

This Subscription Services Agreement (“Agreement”) establishes the general terms and conditions that govern the provision of Services by Trintech Inc. or its Affiliates (collectively “Trintech”) to the corporation, LLC, partnership, sole proprietorship, or other business entity (“Subscriber”) executing an Order or Statement of Work referencing and incorporating this Agreement. This Agreement is effective as of the date Subscriber executes an Order or Statement of Work for Services (the “Effective Date”). Trintech and Subscriber may herein be referred to as a “Party” individually, or collectively as the “Parties”.

1.0 DEFINITIONS. The following capitalized terms in this **Section 1** will have the following meanings whenever used in this Agreement.

- 1.1 **“Affiliate”** means, with respect to a Party, an entity controlling, controlled by or under common control with such Party where control means the ownership or control, directly or indirectly, of more than fifty percent (50%) of all the voting power of the shares (or other securities or rights) entitled to vote for the election of directors or other governing authority.
- 1.2 **“Agreement”** means this Subscription Service Agreement, and all documents incorporated by reference herein.
- 1.3 **“Content”** means information, data, templates, text, software, music, sound, photographs, graphics, video messages or other material to which Subscriber is provided access by Trintech through the Subscription Services. Content excludes Subscriber Data.
- 1.4 **“Documentation”** means the Subscription Service descriptions, specifications, user instructions, release notes, manuals and on-line help files as updated by Trintech from time to time, in the form generally made available by Trintech, regarding the use of the Subscription Services.
- 1.5 **“Intellectual Property”** means any and all intellectual property rights, recognized in any country or jurisdiction in the world, now or hereafter existing, and whether or not perfected, filed or recorded, including without limitation inventions, technology, patent rights (including patent applications and disclosures), copyrights, trade secrets, trademarks, service marks, trade dress, methodologies, procedures, processes, know-how, tools, utilities, techniques, various concepts, ideas, methods, models, templates, software, source code, algorithms, the generalized features of the structure, sequence and organization of software, user interfaces and screen designs, general purpose consulting and software tools, utilities routines, operation of systems, and training methodology and materials, which Trintech has created, acquired or otherwise has rights in, and may, in connection with the performance of Services hereunder, create, employ, provide, modify, acquire or otherwise obtain rights in.
- 1.6 **“Order”** means any document executed by the Parties for the provision of Subscription Services, which incorporates by reference this Agreement.
- 1.7 **“Personal Data”** means any information that identifies an individual, including without limitation: a name, address, telephone number, online identifier, social security number, drivers’ license number, account number, location data, or one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of an individual.
- 1.8 **“Professional Services”** refers to consulting, integration, installation, training, configuration or other services performed by Trintech under a Statement of Work.
- 1.9 **“Sensitive Data”** means Personal Data that is subject to data breach notification laws or is considered ‘special’ or ‘sensitive’ under any law, regulation, statute that is applicable to either Trintech or Subscriber relating to data security, data protection or privacy, including without limitation Personal Data that contains: social security numbers, drivers’ license numbers, passport numbers, taxpayer IDs, biometric data, genetic data, financial account numbers or payment card numbers (and including any username, password, or PIN used to access any of the foregoing).
- 1.10 **“Services”** means collectively Subscription Services and Professional Services.
- 1.11 **“Statement of Work” or “SOW”** means the document(s) executed by the Parties that describes an order of Professional Services.
- 1.12 **“Subscriber Data”** means all information and data, including Personal Data, in electronic form inputted or otherwise provided by Subscriber or its Users through use of the Subscription Services.
- 1.13 **“Subscription Service(s)”** means the proprietary Trintech software or other products identified in an Order and provided to Subscriber on a subscription basis pursuant to the terms and conditions of this Agreement.
- 1.14 **“Third-Party Products”** means products, software, or services not provided or branded by Trintech.
- 1.15 **“Users”** means those named employees, contractors, and third-party end users authorized by Subscriber to use the Subscription Services in accordance with this Agreement and as specified in the applicable Order.

2.0 THE SERVICES.

- 2.1 **Generally.** Trintech will grant Subscriber and its Users a personal, non-exclusive, non-transferable, worldwide right to use the Subscription Services specified in an Order in accordance with the terms of this Agreement and the applicable Order term, and subject to Subscriber’s timely payment of fees as provided in the Order.
- 2.2 **Affiliates.** Upon Trintech’s prior written consent, any Affiliate of Subscriber may submit and execute Orders under this Agreement, provided that Subscriber and its Affiliates will be jointly and severally liable for such Affiliate’s obligations unless otherwise specified under such Orders.
- 2.3 **Environment.** Trintech will provide Subscriber online access to and use of the Subscription Services via the Internet by use of an approved browser. The Subscription Service will be hosted on a server maintained by Trintech or its designated third-party supplier.

Subscriber is solely responsible for equipment and communication means for accessing and utilizing the Subscription Services. Subscriber is solely responsible for obtaining all necessary rights and licenses to the use of any third-party software or service that may interact with the Subscription Services. Trintech may add or substitute functionally and materially equivalent features in the event of unavailability of the Subscription Services.

- 2.4 **Service Availability.** Trintech will use commercially reasonable efforts to make the Subscription Services generally available in accordance with the terms and conditions within the **Trintech Support Addendum** found at <https://www.trintech.com/terms-and-conditions/cadency/>.
- 2.5 **Security and Access Control.** As part of the Subscription Services, Trintech will implement reasonable and appropriate security procedures to protect Subscriber Data from unauthorized access by physical and electronic intrusion. Trintech will not, under any circumstances, be responsible or liable to Subscriber or any third party for (i) the removal of Subscriber Data; or (ii) any unauthorized access by third parties caused through illegal or illicit means by way of Subscriber's network or Subscriber's provision of credentials. Trintech will promptly report to Subscriber any unauthorized access upon discovery by Trintech. Terms and conditions for the security of the Subscription Services are provided in the **Trintech Security Addendum** located at <https://www.trintech.com/terms-and-conditions/cadency/>.
- 2.6 **Support Services.** Trintech will provide support for the Subscription Services as specified in the **Trintech Support Addendum** and the **Trintech Service Upgrade Policy** located at <https://www.trintech.com/terms-and-conditions/cadency/>.
- 2.7 **Professional Services.** Professional Services may be provided by Trintech to Subscriber as mutually agreed in a Statement of Work executed by the Parties. All Professional Services will be performed in a professional and workmanlike manner, based on industry standards for such Professional Services.
- 2.8 **Cooperation.** Access to Subscriber's internal network by Trintech personnel is generally not required for the Services. If such access is required, Trintech will notify Subscriber in advance and follow Subscriber's reasonable policies provided to Trintech in writing prior to accessing any of Subscriber's internal networks. Subscriber will cooperate with Trintech and provide access to such information, facilities, personnel and equipment as may be reasonably required by Trintech in order to provide the Services and determine actual usage by Subscriber. Trintech's performance is dependent upon Subscriber's timely decisions, approvals, and other responsibilities hereunder in connection with the Services.

3.0 USING THE SUBSCRIPTION SERVICES.

- 3.1 **Acceptable Use Policy.** Subscriber will comply with **Trintech's Acceptable Use Policy** found at <https://www.trintech.com/terms-and-conditions/cadency/>. Trintech does not monitor the content of communications or data of Subscriber or its Users transmitted through the Services, and Trintech will not be responsible for the content of any such communications or transmissions in violation of Trintech's Acceptable Use Policy.
- 3.2 **Subscriber Security Obligations.** Subscriber and any third party of Subscriber will not intentionally: (i) breach or attempt to breach the security of the Subscription Services or any network, servers, data, computers or other hardware relating to or used in connection with the Subscription Services, or any third party that is hosting or interfacing with any part of the Subscription Services, including any penetration tests or vulnerability scans not authorized in advance by Trintech; or (ii) use or distribute through the Subscription Services any software, files or other tools or devices designed to interfere with or compromise the privacy, security or use of the Subscription Services or the operations or assets of any other customer of Trintech or any third party.
- 3.3 **Subscriber Data.** Subscriber has sole responsibility for the legality, reliability, integrity, and accuracy of Subscriber Data and Trintech will not be responsible or liable to Subscriber or any third party for Subscriber's failure to obtain any required consents or authorizations.
- 3.4 **No Liability for Subscriber's Procedures.** Subscriber expressly waives all claims and holds Trintech harmless for the implementation of Subscriber's procedures in the provision of Services. Trintech makes no attempt to determine or advise as to whether Subscriber's procedures comply with any statutory or regulatory requirements or violate any third party's intellectual property rights.
- 3.5 **Training.** Subscriber is responsible to ensure all Users receive training sufficient to enable Subscriber to effectively use the Subscription Services. Support may not be used as a substitute for User training. Trintech may require that Subscriber obtain additional training in a Statement of Work between the Parties in the event Subscriber's support requests are excessive, as determined by Trintech in its sole discretion.
- 3.6 **Compliance with Laws.** Neither Party will knowingly fail to abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with the use or provision, as applicable, of the Subscription Services, including those related to data privacy, international communications and the transmission of technical or Personal Data.

4.0 LIMITED RIGHTS AND OWNERSHIP.

- 4.1 **Limited Rights.** The rights of Subscriber to use the Services are limited to fulfilling Subscriber's own internal business needs and will terminate automatically upon the termination of this Agreement. There are no implied licenses and Trintech hereby reserves all rights not expressly granted to Subscriber under this Agreement. Without limiting the generality of the foregoing, Subscriber may not itself, or through any Affiliate, employee, or other third party: (i) sell, distribute, license in whole or in part, the Services;

(ii) decipher, decompile, disassemble, reverse assemble, modify, translate, reverse engineer or otherwise attempt to derive source code, algorithms, tags, specifications, architecture, structure or other elements of the Services, in whole or in part; (iii) allow access to, provide, divulge or make available the Subscription Services to anyone other than authorized Users; (iv) write or develop any derivative works based upon the Services; (v) modify, adapt, tamper with or otherwise make any changes to the Services or any part thereof; (vi), alter or remove any proprietary or Intellectual Property notices from the Services; (vii) create Internet links to or from the Subscription Service, (viii) "frame" or "mirror" any Content, (ix) use the Services to provide processing services to third parties (other than Subscriber's Affiliates), or otherwise use the same on a 'service bureau' basis; (x) use the Services in conjunction with third-party software to which Subscriber does not have the necessary license(s); (xi) disclose or publish, without Trintech's prior written consent, performance or capacity statistics or the results of any benchmark test performed on the Services; or (xii) otherwise use or copy the Services except as expressly permitted herein.

4.2 **Trintech Ownership.** The Services, Documentation, and all equipment, infrastructure, websites and other materials provided by Trintech and all Intellectual Property embodied therein will at all times remain the exclusive property of Trintech. Unless expressly granted in this Agreement, Subscriber does not acquire any right, title, or interest in or to such Trintech Services, equipment, infrastructure, websites, materials, or any other Trintech Intellectual Property. All rights, title and interest in or to any Trintech Intellectual Property not expressly granted to Subscriber are reserved by Trintech.

4.3 **Subscriber Ownership.** Subscriber will at all times retain ownership of Subscriber Data.

4.4 **Usage Data.** Trintech may disclose, distribute, transfer or otherwise make publicly available usage data and other information collected from Subscriber's use of the Services; provided that Trintech will anonymize and de-identify any Subscriber Data and Confidential Information such that an individual or entity cannot be identified either directly or indirectly.

4.5 **Grant of License.** During the term of the Agreement, Trintech grants Subscriber a personal, nonexclusive, non-transferable, worldwide, royalty-free license to use, execute, reproduce, display, perform and internally distribute the Professional Services work product and prepare for internal use only derivative works based upon such work product. Additionally, during the term of the Agreement as provided in an Order, Trintech grants Subscriber a personal, nonexclusive, non-transferable, worldwide, royalty-free license to use, execute, reproduce, display, perform, and internally distribute such Intellectual Property.

5.0 CONFIDENTIALITY.

5.1 **Definition.** "Confidential Information" is (i) written information received by the receiving party ("Receiving Party") from the disclosing party ("Disclosing Party") which is marked or identified as confidential and (ii) any information which a reasonable person under the circumstances would know the Disclosing Party intended to be treated as Confidential Information. Confidential Information includes, but is not limited to, technical information, information about product plans, strategies, promotions, customers, and related technical, financial or business information, and any information of the Disclosing Party's third-party contractors, licensors, or suppliers. The Trintech Services, Documentation, release notes, collateral materials, operating instructions and any information related to system performance provided by Trintech will be considered Confidential Information of Trintech. All Subscriber Data will be considered Confidential Information of Subscriber.

5.2 **Protection of Confidential Information.** The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own Confidential Information (but in no event less than reasonable care) to protect the Confidential Information of the Disclosing Party. The Receiving Party will: (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement; and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its, and its Affiliates', employees, consultants, contractors and agents who need such access for purposes consistent with permitted use of such Confidential Information under the Agreement and who have confidentiality obligations with the Receiving Party containing protections of the Disclosing Party's Confidential Information no less stringent than those provided herein. Neither Party will disclose the terms of this Agreement to any third party other than its Affiliates and their legal counsel and accountants without the other Party's prior written consent. The Receiving Party will be liable to the same extent that it would have been had it disclosed or used the Confidential Information itself for the actions of its Affiliates and its and their respective employees, consultants, contractors and agents in violation of this **Section 5.0**.

5.3 **Exceptions.** The confidentiality obligations herein will not extend to information that: (i) was already known by or available to the Receiving Party, or rightfully received without obligation of confidentiality prior to disclosure under this Agreement; (ii) is or becomes publicly known without breach by the Receiving Party; (iii) is independently developed or learned by the Receiving Party without use of the Disclosing Party's Confidential Information; (iv) is disclosed by the Receiving Party with the Disclosing Party's prior written approval, or (v) is required to be disclosed pursuant to a lawful order of a governmental authority, so long as the Receiving Party provides the Disclosing Party with timely prior notice of such requirement and provided that such information will remain confidential for all other purposes under this Agreement.

5.4 **Personal Data.** Subscriber may provide to Trintech customer and employee names, contact information, and other limited Personal Data to the extent required for the use of the Subscription Services. If Subscriber has entered into a business associate agreement with Trintech, Subscriber may provide personal health information to Trintech that does not otherwise qualify as Sensitive Data, solely to the extent required for the use of the Subscription Services. In no event will Subscriber provide to Trintech any Sensitive

Data unless first anonymized, encrypted, or masked such that no specific individual can be identified. SUBSCRIBER IS SOLELY RESPONSIBLE FOR ANY COST OR EXPENSE ASSOCIATED WITH REMOVAL OF IDENTIFIABLE SENSITIVE DATA FROM THE SUBSCRIPTION SERVICES OR WITH ANY SECURITY INCIDENT INVOLVING ANY SENSITIVE DATA. NOTWITHSTANDING ANYTHING TO THE CONTRARY, TRINTECH WILL HAVE NO LIABILITY TO SUBSCRIBER OR ANY OTHER THIRD PARTY FOR ANY COST, LOSS, LIABILITY, DAMAGE OR EXPENSE CAUSED BY, ARISING FROM, OR RELATING TO SUBSCRIBER'S FAILURE TO COMPLY WITH THIS SECTION 5.4.

- 5.5 **Period of Obligation.** The Receiving Party's obligation of confidentiality will be for a period of five (5) years after the date of disclosure or the termination of this Agreement, whichever is longer, provided, however, that the Receiving Party's obligation of confidentiality with respect to the trade secrets of the Disclosing Party will continue indefinitely.
- 5.6 **Remedies.** Each Party acknowledges that a Disclosing Party will suffer irreparable damage in the event of any material breach of the provisions of this Section 5.0. Accordingly, in such event, a Disclosing Party will be entitled to injunctive relief, as well as any other applicable remedies at law or in equity, against the Party who has breached or threatened to breach this Section 5.0.
- 5.7 **Return.** Upon the termination of this Agreement or upon the written request of the Disclosing Party, the Receiving Party will destroy or return to the Disclosing Party all originals or copies of Confidential Information of the Disclosing Party and all derivatives thereof and, in the case of destruction, certify such destruction in writing. Upon termination, provided that Subscriber has paid all amounts due under this Agreement, the Subscriber can request a copy of Subscriber Data, and Trintech will provide a copy of Subscriber Data in an electronically readable format within 30 days of receipt of a written request.
- 5.8 **Certain Personal Data.** In the event that the General Data Protection Regulation, Regulation (EU) 2016/679 of the European Parliament ("GDPR") or other privacy laws are applicable to the processing of Subscriber's authorized Users' Personal Data hereunder, then the **Trintech Data Protection Addendum** found at <https://www.trintech.com/terms-and-conditions/cadency/> will apply to Subscriber's use of the Services.

6.0 FEES AND PAYMENTS.

- 6.1 **Fees.** All fees will be invoiced by, and directly payable to, Trintech in accordance with the applicable Order or Statement of Work. Except as otherwise expressly specified in an Order, all payment obligations for recurring fees related to Subscription Services start from the date of execution of the Order.
- 6.2 **Currency and Payments.** The amounts to be paid to Trintech as provided in an Order will be paid without setoff or deduction for any taxes, duties or payments of any kind to any third party. In the event that Trintech is required to pay any amount of tax or duty or make any payment to any third party in connection herewith, except for taxes based on Trintech's income, Subscriber will promptly pay to Trintech such amount.
- 6.3 **Suspension; Late Payments.** Without prejudice to its other rights, Trintech reserves the right to suspend or terminate this Agreement and Subscriber's access to the Subscription Services upon not less than 30 days' written notice to Subscriber if Subscriber is 60 days late paying any undisputed amounts due hereunder. Delinquent invoices are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less. Trintech reserves the right to impose a reconnection fee based on actual cost to Trintech in the event Subscriber's access is suspended. Unless the Parties have agreed otherwise, Trintech reserves the right to irretrievably delete Subscriber Data by providing 30 days' written notice to Subscriber of such deletion if Subscriber is 90 days late paying any undisputed amounts due hereunder.

7.0 WARRANTIES, WARRANTY DISCLAIMERS, AND INDEMNITIES.

- 7.1 **General Warranty.** Each Party hereby represents and warrants to the other Party that: (i) such Party will comply in all material respects with all applicable laws; (ii) such Party will use commercially reasonable virus detection software and procedures to minimize the risk of transmitting any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or information (and Subscriber acknowledges that Trintech or its hosting service provider may remove any content that violates this Section 7.1(ii)); (iii) such Party has the right, power and authority to enter into this Agreement and to fully perform all its obligations hereunder; and (iv) the making of this Agreement does not violate any agreement existing between such Party and any third party. Additional warranties may apply as provided in an Order.
- 7.2 **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, TRINTECH MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS, STATUTORY, IMPLIED, OR OTHERWISE, WITH RESPECT TO THE SERVICES, OR ANYTHING ELSE, AND TRINTECH HEREBY DISCLAIMS THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, INTEROPERABILITY, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT THERETO. WITHOUT LIMITING THE FOREGOING, TRINTECH DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. TRINTECH DOES NOT WARRANT THAT SERVICES PROVIDED HEREUNDER WILL BE COMPATIBLE WITH FUTURE PRODUCTS OF TRINTECH OR FUTURE VERSIONS OF THIRD-PARTY PRODUCTS.
- 7.3 **Trintech Indemnity.** Trintech will defend or settle any third-party claim against Subscriber arising out of or resulting from: (i) the gross negligence or willful misconduct of Trintech; or (ii) allegations that the Subscription Services infringe a United States of America, United Kingdom, Switzerland, Australia, Canada, European Economic Area country or European Union member state patent, a copyright in a country that is a signatory to the Berne Convention, or a trademark, or misappropriates a trade secret.

Trintech will pay Trintech-negotiated settlement amounts, court-awarded damages, and fines and penalties imposed by any governmental authority. For a claim of Intellectual Property infringement as provided under **Section 7.3 (ii)** above, Subscriber must: (a) promptly notify Trintech of the claim in writing; (b) cooperate fully with Trintech in the defense of the claim; and (c) grant Trintech sole control of the defense and settlement of the claim. If such a claim appears likely then Trintech may (1) modify the Trintech Software; (2) procure any necessary license; or (3) replace the Subscription Services with software that is at least functionally equivalent. If Trintech determines that none of these alternatives is reasonably available, then Trintech will provide Subscriber with a refund equal to the Subscription Services fees prepaid by Subscriber. Notwithstanding the foregoing, Trintech has no obligation for any claim of infringement arising from: (A) Trintech's compliance with designs, specifications, instructions or technical information of Subscriber or a third party on behalf of Subscriber; (B) modifications made by Subscriber or a third party on behalf of Subscriber; (C) Subscriber's non-compliance with the Documentation; or (D) Subscriber's use of the Subscription Services with products or services that are not supplied by Trintech or referenced in the Documentation. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PROVISIONS OF THIS **SECTION 7.3** STATE TRINTECH'S ENTIRE LIABILITY AND OBLIGATION, AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, FOR CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT, WHETHER EXPRESS OR IMPLIED.

- 7.4 **Subscriber Indemnity.** Subscriber will defend or settle any third-party claim against Trintech arising out of or resulting from: (i) Subscriber's misuse of the Subscription Services in violation of the Agreement; (ii) the gross negligence or willful misconduct of Subscriber; or (iii) any breach, loss, misuse, or unauthorized processing of Sensitive Data provided by Subscriber, provided that Trintech (a) promptly notifies Subscriber of the claim in writing; and (b) cooperates with Subscriber in the defense of the claim. Subscriber will pay Subscriber-negotiated settlement amounts, court-awarded damages, fines and penalties imposed by any governmental authority, and any costs of complying with any consumer notification, credit monitoring, privacy audit, remediation, or similar obligation under any data protection or privacy law and in accordance with **Section 5.4** herein.
- 7.5 **Indemnification Procedure.** Neither Party, absent the written consent of the indemnified Party (which will not be unreasonably withheld), will consent to the entry of any judgment or the imposition of any fine or penalty or enter into any settlement that: (A) provides for admission of liability on the part of the indemnified Party, or any relief against the indemnified Party other than the payment of monetary damages for which the indemnifying Party will be solely liable; or (B) does not release the indemnified Party from all liability in respect thereof.

8.0 LIABILITY LIMITATIONS.

- 8.1 **Limitation of Liability.** EXCEPT FOR TRINTECH'S INDEMNIFICATION AND CONFIDENTIALITY OBLIGATIONS HEREIN AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TRINTECH'S TOTAL AGGREGATE LIABILITY TO SUBSCRIBER UNDER THIS AGREEMENT IS LIMITED TO THE AMOUNTS ACTUALLY PAID OR PAYABLE BY SUBSCRIBER IN THE ONE YEAR PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE.
- 8.2 **Disclaimer of Consequential Damages.** EXCEPT FOR SUCH PARTY'S INDEMNIFICATION OBLIGATIONS HEREIN, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL COSTS OR DAMAGES (INCLUDING, WITHOUT LIMITATION, DOWNTIME COSTS, LOST BUSINESS, REVENUES OR PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, ADDITIONAL LICENSE FEES DUE TO SUBSCRIBER'S USE OF THE SERVICES WITH THIRD-PARTY SOFTWARE, LOSS OF OR DAMAGE TO DATA, OR SOFTWARE RESTORATION), WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES. SUBSCRIBER ACKNOWLEDGES AND AGREES THAT THE SUBSCRIPTION SERVICES PROVIDED BY TRINTECH HEREUNDER, INCLUDING ACCESS TO THE SUBSCRIPTION SERVICES, MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS OUTSIDE THE CONTROL OF TRINTECH BUT INHERENT IN THE USE OF THE INTERNET, ELECTRONIC COMMUNICATIONS AND REMOTE COMPUTING SERVICES. TRINTECH IS NOT RESPONSIBLE FOR ANY DAMAGES RESULTING FROM DELAYS, DELIVERY FAILURES OR OTHER SIMILAR PROBLEMS OUTSIDE THE REASONABLE CONTROL OF TRINTECH OR TRINTECH'S CONTRACTORS, LICENSORS, OR SUPPLIERS.
- 8.3 **Failure of Essential Purpose, Etc.** THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY SPECIFIED IN THIS SECTION 8.0, LIABILITY LIMITATIONS, WERE INTEGRAL TO THE DETERMINATION OF THE AMOUNTS CHARGED BY TRINTECH AND THAT, ABSENT SUCH LIMITATIONS, SUCH AMOUNTS WOULD BE SUBSTANTIALLY GREATER BY NECESSITY. THE LIMITATIONS SPECIFIED IN THIS SECTION 8.0 WILL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND WHETHER THE CLAIM IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), MISREPRESENTATION, PRODUCT LIABILITY, OR OTHERWISE.

9.0 TERM AND TERMINATION.

- 9.1 **Agreement Term.** The term of this Agreement will commence on the Effective Date as provided in an Order or Statement of Work and will continue in full force and effect until the expiration or termination of such Order or Statement of Work.
- 9.2 **Effect of Termination.** Trintech will provide a copy of Subscriber's Data in an electronically readable format within 30 days of expiration or termination of any Order. Trintech has no obligation to keep the Subscriber Data thereafter.

- 9.3 **Default.** If either Party defaults in the performance of any of its material obligations hereunder, that Party will use its reasonable efforts to correct the default within 30 days (or such additional time as the Parties may agree) after written notice of default from the other Party. If the default cannot be, or is not, corrected within such 30-day period, then the non-defaulting Party will have the right, in addition to any other remedies, to terminate this Agreement by giving written notice of termination to the Party in default.
- 9.4 **Termination for Insolvency.** If either Party becomes insolvent, is unable to pay its debts when due, files for bankruptcy, is the subject of involuntary bankruptcy, has a receiver appointed, or has its assets assigned for the benefit of creditors, the other Party may terminate this Agreement without notice and may cancel any unfulfilled obligations.
- 9.5 **Survival.** Notwithstanding any other provision of this Agreement, **Sections 0, Definitions, 4.0, Limited Rights and Ownership, 5.0, Confidentiality, 6.0, Fees and Payments, 7.0, Warranty, Warranty Disclaimers, and Indemnities, 8.0, Liability Limitations, 9.0, Term and Termination and 10.0, Miscellaneous** will survive the termination of this Agreement and will continue unless such provisions expire or terminate by their terms. Notwithstanding the foregoing, **Section 10.6, Audits** will not survive the termination of this Agreement.

10.0 MISCELLANEOUS.

- 10.1 **Notices; Governing Law.** Notices sent to Trintech and the governing law applicable to this Agreement are determined in the table found below except as otherwise provided in an Order. Trintech may send notices to Subscriber pursuant to this Agreement provided on the most recent active Order or otherwise provided to Trintech, and such notices will be deemed received 24 hours after they are sent.

If Subscriber is using Trintech Services in:	Subscriber is contracting with:	Subscriber must send Notices to:	Governing Law:	Jurisdiction (Exclusive):
The United States; Canada; Mexico; Central America; South America; or the Caribbean	Trintech Inc., a California corporation	Trintech Inc. Attn: Legal 5600 Granite Pkwy Suite 10000 Plano, TX 75024 Legal@trintech.com	Texas, USA	Dallas, Texas, USA
The United Kingdom	Trintech UK Ltd., a UK private limited company	Trintech Inc. Attn: Legal 5600 Granite Pkwy Suite 10000 Plano, TX 75024 Legal@trintech.com	England and Wales	England and Wales
Australia; New Zealand	Trintech Technologies Limited, an Irish private limited company	Trintech Inc. Attn: Legal 5600 Granite Pkwy Suite 10000 Plano, TX 75024 Legal@trintech.com	Australia	New South Wales
Any other country	Trintech Technologies Limited, an Irish private limited company	Trintech Inc. Attn: Legal 5600 Granite Pkwy Suite 10000 Plano, TX 75024 Legal@trintech.com	Republic of Ireland	Republic of Ireland

- 10.2 **Force Majeure.** Neither Party will be liable for any failure, deficiency or delay in the performance of its obligations under this Agreement due to any force majeure, which includes but is not limited to, any storm, flood, fire, explosion, electrical or communication line failure, disturbance, war or military action, pandemic, government act or administrative delay, equipment failure or non-delivery, inability to obtain materials or any cause or matter whatsoever not within the reasonable control of the Parties. In the event of such a force majeure, the affected Party will be entitled to a reasonable extension of time for the performance of its obligations under this Agreement.
- 10.3 **Independent Contractors.** The Parties are independent contractors. Nothing contained in this Agreement will constitute either Party the agent of the other Party for any purpose or in any sense whatsoever or constitute the Parties as partners or joint venturers. Neither Party has any authority to bind the other Party or make any representations on behalf of the other Party.
- 10.4 **Assignment.** Except where the assignment is to a successor in interest, neither Party may assign this Agreement without the prior written consent of the other Party, which will not be unreasonably withheld. Any attempted assignment without the consent of the other Party will be considered void and of no effect.
- 10.5 **No Third-Party Beneficiaries.** This Agreement is for the benefit of the Parties and their successors and permitted assigns and does not confer any rights or benefits on any third party, including any employee of a party, any client of a party, or any employee of a client of a party.

- 10.6 **Subscriber Audits; Questionnaires.** No more than once during any twelve (12) month period, upon a mutually agreed time during normal business hours, Trintech will allow Subscriber reasonable access to audit Trintech's processes and security to determine if Trintech is in compliance with its obligations to Subscriber under this Agreement. The audit or inspection performed will not unreasonably interfere with the normal conduct of Trintech's business, and any information obtained by Subscriber will be considered Confidential Information of Trintech. Any expenses or other costs incurred by Subscriber during the course of any audit or inspection will be the sole responsibility of Subscriber notwithstanding the conclusion of the audit. Subscriber will only be permitted to perform audit activities at Trintech's headquarters location in Texas, USA during normal business hours, and upon 30 days prior written notice to Trintech. Any confidential information of any Trintech vendor or other customer will be excluded from the scope of any audit or inspection by Subscriber. In the event Subscriber uses a third party to perform the audit, such party must execute a non-disclosure agreement with Trintech before performing any audit activities. Subscriber acknowledges and agrees that certain Confidential Information of Trintech, at Trintech's discretion, will be shown during the audit on a view only basis, with no copies made or recorded. Trintech will reasonably cooperate with the audit or inspection initiated by Subscriber provided Subscriber complies with the requirements of this **Section 10.6**. Questionnaires, security reviews, annual vendor assessments, and other similar information or documentation requested by Subscriber may only be provided as part of a formal audit under this **Section 10.6**. Trintech will have no obligation to respond to such requests and any information or documentation provided outside of the Subscriber's annual audit right will be at Trintech's sole discretion.
- 10.7 **No Waiver.** The failure of either Party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other Party of any of the provisions of this Agreement, will in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either Party to enforce each and every such provision thereafter. The express waiver by either Party of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition or requirement.
- 10.8 **Severability.** If, for any reason, a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be invalid or unenforceable, such provision of the Agreement will be enforced to the maximum extent permissible so as to affect the intent of the Parties, and the remainder of this Agreement will continue in full force and effect. The Parties agree to negotiate an enforceable substitute provision in good faith for any invalid or unenforceable provision that most nearly achieves the intent and economic effect of such provision.
- 10.9 **Order of Precedence.** In the event of conflict, the terms of this Subscription Services Agreement will prevail over any Order, Statement of Work, or Addendum to this Agreement, unless (i) such Order, Statement of Work, or Addendum specifically references the conflicting section of this Agreement and clearly states that the amending document will have precedence, and (ii) such Order, Statement of Work, or Addendum is signed by both Parties.
- 10.10 **Expenses.** Except as otherwise provided herein, each Party will pay its own expenses incurred in connection with this Agreement and its performance hereunder; provided, however, that if any suit or other proceeding is brought for the enforcement or interpretation of this Agreement or because of any alleged dispute, breach, default or misrepresentation hereunder, the successful or prevailing Party will be entitled to recover from the other Party its reasonable attorneys' fees and other expenses incurred in connection therewith.
- 10.11 **Non-solicitation; Non-hire.** Neither Party will directly or indirectly solicit for employment, or endeavor to employ or retain as an independent contractor or agent, any person who is an employee of the other Party during the term of this Agreement and for a period of 6 months thereafter without the prior consent of the other Party. Notwithstanding the foregoing, nothing in this **Section 10.11** will prohibit any advertisement or general solicitation of employment (or hiring or retention as a result thereof) that is not specifically targeted at a Party's employees.
- 10.12 **Subcontractors.** Trintech will remain fully liable to Subscriber for any subcontractors Trintech may use to provide Services hereunder. Subscriber will ensure that Subscriber, its Affiliates', employees, consultants, contractors and agents will not bring any action or claim against any subcontractor under this Agreement.
- 10.13 **Additional Documents.** The following documents found at <https://www.trintech.com/terms-and-conditions/cadency/> are incorporated by reference and form part of this Agreement: **Trintech Support Addendum, Trintech Security Addendum, Trintech Data Protection Addendum, Trintech Acceptable Use Policy, Trintech Upgrade Policy.**
- 10.14 **Cumulative Remedies.** Except as provided in the Agreement that a remedy shall be the sole and exclusive remedy, the rights and remedies of the Parties in this Agreement are not exclusive of but are cumulative as to any rights or remedies now existing or subsequently existing in law or equity.
- 10.15 **Entire Agreement.** The Agreement and all other documents referenced herein, including, without limitation, all documents referenced by Uniform Resource Locator ("URL") constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous and contemporaneous agreements and understandings, whether oral or written, between the Parties with respect to the subject matter hereof.

END OF DOCUMENT