STANDARD TOSCA TERMS AND CONDITIONS FOR SOFTWARE LICENSES

Capitalized terms not otherwise defined herein shall have the meaning set forth in Section 12.

1. LICENSE AND TERMS OF USE

1.1 **License Grant**. Subject to payment by Customer of the fees required hereunder (the "**Fees**"), 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.

1.2 **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 set forth in such Order), which terms and conditions are incorporated herein by reference. 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.

1.3 **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.

1.4 **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 1.1.

1.5 **Third-Party Software**. Customer is solely responsible for the installation, maintenance, repair, use, and upgrade of the Third-Party Software the Tricentis Software is used with. Tricentis disclaims all warranties of any kind with respect to such Third-Party Software.

1.6   **Open Source Components**. Customer acknowledges that certain software components of the Tricentis Software 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.

1.7   **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.

1.8   **Cloud License Server**. Tricentis may change, discontinue, or deprecate the provision of licenses via the cloud license server ("Cloud License Server"). In case of termination by Tricentis' Cloud License Server provider, Tricentis is entitled to revoke the licenses provided via the Cloud License Server at any time. Customer will be notified of any material change to, discontinuation or termination of the Cloud License Server services and Tricentis will use reasonable endeavours to migrate existing licenses of the Tricentis Software to a different server.

2.   **SUPPORT**

2.1   **Tricentis Support Services**. Subject to the payment of the Fees described in the applicable Order, Tricentis (or at Tricentis's option, Tricentis's Affiliate) 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 2.1 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 Consumer Price Index (CPI) published by the Australian Bureau of Statistics or other agency publishing such index (basis: the month following the Effective Date).

3.   FEES

3.1   **Fees**. Customer shall pay the Fees to Tricentis. Such 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.

3.2   **Payments**. Except as otherwise set forth in an 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.

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

3.4   **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.

3.5   **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.

4.   OWNERSHIP

4.1   **Ownership of Tricentis Software**. As between the parties, Tricentis retains all rights, title, and interest, including all Intellectual Property Rights, in and to the Tricentis Software. 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, estoppel, or otherwise.

4.2   **Trademarks**. The Tricentis trademarks, logos, and service marks displayed on the Tricentis Software (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 the Tricentis Software should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Tricentis Mark(s) without the express written permission of Tricentis.

5.   TERM AND TERMINATION

5.1   **Term**. This Agreement will remain in effect during the term of any unexpired Order, unless terminated earlier pursuant to the terms of this Section 5. Each Order shall have the initial license term indicated on the Order, commencing on the Acceptance Date ("**License Term**").

5.2 **Termination for Breach**. Either party may terminate this Agreement and/or the applicable Order immediately upon written notice to the other party if the other party breaches this Agreement and fails to correct the breach 30 days following written notice from the other party specifying the breach; provided, however, that in the event that any material breach by Tricentis requires more than 30 days to cure, Customer shall not be entitled to terminate this Agreement or the applicable Order if Tricentis promptly commences to cure such breach and proceeds diligently until cured.

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 1.2 or 1.3 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.

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 the applicable 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. 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 1 (excluding Section 1.1), 3, 4, 5, 7 (excluding Section 7.1), 8, 10, 11, and 12 will survive expiration or termination of this Agreement.

5.6 **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.

6. AUSTRALIAN CONSUMER LAW

6.1 Under Australian Consumer Law (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**.**

7. LIMITED WARRANTIES AND LIABILITY

7.1 **Limited Tricentis Software Warranty**. To the extent permitted by law and without prejudice to any rights of Customer under the ACL, Tricentis warrants to Customer that the Tricentis Software will conform 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. Notwithstanding any provision of this Agreement to the contrary and subject to Section 6.1, Tricentis shall not have any obligation under this Section 7.1 to the extent the nonconformity of the Tricentis Software is the result of: (i) the Tricentis Software 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 in conjunction with another product or service not recommended in the Documentation; (iii) any damage to the Tricentis Software 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 not in conformance with the Documentation.

7.2   **Cloud License Server**. To the extent permitted by law and without prejudice to any rights of Customer under ACL, with respect to the Cloud License 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.

7.3   **Representations**. Each party represents that it has validly entered into this Agreement and has the legal power to do so.

7.4   **Limited Remedy**. If the Tricentis Software does not meet the warranty as provided in Section 7.1, Tricentis will make commercially reasonable efforts to correct the nonconformity causing the warranty failure in the Tricentis Software. For any breach of the warranty in Section 7.1, Customer's exclusive remedy will be as described in this Section 7.4. Where Tricentis cannot correct any nonconformity, Tricentis limits its liability to Customer for breach of the warranty in Section 7.1 under the ACL to (at Tricentis's election) the re-supply of the services or payment of the cost of resupplying the services.

7.5   **Disclaimer**. Except as expressly provided in Section 7.1, the Tricentis Software is 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 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 will be free of defects, run error-free or uninterrupted or meet Customer's or an Authorized User's requirements.

7.6   **Limitation of Liability**. Except for a breach of Sections 1.2 or 1.3, indemnification liability under Section 8, or a breach of Section 10 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 and without prejudice to any rights of Customer under the ACL: (a) neither party will be liable to the other party, for any consequential, indirect, incidental, or special damages, any loss of revenues or profits, or any cost of cover arising out of this Agreement, whether or not such party has been advised of the possibility of such damages; and (b) each party's liability for any claim arising out of this Agreement will be limited to the Fees actually paid or payable by Customer for the Tricentis Software that is subject of such claim. The parties agree that this Section 7.6

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.

8. INDEMNITY

8.1 **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 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, Tricentis may in its discretion and at no cost to Customer (i) modify the Tricentis Software so that it no longer infringes, without breaching the warranty set forth in Section 7.1, (ii) obtain a license for Customer's continued use of the Tricentis Software in accordance with this Agreement, or (iii) terminate this Agreement and any applicable Order upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the applicable Order(s). The above defense and indemnification obligations do not apply to the extent a Claim Against Customer arises from Customer's breach of this Agreement or use of the Tricentis Software in combination with technology not provided by Tricentis.

8.2 **Indemnity of Tricentis**. Customer shall defend, or at Customer's option, settle, any claim, demand, suit, or proceeding made or brought against Tricentis, its directors, employees, and agents by a third party arising out of (a) Customer's violation of the restrictions in Section 1, (b) Customer's breach of this Agreement, or (c) 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.

8.3 **Exclusive Remedy**. This Section 8 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 8.

9. ESCROW

9.1 **Escrow**. In the event Tricentis shall become bankrupt, insolvent or dissolved and Tricentis' 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, by Customer and its Authorized Users 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.

10. CONFIDENTIAL INFORMATION

10.1 **Restrictions On Use and Disclosure**. Receiving Party shall (a) not use the Confidential Information of the Disclosing Party for any purposes other than for the purpose of performing its obligations or exercising its rights under this Agreement and (b) hold such Confidential Information in strict confidence and protect such Confidential Information with the same degree of care (but no less than a reasonable degree of care) the Receiving Party uses to protect its own similar Confidential Information. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party: (i) to the Receiving Party's directors, officers, or legal or business advisors to the extent reasonably necessary to carry out its obligations or exercise its rights under this Agreement, provided that such directors, officers, employees, or agents have been advised of the confidential nature of such information and are legally bound to maintain such information as confidential as required by this Section 10 or (ii) as is required to be disclosed by the Receiving Party pursuant to a judicial or governmental statute, rule, or order, provided that the Receiving Party gives the Disclosing Party sufficient notice to permit Disclosing Party to seek a protective order or other opportunity to limit disclosure, and provided that the Receiving Party discloses only such Confidential Information as is required to be disclosed.

11. GENERAL PROVISIONS

11.1 **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of Australia, without regard to its conflict of law principles. Any disputes, actions, claims, or causes of action arising out of or in connection with this Agreement or the Tricentis Software will be subject to the exclusive jurisdiction of the courts located in Sydney, New South Wales. The parties hereby disclaim and exclude the application hereto of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act.

11.2 **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.

11.3 **Notices**. All notices under this Agreement must be delivered in writing in person, by courier, by facsimile, by e-mail communication, or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in this Agreement, and will be effective upon receipt or three (3) business days after being deposited in the mail

as required above, whichever occurs sooner. Either party may change its address by giving written notice of the new address to the other party. The initial addresses for the parties for purposes of notice under this Section will be those addresses identified above in the first paragraph of this Agreement, directed to the attention of the signatory of this Agreement or other representative the party may designate in writing pursuant to this provision.

11.4 **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.

11.5 **Waiver**. No term or provision of this Agreement will be deemed waived and no breach excused unless such waiver or consent is in writing and signed by the party claimed to have waived or consented. The waiver by either party of any right hereunder, or of the failure to perform or notify of a breach by the other party, will not be deemed to be a waiver of any other right hereunder or of any other breach or failure by such other party, whether of a similar nature or otherwise.

11.6 **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.

11.7 **Exports**. Customer shall comply with all applicable export control laws, rules, and regulations with respect to its use of the Tricentis Software. Without limiting the foregoing, Customer shall not export or re-export all or any part of the Tricentis Software without Tricentis's prior written consent.

11.8 **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.

11.9 **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 Order, (2) this Agreement, and (3) the Documentation.

11.10 **Construction**. The headings in this Agreement are for purposes of convenience only and shall not affect the meaning or construction of the sections to which they relate. Any use in this Agreement of words denoting the singular include the plural and vice versa. As used in this Agreement, the words "include" and "including" and variations thereof, will not be deemed to be terms of limitation, but rather will be deemed to be followed by the words "without limitation."

11.11 **No Construction Against Drafter**. Notwithstanding that one party or its representatives may have prepared the initial draft of this Agreement or any provision or played a greater role in the preparation of subsequent drafts, the parties agree that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement, no provision hereof will be construed in favor of one party on the ground that such provision was drafted by the other.

11.12 **No Third-Party Beneficiaries**. This Agreement will be binding upon and inure solely to the benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of this Agreement.

11.13 **Force Majeure**. Neither party will be deemed to be in breach of any provision of this Agreement for any failure in performance resulting from acts or events beyond that party's reasonable control ("**Force Majeure**"). If a Force Majeure event continues for more than sixty (60) days preventing a party from performing, either party may terminate this Agreement upon written notice to the other party, provided, however, that the non-performing party may terminate only if the non-performing party is not the cause of the Force Majeure.

11.14 **Assignment**. Neither this Agreement nor any rights granted hereunder, nor the use of any of the Tricentis Software may be assigned or otherwise transferred (whether by operation of law or otherwise), in whole or in part, by Customer, without the prior written consent of Tricentis, which consent shall not be unreasonably withheld or delayed; provided, however, that no such consent to an assignment of this Agreement and the rights granted herein will be required in the event of an assignment to Customer's Affiliate, or in the event of an assignment related to a merger or a sale of substantially all of Customer's assets; provided that Customer provide notice of such assignment as soon as reasonably practicable and upon such assignment or sale, the rights granted herein shall apply only to the use of the Tricentis Software 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.

11.15 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which together will be considered one and the same instrument. This Agreement may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile or other electronic means as if the original had been received.

12.   DEFINITIONS

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

12.1 "**Acceptance Date**" means the date on which Customer signs the Master License Agreement/Order Form for Software Licenses.

12.2 "**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.

12.3 "**Authorized User**" means a Customer employee or contractor who is authorized by Customer to use the Tricentis Software.

12.4 "**Confidential Information**" means information furnished to one party ("**Receiving Party**") by the other party ("**Disclosing Party**"), (1) that is marked at the time of disclosure as being "Confidential" or words of similar import or (2) that is identified orally as being confidential or proprietary or is of such a nature or the circumstances of the disclosure are such that a reasonable person would understand that the information should be treated as confidential information. The Tricentis Software and Documentation will be deemed Tricentis's Confidential Information regardless of whether so marked. Confidential Information will not include information that the Receiving Party can demonstrate by contemporaneous records: (a) was rightfully known by Receiving Party prior to the date it was disclosed by the Disclosing Party; (b) is lawfully disclosed to the Receiving Party without obligation of confidentiality by a third party rightfully in possession of such information; (c) becomes generally known to the public through no act or omission on the part of the Receiving Party; or (d) is independently developed by the Receiving Party without reference to or reliance upon any Confidential Information of the Disclosing Party.

12.5 "**Customer System**" means any server system owned, operated, or managed by Customer or a Customer Affiliate on which the Tricentis Software is installed.

12.6 "**Documentation**" means Tricentis's standard written user documentation that describes the design, functions, operation, or use of the Tricentis Software, as updated by Tricentis from time to time.

12.7 "**Intellectual Property Rights**" means current and future worldwide common law and statutory rights, whether arising under the laws of Australia or any other state, country, jurisdiction, government, or public legal authority, in, to, or associated with : (i) patents, utility models, and invention disclosures and applications therefor and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations, and continuations-in-part thereof; (ii) trade secrets, confidential information, or proprietary information; (iii) copyrights, copyrights registrations and applications therefor; (iv) trademarks, service marks, and other designations of source or origin; (v) industrial designs; (vi) all rights in databases and data collections; (vii) all moral and economic rights of authors and inventors, however denominated; (viii) rights to apply for, file for, certify, register, record, or perfect any of the foregoing; and (viii) any similar or equivalent rights to any of the foregoing (as applicable).

12.8 "**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.

12.9 "**Order**" means an order for the Tricentis Software specifying the options chosen by Customer for the Tricentis Software and the applicable fees and limitations.

12.10 "**Territory**" means the territory set forth in the applicable Order, whether an "Area License," "National License," or "Global License" as applicable.

12.11 "**Third-Party Software**" means software not owned by Tricentis and licensed to or used by Customer, whether supplied by Tricentis or a third party.

12.12 "**Tricentis**" means TRICENTIS PTY LTD, ABN 59 143 271 130, Level 24 Tower 2, 101 Grafton Street, Bondi Junction NSW, 2022, Australia.

12.13 "**Tricentis Software**" means Tricentis's "TOSCA Testsuite™" software, including its components "TOSCA Commander", "Requirement Management AddIn", "TestCase Design AddIn", and "TC WebAccess" as well as all available technology adapters with respect thereto.