

# TRICENTIS GENERAL TERMS OF USE

## Tricentis General Terms of Use

Effective August 1, 2022. These Terms replace and supersede all prior versions.

These Tricentis General Terms of Use (these “**Terms**”) govern the use of the Offerings. “**Customer**,” “**you**” or “**your**” means the entity accepting these Terms. “**Tricentis**,” “**Company**,” “**we**,” “**our**” or “**us**” means the Tricentis entity identified in the Order.

**Important: These Terms form a binding contract between you and Tricentis when accepted by you. You accept these Terms by (1) signing an Order referencing these Terms; (2) reserved; or (3) reserved. These Terms are effective on the date of your acceptance. If you are accepting these Terms on behalf of an entity, you warrant and represent that you have authority to bind that entity. If you sign up for Offerings online using an email address from your employer or another entity, then you will be deemed to represent your employer or that entity and your acceptance will bind your employer or that entity to these Terms. If you do not agree to these Terms, or are not authorized to accept these Terms, you must not use the Offerings. If you accept these terms personally and not on behalf of any entity, you may not use the Offerings for or on behalf of any entity. Use of the Offerings is intended for persons eighteen (18) years of age or older. If you are between thirteen (13) and seventeen (17) years of age, you may use the Offerings under the supervision of your parent or legal guardian who has explained these Terms to you and agrees to be bound to them on your behalf. You may not use the Offerings if you are under thirteen (13) years of age.**

Capitalized terms used in these Terms are defined in context or in Section 1.

### 1. DEFINITIONS

- 1.1. “**Additional Terms**” means additional terms that apply to certain customers and Offerings set out in Section 13.
- 1.2. “**Administrative Data**” means account-related data collected during your purchase and use of the Offerings.
- 1.3. “**Affiliate**” means any individual or business entity that controls, is controlled by, or is under common control with a party where control means ownership, directly or indirectly, of 50% or more of the voting power (or equivalent).
- 1.4. “**Agreement**” means these Terms, the Order, the Ancillary Documents and, if applicable, the Data Processing Addendum.
- 1.5. “**Ancillary Documents**” means any ancillary documents referenced in the Agreement as applicable to your ordered Offerings including the Documentation, Support Plan and Privacy Policy.
- 1.6. “**Customer Content**” means any content, code or data provided by you or Users to us in connection with your use of, or resulting from your authorized use of, the Offerings.
- 1.7. “**Customer Systems**” means servers, systems, platforms, networks, applications, databases, computers, mobile devices or other endpoints (physical or virtual) on which any On-Premises Product is installed, or from which SaaS Products are accessed, that are owned, operated or managed by, or on behalf of, you and your Affiliates.
- 1.8. “**Documentation**” means the then-current official user documentation provided by Tricentis for the applicable Product.
- 1.9. “**Feedback**” means comments, ideas, enhancement requests, recommendations, suggestions or other feedback relating to any Offerings.
- 1.10. “**Intellectual Property Rights**” mean all registered or unregistered worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, patents, patent applications and moral rights.
- 1.11. “**Offerings**” means the Products, Documentation and Professional Services that Tricentis provides to you under the Agreement.
- 1.12. “**On-Premises Products**” means our software products that are installed and run on Customer Systems.
- 1.13. “**Open-Source Software**” means any software components made available or distributed with the Products that are subject to open-source licenses.
- 1.14. “**Order**” means the order document or online order on a form approved by Tricentis that you submit, or a Tricentis authorized reseller submits on your behalf, to Tricentis that specifies the Offerings ordered and the applicable subscription term, quantities, license metrics, fees, billing and payment terms and other terms.

- 1.15. **"Products"** means On-Premises Products and SaaS Products.
- 1.16. **"Professional Services"** means professional services (excluding support) and any deliverables, as applicable, provided by Tricentis and described in the applicable Order.
- 1.17. **"SaaS Products"** means our hosted or cloud-based products that are provided by us on a software-as-a-service basis including any related software provided by us to access or use the product from Customer Systems.
- 1.18. **"Sensitive Personal Information"** means an individual's financial information, sexual orientation, political orientation, race, health or medical information protected under any health data protection laws or any other type of information protected as sensitive personal information or a special category of personal information under applicable data protection or privacy laws.
- 1.19. **"Service Data"** means information about your and your Users' use of the Offerings and performance of the Offerings that is anonymized and aggregated by Tricentis.
- 1.20. **"Support Plan"** means the Tricentis support plan identified in the applicable Order.
- 1.21. **"Taxes"** means any sales, value added, good and services, gross receipts, business and occupation, and other taxes (other than taxes on Tricentis's income or property), export and import fees, customs duties and similar charges imposed by any government or other authority.
- 1.22. **"Term"** means the term specified in the Order during which Customer may use the Offerings, including any renewal terms.
- 1.23. **"Third-Party Content"** means third-party software, products or services that are not owned by Tricentis or licensed under this Agreement that may be used or integrated with the Offerings.
- 1.24. **"Users"** means your and your Affiliates' employees, contractors and service providers that are authorized to use the Offerings.

## 2. LICENSE; USE OF OFFERINGS

- 2.1. **On-Premises Products.** For On-Premises Products specified in an Order and provided under the Agreement, Tricentis grants to you a worldwide, limited, non-exclusive, non-transferable, non-sublicensable license to install and use the On-Premises Product, in executable form, on Customer Systems and use the On-Premises Product and Documentation during the Term solely for your internal business purposes subject to the terms of the Agreement, including payment of fees.
- 2.2. **SaaS Products.** For SaaS Products specified in an Order and provided under the Agreement, Tricentis grants to you a worldwide, limited, non-exclusive, non-transferable, non-sublicensable license to access and use the SaaS Product and Documentation during the Term solely for your internal business purposes subject to the terms of the Agreement, including payment of fees. If applicable, this includes the right to install and use any software, in executable form, that Tricentis makes available to you to access or use the SaaS Products.
- 2.3. **Restrictions.** You and your Users must not: (1) decompile, disassemble, reverse engineer, attempt to identify source code, modify or create a derivative work of any Offerings except as expressly permitted by law (and then only with advance written notice to Tricentis); (2) copy, reproduce, republish, post or transmit any Offerings (except for archival copies, solely for backup purposes, of any software that Tricentis makes available to you for download); (3) sell, resell, rent, lease, license, sublicense, assign, distribute or transfer any Offerings to a third party except as authorized by Tricentis under a written agreement; (4) permit anyone other than Users to access and use any Offerings; (5) incorporate any Offerings into a product or service that you provide to a third party except as authorized by Tricentis under a written agreement; (6) use any Offerings to develop or operate competitive products or services; (7) publish or disclose information regarding the availability, performance or functionality of any Offerings to a third party, including any benchmarking; (8) remove, alter or obscure any proprietary rights notices contained in any Offerings; (9) use the Products in any hazardous environments in which the failure of the Products could result in death, personal injury, or physical or environmental damage; (10) attempt to gain unauthorized access to or circumvent any technical limitations on the use of any Offerings; (11) use any Offerings to store or transmit malicious code, Trojan horses, malware, spam, viruses or other destructive technology; (12) disrupt or interfere with the security, integrity or availability of any Offerings or any third parties' use of any Offerings; (13) perform any attack, scan, test, probe or penetration other security assessment of the SaaS Products hosted in Tricentis's third party cloud environments; (14) use any Offerings in a way that violates the terms of the Agreement, the rights of others or any applicable law; or (15) allow, encourage or assist any third party to do any of the foregoing. Any breach of this Section 2.3 will be considered a material breach.
- 2.4. **Limits on Use.** Your use of the Products is limited to the edition, license type, quantities and metrics stated in the Order. You are responsible for all actions taken by Users or through access credentials provided by us for the Products ("**User IDs**"). You will notify Tricentis immediately if you become aware of any unauthorized use of the Products or a User ID. Tricentis may restrict access to features not licensed, even if made accessible at the time of delivery.
- 2.5. **Support.** Tricentis will provide support for the Products during the Term according to the applicable Support Plan. Tricentis will not be obligated to provide support for issues arising from unauthorized use of the Products, use of the Products not in accordance with the Documentation or services for which Tricentis charges separate fees.
- 2.6. **Professional Services.** You may purchase Professional Services under the Agreement. Professional Services are described in the applicable Order and are subject to the Professional Services Terms described in Section 13.3.

**2.7. Limited Use Licenses.** At its sole discretion, Tricentis may provide certain Products to you for free or under other limited use licenses (collectively, "**Limited Use Licenses**"). Your use of a Product under a Limited Use License is: (1) subject to these Terms and any additional terms we specify when we provide the Limited Use License to you; and (2) restricted to the use for which it is provided during the Term. Limited Use Licenses for trials are restricted to use for internal evaluation. Limited Use Licenses for alpha, beta or other pre-release versions of Products or features are restricted to use for pre-release testing. You understand that Products and features provided under Limited Use Licenses for pre-release testing are still under development, may be inoperable or incomplete, and may contain more errors and bugs than generally available versions of Products. All information regarding the features or performance of Products provided under a Limited Use License is our Confidential Information. We may terminate a Limited Use License at any time for any reason at our sole discretion. Use of multiple free accounts to avoid incurring fees may result in termination of your account(s) or conversion to a paid subscription. Limited Use Licenses are intended for use in a non-production environment. **Any use by you of Products under a Limited Use License, including any use in a production environment, is at your own risk. To the maximum extent permitted by law, Products under a Limited Use License are provided "AS IS" without support, warranty or indemnification of any kind, express or implied. Notwithstanding anything else in these Terms, Tricentis's maximum aggregate liability to you for Limited Use Licenses will not exceed USD\$100.**

### **3. INTELLECTUAL PROPERTY**

**3.1. Tricentis Ownership.** Tricentis, its Affiliates and licensors retain all right, title and interest to the Offerings (including derivative works) and all related Intellectual Property Rights. The Offerings are licensed, not sold. The use of terms such as "purchase" or "sale" will not be interpreted to imply a transfer of ownership. Your rights to the Offerings are limited to the rights expressly granted in these Terms.

**3.2. Your Ownership.** You, your Affiliates and licensors retain all right, title and interest to Customer Content and all related Intellectual Property Rights. You grant to Tricentis, its Affiliates and its service providers a worldwide, limited license to use and process Customer Content during the Term solely to provide the Offerings and as expressly permitted under the Agreement. Our rights to Customer Content are limited to the rights expressly granted in these Terms.

**3.3. Feedback.** If you provide Feedback to Tricentis, you agree that Tricentis may use the Feedback and incorporate the Feedback into Offerings without restriction, compensation or other obligation to you.

**3.4. Open-Source Software.** A list of Open-Source Software made available or distributed with the Products is available on the Tricentis Support Portal or may be provided by Tricentis upon written request. Open-Source Software is licensed to you under its own license terms and those terms apply to your use of the Open-Source Software. In the event of a conflict, the Open-Source Software license terms supersede these Terms solely with respect to that Open-Source Software.

**3.5. Third-Party Content.** Third-Party Content is licensed to you under its own terms and those terms apply to your use of the Third-Party Content. Tricentis does not control or review Third-Party Content. You are responsible for ensuring that Third-Party Content is appropriate for your intended use and that you have the rights necessary to use the Third-Party Content.

### **4. ORDERING AND PAYMENT**

**4.1. Orders.** You may purchase Offerings directly from Tricentis, its Affiliates or through a Tricentis authorized reseller. The Offerings will be made available to you on your acceptance of an Order. An Order is accepted by you when you sign the Order or when you submit an online Order. The parties agree that Customer's signature only is sufficient to create a binding contract on any unaltered order form provided by Tricentis.

**4.2. Reseller Orders.** If you purchase through a Tricentis authorized reseller, Sections 4.4 (Fees and Payment) and 4.5 (Taxes) will not apply to that purchase and the reseller will invoice you and you will pay the reseller instead of Tricentis. If you purchase through a Tricentis authorized reseller, you agree that your order details will be as stated on the Order submitted by the reseller on your behalf. You also acknowledge and agree that the reseller is not authorized to make any changes to the Agreement or make any warranties, representations, promises or commitments on behalf of Tricentis related to the Offerings. If Tricentis provides you a refund under Sections 5.1, 5.2, 6.1, 10.5 or 11.2, Tricentis will issue the refund to the reseller.

**4.3. Affiliate Orders.** Your Order will be placed with the Tricentis Affiliate indicated on the Order. You may authorize your Affiliates to submit Orders under these Terms. You remain responsible for your Affiliates' compliance with the Agreement.

**4.4. Fees and Payment.** Tricentis or its authorized reseller as applicable will invoice you for fees stated on the Order after accepting your Order. Fees will be due and payable thirty (30) days after the invoice date unless the Order states a different payment due date. The fees stated in an Order are for the current versions of the Offerings and you acknowledge that you are not relying on future availability of any feature or functionality of the Offerings in consideration for the fees

**4.5. Taxes.** Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with 552.212-4(k).

**4.6. Upgrades/Downgrades.** You may upgrade your account at any time. After an upgrade, we will invoice you for the additional fees due for the remainder of the applicable Term and future auto-renewals will reflect the upgrade. You may not downgrade your account during the Term.

## **5. WARRANTIES**

**5.1. Product Warranty.** Tricentis warrants that the Products will materially conform to the applicable Documentation during the Term. For On-Premises Products licensed on a perpetual basis, the warranty will apply only for a period of twelve (12) months from delivery of the On-Premises Products. This warranty applies only to currently supported versions of the Product licensed to you that are used in unmodified form in accordance with the Documentation and the Agreement. If you promptly notify Tricentis of a reproducible error that Tricentis determines is a breach of this warranty, Tricentis will use commercially reasonable efforts to correct the error. If Tricentis determines that it is not commercially feasible to correct the error, Tricentis may terminate the Order for the applicable Product and refund to you the amount that Tricentis received for the unused portion of the Term after the date you notified Tricentis of the error. The remedies provided in this Section are your sole and exclusive remedies for a breach of the product warranty provided in this Section.

**5.2. Professional Services Warranty.** Tricentis warrants that it will perform Professional Services under the Agreement in a professional and workmanlike manner. If you notify Tricentis of an issue that Tricentis determines is a breach of this warranty within sixty (60) days of the completion date, Tricentis will use commercially reasonable efforts to reperform the services to comply with the warranty. If Tricentis determines that it is not commercially feasible to reperform the services, Tricentis may terminate the Order for the applicable Professional Services and refund to you the amount that Tricentis received for the portion of the Professional Services that failed to conform to the warranty. The remedies provided in this Section are your sole and exclusive remedies for a breach of the professional services warranty provided in this Section.

**5.3. Warranty Disclaimer. The express warranties set forth in this Section 5 (Warranties) are in lieu of all other warranties. Tricentis makes no warranties with respect to any Open-Source Software or Third-Party Content. To the maximum extent permitted by law, Tricentis disclaims all other warranties, whether express, implied or statutory (including any implied warranties of merchantability, fitness for a particular purpose, title or noninfringement), and any warranties arising from usage of trade, course of dealing or course of performance. Tricentis does not warrant that the Offerings will meet your requirements or that they will be accurate or operate without interruption or error. You acknowledge and agree that you have not relied on any promise, warranty, or representation not expressly provided in this Agreement.**

## **6. INDEMNIFICATION**

**6.1. Tricentis Indemnification.** Tricentis agrees to indemnify and has the right to intervene to defend you, your Affiliates and your respective officers, directors and employees from and against any unaffiliated third-party suit or proceeding alleging that the Products infringe any patent, trademark or copyright, or misappropriate a trade secret, of that third party ("**Tricentis Indemnified Claim**"). Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. Tricentis will indemnify you from the damages finally awarded against you to that third party by a court of competent jurisdiction or agreed to by Tricentis in settlement. Tricentis's obligations under this Section 6.1 apply only if you: (1) promptly notify Tricentis of the Tricentis Indemnified Claim in writing; (2) allow Tricentis sole control over the defense of the claim and any settlement negotiations; and (3) reasonably cooperate in response to Tricentis's requests for assistance. If a Product becomes, or in Tricentis's opinion is likely to become, the subject of a Tricentis Indemnified Claim, Tricentis will at its option and expense either: (A) procure the rights necessary for you to make continued use of the affected Product; (B) replace or modify the affected Product to make it non-infringing while materially retaining functionality; or (C) terminate your right to use the affected Product and, upon your certified deletion of the affected Product, refund you the amount that Tricentis received for the unused portion of the Term for the terminated Product. Tricentis's obligations under this Section 6.1 do not apply to any claim based on: (i) a combination of any Product with non-Tricentis products; (ii) any use of a Product that is not in compliance with the terms of the Agreement; (iii) continued use of an infringing version of the Product after Tricentis has provided you a non-infringing version or terminated your right to use the affected Product; (iv) any modification to a Product made by anyone other than Tricentis; (v) Customer Content; or (vi) Third-Party Content. **This Section 6.1 sets forth your sole and exclusive remedy and Tricentis's entire liability for any Tricentis Indemnified Claim.**

## 6.2. Reserved.

## 7. LIMITATIONS OF LIABILITY

- 7.1. Limitation on Damages.** Neither party nor its Affiliates are liable for any lost profits or business opportunities, loss of use, loss of data, business interruption, or any indirect, punitive, special, incidental or consequential damages under any theory of liability. This limitation applies regardless of whether Tricentis or you have been advised of the possibility of those damages and regardless of whether any remedy in this Agreement fails of its essential purpose.
- 7.2. Cap on Monetary Liability.** The maximum aggregate liability of either party and its Affiliates for claims related to the Agreement will not exceed the fees paid or payable to Tricentis for the Offering that is subject of the claim in the 12 months preceding the event giving rise to the claim.
- 7.3. Exclusions.** The limitations in Section 7 (Limitations of Liability) will not apply to: (1) either party's obligations in Section 6 (Indemnification); (2) either party's violation of the other party's Intellectual Property Rights; (3) your payment obligations under Section 4.4 (Fees and Payment); (4) your violation of Section 2.3 (Restrictions); (5) personal injury or death resulting from Licensor's negligence; for fraud or (6) any liability that cannot be excluded under applicable law.

## 8. CONFIDENTIALITY

- 8.1. Confidential Information.** "Confidential Information" means non-public information provided by one party ("Discloser") to the other party ("Recipient") in connection with the Agreement that is labeled confidential or proprietary or that a reasonable businessperson would consider to be proprietary or confidential due to its nature. Tricentis's Confidential Information includes information related to the Offerings, and product roadmaps. Your Confidential Information includes Customer Content. Confidential Information does not include any information that Recipient can show: (1) was rightfully known to Recipient without any obligation of confidentiality at the time of disclosure; (2) was disclosed to Recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (3) was generally available to the public at the time of disclosure through no fault of Recipient; or (4) was independently developed by Recipient without use of Discloser's Confidential Information.
- 8.2. Obligations; Permitted Use and Disclosure.** Recipient will protect the Discloser's Confidential Information in the same manner as it protects its own Confidential Information of a similar nature or value, and always with at least reasonable care. Recipient may use Confidential Information of Discloser solely to exercise its rights and perform its obligations under the Agreement. Recipient may disclose Confidential Information only to its and its Affiliates' officers, directors, employees, service providers, contractors, advisors or representatives ("Representatives") who have a reasonable need to know the Confidential Information to perform under the Agreement and who are bound by a similar duty of confidentiality. Recipient is responsible for its Representatives compliance with this Section 8. Recipient also may disclose Confidential Information to the extent required by law or regulation, in which case Recipient will notify Discloser as soon as practicable if permitted by law or regulation. At Discloser's request and expense, Recipient will take reasonable steps to contest and to limit the scope of any required disclosure. Recipient's obligation to protect Confidential Information of Discloser applies during the Term and for three (3) years after the end of the Term except with respect to Confidential Information that constitutes a trade secret, which will remain subject to the confidentiality obligations for as long as it remains subject to trade secret protection under applicable law. Vendor recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which requires that certain information be released, despite being characterized as "confidential" by the vendor.

## 9. DATA PRIVACY AND INFORMATION SECURITY

- 9.1. Data Protection and Security.** Each party will comply with its respective obligations under applicable data protection laws subject to Section 9.5. Tricentis will maintain appropriate technical and organizational measures. You are solely responsible for maintaining the security of Customer Systems.
- 9.2. Data Processing Addendum.** If you are in the territorial scope of the General Data Protection Regulation ("GDPR") or subject to the California Consumer Privacy Act ("CCPA"), you may sign and return the Tricentis Data Processing Addendum available at: <https://www.tricentis.com/legal-information/data-processing-addendum/> (the "Data Processing Addendum"). If signed by the parties, the Data Processing Addendum is incorporated by reference to the Agreement.
- 9.3. Service Data.** You agree that Tricentis may analyze and use Service Data to provide features, improve the Offerings and develop new features, products and services. Service Data is not Customer Content or your Confidential Information.
- 9.4. Administrative Data.** You agree that Tricentis may use Administrative Data to provide the Offerings, bill you for the Offerings, advise you of new Tricentis products and services, or otherwise comply with Tricentis's contractual obligations and applicable law. Tricentis is an independent controller of Administrative Data and will process Administrative Data under the privacy statement attached hereto and available at: <https://www.tricentis.com/legal-information/privacy-policy/> (the "Privacy Policy").

**9.5. Customer Content and Data Obligations.** You agree to obtain and maintain all rights and permissions necessary for you to transmit Customer Content to the Products, make Customer Content, Administrative Data and Service Data available to Tricentis and its service providers in connection with your use of the Offerings, and to grant us the rights to use and process Customer Content provided under these Terms. You agree not to transmit Sensitive Personal Information to the Products or otherwise make Sensitive Personal Information available to Tricentis or its service providers in connection with the use of the Offerings unless its processing is expressly supported as a feature of the applicable Product in the applicable Documentation or a written agreement between you and Tricentis.

## **10. TERM AND TERMINATION.**

**10.1. Term.** The Agreement will remain in effect for the Term of all Orders accepted under the Agreement unless earlier terminated under this Section.

**10.2. Renewals.** The Term may be renewed for successive twelve-month terms at the same account level and quantities of the expiring Term by executing a written order for the successive renewal term. At least sixty (60) days before the end of the current Term, Tricentis will send a renewal notice to you or your reseller, as applicable, regarding the fees and any additional terms that apply in the renewal Term, which will become effective at the start of the renewal Term unless you or your reseller timely notify us of your intent not to renew.

**10.3. Suspension.** Tricentis may immediately temporarily suspend or terminate your access to the Offerings if: (1) reserved; (2) reserved; or (3) Tricentis reasonably determines your use is disrupting or interfering with the security, integrity or availability of any Offerings or any third parties' use of any Offerings.

**10.4. Termination at end of Term.** Either party may terminate an Order effective at the end of the current Term by providing the other party at least thirty (30) days written notice before the end of the current Term.

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

**10.6. Reserved.**

**10.7. Effect of Expiration or Termination.** Upon termination or expiration of an Order, you will immediately stop using and Tricentis will stop providing the applicable Offerings. Any unpaid fees will become immediately due and payable on termination. You will not be entitled to a refund of any pre-paid fees except as provided under Sections 5.1, 5.2, 6.1, 10.5 and 11.2.

**10.8. Survival.** The following Sections will survive termination or expiration of this Agreement: 2.3 (Restrictions); 2.4 (Limits on Use); 3 (Intellectual Property); 4.4 (Fees and Payment); 5.3 (Warranty Disclaimer); 6 (Indemnification); 7 (Limitations of Liability); 8 (Confidentiality); 9 (Data Privacy and Information Security); 10.7 (Effect of Expiration or Termination); 10.8 (Survival) and 12 (General).

## **11. MODIFICATIONS.**

**11.1. Changes to Offerings.** Our Offerings are continually evolving. We may update or modify the Offerings and the Ancillary Documents during the Term to reflect changes in laws, technology, industry practices, our business or other market factors. The Ancillary Documents applicable at any time are the current version. Tricentis may use third-party service providers to deliver the Offerings and may change or replace third-party service providers from time to time at its sole discretion. Use of third parties and any changes to Offerings will not materially reduce the level of performance, security or availability of the Offerings during the Term. If we decide to discontinue any Products, it will be according to our product lifecycle policies. In the event that Tricentis discontinues or materially diminish functionality of a Service that You have contracted for, You shall be entitled to a pro rata refund for any fees paid not used.

**11.2. Changes to Terms.** We may non-materially modify these Terms (including any Additional Terms) with notice to you as provided in Section 12.6 or by posting the modified Terms on our website. Any non-material changes to these Terms will be effective on notice for Limited Use Licenses and effective at the start of the next renewal Term for paid Offerings unless a different effective date is stated on the notice. Your continued use of the Offerings after effectiveness of the change confirms your acceptance. If the change is effective during the current Term, is not required to comply with law, and materially and adversely impacts your use of the Offerings, then you may object to the change by providing written notice to us that describes the material impact of the change to you within thirty (30) days of the date of our notice of the change. Following notice of your objection, at our option, we may: (1) delay the effective date of the change to you until after the end of the current Term; (2) use commercially reasonable efforts to remediate the impact of the change to you; or (3) terminate the affected Orders and refund to you any fees that you have pre-paid for the unused portion of the Term.

## **12. GENERAL**

**12.1. Governing Law and Forum.** Unless otherwise specified in the Order, the Agreement is governed by the Federal laws of the United States without regard to principles of conflicts of law and any dispute arising out of the Agreement will be exclusively resolved in the State or Federal courts located in Texas. The United Nations Convention on Contracts for the International Sale of Goods will not apply.

**12.2. Reserved.**



each party agrees that disputes related to this Agreement will be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed under the Rules. The arbitration will be final and binding and the judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction. The place of arbitration will be where the Tricentis entity specified in the Order is located and the arbitration will be conducted in English.

### 12.3. Reserved.

**12.4. Assignment.** Neither party may assign its rights or obligations under the Agreement or any Order without the prior written consent of the other party. This Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns. Any purported assignment in violation of this Section 12.4 is void.

**12.5. Export Compliance.** You agree to comply with applicable anti-corruption and export control laws in your use of the Offerings. You represent and warrant that you are not, are not acting on behalf of, and will not export or re-export any part of the Offerings to: (1) any person who is a citizen, national, resident of, or who is controlled by, the government of any country to which the United States has prohibited export transactions; (2) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department Denied Persons List or Entity List; or (3) any country to which the United States government requires an export license or other governmental approval without first obtaining the license or approval. You are not subject, either directly or indirectly, to any order issued by any agency of the United States government revoking or denying, in whole or in part, your United States export privileges.

**12.6. Notices.** All notices will be in writing. The parties agree that electronic communications will satisfy applicable legal notice requirements, including that the notice be in writing. Notice will be deemed given on the next business day after the notice is sent. Tricentis will send notices to you at the email address indicated on the Order or updated through your customer account. It is your responsibility to keep your email address for notices valid and current to receive notices. You will send termination and non-renewal notices to Tricentis at [renewalbilling@tricentis.com](mailto:renewalbilling@tricentis.com) and other notices to Tricentis at [legalnotices@tricentis.com](mailto:legalnotices@tricentis.com).

**12.7. Records.** You agree to make available to Tricentis on request all information and records reasonably necessary to demonstrate that your use of the Offerings complies with the Agreement. For SaaS Products, you agree that Tricentis may monitor your use of the SaaS Products for compliance with applicable limits on use. If Tricentis determines your use exceeds applicable limits, Tricentis will invoice you for fees related to the excess use.

**12.8. Publicity.** We may identify you as a Tricentis customer and use your name in promotional and marketing materials to the extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71 unless you notify us that you do not consent to such use by sending notice to [legalnotices@tricentis.com](mailto:legalnotices@tricentis.com).

**12.9. Severability.** If part of the Agreement is held to be void, invalid or unenforceable, the rest will remain in full force and effect.

**12.10. Entire Agreement.** The Agreement as it may be modified from time to time is the entire agreement of the parties regarding your purchase and use of the Offerings. The Agreement supersedes all prior or contemporaneous communications, understandings and agreements, whether written or oral, between the parties regarding its subject matter. Any additional terms included in a purchase order or other business form provided by you will be for administrative purposes only, will have no legal effect and will not supersede, amend or supplement the terms of the Agreement. In the event of a conflict, the order of precedence will be: (1) the Order; (2) these Terms; and (3) the applicable Ancillary Document.

**12.11. Waiver and Amendment.** The waiver of a breach of any provision of the Agreement will not constitute a waiver of another provision or a later breach. Except as provided in Section 11, any modifications to the Agreement must be in writing and signed by both parties.

**12.12. Relationship of the Parties.** The parties are independent contractors. Nothing in this Agreement creates a partnership, joint venture or agency relationship. Neither party has any authority to assume or create any obligation of any kind in the name of or on behalf of the other party.

**12.13. Force Majeure.** In accordance with GSAR Clause 552.212-4(f), A party's delay or failure to perform obligations under this Agreement (except for payment obligations) that is caused by conditions beyond the reasonable control of that party is not a breach of this Agreement. The time for performance will be extended for a period equal to the duration of the conditions preventing performance.

**12.14. Counterparts and Electronic Signatures.** The Agreement may be executed in counterparts that will be considered one original. Electronic signatures will have the same force and effect as handwritten signatures.

**12.15. Construction.** The words "include" and "including" mean "including but not limited to." Section headings are for convenience only and are not to be used in interpreting this Agreement.

## 13. ADDITIONAL TERMS

**13.1. U.S. Government Use (applies only if you are U.S. Federal government customer or the Agreement becomes subject to the Federal Acquisition Regulations (FAR)).** You acknowledge and agree that elements of the Offerings constitute software and documentation and are provided as "Commercial Items" as defined in 48 C.F.R. 2.101 and are being licensed to you as commercial computer software subject to restricted rights described in 48 C.F.R. 2.101, 12.211 and 12.212. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of the Agreement as specified in 48 C.F.R. 227.7202-3 of the



DOD FAR Supplement ("DFARS") and its successors. This Section 13.1 is in lieu of, and supersedes, any other FAR, DFARS or other clause or provision that addresses government rights in computer software or technical data. Tricentis provides the Products, including related Documentation, for U.S. federal government end use solely in accordance with the following: government technical data and software rights related to the Product include only those rights customarily provided to the public as defined in the 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 requests rights not granted under these terms, the parties will need to agree upon a mutually acceptable written addendum specifically granting those rights pursuant to the provisions and guidance set forth in FAR 27.405.3.

**13.2. Australian Consumer Law (applies only if you are domiciled in Australia).** Nothing in the Agreement is intended to exclude, restrict or modify the application of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 of Australia ("**ACL**"). To the fullest extent permitted by law, Tricentis's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) will be limited to any one or more of the following (as determined by Tricentis in its absolute discretion): (1) in the case of goods, the replacement repair or payment of the cost of replacement or repair of the goods; and (2) in the case of services, supplying the services again or payment of the cost of having the services supplied again.

**13.3. Professional Services Terms (applies only to Professional Services purchased under the Agreement).** If you are purchasing Professional Services under the Agreement, the Professional Services Terms available at: <https://www.tricentis.com/legal-information/professional-services-terms/> (the "**Professional Service Terms**") apply, supplement these Terms and supersede any conflicting terms in these Terms.

**13.4. Product-Specific Terms (apply only to certain Products purchased under the Agreement).** If you are purchasing any of the Products listed below, the Product-specific terms linked below apply, supplement these Terms and supersede any conflicting terms in these Terms.

Tosca Connect	<a href="https://www.tricentis.com/legal-information/tosca-qtest-connect-terms/">https://www.tricentis.com/legal-information/tosca-qtest-connect-terms/</a>
qTest Connect	<a href="https://www.tricentis.com/legal-information/tosca-qtest-connect-terms/">https://www.tricentis.com/legal-information/tosca-qtest-connect-terms/</a>
Testim	<a href="https://www.tricentis.com/legal-information/testim-terms/">https://www.tricentis.com/legal-information/testim-terms/</a>
TestProject	<a href="https://www.tricentis.com/legal-information/testproject-terms/">https://www.tricentis.com/legal-information/testproject-terms/</a>

[END OF DOCUMENT]