

# TRICENTIS CUSTOMER SERVICE TERMS AND CONDITIONS

## 1. SCOPE AND DEFINITION

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

## 2. IP RIGHTS

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

## 3. PROVISION AND USAGE OF PRODUCT

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

#### 4. FEES

- 4.1. Payment.** Except as otherwise set forth in the Order, Fees are due and payable thirty (30) days after Customer's receipt of an undisputed invoice. Invoices are deemed to be accepted if not disputed in writing within ten (10) days after receipt. Customer shall provide Company with accurate billing and contact information and notify Company of any changes to such information.
- 4.2. Interest.** If any sum payable under this Agreement is not paid when due, without prejudice to Company's other rights under this Agreement, that sum will bear interest from the due date until the date when payment is received by Company, both before and after any judgment at the rate of one and a half percent (1.5%) per month, subject to the rate allowed by applicable law. In the event Customer in good faith disputes any amount due under any invoice issued by Company, Customer shall pay the undisputed amount, and the parties shall use diligent efforts to resolve any such dispute.
- 4.3. Taxes.** All payments, Fees, and other charges payable by Customer to Company under this Agreement are exclusive of all sales, goods and services, value added, property, excise, or any other taxes, levies, and assessments of any jurisdiction. Customer shall bear all such taxes, levies, and assessments imposed on Customer or Company arising out of this Agreement, excluding any tax based on Company's net income. If any deduction or withholding is required by law to be made by Customer, the amount of Fees shall be increased to the amount which, after making any deduction or withholding, leaves the amount equal to Fees which would have been due if no deduction or withholding had been required. Prior to any deduction or withholding, Customer shall inform Company about the amount of such deduction or withholding and shall request from Company a tax residency certificate, or any other documents required by law, to claim an exemption from or reduction of any such deduction or withholding. Customer to whom the deduction or withholding applies, shall pay to the relevant taxation authority, or other authorities, as appropriate, the applicable amount of the deduction or withholding, and furnish to Company all documents confirming such deduction or withholding. These documents should include, to the extent existing, any evidence necessary to ensure utilization of tax credit by Company. Company will repay to Customer the portions of a gross-up amount which led to an effective tax saving because of tax credit available to Company.
- 4.4. Expenses.** Except as otherwise set forth in the Order, Customer shall reimburse Company for actual travel and living expenses of its personnel engaged in the performance of the Services at locations other than Company facilities, together with other out-of-pocket expenses incurred in connection with performance of the Service. Company shall adhere to any travel policy reasonably promulgated by Customer.

#### 5. REPRESENTATION, WARRANTY LIABILITY AND INDEMNITY

- 5.1. Representation.** Each party represents that it has validly entered into this Agreement and has the legal power to do so.
- 5.2. WARRANTY.** Company warrants to Customer that the Services will be performed in a professional and workmanlike manner, and the Deliverables will conform in all material respects to the Documentation or specifications set forth in the Order for a period of ninety (90) days after the completion of the Services and delivery of the Deliverables. If Customer performs itself, or retains a third party to perform, any services that interface or interact with the Product, Customer warrants to Company that such services will be performed in a professional manner and Customer shall remain solely responsible and liable at all times for the actions of such third parties as though it were the actions of Customer itself. Customer warrants the accurateness and completeness of all information supplied by it to Company during the provision of the Services.
- 5.3. DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN [5.1 \(WARRANTY\)](#) AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PRODUCTS ARE PROVIDED BY COMPANY "AS IS", AND NEITHER COMPANY NOR ITS THIRD-PARTY LICENSORS MAKE ANY OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES ARISING UNDER STATUTE, USAGE, TRADE CUSTOM, ACCURACY, OR OUT OF TITLE, COURSE OF DEALING, PERFORMANCE OR OTHERWISE. COMPANY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS, OR CONDITIONS RELATING TO THE PRODUCTS INCLUDING, WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF THE COMPANY FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY USE OR PERFORMANCE OF THE PRODUCTS.
- 5.4. LIABILITY.**
- 5.4.1.** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY OTHER THAN [SUBSECTION 5.4.2](#) BELOW AND TO THE EXTENT PERMITTED BY APPLICABLE LAW REGARDLESS OF THE FORM OR CAUSE OF ACTION, WHETHER IN CONTRACT OR TORT, OR THE NUMBER OF CLAIMS (I) NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY, FOR ANY CONSEQUENTIAL SPECIAL, INCIDENTAL, PUNITIVE OR INDIRECT DAMAGES, ANY LOSS OF REVENUES OR PROFITS, LOSS OF GOODWILL, LOSS OF OR INACCURATE DATA, LOSS OF USE, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, COSTS OF DELAY OR ANY COST OF COVER ARISING OUT OF THIS AGREEMENT, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (II) EACH PARTY'S AGGREGATE LIABILITY FOR ANY CLAIM ARISING OUT OF OR RELATED TO THE SERVICES OR THIS AGREEMENT WILL BE LIMITED TO THE VALUE OF SERVICES OR DELIVERABLES ACTUALLY PERFORMED PURSUANT TO THE ORDER THAT IS THE SUBJECT OF SUCH CLAIM WITHIN TWELVE (12) MONTHS PRECEDING THE DATE OF THE CLAIM.
- 5.4.2.** THE PROVISIONS OF [SUBSECTION 5.4.1](#) SHALL NOT APPLY FOR A BREACH OF [SECTIONS 2.1 \(OWNERSHIP\)](#), [3 \(PROVISION AND USAGE OF PRODUCT\)](#), [5.3 \(WARRANTY\)](#), [6 \(CONFIDENTIALITY\)](#), AMOUNTS OWED BY CUSTOMER, PERSONAL OR PROPERTY DAMAGE, INCLUDING DEATH, BODILY INJURY OR DAMAGE TO HEALTH CAUSED INTENTIONALLY OR BY GROSS NEGLIGENCE.
- 5.4.3.** THE PARTIES AGREE THAT THIS SECTION REFLECTS A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES IN LIGHT OF THE TERMS OF THIS AGREEMENT. THIS LIMITATION OF LIABILITY WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREUNDER.
- 5.5. INDEMNITY.**
- 5.5.1.** Customer shall defend, or at Customer's option, settle any Claim made or brought against Company, its directors, employees, Affiliates and agents by a third party arising out of or relating to any claim that the provision or utilization of the Product or any portion thereof constitutes (i) Customer's breach of its Product usage rights, or (ii) Customer's use of Customer Material, and shall indemnify Company from any and all costs, damages, liabilities, losses, and expenses (including reasonable attorneys' fees) incurred by or awarded against Company as a result of, or for amounts paid by Company under a court-approved settlement of a Claim. Customer's obligations under this section include claims arising out of the acts or omissions of its users and anyone who gains access to the Product as a result of Customer's failure to use reasonable security precautions, even if the acts or omissions were not authorized by Customer.
- 5.5.2.** The obligations in this section 5.5 (Indemnity) apply only if (i) Company promptly notifies Customer in writing of a Claim, (ii) Company provides Customer with reasonable assistance, at the Company's reasonable and documented expense, and (iii) Company provides Customer with the right to control and the authority to settle a Claim, provided, however, that Customer will not settle a Claim that admits fault or liability of Company without Company's prior written consent (which shall not be unreasonably withheld) and (iv) Company will have the right to participate in the matter.

#### 6. CONFIDENTIAL INFORMATION

- 6.1. Confidentiality Obligations.** Except as otherwise set forth in a separate Non-Disclosure Agreement, during the Term and five (5) years thereafter, the Recipient shall (i) use Confidential Information solely for performing its obligations or exercising its rights under this Agreement, (ii) keep all Confidential Information in strict confidence; and (iii) not disclose, cause or permit disclosure of the Confidential Information to any third party, except as permitted under this Agreement.

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

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

## 7. DATA PRIVACY AND IT-SECURITY

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

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

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

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

## 8. TERM AND TERMINATION

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

**8.2. Termination for Breach.** Either party may terminate this Agreement 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 within thirty (30) days following written notice from the other party specifying the breach.

**8.3. 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 laws.

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

## 9. MISCELLANEOUS

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

**9.2. Publicity.** For marketing and promotional purposes, Customer agrees that Company may identify Customer in Company's promotional, marketing or other materials and refer to Customer by name, trade name and trademark as applicable. Customer hereby grants to Company a license to use Customer's name and applicable trademarks in accordance with this section.

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

**9.4. Injunctive Relief.** Each party acknowledges and agrees that any breach of its obligations with respect to Confidential Information and IP Rights may cause substantial harm to the other party that could not be remedied by payment of damages alone. Accordingly, the other party shall be entitled, in addition to any other rights or remedies, to seek injunctive relief in any jurisdiction where damage may occur.

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

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

- 9.7. Relationship.** The parties are independent contractors, and nothing contained in this Agreement shall be construed to constitute as agents, partners, joint ventures, or otherwise as participants in a joint undertaking, that would give a party the express or implied right, power or authority to create any duty or obligation of the other party.
- 9.8. Force Majeure.** Neither party shall be deemed to be in breach of any provision of this Agreement for any failure (except for a failure to pay Fees) resulting from acts or events beyond that party's reasonable control, including but not limited to (i) severe weather, power failure, fires, explosions, earthquakes, drought, tidal waves and floods, (ii) war, hostilities, invasion, act of foreign enemies, mobilization, requisition, or embargo, (iii) rebellion, revolution, insurrection, or military or usurped power, or civil war, (iv) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radio-active toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly, (v) diminishment of power of telecommunications or data networks or services, or refusal of a license by a government agency, (vi) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees of Company or its subcontractors. If any of such event has occurred, the non-performing party shall (i) immediately notify the other party in writing describing at a reasonable level of detail the circumstances causing such default or delay and (b) be excused from further performance or observance of its affected obligation(s) for as long as such circumstances prevail and such party continues to use reasonable commercial efforts to recommence performance or observance as soon as possible and to whatever extent possible without delay.
- 9.9. Assignment.** Neither this Agreement nor any rights granted hereunder may be assigned by either party, without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. No such consent will be required in the event of an assignment to either party's Affiliate, or a merger or a sale of substantially all of a party's assets; provided that the assigning party provides notice as soon as reasonably practicable. The right of assignment granted herein shall apply only to the business of Customer as it existed prior to such assignment or sale. This Agreement shall inure to the benefit of the parties' permitted successors and assigns.
- 9.10. Severability.** If any provision of this Agreement is held to be invalid or unenforceable, such provision will be interpreted in a manner that best reflects the parties' intentions, and the remaining provisions of this Agreement will remain in full force and effect.
- 9.11. Entire Agreement.** This Agreement constitutes the entire agreement between Company and Customer regarding the subject matter hereof and supersedes all prior oral and written communications. It may be executed in one or more counterparts, all of which together shall be considered one and the same and may be executed and delivered by electronic signature. All amendments or modifications to this Agreement must be in writing and signed by authorized representatives of both parties, however, the Tricentis Customer Service Terms and Conditions may also be incorporated by way of reference in an Order. In the event of any conflict or inconsistency, the order of precedence shall be (1) the Order, (2) these Tricentis Customer Service Terms and Conditions, and (3) the Documentation.
- 9.12. Law and Jurisdiction.** This Agreement shall be governed by the laws of the country/state in which the Company as specified in the Order is located, without reference to conflict of laws principles. The place of jurisdiction shall be where the Company as specified in the Order is located. This Agreement excludes the United Nations Convention on Contracts for the International Sale of Goods. Notwithstanding the foregoing, Company may bring a claim for equitable relief in any court with proper jurisdiction.
- 9.13. Subsequent Arbitration.** Only if this Agreement is executed by parties located in different countries and such countries have no bilateral treaty regarding litigation and enforcement in place, each party consents to all disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules and such arbitration shall be final binding and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The place of arbitration shall be where the Company as specified in the Order is located, and the arbitration language shall be English.
- 9.14. Australian Consumer Law.** If applicable, nothing in this Agreement excludes, restricts or modifies the application of the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 of Australia ("**ACL**"). To the fullest extent permitted by law, Company's liability for any breach of a consumer guarantee implied by the ACL (and which cannot be excluded) shall be limited to any one or more of the following (as determined by Company in its absolute discretion) (i) in the case of services, supplying the services again or payment of the cost of having the services supplied again or for major failures with the service, Customer is entitled to cancel this Agreement and to a refund for the unused portion, or to compensation for its reduced value. Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel this Agreement and obtain a refund for the unused portion of services.

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