

TRICENTIS GENERAL SOFTWARE AND SERVICES TERMS AND CONDITIONS**PART A
General Provisions****1. GENERAL**

- 1.1 **Agreement.** The provisions set forth in PART A – General Provisions of the Tricentis General Software and Services Terms and Conditions shall apply to both the licensing of the Tricentis Software and the provision of Services to Customer. Any licensing of the Tricentis Software to Customer shall additionally be subject to PART B – Provisions Applicable To Tricentis Software. Any provision of Services to Customer shall additionally be subject to PART C – Provisions Applicable To Tricentis Services.

2. DEFINITIONS

Capitalized terms not otherwise defined in this Agreement shall have the meaning set forth in this Section 2:

- 2.1 **“Acceptance Date”** means the date on which Customer signs the Order.
- 2.2 **“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.
- 2.3 **“Agreement”** means these Tricentis General Software and Services Terms and Conditions, the Master License Agreement/Order Form for Software Licenses and/or the Services Order executed by the parties, and any schedule and appendices thereto.
- 2.4 **“Authorized User”** means a Customer employee or contractor who is authorized by Customer to use the Tricentis Software.
- 2.5 **“Confidential Information”** means information furnished to one party (“**Receiving Party**”) by the other party (“**Disclosing Party**”), (i) that is marked at the time of disclosure as being “Confidential” or words of similar import or (ii) 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 Tricentis Software, the Deliverables and Documentation will be deemed Tricentis’s Confidential Information regardless of whether so marked. Confidential Information will not include information that Receiving Party can demonstrate by contemporaneous records: (i) was rightfully known by Receiving Party prior to the date it was disclosed by Disclosing Party; (ii) is lawfully disclosed to Receiving Party without obligation of confidentiality by a third party rightfully in possession of such information; (iii) becomes generally known to the public through no act or omission on the part of Receiving Party; or (iv) is independently developed by Receiving Party without reference to or reliance upon any Confidential Information of Disclosing Party.
- 2.6 **“Customer Materials”** means any works, materials, content, or data provided to Tricentis by Customer in connection with Tricentis’s performance of the Services.
- 2.7 **“Customer System”** means any system owned, operated, or managed by Customer or a Customer Affiliate on which the Tricentis Software is installed.
- 2.8 **“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.

- 2.9 **“Documentation”** means Tricentis’s standard written user documentation that describes the design, functions, operation, or use of the Tricentis Software and/or the Services or Deliverables, as updated by Tricentis from time to time.
- 2.10 **“Fee”** means any fees which Customer is required to pay hereunder in accordance with the applicable (Service) Order.
- 2.11 **“Intellectual Property Rights”** means current and future worldwide common law and statutory rights, whether arising under the laws of Austria 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 (ix) any similar or equivalent rights to any of the foregoing (as applicable).
- 2.12 **“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.
- 2.13 **“Order”** means the Master License Agreement/Order Form for Software Licenses, or any other document as agreed by the parties, specifying the options chosen by Customer for the Tricentis Software and the applicable fees and limitations.
- 2.14 **“Service”** means any services performed to Customer hereunder pursuant to and as described in a Service Order and subject to the payment of the applicable Fees.
- 2.15 **“Service Order”** means an order, or any other document as agreed by the parties, setting forth the Services to be provided under this Agreement, and other additional terms agreed to by the parties.
- 2.16 **“Territory”** means the territory set forth in the applicable Order, whether an “Area License”, “National License”, or “Global License” as applicable.
- 2.17 **“Third-Party Software”** means software not owned by Tricentis and licensed to or used by Customer, whether supplied by Tricentis or a third party.
- 2.18 **“Tricentis”** means: Tricentis GmbH, Leonard-Bernstein-Strasse 10, 1220 Vienna, Austria, *if Customer is located in EMEA*; (ii) TRICENTIS APAC PTY LTD, Suite 4, Level 3, 2-12 Foveaux Street, Surry Hills, NSW 2010, Australia, *if Customer is located in APAC*; (iii) Tricentis USA Corp., 5150 El Camino Real, Suite D14, Los Altos, CA 94022, *if Customer is located in the Americas*.
- 2.19 **“Tricentis Authorized Reseller Partner”** means a Tricentis partner that is entitled to market and license the Tricentis Software to Customer pursuant to the terms of a reseller agreement.
- 2.20 **“Tricentis Software”** means “Tricentis Tosca”™ software, including its components “Tosca Commander”, “Requirement Management”, “TestCase Design AddIn” as well as all available technology adapters with respect thereto.

3. OWNERSHIP

- 3.1 **Ownership of Intellectual Property.** As between the parties, Tricentis retains all rights, title, and interest, including all Intellectual Property Rights, in and to the Tricentis Software

and/or the Deliverables. As between the parties, Customer shall retain all rights, title, and interest in and to the Customer Systems. Except for the rights expressly granted in this Agreement, no license or right is granted to Customer by Tricentis by implication or otherwise.

- 3.2 **Trademarks.** The Tricentis trademarks, logos, and service marks (collectively, the “**Tricentis Marks**”) are the registered and unregistered trademarks of Tricentis, its Affiliates, licensors and suppliers, and/or others. Nothing contained in this Agreement or in the Tricentis Software should be construed as granting, by implication or otherwise, any license or right to use any Tricentis Mark(s) without the express written permission of Tricentis.
- 3.3 **Open Source Components.** Customer acknowledges that certain software components of the Tricentis Software and/or 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.

4. FEES

- 4.1 **Fees.** Customer shall pay the Fees to Tricentis. Except as otherwise set forth in an Order and/or 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.
- 4.2 **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.
- 4.3 **Future Functionality.** Customer agrees that the obligation to pay Fees is not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by Tricentis regarding functionality or features.
- 4.4 **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.

5. TERM AND TERMINATION

- 5.1 **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 5.
- 5.2 **Termination for Breach.** Either party may terminate this Agreement or the applicable (Service) Order immediately upon written notice to the other party, if the other party is in

material breach of 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 within reasonable time.

- 5.3 **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.
- 5.4 **Suspension and Termination.** Notwithstanding anything to the contrary in this Agreement, if Customer violates the restrictions set forth in Sections 10.2, 10.3 or 17.3 or if any sum payable under this Agreement is past due for longer than 30 days, Tricentis may upon prior notice to Customer, suspend or terminate Customer's license to the Tricentis Software and/or its performance of the Services under this Agreement.
- 5.5 **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 of the applicable (Service) Order, all licenses or rights granted to Customer hereunder shall terminate and Customer shall not, and shall not attempt to, access or use the Tricentis Software, 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. Sections 2, 3, 5, 6 (excluding Section 6.1), 7, 8, 9, 10 (excluding Section 10.1), and 17 (excluding Section 17.2) will survive expiration or termination of this Agreement.

6. LIMITED WARRANTIES AND LIABILITY

- 6.1 **Limited Warranty.** Tricentis warrants to Customer that: (i) the Tricentis Software will conform in all material respects to the Documentation in effect on the Acceptance Date during the first 6 months of the term of this Agreement, provided the Tricentis Software is used in accordance with the Documentation; and/or (ii) the Services will be performed in a professional and workmanlike manner in accordance with standard industry practices, and that the Deliverables will conform in all material respects 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 6.1 to the extent the nonconformity of the Tricentis Software and/or the Deliverables is the result of: (i) the Tricentis Software and/or 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 Tricentis Software and/or the Deliverables in conjunction with another product or service not recommended in the Documentation; (iii) any damage to the Tricentis Software and/or the Deliverables by power failure, fire, explosion, or any act of God or other cause beyond Tricentis's reasonable control; or (iv) any use or access to the Tricentis Software and/or any use of the Deliverables not in conformance with the Documentation.
- 6.2 **Representations.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.

- 6.3 **Limited Remedy.** If the Tricentis Software and/or the Services or the Deliverables do not meet the warranty as provided in Section 6.1, Tricentis will make commercially reasonable efforts to correct the nonconformity causing the warranty failure in the Tricentis Software and/or the Services or the Deliverables. For any breach of the warranty in Section 6.1, Customer's exclusive remedy will be as described in this Section 6.3.
- 6.4 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.1, THE TRICENTIS SOFTWARE AND/OR THE SERVICES OR THE 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 TRICENTIS SOFTWARE AND/OR 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 TRICENTIS SOFTWARE AND/OR THE SERVICES OR THE DELIVERABLES WILL BE FREE OF DEFECTS, RUN ERROR-FREE OR UNINTERRUPTED OR MEET CUSTOMER'S OR AN AUTHORIZED USER'S REQUIREMENTS.
- 6.5 **LIMITATION OF LIABILITY.** EXCEPT FOR A BREACH OF SECTIONS 10.2, 10.3, OR 17.3, INDEMNIFICATION LIABILITY UNDER SECTION 7, OR A BREACH OF SECTION 8 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 AND TO THE EXTENT PERMITTED BY LAW: (A) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY, FOR ANY CONSEQUENTIAL OR INDIRECT 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 TRICENTIS SOFTWARE AND/OR THE SERVICES OR THE DELIVERABLES THAT ARE THE SUBJECT OF SUCH CLAIM. THE PARTIES AGREE THAT THIS SECTION 6.5 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 HEREUNDER.
- 7. INDEMNITY**
- 7.1 **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 Tricentis Software and/or 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 Tricentis Software and/or the Deliverables, Tricentis may in its discretion and at no cost to Customer (i) modify the Tricentis Software and/or the Deliverables so that they no longer infringe, without breaching the warranty set forth in Section 6.1, (ii) obtain a license for Customer's continued use of the Tricentis Software and/or 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 Tricentis Software and/or Deliverables in combination with technology not provided by Tricentis, Tricentis's performance of the Services or delivery of the Deliverables in compliance with any requirements or specifications set forth in Customer Materials.

- 7.2 **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 (i) Customer's violation of the restrictions in Sections 10 and 17.3, (ii) Customer's breach of this Agreement, or (iii) Customer's operation of the Customer Systems (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.
- 7.3 **Exclusive Remedy.** This Section 7 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for relevant claims described in this Section 7.

8. CONFIDENTIAL INFORMATION

- 8.1 **Restrictions On Use and Disclosure.** Receiving Party shall (a) not use Confidential Information of Disclosing Party for any purposes other than for 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) Receiving Party uses to protect its own similar Confidential Information. Notwithstanding the foregoing, Receiving Party may disclose Confidential Information of Disclosing Party: (i) to 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 8 or (ii) as is required to be disclosed by Receiving Party pursuant to a judicial or governmental statute, rule, or order, provided that Receiving Party gives Disclosing Party sufficient notice to permit Disclosing Party to seek a protective order or other opportunity to limit disclosure, and provided that Receiving Party discloses only such Confidential Information as is required to be disclosed.

9. GENERAL PROVISIONS

- 9.1 **Governing Law.** (i) If Customer is located in Europe, Middle East, Africa or India ("**EMEA**"), this Agreement shall be governed by the laws of Austria excluding conflicts of law, and either party shall submit to the exclusive jurisdiction of the courts competent for the Inner District of Vienna, Austria; (ii) If Customer is located in Asia-Pacific countries ("**APAC**"), this Agreement shall be governed by the laws of Australia excluding conflicts of law, and either party shall submit to the exclusive jurisdiction of the courts located in Sydney, New South Wales; (iii) If Customer is located in North, South or Central America ("**Americas**"), this Agreement shall be governed by the laws of the State of California excluding conflicts of

law, and either party shall submit to the exclusive jurisdiction of the state and federal courts located in Santa Clara County, California.

The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods.

- 9.1.1 **Australian Consumer Law ("ACL").** The parties hereby acknowledge that under the ACL, consumers have certain rights which cannot be excluded, including guarantees as to the acceptable quality and fitness for the purpose of goods and services. Nothing in this Agreement will be read or applied to as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the ACL) and which by law cannot be excluded, restricted or modified. Where Tricentis cannot correct a nonconformity in accordance with Section 6.3 of this Agreement, Tricentis limits its liability to Customer for breach of the warranty in Section 6.1 under the ACL to (at Tricentis's election) the re-supply of the services or payment of the cost of resupplying the services.
- 9.1.2 **Ultimate federal government end use provisions.** Tricentis will provide the Tricentis Software and/or 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 Tricentis Software and/or 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.
- 9.2 **Data Privacy Statement.** Tricentis's handling of personal data is governed by the Tricentis Data Privacy Statement 04/2016 (available at <http://www.tricentis.com/legal-information/privacy-policy>), which forms an integral part of this Agreement.
- 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 9.3.
- 9.4 **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.
- 9.5 **Notices.** The parties agree to serve notices to each other by certified or registered mail, courier, fax or by email. Irrespective of the manner used to serve notice, the notice will be deemed to have been served upon receipt or by the end of the third business day on which the notice was sent, whichever occurs sooner. Except as otherwise provided in this Agreement all notices shall be in writing and addressed to the principal office of the parties

as set out in the applicable (Service) Order or to such address as either party may later provide in writing to the other party.

- 9.6 **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.
- 9.7 **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.
- 9.8 **Exports.** Customer shall comply with all applicable export control laws, rules, and regulations with respect to its use of the Tricentis Software and/or Deliverables, including the Export Administration Regulations promulgated by the U.S. Department of Commerce. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Tricentis Software and/or the Deliverables without Tricentis's prior written consent.
- 9.9 **Waiver.** No waiver of any breach shall be deemed a waiver of any preceding or succeeding breach whether the same or not. No delay or omission in exercising any right or remedy shall operate as a waiver. No waiver shall be binding for any purpose unless put in writing and signed by the party. Any written waiver shall only be effective for the purpose stated and no other.
- 9.10 **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.
- 9.11 **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) these Tricentis General Software and Services Terms and Conditions, and (3) the Documentation.
- 9.12 **Interpretation.** Headings are for convenience only and do not constitute part of this Agreement. Words which are singular shall include the plural number and vice versa. As used in this Agreement, the words "include" and "including" and variations thereof will be deemed to be followed by the words "without limitation."
- 9.13 **No Construction Against Drafter.** Notwithstanding that one party 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.
- 9.14 **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.

- 9.15 **Assignment.** Neither this Agreement nor any rights granted hereunder, nor the use of any of the Tricentis Software and/or 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 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 provides 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 Tricentis Software and/or 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.
- 9.16 **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 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. The Tricentis General Software and Services Terms and Conditions may also be incorporated by way of reference in a Master License Agreement or Services Agreement to be entered into by the parties.

PART B

Provisions Applicable To Tricentis Software

10. LICENSE AND TERMS OF USE

- 10.1 **License Grant.** Subject to payment by Customer of the Fees required hereunder, Tricentis hereby grants to Customer a non-exclusive, non-transferable, perpetual (except as set forth on the applicable Order), revocable, non-sublicensable license to use the Tricentis Software in the Territory, for use by Authorized Users, on the Customer Systems in executable form, solely for Customer's internal business purposes. Tricentis shall deliver a copy of the Tricentis Software to Customer by providing Customer with access to the cloud license server infrastructure.
- 10.2 **Usage Limits.** Customer's access to and use of the Tricentis Software is subject to, and Customer shall comply with, all the terms and conditions set forth in the applicable Order (including the usage limits). The Tricentis Software may not be simultaneously used by Customer, in the aggregate, by more than the quantity of licenses granted. Access credentials for the Tricentis Software may not be shared with third parties. Customer shall be responsible for all use of the Tricentis Software by Authorized Users.
- 10.3 **Restrictions.** Customer shall only use the Tricentis Software for Customer's internal business purposes and shall not (and not allow or assist any third party to) (a) modify, adapt, translate, create derivative works of, reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of, any part of the Tricentis Software, (b) sell, resell, license, sublicense, distribute, rent or lease any part of the Tricentis Software or include any part of the Tricentis Software in a service bureau or outsourcing offering, or otherwise encumber the Tricentis Software with any lien or grant a security interest in the Tricentis Software, (c) modify any header files or class libraries contained in any part of the Tricentis Software, (d) publish or otherwise disclose to any third party any results of any benchmark or other performance tests of the Tricentis Software. Customer shall not remove, alter, or obscure any proprietary rights notices contained in or affixed to the Tricentis Software. Customer shall not, nor will it authorize or encourage Authorized Users

to, use the Tricentis Software in any hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation 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.

- 10.4 **Backups.** Except for maintaining a single archival copy of the Tricentis Software for backup purposes only, Customer shall not make copies of the Tricentis Software. Nothing herein shall limit or restrict Customer from providing Authorized Users with copies of the Documentation for their internal use, in connection with the license granted in [Section 10](#).
- 10.5 **Third-Party Software.** Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of Third-Party Software the Tricentis Software is used with. Tricentis disclaims all warranties of any kind with respect to such Third-Party Software.
- 10.6 **Customer System Security and Operation.** Any password or other security codes, or routines provided to Customer hereunder for Customer to access or use the Tricentis Software will be deemed Confidential Information of Tricentis. Customer shall establish appropriate security measures, consistent with industry standards, to protect the Tricentis Software, passwords, security codes, or routines from unauthorized use. Customer shall notify Tricentis immediately of any actual or alleged unauthorized use of the Tricentis Software, passwords, security codes, or routines. Notwithstanding anything to the contrary in this Agreement, Customer is solely responsible for the operation and maintenance of the Customer Systems, and Tricentis disclaims all warranties, and shall have no liabilities to Customer, arising from or related to the operation or maintenance of the Customer Systems or any incompatibilities, faults, defects, or damage attributable thereto.
- 10.7 **Cloud License Server.** Tricentis may change, discontinue, or deprecate the provision of licenses via the cloud license server ("Cloud License Server"). Customer will be notified of any material change to, discontinuation or termination of the Cloud License Server services, and in case of termination by Tricentis' Cloud License Server provider, Tricentis will migrate existing licenses of the Tricentis Software to a different server. Tricentis and its suppliers make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Cloud License Server services or third party content in the Cloud License Server services, including any warranty that the Cloud License Server services will be uninterrupted, error free or free of harmful components.

11. LICENSE ORDERS

- 11.1 **Submission of Orders.** Customer may submit an Order to Tricentis or to a Tricentis Authorized Reseller Partner. For Orders submitted to a Tricentis Authorized Reseller Partner, the respective terms and conditions will be directly agreed between the Tricentis Authorized Reseller Partner and Customer.
- 11.2 **License Fees.** The Fees will be non-refundable and non-cancellable. Tricentis reserves the right to modify the Fees payable by Customer upon the renewal of this Agreement and the applicable Order upon 60 days' prior written notice to Customer.
- 11.3 **License Term.** Each Order shall have the initial license term indicated on the Order, commencing on the Acceptance Date ("**License Term**").

12. SUPPORT

- 12.1 **Tricentis Support Services.** Subject to the payment of the Fees described in the applicable Order, Tricentis shall provide Customer with support in respect of the Tricentis Software under the support plan ordered by Customer on the Order ("**Support Services**"). Each Order shall have an initial support term of twelve months commencing on the Acceptance

Date (“**Initial Support Term**”). The Support Services Fees shall be invoiced to Customer annually in advance. Upon expiration of the Initial Support Term, the term of the Support Services provided under this [Section 12](#) shall automatically renew for successive periods of twelve months each, unless either party cancels such renewal by notifying the other party at least 60 days prior to the expiration of the then-current term. Tricentis is entitled to increase the annual Support Services Fees (for the successive periods) to the maximum extent of the increase of the: (i) “Harmonized Index of Consumer Prices of the EU” published by EUROSTAT (HICP 2005 / basis: the month following the Acceptance Date), *if Customer is located in EMEA*; (ii) “Consumer Price Index” (CPI) published by the Australian Bureau of Statistics or other agency publishing such index (basis: the month following the Acceptance Date), *if Customer is located in APAC*; (iii) “U.S. Consumer Price Index” (CPI) published by the U.S. Bureau of Labor Statistics (BLS), *if Customer is located in the Americas*.

13. ESCROW

13.1 **Escrow.** In the event Tricentis shall become bankrupt, insolvent or dissolved and Tricentis’s rights and obligations under this Agreement shall not be assumed by a successor, Customer shall be entitled to require the release of the most recent version of the source code for the Tricentis Software from escrow for the sole purpose of enabling the continued use of the Tricentis Software, subject to the terms of this Agreement, and for no other purpose. Such use shall only be permitted until the license is otherwise terminated in accordance with the terms of [Section 5](#) by Tricentis or its trustee, administrator, receiver, or liquidator as the case may be, and provided that Customer paid the Fees and that a support agreement relating to the Tricentis Software is in force.

14. DATA RETENTION AND TRANSFER

14.1 **Data Retention and Transfer.** Customer acknowledges that it is Customer’s responsibility to perform any offsite backup deemed necessary by Customer to transition to a substitute software solution after termination of this Agreement. In the event Customer wishes to engage Tricentis to assist with any such activities, such engagement will be subject to the parties’ agreeing in writing on the terms, conditions, and fees therefor.

PART C

Provisions Applicable To Tricentis Services

15. SERVICE ORDERS

15.1 **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. 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 the applicable Service Order, Tricentis shall perform for Customer the 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.

15.2 **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: (a) the effective

date of the Change Order; (b) the specific changes, with reference to the affected sections of the applicable Service Order; and (c) 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. The parties may enter into a Change Order to extend the term of a Service Order.

- 15.3 **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: (a) 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 (b) 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 Customer to have been the result of an error or discrepancy in materials, technology, or information provided by Customer rather than errors of Tricentis.
- 15.4 **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 15.5) 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.
- 15.5 **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.

16. EXPENSES

- 16.1 **Travel Expenses.** Customer shall 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.

17. INTELLECTUAL PROPERTY

- 17.1 **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 17.1](#), Customer retains all rights, title, and interest in and to the Customer Materials.
- 17.2 **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.
- 17.3 **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.
- 17.4 **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.

18. TERMINATION OF THE SERVICES

- 18.1 **Effect of Termination of the Services.** 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.