

## General Terms and Conditions

Effective Date: May 19, 2026

These General Terms and Conditions ("**Terms**") are entered into as of the Effective Date pursuant to the Order Form between Trivalence and the Customer set forth on the Order Form.

If you purchased a subscription to the Platform or otherwise access or use the Platform pursuant to an agreement with an authorized reseller or white-label partner, your use of the Platform is governed by these Terms, subject to Section 12.12 (Reseller Orders) below, and you are considered the "Customer" for purposes of these Terms.

### 1. DEFINITIONS

"**Agreement**" means the agreement as defined in the Order Form, which includes these Terms, the Order Form, and the other documents referenced in the Order Form.

"**Authorized User**" means Customer's employees, contractors, and agents who are authorized by Customer to use the Platform pursuant to the Agreement.

"**Customer Data**" means the information submitted to the Platform by or on behalf of Customer or Authorized Users.

"**Documentation**" means any user instructions, manuals, online support resources, or other materials that Trivalence makes available to Customer through the Platform.

"**Intellectual Property**" means all intellectual property and other similar proprietary rights in any jurisdiction, whether registered or unregistered, including all rights and interests pertaining to or deriving from all patents, copyrights (including data compilations), trademarks and trade secrets.

"**Order Form**" means the order form specifying the Platform Services to be provided to Customer that references these Terms.

"**Platform**" or "**Platform Services**" means Trivalence's proprietary software-as-a-service application provided to Customer under an Order Form.

"**Platform Usage Data**" means any data that is derived from the use of the Platform that does not directly or indirectly identify Customer, Authorized Users, or any natural person and includes (a) data such as volumes, frequencies, bounce rates, and Platform performance data and (b) subject to any restrictions under applicable law or regulation, data that is anonymized, de-identified, and/or aggregated such that it could no longer directly or indirectly identify Customer, Authorized Users, or any natural person.

"**Reseller**" shall have the meaning set forth in Section 12.12. below.

"**Reseller Agreement**" shall have the meaning set forth in Section 12.12. below.

## 2. USAGE RIGHTS, RESPONSIBILITIES AND RESTRICTIONS

2.1. **Platform Access.** Subject to the Agreement, Trivalence hereby grants Customer a non-exclusive, non-sublicensable, non-transferable right to use the Platform and Documentation solely for Customer's internal business use.

2.2. **Authorized Users.** Customer may permit Authorized Users to use the Platform. Access credentials for the Platform may not be used by more than one individual. As part of the registration process, Customer will identify a business administrator for Customer's Trivalence account ("**Administrator**").

2.3. **Customer Responsibilities.** Customer will (a) be responsible for Authorized Users' compliance with the Agreement and the Documentation, (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, and Customer's use of Customer Data with the Platform Services, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform, and notify Trivalence promptly of any such unauthorized access or use, and (d) use the Platform only in accordance with the Agreement and the Documentation. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Platform, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "Equipment"). Customer shall also be responsible for maintaining the security of its Equipment, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

2.4. **Usage Restrictions.** Customer will not, directly or indirectly, and will not authorize any Authorized User or third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to derive the source code, structure, algorithms, or associated know-how of, the Platform, or reconstruct, or discover, any hidden or non-public elements of the Platform, or results or reports provided by the Platform (except to the extent expressly permitted by applicable law); (b) translate, adapt, or modify the Trivalence IP, any results or reports generated by the Platform, or any portion of any of the foregoing; (c) write or develop any program based in whole or in part upon the Platform, or otherwise use the Trivalence IP in any manner for the purpose of developing, distributing or making accessible products or services that compete with any Platform Services; (d) sell, sublicense, transfer, assign, lease, rent, distribute, or grant a security interest in the Platform or any rights to any of the foregoing; (e) export, sell or distribute any content or portion of the Trivalence IP or use the Trivalence IP for the benefit of any third persons other than Authorized Users; (f) transmit unlawful, infringing or harmful data or code, or any data or code that Customer is not authorized to transmit, either to or from the Platform; (g) alter, remove or use for any other purposes any trademarks, trade names, logos or proprietary notices contained in or on the Platform, including those of any Reseller; (h) circumvent or otherwise interfere with any authentication or security measures or otherwise interfere with or disrupt the integrity or performance of any of the foregoing; or (i) otherwise use the Trivalence IP except as expressly permitted hereunder. Customer acknowledges that Trivalence may, but is under no obligation to, monitor Customer's or any Authorized User's use of the Platform.

2.5. **Suspension of Platform Services.** Trivalence may suspend or limit use of the Platform if (a) Trivalence has a reasonable basis for concluding that (a) Customer or any Authorized User is in breach of the Agreement or if it has been notified by a Reseller that Customer or any Authorized User is in breach of any Reseller Agreement, (b) Customer's or any Authorized User's continued use may result in material harm to the Platform or other customers, or (c) suspension or limitation is otherwise necessary to comply

with laws and regulations applicable to Trivalence. Trivalence will use commercially reasonable efforts under the circumstances to provide Customer with notice and limit any suspension or limitation in time and scope.

2.6. **Services Levels.** Trivalence will make the Platform Services available to Customer at least 99.9% of the time, excluding unavailability due to an Exception, measured on a calendar month basis (“**Availability Commitment**”). The following are “**Exceptions**” to the Availability Commitment: (a) any act or omission by Customer or any Authorized User that does not strictly comply with the Agreement and the Documentation; (b) any delay or failure of performance caused in whole or in part by Customer’s delay in performing, or failure to perform, any of its obligations under the Agreement; (c) Customer’s or its Authorized User’s Internet connectivity; (d) force majeure event; (e) failure, interruption, outage, or other problem with any software, hardware, system, network, facility, or other matter not supplied by Trivalence pursuant to the Agreement; (f) scheduled downtime; or (g) suspension or limitation of the Platform pursuant to Section 2.5.

2.7. **Modifications.** Trivalence may modify the Platform Services from time to time during the Subscription Term, provided that Trivalence will not materially degrade the core functionality of the Platform during the Subscription Term. Trivalence will use commercially reasonable efforts to notify Customer of modifications in advance, including by providing notice of modifications to Customer through the Platform.

### 3. CUSTOMER DATA

3.1. **Customer Data.** As between Customer and Trivalence, Customer will retain all right, title, and interest in and to Customer Data. Customer represents and warrants that Customer has obtained and will obtain all necessary rights, consents, authorizations, and other permissions necessary to transfer or submit the Customer Data to the Platform for the purposes described in the Agreement. Customer grants to Trivalence a royalty-free, fully paid, non-exclusive right and license to copy, aggregate, compile, modify, distribute (directly or indirectly), publish, transmit, and create derivative works from Customer Data as necessary or useful for Trivalence to provide the Platform Services and for any other purpose not prohibited by law, including to create de-identified copies of Customer Data (such de-identified copies, “**De-Identified Data**”). Reseller Agreements may contain different rights and obligations regarding Customer Data, which, as between Customer and Reseller, shall be binding only on Customer and Reseller and not Trivalence.

3.2. **Access to Customer Data.** During the Subscription Term, Customer can access its Customer Data at any time. Customer may export and retrieve its Customer Data in a standard format. Export and retrieval may be subject to technical limitations, in which case Trivalence and Customer will find a reasonable method to allow Customer access to Customer Data. Upon expiration or termination of the Agreement, Trivalence may delete the Customer Data remaining on servers hosting the Platform unless applicable law requires retention. Retained data is subject to the confidentiality provisions of the Agreement. In the event of third-party legal proceedings relating to the Customer Data, Trivalence will cooperate with Customer and comply with applicable law (both at Customer’s expense) with respect to handling of the Customer Data.

3.3. **Security.** Trivalence will implement and maintain appropriate technical and organizational measures to protect Customer Data processed by Trivalence as part of the Platform Services. To the extent Trivalence creates, receives, maintains, or transmits “protected health information” (as defined by the

Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, each as amended from time to time) for or on behalf of Customer, Trivalence will comply with the Business Associate Agreement (“BAA”) incorporated into the Order Form.

#### **4. VENDOR PURCHASING AND PAYMENT SERVICES**

4.1. **Vendor Purchasing and Payment Services.** The Platform Services include features and functionality that permit Customer to place orders with certain vendors (“**Vendor Purchasing Services**”) and make and manage payments with those vendors (“**Vendor Payment Services**”). The Vendor Purchasing Services and Vendor Payment Services are offered as a convenience to Customer, and Customer agrees that Customer is solely responsible for managing Customer’s relationship with each of Customer’s vendors, including with respect to any delinquent accounts, statement reconciliations, or late fees.

4.2. **Vendor Account Information.** To receive Vendor Purchasing Services and Vendor Payment Services, Customer must provide information, data, usernames, passwords, and other login information (“**Vendor Account Information**”) reasonably necessary for Trivalence to access and use Customer’s accounts with Customer’s vendors (each a “**Customer Vendor Account**”). The Platform Services use Vendor Account Information to access Customer Vendor Accounts on Customer’s behalf to obtain and analyze pricing information, product availability, order history, invoices, ecommerce cart, and other information, and to make payment for orders.

4.3. **Designation as Authorized Representative.** Customer expressly designates Trivalence as Customer’s authorized representative and grants Trivalence a limited power of attorney during the Subscription Term to use Vendor Account Information, access Customer Vendor Accounts, and perform any other activities reasonably necessary to provide Vendor Purchasing Services and Vendor Payment Services.

4.4. **Pricing and Availability Information.** Prices viewable through the Platform are the prices offered to Customer by the applicable vendor and are retrieved in real time or via vendor-provided catalog. Customer acknowledges that pricing and availability information of any given vendor may be unavailable from time to time due to an error or downtime on the applicable vendor’s website or changes to the vendor’s website that affect the integration between the vendor’s website and the Platform. Trivalence makes no warranties as to the accuracy of pricing or availability of information or that pricing and availability will be retrievable at any given time.

4.5. **Vendor Purchases.** Customer acknowledges and agrees that any purchase of products or services from a vendor through the Platform Services (“**Vendor Order**”) is made directly with the applicable vendor and not with Trivalence. Trivalence is not responsible for examining or evaluating any product or service and disclaims all liability and warranties for the quality of products or services offered by vendors.

4.6. **Funding and Processing Payments.** Trivalence is not a bank. Vendor Payment Services are currently provided through Piermont Bank, Member FDIC (“**Piermont**”), but Piermont may be replaced by another bank at Trivalence’s option (Piermont or any successor bank are referred to in the Agreement as “**Bank**”). To use the Vendor Purchasing Services, Customer must link its bank account (“**Funding Account**”)

to the Platform and deposit funds from the Funding Account into an account Trivalence holds at Bank “for the benefit of” its customers (“**FBO Account**”). Customer represents that the Funding Account is solely used for business or commercial purposes and that Customer has authority to authorize transactions from such Funding Account without the consent or approval of any other person. Trivalence will establish a virtual account for Customer within the FBO Account (such virtual account, the “**Payment Account**”) and will provide Customer with a monthly summary statement of Payment Account transactions. Customer’s deposit balances held at Bank are insured by the Federal Deposit Insurance Corporation (FDIC) for up to the legal limit (currently \$250,000 for each category of legal ownership). Customer acknowledges that the rights granted by Customer to Bank in the Bank Cardholder Agreement are also granted by Customer to Trivalence to the extent Trivalence requires any rights granted to the Bank to provide the Platform Services. By approving or otherwise initiating a payment for a Vendor Order through the Platform (“**Vendor Payment**”), Customer authorizes Trivalence to initiate and complete the Vendor Payment on Customer’s behalf to the designated payee in the amount specified in the payment instructions. Vendor Payments issued by Trivalence that are not negotiated by the payee are considered stale 90 days after the date of issuance, will be refunded promptly to Client, and Trivalence will have no further responsibility for such Vendor Payment. Under no circumstances will Trivalence be required to use its own funds or assets to pay any vendor of Customer. Any funds flowing to vendors through Trivalence or its partners are at all times Customer funds until receipt by the vendor. Upon Customer’s request, Trivalence will use reasonable efforts to stop any Vendor Payment; however, Customer acknowledges and agrees that (a) Trivalence may be unable to stop a Vendor Payment, (b) if Customer directs Trivalence to stop a Vendor Payment and initiate a replacement Vendor Payment for the same Vendor Order, Customer authorizes Trivalence to withdraw additional funds from Customer’s Funding Account and take other actions necessary to process the replacement Vendor Payment, and (c) Trivalence will have no liability in connection with any request to stop a Vendor Payment or initiate a replacement Vendor Payment, including for any cash flow issues resulting from Customer’s request to initiate a replacement Vendor Payment. Customer agrees to promptly reimburse Trivalence for any third-party fees, charges, or other costs incurred by Trivalence in connection with a cancelled or stopped Vendor Payment. Customer acknowledges and agrees to abide by any applicable Bank policies and procedures and accept any agreements required by the Bank in order to establish and operate accounts with Bank.

4.7. **Payment Methods.** Trivalence may, in its sole discretion, select any payment method to make a Vendor Payment. These payment methods may include, without limitation: use of a virtual card or other transaction through a payment card network; an automated clearing house (ACH), wire or other electronic funds transfer. To the extent that ACH transactions are used, Customer acknowledges and agrees (a) to be bound by the NACHA Operating Rules, (b) that Trivalence will act as a third-party sender on your behalf within the NACHA network, and (c) that there is a risk of reversal or chargeback of a payment due to insufficient funds in your account or other reasons (“**ACH Returns**”). Customer will be responsible for any ACH Returns.

4.8. **Diligence Requirements.** Federal and state law requires financial institutions, including Bank, to obtain, verify, and record information that identifies every Customer (“**Diligence Requirements**”). To use the Platform, Customer is required to provide the name, address, date of birth, social security number, and any other information reasonably requested by Trivalence, including driver’s license or other business-related documents, for each qualifying beneficial owner or other individual who exercises significant authority to control Customer’s affairs as required by the Diligence Requirements. Customer represents and warrants that all such information is current and accurate and will promptly provide any updates as needed or requested by Trivalence or Bank from time to time. Trivalence reserves the right to refuse access to the Platform if Trivalence or Bank are unable to obtain or verify any individual as required

by the Diligence Requirements and to review, place on hold, or cancel after appropriate inquiry any payment requested or initiated through the Platform for any reason. Customer acknowledges that Trivalence and Bank may make appropriate reports regarding Customer's activities made through the Platform, including but not limited to financial institutions, regulators, tax agencies, and law enforcement authorities, and that Trivalence and Bank will cooperate with the appropriate authorities in any resulting investigation or prosecution, all as required or permitted by law.

**4.9. Invoice Payment Exclusivity** Trivalence invests a significant amount of resources and effort to establish Customer's purchasing and payment functionality. In consideration of such investment by Trivalence, Customer agrees not to use or process vendor invoice payments with any other payment processing service provider during the term of the Agreement. Notwithstanding the foregoing restrictions, Customer may use purchasing cards or P-Cards for up-front payments on purchases and for occasional invoice payments using another third-party payment processing service.

## **5. FEES AND TAXES**

**5.1. Invoicing and Payment.** All fees related to Customer's access and use of the Platform are set forth on the applicable Order Form. Unless otherwise set forth in the Order Form, Trivalence will invoice Customer beginning on the earlier of the date Customer completes initial onboarding to the Platform or 90 days after the Effective Date. Initial onboarding will be deemed to have been completed once the Platform has been set up for use by Customer and Customer's designated Administrator has been provided with training materials or other instructions from Trivalence on how to use Customer's production environment to make purchases from and payments to Customer's vendors. Payment due upon receipt of invoice unless otherwise specified in the applicable Order Form. If Customer does not pay invoices in accordance with the Agreement, in addition to any other available remedies, Trivalence may suspend Customer's use of the Platform until payment is made. Any invoice not paid when due will accrue interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower. Purchase orders submitted by Customer are for administrative convenience only. Trivalence may issue an invoice and collect payment without a corresponding purchase order. Customer may not withhold, reduce or set-off fees owed. All Order Forms are non-cancelable, and all fees are non-refundable.

**5.2. Fee Increases.** Trivalence reserves the right to adjust fees once annually after the Initial Term. Trivalence will notify Customer in advance, either through the Platform or by email, if Trivalence adjusts the fees. Any fee adjustments will apply upon the next renewal of the Subscription Term. If Customer does not agree to fee adjustments, Customer must provide notice of non-renewal pursuant to Section

**5.3. Taxes.** Customer is responsible for all federal, state, local, sales, use, value added, excise, or other taxes, fees, or duties arising out of the Agreement or any Reseller Agreement or the transactions contemplated by the Agreement or any Reseller Agreement (other than taxes based on Trivalence's net income).

**5.4. Payment; Late Fees; Suspension Rights.** Customer shall pay all undisputed fees and charges set forth in the applicable Order Form or Statement of Work in accordance with the payment terms stated therein. Unless otherwise specified, all invoices are due within thirty (30) days of the invoice date. Any undisputed amounts not paid when due may accrue interest at the lesser of: (i) one and one-half percent (1.5%) per month; or (ii) the maximum rate permitted by applicable law, calculated from the date due until paid in full. Customer shall also reimburse Trivalence for any reasonable costs of collection,

including attorneys' fees and collection agency costs, incurred in recovering overdue amounts. If Customer fails to timely pay any undisputed fees or charges, Trivalence may, upon written notice and after providing Customer at least ten (10) days to cure such non-payment, suspend Customer's access to all or part of the Services until all past due amounts are paid in full. During any suspension period:

- Trivalence shall have no obligation to provide the Services, support, service levels, or related obligations otherwise applicable under this Agreement;
- Customer shall remain responsible for all fees accrued prior to and during the suspension period; and
- Trivalence shall not be liable for any damages, losses, or liabilities arising from or related to such suspension.
- If Customer's account remains unpaid for more than sixty (60) days following the applicable due date, Trivalence may terminate this Agreement for material breach upon written notice to Customer.

Trivalence reserves the right to require future payments to be made via automatic payment method, ACH transfer, or prepaid billing terms for accounts with repeated late payment history.

## 6. TERM AND TERMINATION

6.1. **Term.** The Agreement will start on the Effective Date and will continue for the duration of the initial term stated on the Order Form (the "**Initial Term**"). Upon expiration of the Initial Term, the Agreement will automatically renew for consecutive 12-month periods (each such period, a "**Renewal Term**" and all Renewal Terms together with the Initial Term, the "**Subscription Term**") unless either party provides notice of non-renewal at least 90 days prior to the end of the then current Initial Term or Renewal Term. Customer acknowledges and agrees that the term of a Reseller Agreement may vary from the Subscription Term.

6.2. **Termination.** Either party may terminate the Agreement by written notice if the other party is in material breach of the Agreement and the material breach is not cured within 30 days after written notice reasonably describing the basis for the breach.

6.3. **Effect of Termination.** Upon the effective date of the termination or expiration of the Agreement for any reason: (a) Customer's access to the Platform will automatically terminate; (b) a Reseller may immediately terminate the applicable Reseller Agreement; and (c) Customer will immediately return, or at Trivalence's request destroy and certify the destruction of Trivalence's Confidential Information. The following provisions will survive the expiration or termination of the Agreement for any reason: Sections 1, 3 (with respect to the BAA), 5 (with respect to amounts due to either party), 7, 8, 9, 10, 11, and 12, and any other provision that by its nature should survive expiration or termination.

## 7. CONFIDENTIALITY

7.1. **Definition of Confidential Information.** From time to time during the Subscription Term, either party (the "**Disclosing Party**") may disclose or make available to the other party (the "**Receiving Party**"), information that is designated as confidential, internal and/or proprietary at the time of disclosure or should reasonably be understood to be confidential at the time of disclosure given the nature of the information and the circumstances surrounding its disclosure ("**Confidential Information**"). Without limiting the generality of the foregoing, Trivalence IP is Trivalence Confidential Information. Confidential

Information does not include information that the Receiving Party can demonstrate through competent evidence is: (a) publicly available when received, or subsequently becomes publicly available through no fault of the Receiving Party; (b) obtained by the Receiving Party from a source other than the Disclosing Party without obligation of confidentiality; (c) developed independently by the Receiving Party without use of the Disclosing Party's Confidential Information; or (d) already in the possession of the Receiving Party without obligation of confidentiality. Customer Data is not Confidential Information and Trivalence's obligations regarding Customer Data are specifically addressed in Section 3.

7.2. **Protection of Confidential Information.** The Receiving Party will not use Confidential Information for any purpose except to perform its obligations or exercise its rights under the Agreement. The Receiving Party will use the same care and discretion to avoid disclosure and unauthorized use of Confidential Information as it uses to protect its own information of a similar nature, but in no event less than reasonable care. Except as otherwise expressly permitted by the Agreement, the Receiving Party may only disclose Confidential Information to its employees, agents, contractors, or other advisors who have a need to know such Confidential Information and who are bound by written confidentiality obligations at least as protective as those that apply to the Receiving Party under the Agreement. Customer will not disclose any information about the Agreement, its terms and conditions, the pricing, or any other related facts to any third party.

7.3. **Compelled Disclosure.** The Receiving Party may disclose the Disclosing Party's Confidential Information to the limited extent required to comply with the order of a court or other governmental body, provided that, unless prohibited by law, the Receiving Party gives prior written notice to the Disclosing Party sufficient to allow the Disclosing Party a reasonably opportunity to seek a protective order or other confidential treatment for such Confidential Information.

7.4. **Equitable Relief.** In the event of a breach of this Section 7, the Disclosing Party may seek appropriate equitable relief in addition to any other remedy.

## 8. INTELLECTUAL PROPERTY

8.1. **Trivalence Intellectual Property.** As between Customer and Trivalence, Trivalence owns and retains all right, title and interest in and to the Platform, Documentation, De-Identified Data, and Platform Usage Data, including all Intellectual Property, technology, software, algorithms, user interfaces, trade secrets, techniques, designs, inventions, works of authorship, and other tangible material and information pertaining thereto or included therein ("**Trivalence IP**"). Nothing in the Agreement precludes or restricts Trivalence from future use or exploitation of any concepts, ideas, techniques, or know-how of, or related to, the Trivalence IP or otherwise arising in connection with Trivalence performance under the Agreement.

8.2. **Feedback.** Customer or Authorized Users may, from time to time and in Customer's or their discretion, provide suggestions for changes, modifications, or improvements to the Platform (collectively, "**Feedback**"). Customer hereby grants to Trivalence, on Customer's behalf and on behalf of Authorized Users, a perpetual, irrevocable right to use and fully exploit all Feedback for any lawful purpose without payment or other consideration to Customer.

8.3. **Reservation of Rights.** Except for the limited rights and licenses expressly granted under the Agreement, nothing in the Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any right, title, or interest in or to the Trivalence IP or any Intellectual Property therein or pertaining thereto. Trivalence reserve all rights not expressly granted to Customer in the Agreement.

## 9. INDEMNIFICATION

9.1. **Trivalence Indemnification Obligations.** Trivalence will defend or, at Trivalence's option, settle, any claim brought against Customer by a third party to the extent it alleges that Customer's (or one of Authorized Users) authorized use of the Platform or Documentation during the Subscription Term infringes any U.S. patent, copyright, or trademark, or misappropriates a trade secret of any third party (a "IP Claim"), and pay any damages awarded in a final judgment (or amounts agreed in a monetary settlement) in any such IP Claim defended by Trivalence, provided that Customer provide Trivalence with (a) prompt written notice of, (b) sole control over the defense and settlement of, and (c) all information and assistance reasonably requested by Trivalence in connection with the defense or settlement of, any such IP Claim. If any IP Claim is brought or threatened, Trivalence may, at Trivalence's sole option and expense: (w) procure for Customer the right to continue to use the Platform or Documentation; (x) modify the Platform or Documentation to make it non-infringing; (y) replace the affected aspect of the Platform or Documentation with non-infringing technology having substantially similar capabilities; or (z) if none of the foregoing is commercially practicable, terminate the Agreement with notice to Customer and no further liability. Notwithstanding the foregoing, Trivalence has no obligation to indemnify Customer to the extent any IP Claim arises in connection with: (1) any use of the Platform or Documentation in combination with software, products or services not provided by Trivalence to the extent that the Platform or Documentation would not be infringing but for such combination or modification; (2) Customer's failure to use the Platform in accordance with the Documentation or the Agreement; or (3) for any claims related to Customer Data.

9.2. **Sole Remedy.** SECTION 9.1 STATES TRIVALENCE'S ENTIRE LIABILITY, AND CUSTOMER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY TRIVALENCE OR THE DOCUMENTATION OR SERVICE.

9.3. **Customer's Indemnification Obligations.** Customer will indemnify, defend and hold Trivalence and Trivalence's investors, officers, directors, affiliates, subsidiaries, licensors, partners, licensees, consultants, employees, contractors, and agents (collectively, the "Indemnified Parties") harmless from and against any and all damages, payments, deficiencies, fines, judgments, settlements, liabilities, losses, costs and expenses (including, but not limited to, reasonable attorney and expert fees, costs, penalties, interest and disbursements) resulting from any actual or threatened claim (groundless or otherwise, including third party claims), suit, action, or proceeding (at law or in equity) against any Indemnified Parties, whether successful or not, arising out of, resulting from or relating to: (a) Customer's or any of Authorized Users' use of the Platform or Documentation; (b) Customer's or Authorized Users' negligence, fraud or intentional misconduct; (c) any breach of the Agreement or any Reseller Agreement by Customer or Authorized Users (including, but not limited to, any breach of any of Customer's representations or warranties); (d) any violation of applicable law by Customer or Authorized Users; or (e) Customer Data.

## 10. DISCLAIMER; LIMITATION OF LIABILITY

10.1. **Disclaimer.** THE PLATFORM, THE DOCUMENTATION, AND ANY OTHER MATERIAL INCLUDED ON OR OTHERWISE MADE AVAILABLE TO CUSTOMER THROUGH THE PLATFORM ARE PROVIDED TO CUSTOMER ON AN "AS IS" OR "AS AVAILABLE" BASIS WITHOUT ANY REPRESENTATIONS OR WARRANTIES OR CONDITIONS OF ANY KIND, UNLESS OTHERWISE EXPRESSLY SET FORTH IN WRITING. TRIVALENCE DOES NOT WARRANT THAT THE PLATFORM IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TRIVALENCE MAKE NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE AVAILABILITY, RELIABILITY OR SECURITY OF THE PLATFORM. UNLESS OTHERWISE EXPRESSLY SET FORTH IN WRITING,

TRIVALENCE DISCLAIM ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS (EXPRESS OR IMPLIED, ORAL OR WRITTEN) WITH RESPECT TO THE PLATFORM WHETHER ALLEGED TO ARISE BY OPERATION OF LAW, BY REASON OF CUSTOM OR USAGE IN THE TRADE, BY COURSE OF DEALING OR OTHERWISE, INCLUDING: (A) ANY AND ALL WARRANTIES OF MERCHANTABILITY; (B) ANY AND ALL WARRANTIES OF FITNESS OR SUITABILITY FOR ANY PURPOSE (WHETHER OR NOT TRIVALENCE KNEW, HAVE REASON TO KNOW, HAVE BEEN ADVISED, OR ARE OTHERWISE AWARE OF ANY SUCH PURPOSE); (C) ANY AND ALL WARRANTIES OF NONINFRINGEMENT OR CONDITION OF TITLE; (D) ALL WARRANTIES WITH RESPECT TO UPTIME AND DATA ACCURACY; (E) ALL WARRANTIES WITH RESPECT TO ANY AND ALL CONTENT AND RELATED DELIVERIES PROVIDED IN CONNECTION WITH THE AGREEMENT; AND (F) THAT THE PLATFORM WILL OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGE AND AGREE THAT CUSTOMER HAVE RELIED ON NO WARRANTIES.

10.2. **Exclusions of Certain Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRIVALENCE WILL NOT BE LIABLE FOR (A) INCIDENTAL, EXEMPLARY, PUNITIVE, INDIRECT, CONSEQUENTIAL OR ANY OTHER SPECIAL CATEGORY OF DAMAGES, OR (B) LOST PROFITS (DIRECT OR INDIRECT), LOSS OF USE OR DATA, PLATFORM INTERRUPTION, BUSINESS, VALUE, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF TRIVALENCE HAVE BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.

10.3. **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, TRIVALENCE'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL OR EQUITABLE THEORY, WILL BE LIMITED TO THE TOTAL AMOUNT PAID BY CUSTOMER UNDER THE AGREEMENT DURING THE 12-MONTH PERIOD PRECEDING THE MONTH DURING WHICH THE CLAIM AROSE, UNLESS 12 MONTHS HAVE NOT ELAPSED SINCE THE EFFECTIVE DATE, IN WHICH CASE TRIVALENCE'S TOTAL AGGREGATE LIABILITY WILL NOT EXCEED 12 TIMES THE AVERAGE AMOUNT PAID BY CUSTOMER FOR THE ELAPSED PERIOD OF THE INITIAL TERM.

10.4. **Failure of Essential Purpose.** CUSTOMER ACKNOWLEDGES AND AGREES THAT THIS SECTION 10 IS A FUNDAMENTAL BASIS OF THE BARGAIN AND A REASONABLE ALLOCATION OF RISK BETWEEN THE PARTIES AND WILL SURVIVE AND APPLY TO ANY CLAIMS ARISING OUT OF OR RELATED TO THE AGREEMENT OR THE PLATFORM, REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE), EVEN IF ANY LIMITED REMEDY IN THE AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

## 11. DISPUTE RESOLUTION AND ARBITRATION AGREEMENT

11.1. **Informal Resolution.** Before filing any claim against the other party, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in Section 12.5. If a dispute is not resolved within thirty days of notice, Customer or Trivalence may bring a formal proceeding in accordance with Section 11.2.

11.2. **Arbitration.** Subject to Section 11.1, the parties agree to resolve all disputes arising under or in connection with the Agreement through binding arbitration. The arbitration will be conducted before a single arbitrator in accordance with the applicable rules of the American Arbitration Association ("AAA"). The arbitration will be conducted in English in the State of New York. If the parties do not agree on an arbitrator, the arbitrator will be selected in accordance with the applicable rules of the AAA for the

appointment of an arbitrator. The selection of an arbitrator under the rules of the AAA will be final and binding on the parties. The arbitrator must be independent of the parties. The arbitrator's decision will be final and binding on both parties, and the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The costs and expenses of the arbitration will be shared equally by both parties; however, if the arbitrator finds that either the substance of the claim or the relief sought in arbitration is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. If this Section 11.2 is found to be unenforceable, the parties agree that the exclusive jurisdiction and venue described in Section 12.4 will govern any action arising out of or related to the Agreement.

**11.3. Exceptions to Arbitration.** Notwithstanding Section 12.3, neither party is prohibited from: (a) bringing an individual action in small claims court; (b) seeking injunctive or other equitable relief in a court of competent jurisdiction; (c) pursuing an enforcement action through the applicable federal, state, or local agency if that action is available; or (d) filing suit in a court of law to address an intellectual property infringement or misappropriation claim.

## **12. GENERAL PROVISIONS**

**12.1. Modifications to these Terms.** Trivalence may modify these Terms from time to time in its sole discretion. Trivalence will use reasonable means to notify Customer of any material modifications (by, for example, sending an email to the email address associated with the applicable Customer account). Customer is responsible for checking these Terms regularly for modifications. By continuing to access or use the Platform after modifications become effective, Customer agrees to be bound by the modified Terms. If Customer does not agree to the modified Terms, Customer may terminate the Agreement within 30 days of receiving notice of the modified Terms.

**12.2. Assignment.** Customer may not assign the Agreement or any of its rights or obligations under the Agreement without Trivalence's prior written consent. Subject to the foregoing, the Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

**12.3. Force Majeure.** Neither party will be liable for any failure or delay in its performance under the Agreement due to any cause beyond its reasonable control, including without limitation an act of war, terrorism, act of God, earthquake, flood, embargo, riot, sabotage, pandemic, labor shortage or dispute, governmental act or failure or degradation of the Internet. The delayed party will give the other party notice of such cause and will use commercially reasonable efforts to correct such failure or delay in performance.

**12.4. Governing Law.** The Agreement is governed by and construed under the laws of the State of Delaware without reference to conflict of laws principles. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. Subject first to Section 11, if a lawsuit or court proceeding is permitted under the Agreement, the parties will be subject to the exclusive jurisdiction of the state and federal courts located in Delaware and the parties hereby agree and consent to the exclusive jurisdiction and venue of such courts.

**12.5. Notices.** Any required notice will be given in writing by customary means with receipt confirmed at the address of each party set forth on the Order Form, or to such other address as either party may substitute by written notice to the other. Notices will be deemed to have been given at the time of actual delivery in person, three days after delivery to an overnight courier service, or five days after deposit in

certified mail. Notwithstanding the foregoing, Trivalence may give notices to Trivalence customers generally by means of a general notice on the Platform, and notices specific to Customer by electronic mail to Customer's e-mail address on record with Trivalence.

**12.6. Electronic Communications.** To the extent required by applicable law, Customer consents to receive electronic communications from Trivalence (e.g., via email or by posting notices to the Platform). These communications may include operational notices about Customer's Customer Account or User Accounts (e.g., password changes and other transactional information) and are part of Customer's relationship with Trivalence. Customer agrees that any notices, agreements, disclosures, or other communications that Trivalence sends electronically will satisfy any legal communication requirements, including, but not limited to, that such communications be in writing. Trivalence may also send Customer and Authorized Users promotional communications via email, including, but not limited to, newsletters, special offers, surveys and other news and information about Trivalence products and services. Customer or any Authorized User may opt out of receiving these promotional emails at any time by following the unsubscribe instructions provided in those emails.

**12.7. Publicity.** Trivalence may use Customer's name and logo as a reference for marketing or promotional purposes on the Trivalence website and in other communication with existing or potential customers, subject to any written trademark policies Customer may provide to Trivalence in writing with reasonable advance notice.

**12.8. Case Studies.** Upon Trivalence's request, Customer may agree to participate in case studies for Trivalence's internal training purposes or for sales promotion purposes. Such case studies may be made publicly available to third parties to demonstrate Customer's success with the Platform Services.

**12.9. Reference Calls.** Upon Trivalence's request, Customer may agree to participate in reference calls with Trivalence, whereby Customer's employees or agents may be requested to provide a referral of the Platform to third parties.

**12.10. Government Users.** If Customer is a U.S. government entity, or if the Agreement is or becomes subject to the Federal Acquisition Regulations (FAR), then the Platform Services provided under the Agreement are "Commercial Product(s) or Commercial Platform Services(s)" as those terms are defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," and services related thereto, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through §227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are licensed to U.S. Federal Government End Users (a) only as Commercial Products and Platform Services; and (b) with only those rights as are granted to all other end users pursuant to the Agreement. Unpublished rights are reserved under the laws of the United States.

**12.11. Miscellaneous.** The Agreement is the sole agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings with respect to said subject matter. Customer may not subcontract or delegate any rights or obligations granted to Customer under the Agreement to any third parties, including Customer's consultants or contractors, without Trivalence's prior written consent. Customer agrees that Customer is solely responsible for any liability arising out of Customer's approved consultants' and contractors' authorized access and use of the Platform. Trivalence is an independent contractor, and each party agrees that no partnership, joint venture, or agency relationship exists between the parties. No terms of any purchase order, acknowledgement, or other form

provided by Customer will modify the Agreement, regardless of any failure by Trivalence to object to such terms. Any ambiguity in the Agreement will be interpreted without regard to which party drafted the Agreement. There are no third-party beneficiaries to the Agreement. Trivalence may use subcontractors or otherwise delegate aspects of Trivalence's performance under the Agreement. Waiver of any provision of the Agreement or forbearance to enforce any provision by either party will not constitute a waiver as to any subsequent breach or failure of the same provision or a waiver of any other provision of the Agreement. Any provision of the Agreement found to be unlawful, unenforceable, or void will be severed from the remainder of the Agreement and the remainder of the Agreement will continue in full force and effect without said provision. The parties agree to comply with all applicable export control laws and regulations related to their performance of the Agreement.

#### **12.12. Reseller Orders and Agreement.**

12.12.1. This Section applies to any access or use of the Platform purchased by Customer through an authorized reseller or white-label partner (each a "**Reseller**") pursuant to a separate written agreement (each a "**Reseller Agreement**"). Customer acknowledges and agrees that (a) references to "the Agreement" in these Terms are revised to refer to "these Terms", (b) Section 5 (Fees and Taxes) of these Terms is superseded by the pricing, payment, and similar commercial terms applicable to Customer's access to the Platform set forth in Customer's Reseller Agreement, (c) Customer will make all payments set forth in the Reseller Agreement to the applicable Reseller and not Trivalence, (d) Section 6.1 (Term) of these Terms is superseded by the term set forth in Customer's Reseller Agreement, (e) Customer's Reseller Agreement may include separate termination and other provisions applicable to Customer, (f) the amount paid or payable by the applicable Reseller to Trivalence for Customer's use of the Platform will be deemed the amount paid or payable by Customer to Trivalence for purposes of Section 10.3, and (g) Reseller (including its subsidiaries and affiliates and each of their officers, directors, licensors, partners, licensees, consultants, employees, contractors, and agents) is an Indemnified Party hereunder for purposes of Section 9.3.

12.12.2. Customer and Trivalence agree to the BAA available at <https://www.trivalence.com/legal/>. Trivalence may suspend or terminate Customer's access or use of the Platform if Trivalence does not receive timely payment from the applicable Reseller or if Trivalence is notified by any Reseller that such Reseller has not received timely payment from Customer.

12.12.3. These Terms are directly between Trivalence and Customer and, subject to this Section, govern Customer's access and use of the Platform. Resellers are not authorized to modify these Terms or make any promises or commitments on Trivalence's behalf, and Trivalence is not bound by any obligations to Customer except as set forth in these Terms. Trivalence is not a party to (or responsible under) Customer's Reseller Agreement and is not responsible for Reseller's acts or omissions.