such rights unless expressly waived in writing.

- 9.7. Relationship.** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking, that would give a party the express or implied right, power or authority to create any duty or obligation of the other party.
- 9.8. Force Majeure.** Excusable delays shall be governed by FAR 552.212-4(f).
- 9.9. Assignment.** Neither this Agreement nor any rights granted hereunder may be assigned by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. The right of assignment granted herein shall apply only to the business of Customer as it existed prior to such assignment or sale. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.
- 9.10. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 9.11. Entire Agreement.** This Agreement constitutes the entire agreement between Company and Customer regarding the subject matter hereof and supersedes all prior oral and written communications. It may be executed in one or more counterparts, all of which together shall be considered one and the same and may be executed and delivered by electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, the Tricentis Customer Service Terms and Conditions may also be incorporated by way of reference in an Order. In the event of any conflict or inconsistency, the order of precedence shall be (1) the Order, (2) these Tricentis Customer Service Terms and Conditions, and (3) the Documentation.
- 9.12. Law and Jurisdiction.** This Agreement shall be governed by the Federal laws of the United States. The place of jurisdiction shall be where the Company as specified in the Order is located. This Agreement excludes the United Nations Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, Company may bring a claim for equitable relief in any court with proper jurisdiction.
- 9.13. Reserved.**
- 9.14. Australian Consumer Law.** If applicable, nothing in this Agreement excludes, restricts or modifies the application of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 of Australia ("ACL"). To the fullest extent permitted by law, Company's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by Company in its absolute discretion) (i) in the case of services, supplying the services again or payment of the cost of having the services supplied again or for major failures with the service, Customer is entitled to cancel this Agreement and to a refund for the unused portion, or to compensation for its reduced value. Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion of services.

[END OF DOCUMENT]

TRICENTIS CUSTOMER GENERAL TERMS AND CONDITIONS

1. SCOPE AND DEFINITION

- 1.1. Scope.** These Tricentis Customer General Terms and Conditions shall apply to the licensing of the Software as well as the provision of the Platform Services and the Services to Customer as set forth on the applicable Order.
- 1.2. Definitions.** Capitalized terms not otherwise defined shall have the meaning set forth in this section.
- 1.2.1. **“Acceptance Date”** means the date on which Customer signs the Order.
- 1.2.2. **“Affiliate”** means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by an entity with an ownership of more than 50% of the voting shares.
- 1.2.3. **“Agreement”** means these Tricentis Customer General Terms and Conditions, the applicable Order and any schedule and appendices thereto executed by the parties.
- 1.2.4. **“Company”** means the entity identified in the Order, which provides the Products in accordance with the terms of this Agreement.
- 1.2.5. **“Confidential Information”** means any data or information that is disclosed to one party (**“Recipient”**) by the other party (**“Discloser”**) and not generally publicly available in whatever form, whenever and however disclosed, including but not limited to the Product and Documentation, including all data, code, techniques, algorithms, methods, know-how, logic, architecture, and designs embodied or incorporated therein, client lists, information security plans, business continuity plans, trade secrets and proprietary information, personal identifiable data or any data or information which is either identified as confidential, or which by its nature a reasonable business person would consider to be proprietary or confidential.
- 1.2.6. **“Customer”** means the entity identified in the Order, which receives licenses, subscribes or accesses the Products, Documentation and Support.
- 1.2.7. **“Customer Material”** means any work, material, content, code or data provided to Company by Customer in connection with Customer’s use of, or resulting from Customer’s use of, the Products.
- 1.2.8. **“Customer System”** means any system owned, operated, or managed by Customer or its Affiliate on which the Software is installed, or which is accessed and used for the Platform Services.
- 1.2.9. **“Deliverable”** means any work or material (including software, reports, test cases, flow charts or documentation) delivered to Customer pursuant to this Agreement as described in or pursuant to the Order.
- 1.2.10. **“Documentation”** means Company’s standard written user documentation, explanatory documents, notes and/or handbooks that describe the design, functions, operation, or use of the Products as updated by Company from time to time.
- 1.2.11. **“Fee”** means any fees which Customer is required to pay in accordance with this Agreement.
- 1.2.12. **“Intellectual Property Rights”** or **“IP Rights”** mean any worldwide common law and statutory rights, whether arising under the applicable law or any other state, country, jurisdiction, government, or public legal authority, associated with (i) patents, utility models, and invention disclosures and applications therefor, (ii) trade secrets, or proprietary information, (iii) copyrights; (iv) trademarks and service marks, (v) industrial designs, (vi) all rights in databases and data collections; (vii) all economic rights of authors and inventors, however denominated, (viii) rights to apply for, file for, certify, register, record, or perfect or any similar or equivalent rights to any of the foregoing, provided those rights or applications for any of those rights (where such applications can be made) are capable of protection in the applicable jurisdiction.
- 1.2.13. **“Order”** means the order form, or any other document as agreed by the parties, specifying the options chosen by Customer for the Products as well as Fees and additional conditions.
- 1.2.14. **“Platform Services”** mean any Software made available by Company to Customer on a remote basis as identified in the Order.
- 1.2.15. **“Products”** mean collectively the Software, the Platform Services, Services and/or Deliverables provided by Company to Customer as identified in the Order.

- 1.2.16. “**Services**” mean any services performed to Customer pursuant to and as described in the Order.
- 1.2.17. “**Software**” means any software as standard computer program in executable code, including its components as well as all available technology adapters as set forth in the Order.
- 1.2.18. “**Support**” means standard support services in connection with the Software and/or the Platform Service provided in accordance with Company’s Support plan and any applicable service level agreement set forth in or attached to the Order.
- 1.2.19. “**Term**” means the duration of Customer’s rights to use or access the Products including Support as set forth in the Order.
- 1.2.20. “**Third-Party Software**” means software not owned by Company and licensed to or used by Customer, whether supplied by Company or a third party.
- 1.2.21. “**User**” means Customer’s or Customer’s Affiliate employees or contractors for whom the use of Product and Documentation is licensed or subscribed for.

2. IP RIGHTS

- 2.1. Ownership.** Company retains all rights, title, and interest, including all IP Rights, in and to the Products and its Confidential Information and Customer shall retain all rights, title, and interest in and to the Customer Systems, Customer Materials and its Confidential Information. The Products are made available on a limited license or access basis, and no ownership right is conveyed to Customer, irrespective of the use of terms such as “purchase” or “sale”. Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Products. Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Company by implication or otherwise.
- 2.2. Customer Material.** For the sole purpose of providing the Products, Customer hereby grants to Company and its Affiliates and subcontractors a worldwide, non-exclusive, revocable license to use Customer Materials during the Term. Customer shall ensure that its use of the Products and all Customer Materials are at all times compliant with applicable local, state, federal and international laws and regulations.
- 2.3. Open Source Component.** Customer acknowledges that certain software components of the Product may be covered by open source licenses as promulgated by the Open Source Initiative or by the Free Software Foundation. To the extent required by such open source license, the terms of such license will apply to such open source component in lieu of the relevant provisions of this Agreement. If such open source license prohibits any of the restrictions in this Agreement, such restrictions will not apply to respective open source component. Company shall provide Customer with a list of open source components upon Customer’s request.
- 2.4. Feedback.** Customer or its Users may submit feedback while using the Products. To the extent that Customer has the right, Customer assigns to Company all right, title and interest in and to any IP Rights associated with any suggestions, enhancement requests, communications, recommendations or other advice (“**Feedback**”) that it or its Users provide to Company relating to the Products or the Documentation for all possible uses by Company (including adaptation, reproduction, editing, alteration, addition to and/or deletion from, rearrangement, transposition, translation) and exploitation of the Feedback, and otherwise agrees not to enforce, and otherwise waives to the fullest extent legally possible, any rights that it or the User may have now or in the future in respect of such Feedback.
- 2.5. Aggregated Data.** Company may aggregate the metadata and usage data of Customer or User collected or otherwise made available through the Products so that the results are non-personally identifiable with respect to Customer or User (“**Aggregated Data**”). The Aggregated Data will be deemed Company’s Confidential Information, and Customer acknowledges that Company may use the Aggregated Data, both during and after the Term, (i) for its own internal, statistical analysis, (ii) to develop and improve the Products, and (iii) to create and distribute reports and other materials regarding use of the Products. For purposes of clarity, nothing in this section gives Company the right (or ability) to publicly identify Customer as the source of any Aggregated Data.

3. PRODUCT USAGE

- 3.1. Usage Rights.** Subject to payment by Customer of the Fees and subject to continuous compliance with the Agreement, Company hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable right to use the Products by its Users in accordance with this Agreement and the Documentation during the Term, solely for Customer’s internal business purposes. In addition, and unless otherwise specified in the Order, (i) in case of Software, Customer may install the Software on its Customer System, and/or (ii) Company shall perform the Services, and shall provide the Deliverables as described in the Order on a time and material basis
- 3.2. Delivery.** Company shall execute, perform or otherwise make available the Software electronically and the Platform Services over the Internet and shall deliver the applicable license keys and/or login instructions to the email address(es) provided in the Order. Customer is responsible for installation of any downloadable Software, and Customer acknowledges that Company has no further delivery obligation with respect to downloadable Software after delivery of the license keys. Services may be provided on-site or remotely as specified in the Order.
- 3.3. Restrictions.** Customer shall not allow or assist any third party to and shall be responsible for ensuring that its Users do not: (i)

modify, adapt, translate, create derivative works of, reverse engineer, decompile, disassemble, reproduce or otherwise attempt to derive the source code of, any part of the Products, any header files or class libraries contained in any part of the Products or any underlying ideas, algorithms, file formats, except as permitted by law, (ii) sell, resell, license, sublicense, distribute, transfer or provide access to a third party, rent or lease any part or include the Products in a service bureau or outsourcing offering, or otherwise encumber the Products with any lien or grant or allow third parties the registration of a security interest, time share or offer as a service, (iii) use the Products for the benefit of any third party, publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the Products or publicly disseminate information regarding the performance of the Products or incorporate the Products or any part of it into a product or service provided to third parties, (iv) remove, alter, or obscure any proprietary rights notices contained in or affixed to the Products, (v) use the Products in any hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation, vehicles with autonomous driving systems or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of products could lead directly to death, personal injury, or severe physical or environmental damage, (vi) interfere with any license key mechanism in the Products or otherwise circumvent mechanisms in the Products intended to limit the scope of use or to try to gain unauthorized access to or disrupt any service, device, data, account or network, (vii) use the Products in a way prohibited by law, regulation, governmental order or decree, or to violate the rights of others, and (viii) to spam or distribute malware in a way that could harm the Products or impair anyone else's use of it.

- 3.4. Backup.** Except for maintaining one archival copy of the Software for backup purposes only, Customer shall not make copies of the Software. Nothing herein shall limit or restrict Customer from providing Users with copies of the Documentation for their internal business use, in connection with the license granted in this section.
- 3.5. Support.** Subject to the payment by Customer of the Fees, Company provides Customer with Support for the Software and/or the Platform Services during the Term. If not otherwise stated in the Order, Gold Support Plan applies. Company may also access Customer's Platform Services account or instance or request access to the Software in order to respond to support requests.
- 3.6. Usage Scope and Verification.** Only Customer and its Users may access and use the Products within the authorized scope and Customer is responsible for all Users' compliance in accordance with this Agreement. Without limiting the foregoing, the Software and/or Platform Service may not be simultaneously accessed or used by more than the quantities purchased by Customer as set forth in the applicable Order. Upon Company's written request Customer shall provide to Company reasonable assistance to verify Customer's compliance with this Agreement. If Company determines that Customer has exceeded its permitted scope of use, Company shall notify Customer of its determination and (i) invoice Customer for additional User licenses or subscriptions commensurate with Customer's actual past use and Customer shall pay Company's invoice on receipt or (ii) require Customer to immediately discontinue the unpermitted use. Company and Customer may mutually agree to amend the Order to reflect Customer's actual use on a going forward basis.
- 3.7. Hosting Platform Provider.** In order to provide the Platform Services, Company uses third party Platform hosting providers. Company's platform hosting providers are identified in the applicable Platform Service infrastructure. Company may change, discontinue or replace platform hosting providers from time to time, provided there is no material change to, discontinuation or termination of the Platform Service or applicable data protection and IT-security standards.
- 3.8. Third-Party Software.** Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of Third-Party Software the Products are used with. Company disclaims all warranties or statutory guarantees of any kind with respect to such Third-Party Software.
- 3.9. Evaluation or Beta License.** If Products and Documentation are provided to Customer for evaluation, beta, or release candidate purposes, Company grants to Customer a limited, nonexclusive, non-transferable evaluation license to use the Products and Documentation solely for evaluation prior to purchase or implementation ("**Evaluation License**"). The Evaluation License shall terminate immediately upon notice from Company in its sole discretion. Notwithstanding any other provision contained in this Agreement, the Products and Documentation provided pursuant to an Evaluation License are provided to Customer "AS IS" without indemnification, support, or warranty of any kind, express or implied, unless otherwise required by law. Except the terms in this section conflict with any other provisions of this Agreement, this section shall prevail for Evaluation Licenses only.

4. FEES

- 4.1. Payment.** Except as otherwise set forth in the Order, Fees are due and payable thirty (30) days after Customer's receipt of an undisputed invoice. Invoices are deemed to be accepted if not disputed in writing within ten (10) days after receipt. Customer shall provide Company with accurate billing and contact information and notify Company of any changes to such information. All Fees are provided for the Term as set out in the Order in accordance with the GSA Schedule Pricelist. If Customer fails to pay, Company shall be entitled, at its sole discretion, to: (i) reserved; (ii) charge Customer an interest rate in accordance with [4.3 \(Interest\)](#) below; and/or (iii) reserved. If applicable, if Customer exceeds the license capacity designated in the Order, in addition to Company's other remedies, Customer will be charged additional fees.
- 4.2. Fee Modification.** The Fees are in consideration of the current version of the Products and Customer acknowledges that it is not relying on future availability of any Products beyond the current Term or any Product upgrades or feature enhancements in

consideration of the Fees paid for the Term. Upon the renewal of the Order, Company reserves the right to modify the Fees payable by Customer in accordance with the then current GSA Schedule Pricelist upon ninety (90) days' prior the end of the current Term and written notice to Customer.

- 4.3. Interest.** If any sum payable under this Agreement is not paid when due, without prejudice to Company's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Company, both before and after any judgment at the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid. In the event Customer in good faith disputes any amount due under any invoice issued by Company, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute.
- 4.4. Taxes.** Company or the GSA Schedule Contract reseller as applicable shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 552.212-4(k).
- 4.5. Expenses.** Except as otherwise set forth in the Order, Customer shall reimburse Company for actual travel and living expenses of its personnel engaged in the performance of the Services at locations other than Company facilities, together with other out-of-pocket expenses incurred in connection with performance of the Service in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable, Ordering Activity shall only be liable for such travel expenses as approved by Ordering Activity and funded under the applicable ordering document. Company shall adhere to any travel policy reasonably promulgated by Customer.

5. WARRANTY AND LIABILITY

- 5.1. Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. Warranty.** Company warrants to Customer that (i) the Software will conform in all material respects to the Documentation in effect on the Acceptance Date during the first six (6) months of this Agreement, (ii) the Platform Services will conform in all material respects to the Documentation in effect during the Term, (iii) the Services will be performed in a professional and workmanlike manner, and that the Deliverables will conform in all material respects to the Documentation or specifications set forth in the Order for a period of ninety (90) days after the completion of the Services and delivery of the Deliverables. Notwithstanding any provision of this Agreement to the contrary, Company shall not have any obligation under this section to the extent a nonconformity of the Products are the result of (a) the Products having been modified, repaired, or reworked by any party other than Company or a third party on behalf of Company, (b) any use of the Products in conjunction with another product or service not recommended in the applicable Documentation, (c) any damage to the Products by power failure, fire, explosion, or any act of God or other cause beyond Company's reasonable control, or (d) any use of or access to the Products not in conformance with the Documentation. Warranty is fully excluded in cases of Evaluation, Beta or free-of-charge (trial) use of the Products.
- 5.3. Remedy.** If the Product does not conform to the warranty as provided in [5.2 \(Warranty\)](#), Company will use commercially reasonable efforts to correct the nonconformity causing the warranty failure in the Product provided the failure can be recreated by the Customer or Company. Customer shall notify Company in writing, specifically describing the non-conformity within the warranty period and Company shall verify the existence of such non-conformity before Company proceeds the correction. For any breach of [5.2 \(Warranty\)](#), Customer's sole and exclusive remedy will be as described in this section.
- 5.4. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN [5.1 \(WARRANTY\)](#) AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED BY COMPANY "AS IS", AND NEITHER COMPANY NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, USAGE, TRADE CUSTOM, ACCURACY, OR OUT OF TITLE, COURSE OF DEALING, PERFORMANCE OR OTHERWISE. COMPANY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING TO THE PRODUCTS INCLUDING, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. COMPANY DOES NOT GUARANTEE THAT THE PRODUCTS WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED OR MEET CUSTOMER'S REQUIREMENTS.
- 5.5. LIABILITY**
- 5.5.1.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY OTHER THAN [SUBSECTION 5.5.2](#) BELOW AND TO THE EXTENT PERMITTED BY APPLICABLE LAW REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS (I) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, FOR ANY CONSEQUENTIAL SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, ANY LOSS OF REVENUES OR PROFITS, LOSS OF GOODWILL, LOSS OF OR INACCURATE DATA, LOSS OF USE, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY COST OF COVER ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF

SUCH DAMAGES; AND (II) EACH PARTY'S AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER PURSUANT TO THE ORDER THAT IS THE SUBJECT OF SUCH CLAIM.

- 5.5.2. THE PROVISIONS OF SUBSECTION 5.5.1 SHALL NOT APPLY FOR A BREACH OF SECTIONS 2.1 (OWNERSHIP), 3 (PRODUCT USAGE), 6 (INDEMNITY), 7 (CONFIDENTIALITY), AMOUNTS OWED BY CUSTOMER, PERSONAL OR PROPERTY DAMAGE, INCLUDING DEATH, BODILY INJURY OR DAMAGE TO HEALTH CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE.
- 5.5.3. THE PARTIES AGREE THAT THIS SECTION REFLECTS A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES IN LIGHT OF THE TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREUNDER.

6. INDEMNITY

6.1. By Company.

- 6.1.1. Company shall have the right to intervene to defend, or at Company's option, settle, any claim, demand, suit, or proceeding made or brought by a third party ("**Claim**") against Customer, its directors, employees, and agents by a third party alleging that the authorized use of the Product in accordance with this Agreement infringes such third party's IP Rights and shall indemnify Customer from any costs, damages, liabilities, losses, claim, demand, judgement or settlement and expenses (including reasonable attorneys' fees) finally awarded against Customer as a result of, or for amounts paid by Customer under a court-approved settlement of a Claim. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516.
- 6.1.2. If Company receives notice of a Claim, Company may in its discretion and at no cost to Customer (i) modify the Product so that it no longer infringes, without breaching section 5.2 (Warranty), (ii) obtain a license for Customer's continued use of the Product in accordance with this Agreement, or (iii) terminate this Agreement upon thirty (30) days' written notice and refund Customer as follows: (a) as it relates to perpetual software licenses, refund the amount paid by Customer for the Software as depreciated on a straight line basis over a five (5) year period, upon return or certified destruction of the Software, (b) as it relates to subscription licenses, refund the prepaid but unused subscription fee that corresponds to the period of license discontinuation upon return or certified deinstallation of the Software or discontinuation of the Platform Service, and refund the prepaid but unused Fees for Services or Deliverables that corresponds to such discontinuation.
- 6.1.3. The above obligations do not apply to the extent a Claim arises from: (i) Customer Materials or Customer Systems, (ii) Customer's material breach of this Agreement, (iii) Customer's use of the Product in combination with technology not provided by Company, (iv) Company's compliance with any requirements or specifications set forth in Customer Materials, (v) Customer's use of any unsupported release of the Software, (vi) a Third-Party Software or (vii) Customer's failure to install any update provided by Company that would result in total or partial avoidance of an alleged infringement.

6.2. Reserved.

- 6.3. **Process.** The obligations in this section 6 (Indemnity) apply only if (i) the indemnified party promptly notifies the indemnifying party in writing of a Claim, (ii) the indemnified party provides the indemnifying party with reasonable assistance, at the indemnifying party's reasonable and documented expense, and (iii) the indemnified party provides the indemnifying party with the exclusive right to control and the authority to settle a Claim, provided, however, that the indemnifying party will not settle a Claim that admits fault or liability of the indemnified party without the indemnified party's prior written consent (which shall not be unreasonably withheld) and (iv) the indemnified party will have the right to participate in the matter at its own expense.
- 6.4. **Exclusive Remedy.** This section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for relevant claims as described in this section.

7. CONFIDENTIAL INFORMATION

- 7.1. **Confidentiality Obligations.** Except as otherwise set forth in a separate Non-Disclosure Agreement, during the Term and five (5) years thereafter, the Recipient shall (i) use Confidential Information solely for performing its obligations or exercising its rights under this Agreement, (ii) keep all Confidential Information in strict confidence; and (iii) not disclose, cause or permit disclosure of the Confidential Information to any third party, except as permitted under this Agreement. Specifically, the Recipient shall limit disclosure of any Confidential Information to its directors, officers, employees, Affiliates, agents, or representatives (collectively "**Representatives**") that have a "need to know" in order to carry out the purpose set forth above and ensure that such Representatives have signed an agreement containing disclosure and use provisions similar to those set forth herein. The Recipient shall be held responsible to the same standard of care as it applies to its own confidential information, which shall not be less than reasonable care. The Recipient is responsible for any breach of this Agreement by any of its Representatives.
- 7.2. **Exceptions.** Confidential Information shall not include information that the Recipient can demonstrate (i) was in the Recipient's

possession prior to disclosure hereunder; (ii) is or becomes publicly available through no fault of or failure to act by the Recipient in breach of this Agreement; (iii) was rightfully known by the Recipient prior to disclosure of such information by the Discloser to the Recipient; (iv) was independently developed by the Recipient without any use of or access to the Confidential Information; and (v) is required to be disclosed by a judicial or governmental order, and Discloser has been given timely notice (if legally permissible) of such order so that Discloser may seek an injunction or protective order. If only particular parts or aspects of Confidential Information become subject to any of the foregoing exceptions, all other portions or aspects shall remain subject to this Agreement.

8. DATA PRIVACY AND IT-SECURITY

- 8.1. Personal Data.** Each party warrants that it shall use, collect, store and/or process personal identifiable data or personal information as defined under and in accordance with any applicable privacy laws ("**Personal Data**").
- 8.2. Data Collection.** Each party acknowledges it is necessary for the cooperation to exchange and allow the use of the other party's contact information relating to their respective Representatives for (i) invoicing, billing and other business inquiries, (ii) contract and customer management and (iii) order fulfillment and deliveries to Customer ("**Contact Data**") and hereby authorizes such exchange, use and processing of Contact Data by the receiving party or its respective Affiliates. Each party agrees that it shall process Contact Data as a controller (where this concept is under the applicable law), in compliance with all applicable privacy laws and regulations and their respective privacy policies and in a safe and secure manner preventing unauthorized access, use or disclosure use of Contact Data only for the purposes outlined herein.
- 8.3. Data Processing.** It is under Customer's sole discretion and Company has no control over the nature, scope, or origin of, the data processed by the Products and Customer shall have sole responsibility for the adequacy, relevancy, accuracy, quality, and legality of it. Customer shall not use any Personal Data in connection with, to input into and process while using the Products. In no event shall Customer use sensitive Personal Data, such as information on health, sexual orientation, political orientation, race, etc. Unless a data processing agreement ("**DPA**") is executed, neither Party authorizes any exchange, use or processing of other Personal Data (other than Contact Data). Notwithstanding the foregoing, if a party requests a DPA to regulate the processing of Personal Data, the DPA shall be deemed an appendix to this Agreement.
- 8.4. Credentials.** Access credential for the Products may not be shared with third parties or by and between Users or other Customer's employees or contractors. Customer shall ensure that all Users keep their user IDs and passwords for the Product strictly confidential and not share such information with any unauthorized persons. User IDs are granted to individual, named persons and shall not be shared. Customer is responsible for all actions taken through use of Customer accounts and passwords. Customer agrees to notify Company immediately if Customer becomes aware of any unauthorized use of the Products.
- 8.5. Security.** Each Party will use adequate contractual and technical mechanisms to protect any data of the other party received by it. Customer acknowledges that use of the Product necessarily involves transmission of Customer Material over networks that are not owned, operated or controlled by Company, and Company is not responsible for any Customer Material's lost, altered, intercepted or stored across such networks. Company cannot guarantee that its security procedures will be error-free, that transmissions of Customer Material will always be secure or that unauthorized third parties will never be able to defeat Company security measures or those of Company's third-party hosting providers. Customer is solely responsible for maintaining the security of its Customer System. Company assumes no responsibility or liability for Customer Material.

9. TERM AND TERMINATION

- 9.1. Term.** This Agreement shall remain in effect for the Term of each underlying Order, unless terminated earlier in writing pursuant to the terms of this section. Upon the renewal of an Order, this Agreement shall be applicable to the extent of any variations set out in the Order.
- 9.2. Renewals.** Unless otherwise stated in the Order, upon expiration of the initial Term, the Term may be renewed for successive periods of twelve (12) months each at then current Company list pricing in accordance with the GSA Schedule Pricelist by executing a written order for the successive term. The quantity and license metrics (such as number of Users subscribed or virtual user hours) during any renewal Term shall be the same as of the previous Term unless otherwise agreed at the moment of renewal.
- 9.3. Termination for Breach.** When the End User is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, Company shall proceed diligently with performance of this Agreement, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer.
- 9.4. Reserved.**

9.5. Effect of Termination. Expiration or termination of this Agreement will not relieve any party of its obligations to pay any amounts accrued or otherwise owed under this Agreement. Upon termination or non-renewal of this Agreement, all usage or access rights granted to Customer hereunder shall terminate and Customer shall not use the Products, and Company shall have no further obligation to provide the Products. Customer must remove any Customer Materials in the Platform Services prior to termination. Upon termination of an Order for Services, Customer shall pay Company any unpaid fees and expenses incurred on or before the termination date on a time and material basis, based on the rates agreed in the Order. In addition, no later than ten (10) calendar days after termination or non-renewal, each party shall return or certify destruction of all Confidential Information in its possession or control to the other party, if so requested. Any provision that is intended to continue after termination shall not be affected by the termination of this Agreement.

10. MISCELLANEOUS

10.1. Notices. All notices shall be in writing and addressed to the office location of the parties as set out in the Order or to such address as either party may later provide in writing to the other party by certified or registered mail, courier or email or through Customer's account.

10.2. Publicity. For marketing and promotional purposes, Customer agrees that Company may identify Customer in Company's promotional, marketing or other materials and refer to Customer by name, trade name as applicable to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71. Customer hereby grants to Company a license to use Customer's name in accordance with this section to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

10.3. Non-Solicitation. During the term of this Agreement and for one year thereafter, neither party will solicit any of the other party's employees or contractors to leave their current employment or engagement with the other party. The placement of general employment solicitations and advertisements in public media (e.g. newspapers, company website postings, internet recruiting sites), or the engagement of a recruiting firm who solicits the other party's employees as part of a general solicitation effort, without any direction from the hiring party to solicit individuals from such other party, will not constitute a breach of the terms of this section.

10.4. Reserved.

10.5. Exports. Customer shall comply with all applicable export trade control laws, rules, and regulations with respect to its use of the Product, including but not limited to International Traffic in Arms Regulations of the U.S. State Department, the Export Administration Regulations promulgated by the U.S. Department of Commerce or sanction regulations of U.S. Treasury Department and shall comply with all restrictions imposed pursuant thereto with respect to complying with prohibitions of trade or transactions with persons or entities whom or which may be sanctioned or blocked by virtue of being subject of an order, directive, proclamation, regulation or otherwise listed as a blocked, barred, suspended, sanctioned or prohibited person identified by such agencies and departments. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Product without Company's prior written consent and license as may be required by the export trade control laws of the U.S. Customer agrees to notify Company promptly if Customer or any User may be in non-compliance with this section.

10.6. No Waiver. A party's failure or delay in exercising any of its rights shall not constitute a waiver of such rights unless expressly waived in writing.

10.7. Relationship. The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking, that would give a party the express or implied right, power or authority to create any duty or obligation of the other party.

10.8. Force Majeure. Excusable delays shall be governed by FAR 552.212-4(f).

10.9. Assignment. Neither this Agreement nor any rights granted hereunder may be assigned by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

This Agreement shall inure to the benefit of the parties' permitted successors and assigns.

- 10.10. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 10.11. Entire Agreement.** This Agreement constitutes the entire agreement between Company and Customer regarding the subject matter hereof and supersedes all prior oral and written communications. It may be executed in one or more counterparts, all of which together shall be considered one and the same and may be executed and delivered by electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, the General Terms and Conditions may also be incorporated by way of reference in an Order. In the event of any conflict or inconsistency, the order of precedence shall be (1) the Order, (2) these Tricentis Customer General Terms and Conditions, and (3) the Documentation.
- 10.12. Law and Jurisdiction.** This Agreement shall be governed by the Federal laws of the United States. The place of jurisdiction shall be where the Company as specified in the Order is located. This Agreement excludes the United Nations Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, Company may bring a claim for equitable relief in any court with proper jurisdiction.
- 10.13. Reserved.**
- 10.14. Ultimate U.S. Federal Government Provisions.** If applicable, Company will provide the Product, including related Documentation and technology for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Product include only those rights customarily provided to the public as defined in this Agreement. This customary commercial 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). If a government agency has a need for rights not granted under these terms, it must negotiate with Company to determine if there are acceptable terms for granting those rights, and a mutually acceptable written addendum specifically granting those rights must be included in any applicable agreement pursuant to the provisions and guidance set forth in FAR 27.405.3.
- 10.15. Australian Consumer Law.** If applicable, nothing in this Agreement excludes, restricts or modifies the application of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 of Australia ("**ACL**"). To the fullest extent permitted by law, Company's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by Company in its absolute discretion) (i) in the case of goods, the replacement repair or payment of the cost of replacement or repair of the goods, and (ii) in the case of services, supplying the services again or payment of the cost of having the services supplied again or for major failures with the service, Customer is entitled to cancel this Agreement and to a refund for the unused portion, or to compensation for its reduced value. Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion of services.

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