

STANDARD SERVICES TERMS AND CONDITIONS

Capitalized terms not otherwise defined herein shall have the meaning set forth in Section 9.

1. SERVICE ORDERS

- 1.1 **Service Orders.** From time to time, Customer and Tricentis may agree on certain services to be performed under this Agreement, and in that case shall prepare a service order setting forth the services to be provided, and other additional terms agreed to by the parties (a “**Service Order**”). Each Service Order, upon execution by both of the parties hereto, shall be incorporated into this Agreement. Subject to the payment of the applicable fees or other amounts described in, and to be paid under, the applicable Service Order (the “**Fees**”) Tricentis shall perform for Customer the services (“**Services**”), and shall provide to Customer the Deliverables, described in, and according to any additional terms stated in, each Service Order. Customer shall perform the tasks designated as the responsibility of Customer, if any, set forth in the Service Order to facilitate Tricentis’s performance. Where Services are to be performed upon Customer’s premises, Customer shall provide Tricentis with reasonable and necessary access to Customer’s facilities during normal business hours, and otherwise as reasonably requested by Tricentis in order to facilitate Tricentis’s performance of Services, including, without limitation, office space, telephone, and high-speed Internet connections. Tricentis may freely subcontract performance of the Services in its sole discretion.
- 1.2 **Change Orders.** If the parties mutually agree to change the terms of a Service Order, including but not limited to the type or amount of Services to be performed, the parties shall prepare and execute a writing (“**Change Order**”) stating, at a minimum: (i) the effective date of the Change Order; (ii) the specific changes, with reference to the affected sections of the applicable Service Order; and (iii) the effect of the changes on any Fees or other amounts described in, and to be paid under, the applicable Service Order. Once executed, a Change Order will become a part of, and will be incorporated into, the related Service Order.
- 1.3 **Lost Time.** If the Service Order indicates any responsibilities on the part of Customer, Tricentis’s obligations related thereto will be subject to the complete and timely performance by Customer of Customer’s responsibilities. The remainder of this Section will only apply to Services performed by Tricentis pursuant to a Service Order on a fixed-fee basis. Any delays or additional costs incurred by Tricentis during the course of a fixed-fee engagement as a result of Customer’s failure to provide timely and properly the co-operation described in this Agreement (“**Lost Time**”) shall be the responsibility of Customer, and payment for all Lost Time shall be made to Tricentis at Tricentis’s then-current rates. Any payments for Lost Time will be in addition to any fixed-fee for Services. For purposes of this Agreement, “Lost Time” will include, without limitation: (i) any time Tricentis stands idle as a result of any failure of Customer to perform Customer’s responsibilities as set forth in the applicable Service Order, and (ii) any time and materials expended by Tricentis in an attempt to correct discrepancies in Services that are demonstrated by Tricentis to the reasonable satisfaction of the Customer to have been the result of an error or discrepancy in materials, technology, or information provided by Customer rather than errors of Tricentis.
- 1.4 **Failure of Assumptions.** In the event that the assumptions contained in a Service Order on a fixed-fee basis fail, such that Tricentis can meet the related Milestones (as defined in Section 1.5) and produce the related Deliverables, if at all, only through the expenditure of resources in excess of those contemplated by the parties, the parties shall in good faith execute a Change Order. Such Change Order will extend such Milestones and/or require Customer to pay such additional amounts as necessary to compensate for the failure of the parties’ assumptions. In the event that the parties are unable to reach agreement on such Change Order, Tricentis may, in its discretion, terminate the related Service Order. In the event of such termination, Customer shall pay Tricentis the Fees for any Services performed before the effective date of termination, on a time and materials basis, such fees not to exceed the amount associated with the next uncompleted Milestone, plus any reasonable costs incurred before the effective date of termination.

1.5 **Acceptance Testing.** This Section will only apply to Services performed by Tricentis pursuant to a Service Order on a fixed-fee basis. Tricentis shall notify Customer when it believes it has completed a milestone contained in a Service Order (a “**Milestone**”), and will deliver to Customer the associated Deliverable. Customer shall evaluate the Deliverable. Customer agrees that when it has made a finding as to whether Tricentis has completed a Deliverable substantially in accordance with the applicable specifications provided to Tricentis by Customer, it shall promptly provide a written acceptance or rejection to Tricentis. In the event Customer has not provided a written notice of rejection within 3 days after delivery of the Deliverable, the Deliverable will be deemed accepted. Any notice of rejection shall set forth in reasonable detail the basis for Customer’s rejection. Upon receipt of a written notice of rejection, Tricentis shall make commercially reasonable efforts to submit a revised Deliverable within 30 days, and the Deliverable shall again be subject to the acceptance procedure described above. If the Deliverable fails to meet the applicable specifications after three sequences of the acceptance and rejection procedure described above, either party may terminate this Agreement and/or the applicable Service Order upon written notice to the other party.

2. FEES

2.1 **Fees.** Customer shall pay to Tricentis the Fees.

2.2 **Payments.** Except as otherwise set forth in the applicable Service Order, Fees will be due and payable 30 days after Customer’s receipt of an invoice. Customer shall provide Tricentis with accurate billing and contact information, and notify Tricentis of any changes to such information.

2.3 **Interest.** If any sum payable under this Agreement is not paid when due then, without prejudice to Tricentis’s other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Tricentis, both before and after any judgment at the rate of 18% per year, or if lower, the maximum rate allowed by applicable law. In the event Customer in good faith disputes any amount due under any invoice issued by Tricentis, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute.

2.4 **Taxes.** All payments, Fees, and other charges payable by Customer to Tricentis under this Agreement are exclusive of all taxes, levies, and assessments of any jurisdiction (other than income tax). Customer shall bear all such taxes, levies, and assessments imposed on Customer or Tricentis arising out of this Agreement, excluding any tax based on Tricentis’s net income. If Customer is required to pay Tricentis a lower amount under this Agreement because of any withholding tax, Customer shall pay to Tricentis such grossed-up amount as would be necessary to provide Tricentis the full amount of the Fees, absent any withholding tax imposed on amounts payable hereunder.

2.5 **Expenses.** Customer shall also reimburse Tricentis for the reasonable actual travel and living expenses of its personnel engaged in the performance of Services at locations other than Tricentis facilities, together with other reasonable out-of-pocket expenses incurred in connection with performance of the Services. Tricentis shall adhere to any travel policy reasonably promulgated by Customer.

3. OWNERSHIP

3.1 **Ownership of Tricentis Intellectual Property.** As between the parties, Tricentis retains all rights, title, and interest, including all Intellectual Property Rights, in and to the Deliverables. Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Tricentis by implication, estoppel, or otherwise.

3.2 **License to Tricentis.** Customer hereby grants Tricentis and its Affiliates a worldwide, non-exclusive, royalty-free, fully paid-up, perpetual, irrevocable, sublicensable (through multiple tiers of sublicenses), and transferable license under Customer’s Intellectual Property Rights in the Customer Materials for the sole purpose of providing the Services. Subject to the license granted to Tricentis in this [Section 3.2](#), Customer retains all rights, title, and interest in and to the Customer Materials.

- 3.3 **License to Customer.** Subject to Customer’s payment of the applicable Fees, Tricentis hereby grants Customer a worldwide, non-exclusive, revocable, non-sublicensable, non-transferable, license to use the Deliverables.
- 3.4 **Restrictions.** Customer shall use the Deliverables solely for its internal business purposes and shall not: (i) reverse engineer, disassemble, decompile, or attempt to circumvent any restrictions in the Deliverables; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer as a service, or otherwise make the Deliverables available to any third party; (iii) use the Deliverables in violation of applicable laws or regulations; or (iv) publicize or otherwise distribute any reviews, comparisons, or benchmarks based on Customer’s use of the Deliverables. Customer may not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Deliverables.
- 3.5 **Open Source Components.** Customer acknowledges that certain software components of the Deliverables may be covered by Open Source Licenses (“**Open Source Components**”). To the extent required by the Open Source License for any Open Source Components, the terms of such licenses will apply to such Open Source Components in lieu of the terms of this Agreement. To the extent the terms of the Open Source License applicable to Open Source Components prohibit any of the restrictions in this Agreement with respect to such Open Source Component, such restrictions will not apply to such Open Source Component. Tricentis shall provide Customer with a list of Open Source Components upon Customer’s request.
- 3.6 **Trademarks.** The Tricentis trademarks, logos, and service marks (collectively, the “**Tricentis Marks**”) are the registered and unregistered trademarks of Tricentis, its Affiliates, licensors, suppliers, and/or others. Nothing contained in this Agreement shall be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Tricentis Mark(s) without the express written permission of Tricentis.
- 3.7 **Third-Party Materials.** For all materials designated as “**Third-Party Materials**” on a Service Order, the parties acknowledge that such materials will be necessary for Tricentis to perform the Services or provide the Deliverables, and Customer shall be solely responsible for obtaining necessary licenses or rights to the Third-Party Materials.
- 3.8 **Federal Government End Use Provisions.** Tricentis provides the Services and Deliverables, including related software, Documentation, and technology, for ultimate federal government end use solely in accordance with the following: government technical data and software rights related to the Services or Deliverables 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) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not granted under these terms, it must negotiate with Tricentis 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.

4. TERM AND TERMINATION

- 4.1 **Term.** This Agreement will remain in effect during the term of any unexpired Service Order, unless terminated earlier pursuant to the terms of this Section 4. The parties may enter into a Change Order to extend the term of a Service Order.
- 4.2 **Termination for Breach.** Either party may terminate this Agreement and/or the applicable Service Order immediately upon written notice to the other party if the other party breaches this Agreement and fails to correct the breach 30 days following written notice from the other party specifying the breach; provided, however, that in the event that any material breach by Tricentis requires more than 30 days to cure, Customer shall not be entitled to terminate this Agreement or the applicable Service Order if Tricentis promptly commences to cure such breach and proceeds diligently until cured.

- 4.3 **Termination for Insolvency.** Either party may terminate this Agreement immediately upon written notice to the other party if the other party has a receiver appointed, or an assignee for the benefit of creditors or in the event of any insolvency or inability to pay debts as they become due by the other party, except as may be prohibited by applicable bankruptcy laws.
- 4.4 **Suspension and Termination.** Notwithstanding anything to the contrary in this Agreement, if Customer violates the restrictions set forth in Section 3.4, or if any sum payable under this Agreement is past due for longer than 30 days, Tricentis may immediately suspend or terminate its performance of the Services under this Agreement upon prior notice to Customer.
- 4.5 **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 or the applicable Service Order, all licenses or rights granted to Customer hereunder shall terminate, and Tricentis shall have no further obligation to provide the Services or Deliverables. In addition, no later than 10 calendar days after termination or non-renewal, Customer shall return all Tricentis Confidential Information in its possession or control to Tricentis, or, at Customer's option, destroy, and certify the destruction of, the same. Upon any termination of this Agreement or a Service Order, Customer shall pay Tricentis any unpaid fees and expenses incurred on or before the termination date on a time and material basis based on Tricentis's then-current rates. Sections 2, 3 (excluding Section 3.3), 4, 5 (excluding Section 5.1), 6, 7, 8, and 9 will survive expiration or termination of this Agreement.

5. LIMITED WARRANTIES AND LIABILITY

- 5.1 **Limited Warranty.** Tricentis warrants to Customer that the Services will be performed in a professional and workmanlike manner in accordance with standard industry practices, and that the Deliverables will conform to the Documentation or specifications set forth in the applicable Service Order for a period of 90 days after the completion of the Services and delivery of the Deliverables, provided that the Deliverables are used in accordance with the Documentation. Notwithstanding any provision of this Agreement to the contrary, Tricentis shall not have any obligation under this Section 5 to the extent the nonconformity of the Deliverables is the result of: (i) the Deliverables having been modified, repaired, or reworked by any party other than Tricentis or a third party on behalf of Tricentis; (ii) any use of the Deliverables in conjunction with another product or service not recommended in the Documentation; (iii) any damage to the Deliverables by power failure, fire, explosion, or any act of God or other cause beyond Tricentis's reasonable control; or (iv) any use of the Deliverables not in conformance with the Documentation.
- 5.2 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.3 **Limited Remedy.** If the Services or Deliverables do not meet the warranty as provided in Section 5.1, Tricentis will make commercially reasonable efforts to correct the nonconformity causing the warranty failure in the Services or Deliverables. For any breach of the warranty in Section 5.1, Customer's exclusive remedy will be as described in this Section 5.3.
- 5.4 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 5.1, THE SERVICES AND DELIVERABLES ARE PROVIDED BY TRICENTIS "AS IS", AND NEITHER TRICENTIS NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, BY STATUTE, USAGE, TRADE CUSTOM, OR OTHERWISE WITH RESPECT TO THE SERVICES OR DELIVERABLES, AND TRICENTIS DISCLAIMS ANY AND ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING THERETO INCLUDING WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. TRICENTIS DOES NOT GUARANTEE THAT THE SERVICES OR DELIVERABLES WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED, OR MEET CUSTOMER'S REQUIREMENTS.

5.5 **LIMITATION OF LIABILITY.** EXCEPT FOR A BREACH OF SECTION 3.4, INDEMNIFICATION LIABILITY UNDER SECTION 6, OR A BREACH OF SECTION 7 BELOW, NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS: (A) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES, ANY LOSS OF REVENUES OR PROFITS, 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 (B) EACH PARTY'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT WILL BE LIMITED TO THE FEES ACTUALLY PAID OR PAYABLE BY CUSTOMER FOR THE SERVICES OR DELIVERABLES THAT ARE THE SUBJECT OF SUCH CLAIM. THE PARTIES AGREE THAT THIS SECTION 5.5 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 AVAILABLE HEREUNDER.

6. INDEMNITY

6.1 **Indemnity of Customer.** Tricentis shall defend, or at Tricentis's option, settle, any claim, demand, suit, or proceeding made or brought against Customer, its directors, employees, and agents by a third party alleging that the use of the Deliverables in accordance with this Agreement infringes such third party's Intellectual Property Rights (a "**Claim Against Customer**"), and shall indemnify Customer from any and all costs, damages, liabilities, losses, 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 Against Customer, provided that Customer (a) promptly gives Tricentis written notice of the Claim Against Customer, (b) gives Tricentis sole control of the defense and settlement of the Claim Against Customer, and (c) gives Tricentis all reasonable assistance. If Tricentis receives information about an infringement claim related to the Deliverables, Tricentis may in its discretion and at no cost to Customer (i) modify the Deliverables so that they no longer infringe, without breaching the warranty set forth in Section 5.1, (ii) obtain a license for Customer's continued use of the Deliverables in accordance with this Agreement, or (iii) terminate this Agreement and any applicable Service Order upon 30 days' written notice, and refund Customer any prepaid fees covering the remainder of the term of the applicable Service Order(s). The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer Materials, Customer's breach of this Agreement, use of the Deliverables in combination with technology not provided by Tricentis, or Tricentis's performance of the Services or delivery of the Deliverables in compliance with any requirements or specifications set forth in Customer Materials.

6.2 **Indemnity of Tricentis.** Customer shall defend, or at Customer's option, settle, any claim, demand, suit, or proceeding made or brought against Tricentis, its directors, employees, and agents by a third party arising out of (a) Customer's violation of the restrictions in Section 3.4 or (b) Customer's breach of this Agreement (a "**Claim Against Tricentis**"), and shall indemnify Tricentis from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by or awarded against Tricentis as a result of, or for amounts paid by Tricentis under a court-approved settlement of, a Claim Against Tricentis, provided that Tricentis (a) promptly gives Customer written notice of the Claim Against Tricentis, (b) gives Customer control of the defense and settlement of the Claim Against Tricentis, and (c) gives Customer all reasonable assistance. Tricentis may, at its expense, participate in any such action, suit, or claim with counsel of its choice.

7. CONFIDENTIAL INFORMATION

7.1 **Restrictions On Use and Disclosure.** Receiving Party shall (a) not use the Confidential Information of the Disclosing Party for any purposes other than for the purpose of performing its obligations or exercising its rights under this Agreement and (b) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care (but no less than a reasonable degree of care) the Receiving Party uses to protect its own similar Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party: (i) to the

Receiving Party's directors, officers, or legal or business advisors to the extent reasonably necessary to carry out its obligations or exercise its rights under this Agreement, provided that such directors, officers, employees, or agents have been advised of the confidential nature of such information and are legally bound to maintain such information as confidential as required by this [Section 7](#) or (ii) as is required to be disclosed by the Receiving Party pursuant to a judicial or governmental statute, rule, or order, provided that the Receiving Party gives the Disclosing Party sufficient notice to permit Disclosing Party to seek a protective order or other opportunity to limit disclosure, and provided that the Receiving Party discloses only such Confidential Information as is required to be disclosed.

8. GENERAL PROVISIONS

- 8.1 **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of California, without regard to its conflict of law principles. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Services or Deliverables will be subject to the exclusive jurisdiction of the state and federal courts located in San Mateo County, California. The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.
- 8.2 **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., newspaper, 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 to present employees or consultants to a party, without any direction from that party to solicit individuals from such other party, will not constitute a breach of the terms of this [Section 8.2](#).
- 8.3 **Injunctive Relief.** Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and Intellectual Property Rights may cause substantial harm to the other party that could not be remedied by payment of damages alone. Accordingly, the other party will be entitled to seek preliminary and permanent injunctive relief in any jurisdiction where damage may occur without a requirement to post a bond, in addition to all other remedies available to it for any such breach.
- 8.4 **Notices.** All notices under this Agreement must be delivered in writing in person, by courier, by facsimile, by email-communication, or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement, and will be effective upon receipt or three (3) business days after being deposited in the mail as required above, whichever occurs sooner. Either party may change its address by giving written notice of the new address to the other party. The initial addresses for the parties for purposes of notice under this Section will be those addresses identified above in the first paragraph of this Agreement, directed to the attention of the signatory of this Agreement or other representative the party may designate in writing pursuant to this provision.
- 8.5 **Severability.** In the event any provision of this Agreement is held to be invalid, illegal, 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.
- 8.6 **Waiver.** No term or provision of this Agreement will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The waiver by either party of any right hereunder, or of the failure to perform or notify of a breach by the other party, will not be deemed to be a waiver of any other right hereunder or of any other breach or failure by such other party, whether of a similar nature or otherwise.
- 8.7 **Publicity.** Customer agrees that Tricentis may identify Customer as a Tricentis customer in Tricentis's promotional, marketing or other materials, and that Tricentis may refer to Customer by name, trade name, and trademark as applicable. Customer hereby grants Tricentis a license to use Customer's name and applicable trademarks solely to exercise Tricentis's rights under this Section.

- 8.8 **Exports.** Customer shall comply with all applicable export control laws, rules, and regulations, including the Export Administration Regulations promulgated by the U.S. Department of Commerce, with respect to its use of the Deliverables. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Deliverables without Tricentis's prior written consent.
- 8.9 **Relationship Between the Parties.** The relationship between the parties is that of independent contractors, and nothing contained in this Agreement will be construed to constitute as agents, partners, joint venturers, or otherwise as participants in a joint undertaking, or allow Customer to create or assume any obligation on behalf of Tricentis for any purpose whatsoever.
- 8.10 **Entire Agreement.** This Agreement constitutes the entire agreement between Tricentis and Customer regarding the subject matter hereof, and supersedes all prior oral and written communications. Any and all amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Service Order, (2) this Agreement, and (3) the Documentation.
- 8.11 **Construction.** The headings in this Agreement are for purposes of convenience only and shall not affect the meaning or construction of the sections to which they relate. Any use in this Agreement of words denoting the singular include the plural and vice versa. As used in this Agreement, the words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."
- 8.12 **No Construction Against Drafter.** Notwithstanding that one party or its representatives may have prepared the initial draft of this Agreement or any provision or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement, no provision hereof will be construed in favor of one party on the ground that such provision was drafted by the other.
- 8.13 **No Third-Party Beneficiaries.** This Agreement will be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.
- 8.14 **Force Majeure.** Neither party will be deemed to be in breach of any provision of this Agreement for any failure in performance resulting from acts or events beyond that party's reasonable control ("**Force Majeure**"). If a Force Majeure event continues for more than sixty (60) days preventing a party from performing, either party may terminate this Agreement upon written notice to the other party, provided, however, that the non-performing party may terminate only if the non-performing party is not the cause of the Force Majeure.
- 8.15 **Assignment.** Neither this Agreement nor any rights granted hereunder, nor the use of any of the Deliverables may be assigned or otherwise transferred (whether by operation of law or otherwise), in whole or in part, by Customer, without the prior written consent of Tricentis, which consent shall not be unreasonably withheld or delayed; provided, however, that no such consent to an assignment of this Agreement and the rights granted herein will be required in the event of an assignment to Customer's Affiliate, or in the event of an assignment related to a merger or a sale of substantially all of Customer's assets; provided that Customer provide notice of such assignment as soon as reasonably practicable and upon such assignment or sale, the rights granted herein shall apply only to the use of the Deliverables relating to the business of Customer as it existed prior to such assignment or sale. Any attempted assignment will be void and of no effect unless permitted by the foregoing. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.
- 8.16 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together will be considered one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the

receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

9. DEFINITIONS

In this Agreement, the following capitalized terms shall have the following meanings:

- 9.1 “**Affiliate**” of an entity means any individual, corporation, partnership, or business entity that controls, is controlled by, or is under common control by that entity. The term “control” as used in this definition includes direct or indirect ownership of more than 50% of the voting or equity shares or interest of a corporation or more than 50% of the beneficial ownership of an entity.
- 9.2 “**Confidential Information**” means information furnished to one party (“**Receiving Party**”) by the other party (“**Disclosing Party**”), (1) that is marked at the time of disclosure as being “Confidential” or words of similar import or (2) that is identified orally as being confidential or proprietary, or is of such a nature or the circumstances of the disclosure are such that a reasonable person would understand that the information should be treated as confidential information. The Deliverables and Documentation will be deemed Tricentis’s Confidential Information regardless of whether so marked. Confidential Information will not include information that the Receiving Party can demonstrate by contemporaneous records: (a) was rightfully known by Receiving Party prior to the date it was disclosed by the Disclosing Party; (b) is lawfully disclosed to the Receiving Party without obligation of confidentiality by a third party rightfully in possession of such information; (c) becomes generally known to the public through no act or omission on the part of the Receiving Party; or (d) is independently developed by the Receiving Party without reference to or reliance upon any Confidential Information of the Disclosing Party.
- 9.3 “**Customer Materials**” means any works, materials, content, or data provided to Tricentis by Customer in connection with Tricentis’s performance of the Services.
- 9.4 “**Deliverable**” means any work or material (including software, reports, test cases, or flow charts) delivered to Customer pursuant to, and as described in, a Service Order.
- 9.5 “**Documentation**” means Tricentis’s standard written user documentation that describes the design, functions, operation, or use of the Services or Deliverables, as updated by Tricentis from time to time.
- 9.6 “**Intellectual Property Rights**” means current and future worldwide common law and statutory rights, whether arising under the laws of the United States of America or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with : (i) patents, utility models, and invention disclosures and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations, and continuations-in-part thereof; (ii) trade secrets, confidential information, or proprietary information; (iii) copyrights, copyrights registrations and applications therefor; (iv) trademarks, service marks, and other designations of source or origin; (v) industrial designs; (vi) all rights in databases and data collections; (vii) all moral and economic rights of authors and inventors, however denominated; (viii) rights to apply for, file for, certify, register, record, or perfect any of the foregoing; and (viii) any similar or equivalent rights to any of the foregoing (as applicable).
- 9.7 “**Open Source License**” means a license meeting the Open Source Definition (as promulgated by the Open Source Initiative) or the Free Software Definition (as promulgated by the Free Software Foundation), or any substantially similar license.
- 9.8 “**Tricentis**” means Tricentis USA Corp., 5150 El Camino Real, Suite D14, Los Altos, CA 94022, USA.