

General Terms and Conditions of Service (U.S.)

1. General

- 1.1. These General Terms and Conditions of Service (these “Terms”) shall apply to all services (the “Services”) provided by or on behalf of TRICENTIS USA, Corp. (“TRICENTIS”), a Delaware corporation, to a customer (“Customer”), whether relating to Services in connection with any software license agreement between TRICENTIS USA LLC, a Delaware limited liability company (“Licensor”) and a customer (“License Agreement”) or otherwise.
- 1.2. In the event of any contradiction or discrepancy between any order, terms or other writing of a Customer or any trade custom, practice or course of dealing and an offer provided by TRICENTIS to a Customer and/or these Terms, the following ranking of priority shall apply: (1) Accepted Order, (2) these Terms, and (3) any other related agreement/document/order, unless TRICENTIS shall have expressly agreed otherwise in writing. The application of a Customer’s general terms of purchase or similar terms, whether in a contract or an order, is hereby disclaimed.
- 1.3. Capitalized terms used, but not defined herein shall have the meaning given thereto in the License Agreement.

2. Contract Formation

- 2.1. TRICENTIS’ quotes or offers shall be binding provided they are in writing and specify the Services, fees and other essential terms. TRICENTIS’ quotes or offers shall be binding for the period or until the deadline specified therein. Quotes or offers that do not specify any such period or deadline are indicative only and do not bind TRICENTIS in any way, unless TRICENTIS explicitly agrees with Customer to make them binding.
- 2.2. Customer orders (“Order”), based on an offer, shall only be binding on TRICENTIS on the agreed effective date or, if there isn’t any, upon acceptance of the Order by TRICENTIS.
- 2.3. Unless otherwise agreed by TRICENTIS in writing, an Accepted Order and these Terms shall constitute the entire agreement between TRICENTIS and Customer (“Agreement”) with respect to the performance of the Services specified in such Order and any Services performed by reference to such Order.
- 2.4. Modifications of or additions to any of these Terms shall only be binding on TRICENTIS if accepted in writing by TRICENTIS.

3. Fees / Payment

- 3.1. Unless otherwise agreed in writing, TRICENTIS shall be entitled to the following fees for the Services:
 - 3.1.1. Fees payable calculated in accordance with TRICENTIS’ standard daily rates as amended from time to time;
 - 3.1.2. Standard daily fee rates are calculated on the basis of an eight-hour day worked between 9.00 am and 5.00 pm on weekdays (excluding weekends and holidays);
 - 3.1.3. Overtime rate of 10 % of the daily rate for each hour worked by members of the project team outside the hours set forth in Section 3.1.2.
- 3.2. Fees for Services quoted in TRICENTIS’ offers and Accepted Orders do not include (a) sales or similar taxes, duties, levies or other charges, and (b) any out-of-pocket expenses, including without limitation travel expenses, the cost of materials necessary to perform the Services, or the cost of postage, courier, telecommunications, or other third party service providers engaged by or on behalf of TRICENTIS in connection with the Services, if not agreed otherwise with Customer.

- 3.3. TRICENTIS shall invoice Customer monthly in arrears for the fees and expenses for the Services completed and delivered in the respective month or occurring under Section 5.7.
- 3.4. Unless otherwise agreed in writing by TRICENTIS, payment of all fees and expenses in connection with the Services shall be made within thirty (30) days from the invoice date. In the event that Customer fails to pay in time, TRICENTIS shall be entitled, in addition to any other right or remedy available to TRICENTIS, to (a) charge interest of twelve percent (12%) per annum on the unpaid invoice amount and (b) suspend all Services until TRICENTIS' invoices shall have been paid in full. Customer shall not be permitted to withhold, defer payment or offset any amount against the payment of any invoice for any reason (including without limitation for breach of warranty).

4. Customer Obligations

- 4.1. The Customer shall:
 - 4.1.1 Co-operate with TRICENTIS in all matters relating to the Services and appoint a project manager who shall have the authority to contractually bind Customer on all matters relating to the Services;
 - 4.1.2 Provide in a timely manner such access to, and preparation (at Customer's cost) of, Customer's premises and data, and such office accommodation and other facilities, as requested by TRICENTIS for the purpose of providing the Services;
 - 4.1.3 Provide in a timely manner all requisite documents, data or other information or material (the "Input Material") as TRICENTIS may request for the purpose of providing the Services and ensure that such Input Material is accurate in all material respects;
 - 4.1.4 Obtain all necessary licenses, consents, and permits, including without limitation all software licenses to enable TRICENTIS to provide the Services to the Customer.
- 4.2 If TRICENTIS' performance of its obligations under the Agreement is prevented or delayed by any act or omission of Customer or Customer's suppliers (other than TRICENTIS), agents, sub-contractors or employees, Customer shall be liable to pay to TRICENTIS on demand all reasonable costs, fees or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to TRICENTIS confirming such costs, fees and losses to Customer in writing.
- 4.3 The Customer shall not solicit or entice away from TRICENTIS or employ or attempt to employ any person who is, or has been, engaged as an employee or sub-contractor of TRICENTIS or TRICENTIS Group Member at any time from the date of the Agreement to the expiration of a period of one year after the completion of the Services without the prior written consent of TRICENTIS.

5. Performance

- 5.1. Unless TRICENTIS shall have agreed otherwise in writing, all performance periods or dates specified in any Accepted Order are to be treated as estimates and shall not be binding on TRICENTIS.
- 5.2. Except as otherwise expressly agreed in writing, TRICENTIS shall be entitled to use such processes, methods or procedures as it deems appropriate in its sole discretion to perform the Services and to modify, change or abandon any such processes, methods or procedures at any time.
- 5.3. Notwithstanding anything to the contrary contained in any Accepted Order, a performance period shall not commence, and the delivery date shall be extended by the time period, until (a) TRICENTIS shall have received all Input Material necessary for the performance of the Services which must be supplied by Customer or third parties; and (b) Customer shall have complied with all terms required to be complied with by it pursuant to the applicable agreements.

- 5.4. TRICENTIS may employ such subcontractors as TRICENTIS shall deem necessary or advisable in its professional judgment to perform the Services.
 - 5.5. TRICENTIS is entitled at any time to appoint employees of TRICENTIS Group Member to render Services to Customer without Customer's prior consent.
 - 5.6. In the event TRICENTIS is prevented from performing the Services or complying with any other obligation under any Accepted Order due to reasons or circumstances beyond its control (including acts of nature; war; epidemics; revolutions; fire; explosion; accident; natural disasters; sabotage; governmental decisions or actions; prohibition of exports, import, transit and re-exports or revocation of licenses, permits or authorizations; acts of terrorism; riot or civil unrest; labor or other disputes; delayed or absence of deliveries by subcontractors; a shortage of labor, transportation or resources, or Customer's failure to comply with any terms required to be complied with by it pursuant to the applicable Accepted Order), the performance of the Services and other obligations of TRICENTIS shall be suspended during the period such reasons or circumstances persist. In the event the period during which TRICENTIS is unable to perform its obligations as a result of such reasons or circumstances is longer than thirty (30) calendar days, Customer may in consultation with TRICENTIS schedule and agree new, reasonable delivery dates and periods for Services. TRICENTIS will not be liable to the other party for damages, compensation or reimbursement of any kind.
 - 5.7. In the event Services cannot be performed due to circumstances attributable to Customer, Customer shall reimburse TRICENTIS for its project related reasonable fees (daily rates) for cancelled Services, as well as for costs (e.g. travel cancellation costs) and expenses incurred in connection with the preparation of the Services, including without limitation the fees for any preparatory work or Services that have been partially performed, or the cost of personnel and other resources made available for, or acquired, hired or ordered for such Services.
 - 5.8. Should Customer require any evaluation and confirmation that the Licensed Software will operate in accordance with the Specifications on upgraded or modified Equipment or software pursuant to Section 3.2 of the License Agreement, TRICENTIS shall provide such evaluation in consideration for a fee for the reasonable time spent in evaluating to be agreed upon prior to such evaluation.
 - 5.9. In the event of a hardware or network failure following installation of the Licensed Software, TRICENTIS is available to assist Customer in restoring data; provided that Customer provides TRICENTIS with a full electronic backup of the data, and, unless such need arises from a material defect in the Licensed Software, pays TRICENTIS for such restoration at its then applicable daily or hourly rate.
 - 5.10. In the event of any breach of Customer's obligations to Licensor pursuant to Section 2 of the License Agreement, any user error on the part of any Customer's Users, or such Customer's failure to follow Licensor's or any Equipment manufacturer's or third-party licensor's operating guidelines or instructions when operating the Licensed Software, such Customer shall pay TRICENTIS its then applicable daily or hourly rates for the investigation and/or remediation of any damages that Customer or Licensor may have suffered by such breach, user error, or failure to follow Licensor's or any Equipment manufacturer's or third party Licensor's operating guidelines or instructions.
 - 5.11. If Customer fails to pay the License Fee to Licensor or any other amount due to TRICENTIS or Licensor, TRICENTIS may suspend the provision of the Services until TRICENTIS and/or Licensor shall have received payment in full of all such sums.
- 6. Warranty, Remedies and Limitations**
- 6.1. TRICENTIS represents and warrants to Customer that TRICENTIS will perform the Services in a professional and workmanlike manner in accordance with standard industry practices and the specifications set forth in any Accepted Order. Such warranty shall be in effect for (a) a period of three (3) months from the completion of the Services; or (b) such other period as may be specified in an Accepted Order ("Warranty Period").

- 6.2. TRICENTIS represents and warrants during the Warranty Period, that in performing the Services it will not knowingly infringe any valid or enforceable third party intellectual property rights. Except as set forth in the preceding sentence, TRICENTIS makes no warranties in connection with any intellectual property rights in connection with any and all products and materials developed or provided by TRICENTIS in relation to the Services in any media, including, without limitation, computer programs, data, diagrams, reports and specifications (“Deliverables”) or the TRICENTIS Intellectual Property (as defined in Section 8) whatsoever.
- 6.3. **Except for the warranties set forth expressly in this Section 6 and Section 8, all other representations and warranties, of any kind, whether express or implied, (including without limitation the warranty of merchantability or fitness for a particular purpose) are hereby expressly excluded.**

7. Limitation of Liability

- 7.1. The liability of TRICENTIS and its directors, officers, employees, shareholders, affiliates, suppliers, contractors, agents and representatives for any damages, whether derived from torts, breaches of contract, or any other legal theory under these Terms or any Accepted Order shall be limited to the fees payable by Customer for the Services. Notwithstanding the foregoing, TRICENTIS shall not be liable for any loss or corruption of Customer data or other information for any reason in connection with the Services.
- 7.2. To the maximum extent permitted by law, TRICENTIS shall not be liable to Customer or any third party for any lost profits, loss of use, loss of business opportunities, loss of good will, or for any indirect, punitive or consequential damages.

8. Intellectual Property Rights

- 8.1. All patents, copyright and related rights, trademarks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, rights to inventions, database rights, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world and all other rights (“TRICENTIS Intellectual Property”) in the Deliverables shall be owned exclusively by Licensor, and Licensor shall not be liable for Customer’s or any third parties’ use of TRICENTIS Intellectual Property.
- 8.2. In consideration for the payment of the fees and other amounts pursuant to Section 3, TRICENTIS respectively Licensor hereby licenses all such rights to Customer on a non-exclusive basis to such extent as is necessary to enable Customer to make reasonable use of the Deliverables and the Services for the purposes specified in the Accepted Order.
- 8.3. Nothing contained in these Terms or any Accepted Order shall be construed as granting the Customer or any third party any license or right not expressly set forth in this Section 8 to use or exploit in any way any TRICENTIS Intellectual Property for any other purpose other than set forth above, and, unless expressly agreed otherwise in any Accepted Order, nothing contained herein or in any Accepted Order shall restrict TRICENTIS in any way in performing services for any other parties; provided that TRICENTIS shall not use or exploit any of Customer’s intellectual property licensed to TRICENTIS pursuant to Section 8.5 or any Customer confidential information in connection with such services.
- 8.4. Customer acknowledges and agrees that Customer’s use of any TRICENTIS Intellectual Property (including without limitation the “TOSCA Commander Testsuite™” software, including its components, TOSCA Commander, Requirement Management ADDIn, TestCase Design AddIn, TC WebAccess) shall require, and be subject to, a written end user license in form and substance satisfactory to Licensor, duly executed by Customer and accepted by Licensor.
- 8.5. The provisions of Sections 8.1, 8.3, 8.4 and this Section 8.5 shall survive the expiration or termination of this Agreement for any reason.

9. Confidentiality

- 9.1. Customer shall keep in strict confidence any and all technical and non-technical information not generally available or known to the public, including without limitation trade secrets, “know-how”, inventions, computer programs (including documentation of such programs), algorithms, software source codes, applications for intellectual property rights, drawings, specifications and data, other similar information of a confidential nature, and any other confidential information concerning TRICENTIS and TRICENTIS Group Members’ business, products or operations (“Confidential Information”) disclosed to the Customer by TRICENTIS or its agents or which the Customer otherwise learns. Customer shall restrict disclosure of the Confidential Information to such of its employees, agents or sub-contractors that need to know it for the purpose of discharging the Customer’s obligations to TRICENTIS, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind Customer.
- 9.2. All Confidential Information, equipment and tools, supplied by TRICENTIS to Customer shall at all times be and remain the exclusive property of TRICENTIS and TRICENTIS Group Member, but shall be held by Customer in safe custody at its own risk and maintained and kept in good condition by Customer until returned to TRICENTIS, and shall not be disposed of, or encumbered or used in any way other than in accordance with TRICENTIS’ written instructions or authorization.
- 9.3. The provisions of this Section 9 shall survive the expiration or termination of this Agreement for any reason.

10. Term, Termination and Cancellations of Orders

- 10.1. The term of this Agreement shall commence on the date specified in the applicable Accepted Order and continue until the earlier to occur of the expiration of this Agreement pursuant to Section 10.2 or the termination of this Agreement pursuant to Section 10.3.
- 10.2. This Agreement shall automatically expire, without any further action being required of either party, on the expiration date, if any, specified in the applicable Accepted Order or, if the Services consist of the performance of one or more specific tasks or projects upon the completion of the last of such tasks or projects.
- 10.3. This Agreement may be terminated by either party, effective immediately by giving the other party written notice, if
 - 10.3.1. the other party commits a material breach of this Agreement (such as delay in payment as set forth under Section 3 or breach of intellectual property rights as set forth under Section 8) and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing of such breach;
 - 10.3.2. the other party becomes or shall be declared insolvent or otherwise unable to pay its debts as they become due, or upon the filing of any proceeding (whether voluntary or involuntary) for bankruptcy, insolvency or relief from creditors of such other party, which filing is not dismissed within thirty (30) days of filing; or
 - 10.3.3. in the event of a change of control of Customer occurs; or
 - 10.3.4. Customer continually fails to extend the reasonable cooperation necessary for fulfilling ordered and accepted Services provided by TRICENTIS.
- 10.4. In the event of the expiration or termination of this Agreement for any reason,
 - 10.4.1. TRICENTIS shall be entitled to be paid immediately upon invoicing Customer the fees for the Services performed, and expenses incurred, through and including the effective date of such termination.
 - 10.4.2. The license granted pursuant to Section 8.2 will automatically terminate.

- 10.5. The expiration or termination of this Agreement shall not affect the validity of any provision, which by its terms shall survive such expiration or termination.

11. Miscellaneous Terms

- 11.1. Any notice, certificate, request, notification and other communication required, permitted or contemplated hereunder shall be in writing and shall be personally delivered or sent by facsimile transmission, overnight courier, mail (postage prepaid) or by email; provided that any communication sent by email shall only be deemed to be delivered if the recipient of such email shall have acknowledged receipt thereof in a writing delivered in any of the foregoing manners. Notices, certificates, requests, notifications and other communication to TRICENTIS shall be deemed delivered if made to the addresses set forth in the Accepted Order or, in each case, to such address as such party shall have specified to the other party hereto in writing.
- 11.2. Any breach by Customer of Sections 8 or 9 will result in irreparable and continuing damage to TRICENTIS respectively Licensor for which there is no adequate remedy at law, and, in addition to any such other relief to which TRICENTIS respectively Licensor may be entitled (including monetary damages or other relief), TRICENTIS respectively Licensor shall be entitled to injunctive relief and/or a decree for specific performance without any need to post a bond or other security. Customer specifically acknowledges and agrees that to the extent posting of a bond or other security by TRICENTIS respectively Licensor is a prerequisite to any injunctive or other equitable relief sought by TRICENTIS respectively Licensor, the Customer shall not seek to require TRICENTIS respectively Licensor to post a bond or other security in excess of the minimum stated by statute or other law.
- 11.3. These Terms and all Accepted Orders and the performance of all Services shall exclusively be governed by and construed in accordance with the **laws of the state of New York** without giving effect to the principles of conflict of laws thereof.
- 11.4. All disputes which may arise out of or in connection with this Agreement shall exclusively be submitted to the state and federal **courts with jurisdiction in the City of New York, New York**; provided that TRICENTIS may seek preliminary, injunctive or equitable relief in any court which would otherwise have jurisdiction absent this provision.
- 11.5. TRICENTIS' failure to exercise, or delay in exercising any right, power or remedy will not operate as a waiver thereof, nor will any single or partial exercise of any right preclude any other further exercise of such right or the exercise of any other right. Any express waiver of any breach of these Terms or any Accepted Order shall not be deemed to be a waiver of any subsequent breach.
- 11.6. If one or more provisions of these Terms or any Accepted Order should be or become invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions. The parties agree to replace the invalid provisions with legally valid provisions matching the economic purpose of the original provisions as close as possible without rendering such provision invalid or unenforceable.
- 11.7. The parties hereto are independent contractors and nothing in these Terms or any Accepted Order will be construed as creating a joint venture, employment or agency relationship between the parties.
- 11.8. Customer may not assign this Agreement to any party without TRICENTIS' express prior written consent. TRICENTIS may assign this Agreement to any of its affiliates or, in the event of a change of control, to any third party without Customer's consent.
- 11.9. These Terms may be amended, modified or rescinded in whole or in part by TRICENTIS at any time without prior written notice to Customer; provided that all Services performed pursuant to this Agreement shall be governed in all respects by the Terms in effect at the time of the applicable Accepted Order.
- 11.10. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns.

- 11.11. If a final judicial determination is made by a court having jurisdiction that any provision in these Terms or any Accepted Order is invalid or unenforceable, the remaining provisions of these Terms or such Accepted Order shall not be rendered void, and such invalid or unenforceable provision shall be deemed amended to protect the parties' interests reflected by such provision to the maximum extent possible without rendering such provision invalid or unenforceable.
- 11.12. This Agreement constitutes the entire agreement, and supersedes all prior agreements, of the parties hereto relating to the subject matter hereof, and there are no written or oral terms or representations made by either party other than those contained herein.

12. Definitions:

Accepted Order

Customer Order received by TRICENTIS in answer to the previous delivery of an offer from TRICENTIS to the Customer and any possible negotiations in connection with the Order, which is based on the results of this offer and/or these negotiations and reflects the full consent of TRICENTIS to all rights and obligations, fees (daily rates), expenses, costs, services and descriptions, estimations, modalities etc. included in the Order and therefore the willingness of TRICENTIS to contract with the Customer under these conditions.

TRICENTIS Group Member

TRICENTIS USA Corp., (Harborside Financial Center, 2500 Plaza Five, Jersey City, NJ 07311) and all affiliated companies. Therefore, TRICENTIS Group Member means any existing or future TRICENTIS company that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with another TRICENTIS company, whereas "control" or "controlled" or "controlling" means and shall be deemed to exist if a Person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such other Person, either through contract, or by owning a controlling interest of the voting rights or of the equity capital or of other ownership interests of such other Person, or otherwise possesses or is able to exert a controlling influence over such other Person by virtue of (i) having the ability to elect a majority of the board of directors of such other Person, (ii) having the ability to appoint the management of such other Person, (iii) having a contract to manage such other Person (including reciprocal or interinsurance exchanges and mutual insurer), (iv) having the power to direct the day-to-day business or affairs of such Person, (v) being appointed to act as attorney-in-fact for such other Person or (vi) control through other comparable means (including conforming to the local definition of control, if any). "Person(s)" means an individual, firm, corporation (wherever incorporated), trust, joint venture (whether or not having a separate legal existence), partnership, limited liability company, association (whether incorporated or not), or any other entity, agency, or authority thereof, as the case may be.