

Terms and Conditions

Effective **November 15th 2021**

This Terms and Conditions (“Agreement”) is between you who are either the Customer or an End User of the Customer (“you”) and Triyo Software Inc. Triyo (“Triyo”) from which you are procuring Platform (defined below) and governs your use of the Platform purchased through Azure Marketplace and AppSource Marketplace (collectively, “Marketplace”).

You must use the Platform, other than the website, either as the Customer, or on behalf of a Customer, as applicable, and you must be above the age majority in your applicable jurisdiction. You may use the Platform for more than one Customer, but each activity of use of the Platform must be on behalf of a Customer.

This Agreement is the parties’ entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. All Orders between you and Triyo are hereby incorporated into this Agreement by reference. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. Capitalized terms have the meanings given under “Definitions.”

I. License to Platform

- a. **License grant.** Platform is licensed and not sold. Upon Triyo’s acceptance of an Order, and subject to your compliance with this Agreement, Triyo grants you a nonexclusive and limited license to use the Platform. This license is solely for your own use and business purposes on behalf of the organization for which you utilize the Platform and is non-transferable except as expressly permitted under this Agreement or applicable law.
- b. **Duration of licenses.** Licenses may be granted: (i) for a subscription period, and such licenses granted for the Platform will expire at the end of the applicable subscription period set forth in the Order, unless renewed; or (ii) on an continual advance payment basis, and such licenses granted for the Platform continue as long as advance payment is received by Triyo from Customer for usage of the Platform during a set period of time (e.g., a week, month, year, or any other time period determined by Triyo) (the “Usage Period”), and such licenses will expire if advance payment is not received for a Usage Period.
- c. **End Users.** Customer will control access to and use of the Platform by you and its other End Users and is responsible for any use of the Platform that does not comply with this Agreement.
- d. **Reservation of Rights.** Triyo reserves all rights not expressly granted in this Agreement. The Platform is protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use the Platform on a device do not give Customer or you any right to implement Triyo’s patents or other intellectual property in the device itself or in any other software or devices.
- e. **Restrictions.** Except as expressly permitted in this Agreement, Documentation or an Order, Customer must not (and is not licensed to) and you must not (and are not licensed to):
 - (1) copy, modify, reverse engineer, decompile, or disassemble the Platform, or attempt to do so;

- (2) install or use any third-party software or technology in any way that would subject Triyo's intellectual property or technology to any other license terms;
- (3) work around any technical limitations in the Platform or restrictions in Documentation;
- (4) separate and run parts of the Platform on more than one device;
- (5) upgrade or downgrade parts of the Platform at different times;
- (6) use the Platform for any unlawful purpose;
- (7) transfer parts of the Platform separately; or
- (8) distribute, sublicense, rent, lease, or lend the Platform, in whole or in part, or use it to offer hosting services to a third party.

Such unauthorized use is a material breach of these terms, and may also violate applicable laws including without limitation copyright and trademark laws, the laws of privacy and publicity, and applicable communications regulations and statutes.

- f. **End Users** . Customer must require you and each End User to agree to this Agreement.
 - g. **Feedback**. Any Feedback is given voluntarily, and the provider of such Feedback grants to Triyo, without charge, a non-exclusive license under provider's owned or controlled non-patent intellectual property rights to make, use, modify, distribute, and commercialize the Feedback as part of any of Triyo's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by the provider as confidential. The provider hereby assigns to Triyo all of its rights, title and interest in and to such Feedback.
- II. **Privacy**. You hereby agree to the Privacy Policy available at: https://triyo.io/documents/privacy_policy.pdf, which is hereby incorporated in this Agreement by reference. You further agree to (a)-(c) below in this section II, and if you are not the Customer you will provide all information, consents, authorizations and other assistance to cause Customer to comply with the following (a)-(c) below:
- a. **EU Standard Contractual Clauses**. To the extent applicable, the parties will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland. All transfers of Customer Data out of the European Union, European Economic Area, and Switzerland will be governed by the Standard Contractual Clauses, as designated by the European Commission, made available by Triyo at the applicable URL for such terms or as otherwise communicated to Customer.
 - b. **Personal Data**. Customer consents to the processing of Personal Data by Triyo and its Affiliates, and their respective agents and Subcontractors, as provided in this Agreement. Before providing Personal Data to Triyo, Customer will obtain all required consents from third parties (including Customer's contacts, partners, distributors, administrators, and employees) under applicable privacy and Data Protection Laws.
 - c. **Processing of Personal Data; GDPR**. To the extent Triyo is a processor or sub-processor of Personal Data subject to the GDPR, the Standard Contractual Clauses

govern that processing and the parties also agree to the following terms in this subsection (“Processing of Personal Data; GDPR”):

- (1) **Processor and Controller Roles and Responsibilities.** Customer and Triyo agree that Customer is the controller of Personal Data and Triyo is the processor of such data, except when (a) Customer acts as a processor of Personal Data, in which case Triyo is a sub-processor or (b) stated otherwise in any Platform-specific terms. Triyo will process Personal Data only on documented instructions from Customer. In any instance where the GDPR applies and Customer is a processor, Customer warrants to Triyo that Customer’s instructions, including appointment of Processor as a processor or sub-processor, have been authorized by the relevant controller.
- (2) **Processing Details.** The parties acknowledge and agree that:
 - (A) the subject-matter of the processing is limited to Personal Data within the scope of the GDPR;
 - (B) the duration of the processing will be for the duration of the Customer’s right to use the Platform and until all Personal Data is deleted or returned in accordance with Customer instructions or the terms of this Agreement;
 - (C) the nature and purpose of the processing will be to provide the Platform pursuant to this Agreement;
 - (D) the types of Personal Data processed by the Platform include those expressly identified in Article 4 of the GDPR; and
 - (E) the categories of data subjects are Customer’s representatives and end users, such as employees, contractors, collaborators, and customers, and other data subjects whose Personal Data is contained within any data made available to Triyo by Customer.
- (3) **Data Subject Rights; Assistance with Requests.** Triyo will make information available to Customer in a manner consistent with the functionality of the Platform and Triyo’s role as a processor of Personal Data of data subjects and the ability to fulfill data subject requests to exercise their rights under the GDPR. Triyo will comply with reasonable requests by Customer to assist with Customer’s response to such a data subject request. If Triyo receives a request from Customer’s data subject to exercise one or more of its rights under the GDPR in connection with the Platform for which Triyo is a data processor or sub-processor, Triyo will redirect the data subject to make its request directly to Customer. Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Platform. Triyo will comply with reasonable requests by Customer to assist with Customer’s response to such a data subject request.
- (4) **Use of Sub-processors.** Customer consents to Triyo using the sub-processors listed at the applicable Triyo URL or as otherwise communicated to Customer. Triyo remains responsible for its sub-processors’ compliance with the obligations herein. Triyo may update its list of sub-processors from time to time, by providing Customer at least 14-days notice before providing any new sub-processor with access to Personal Data. If Customer does not approve of any such changes,

Customer may terminate any subscription for the affected Platform without penalty by providing, prior to expiration of the notice period, written notice of termination that includes an explanation of the grounds for non-approval.

- (5) **Records of Processing Activities.** Triyo will maintain all records required by Article 30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on behalf of Customer, make them available to Customer upon request.

III. **Confidentiality.**

- a. **Confidential Information.** “Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, the terms of this Agreement, and Customer’s account authentication credentials. Confidential Information does not include information that: (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party’s business, products or services.
- b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives if such party is Triyo or the Customer, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement.
- c. **Disclosure required by law.** A party may disclose the other’s Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- d. **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted by Triyo; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information, excepting confidential information and trade secrets of Triyo which shall be protected as confidential in perpetuity.

IV. **Representation and warranties.**

Triyo continuously represents and warrants that:

- a. it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement;
- b. its performance will not materially violate any agreement or obligation between it and any third party;
- c. the Platform will not:
- (1) to the best of Triyo’s knowledge, infringe or violate any third party patent, copyright, trademark, trade secret, or other proprietary right; or
 - (2) contain viruses or other malicious code that will materially degrade or infect any products, services, software, or Customer’s network or systems, and

- d. while performing under this Agreement, Triyo will comply with applicable Canadian laws.

V. Disclaimer.

Except as expressly stated in this Agreement, the Platform is provided as is. To the maximum extent permitted by law, Triyo disclaims any and all other warranties (express, implied or statutory, or otherwise) including of merchantability or fitness for a particular purpose, whether arising by a course of dealing, usage or trade practice, or course of performance.

You agree that it is your responsibility to ensure that your access to and use of the Platform complies with the laws of your jurisdiction. Triyo makes no representation that information on the Platform or any product or service provided via the Platform is appropriate or available for use outside Canada.

If you access or use the Platform on behalf of any Customer, such Customer shall also be bound to this Agreement and liable for any breach by you or the Customer.

VI. Defense of third-party claims.

- a. **By Customer.** You and Customer will each defend Triyo and its Affiliates from and against any and all third party claims, actions, suits, proceedings arising from or related to your, Customer's or any other authorized user's violation of this Agreement or user terms (a "Claims Against Triyo"), and will indemnify Triyo and its Affiliates for all reasonable attorney's fees incurred and damages and other costs finally awarded against Triyo or its Affiliates in connection with or as a result of, and for amounts paid by Triyo or its Affiliates under a settlement Customer approves of in connection with a Claim Against Triyo. Triyo must provide Customer with prompt written notice of any Claims Against Triyo and allow Customer the right to assume the exclusive defense and control of the claim, and cooperate with any reasonable requests assisting Customer's defense and settlement of such matter.
- b. Notwithstanding anything contained in the above subsection (a), no settlement may be entered into by an indemnifying party, without the express written consent of the indemnified parties (such consent not to be unreasonably withheld), if: (A) the third party asserting the claim is a government agency; (B) the settlement arguably involves the making of admissions by the indemnified parties; (C) the settlement does not include a full release of liability for the indemnified parties; or (D) the settlement includes terms other than a full release of liability for the indemnified parties and the payment of money.

VII. Limitation of liability.

Triyo's maximum, aggregate liability to you and the Customer under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Platform during the term of the applicable licenses twelve months prior to the incident.

VIII. Exclusions.

In no event will Triyo be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.

IX. Pricing and payment.

Customer's pricing and payment terms for a given order are set forth and governed by the applicable Order.

X. Term and termination.

- a. **Term.** This Agreement is effective during the time set out in the Order unless terminated prior to the end of such time period by a party, as described below (the "Term").
- b. **Termination without cause.** Unless otherwise set forth in an Order, either party may terminate this Agreement or any Order without cause on 60 days' written notice. Triyo will not provide refunds or credits for any partial subscription period(s), or any unused Usage Period, if the Agreement or an Order is terminated without cause.
- c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement or any Order immediately on notice if (i) the other party materially breaches the Agreement or an Order, and fails to cure the breach within 30 days after receipt of notice of the breach; or (ii) the other party becomes Insolvent. Upon such termination, the following will apply:
 - (1) All licenses granted under this Agreement will terminate immediately.
 - (2) All amounts due under any unpaid invoices will become due and payable immediately.
- d. **Suspension.** Triyo may suspend use of the Platform without terminating this Agreement during any period of material breach. Triyo will give Customer reasonable notice before suspending the Platform.
- e. **Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

XI. Miscellaneous.

- a. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the terms of this Agreement will prevail.
- b. **Independent contractors.** The parties are independent contractors. Customer and Triyo each may develop products independently without using the other's Confidential Information. Notwithstanding the foregoing, Customer may not develop any product or service that competes with the Platform.
- c. **Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the services of others.
- d. **Amendments.** Triyo reserves the right at any time and from time-to-time to modify, edit and update this Agreement and any of its policies. Customer should review this Agreement and all policies regularly to make sure that they are aware of any changes. Customer's access to use of the Platform on and after the date on which Triyo posts the

revised terms constitutes Customer's acceptance of the Agreement as revised as well as of any revised policies.

- e. **Assignment.** Triyo may assign this Agreement at its discretion, including but not limited to: (i) without consent of the Customer or you, to an Affiliate or to a third party, without prior notice, and all assignees may further assign such rights without further consent; and (ii) without the consent of the Customer or you, in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of Triyo's assets. You or Customer may not assign this Agreement without prior approval of Triyo in writing. Assignment will not relieve you or Customer of your obligations under the assigned Agreement. Any attempted assignment without required approval will be void.
- f. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- g. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- i. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Triyo must be sent to the address stated in the Order. Notices to Customer and you will be sent to the individual at the address Customer or you, as applicable identify on your account for the Platform. Triyo may send notices and other information to you or the Customer by email or other electronic forms.
- j. **Applicable law.** The laws of the province of Ontario, and the federal laws of Canada applicable therein, shall govern the interpretation of these terms and this Agreement, regardless of conflict of law principles.
- k. **Order of precedence.** The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- l. **Government procurement rules.** By accepting this Agreement, Customer represents and warrants that: (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.
- m. **Compliance with laws.** Customer and you must comply with laws applicable to your use of the Platform.
- n. **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent. Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation,"

unless qualified by words such as “only” or “solely.” This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party.

XII. Definitions.

“Affiliate” means any legal entity that Controls, is Controlled by, or is under common Control with a party.

“Control” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

“Customer” means a company, organization or other entity that has an Order with us which permits you to use the Platform on its behalf.

“Customer Data” means all data, including all text, sound, software, image or video files that are provided to Triyo or its Affiliates by, or on behalf of, you or Customer and its Affiliates through use of the Platform.

“Data Protection Law” means any law applicable to Triyo or Customer, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data (“GDPR”), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

“Documentation” means all user manuals, handbooks, training material, requirements, and other written or electronic materials Triyo makes available for, or that result from use of, the Platform.

“End User” means any person Customer permits to use the Platform or access Customer Data on its behalf.

“Feedback” means ideas, suggestions, comments, input, or know-how, in any form, that one party provides to the other in relation to recipient’s Confidential Information, products, or services. Feedback does not include sales forecasts, future release schedules, marketing plans, financial results, and high-level plans (e.g., feature lists) for future products.

“Insolvent” means admitting in writing the inability to pay debts as they mature; making a general assignment for the benefit of creditors; suffering or permitting the appointment of a trustee or receiver for all or any of its (i.e., the non-terminating party’s) assets, unless such appointment is vacated or dismissed within 60 days from the date of appointment; filing (or having filed) any petition as a debtor under any provision of law relating to insolvency, unless such petition and all related proceedings are dismissed within 60 days of such filing; being adjudicated insolvent or bankrupt; having wound up or liquidated; or ceasing to carry on business.

“Platform” means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that Triyo makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Triyo to provide the foregoing. Platform availability may vary by region, or if you are not the Customer, then the collaboration platform to which access is made available to you on behalf of the Customer.

“Order” means an ordering document used to transact the Platform via the Marketplace.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Representatives” means a party’s employees, Affiliates, contractors, advisors and consultants.

“Standard Contractual Clauses” means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR.

“Subcontractor” means any third party: (1) to whom Triyo delegates its obligations under this Agreement, including a Triyo Affiliate not contracting directly with Customer through an Order; or (2) who, in performing under a contract between it and Triyo or a Triyo Affiliate, stores, collects, transfers or otherwise processes Personal Data (obtained or accessed in connection with performing under this Agreement) or other Customer Confidential Information.

“use” means to copy, download, install, run, access, display, use or otherwise interact with.

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