

Terms and Conditions

1. DEFINITIONS

The defined terms used in the Agreement will have the meaning set out in Appendix 1 unless the subject matter or content is inconsistent therewith.

2. USE OF THE TESTASSURE PLATFORM

(a) Use of the TestAssure Platform. Subject to the terms and conditions of the Agreement and payment of any and all applicable Fees, your access and use of the TestAssure Platform is provided in accordance with the specifications described in the Order Form if any.

(b) Use of TestAssure Automation Libraries. Subject to the terms and conditions of the Agreement and payment of all applicable Fees, your access and use of a TestAssure Automation Library or Libraries, as defined within the Order Form.

(c) User IDs. You will ensure that all Users access and use the TestAssure Platform solely through a unique User identification assigned by you to such User. You are responsible for the compliance by all Users with the Agreement, and all Fees and charges incurred by Users in connection with their access to and use of the TestAssure Platform, and any and all activity occurring under the User identification associated with Users. You will not permit Users to share their User identification with any other Person and you will not create generic User identification for use by multiple Users.

(d) Restrictions on Use of the TestAssure Platform. You will use the TestAssure Platform as contemplated in the Agreement and You shall not, and shall not allow third parties to (together, the “**Use Restrictions**”): (i) license, sublicense, sell, resell, lease, transfer, assign, distribute, time share or otherwise make the TestAssure Platform available to any third party except Users; (ii) modify, translate, reverse engineer, decompile, disassemble or create derivative works based on the TestAssure Property, except to the extent expressly permitted in writing by us or pursuant to Applicable Law; (iii) intentionally circumvent any Automation Library restrictions, User limits, Test Case limits, or other use restrictions that are built into the TestAssure Platform; (iv) intentionally cause interference with the TestAssure Platform’s network operations, attempt to bypass our network or security controls, or otherwise re-arrange, disconnect, disable, remove, repair or otherwise interfere with any parts of the TestAssure Platform or the receipt of services by our other customers; (v) maliciously or recklessly use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the technology underlying the TestAssure Platform; (vi) intentionally use, or permit the use of, the TestAssure Platform in a manner contrary to Applicable Law or that infringes, violates or misappropriates the rights of any third parties, including the privacy rights or intellectual property rights of such third parties; (vii) intentionally use, or permit the use of, the TestAssure Platform to perform any type of load generation, load testing, performance testing, or other type of testing against a third party system; (viii) intentionally send any unsolicited commercial communications prohibited by Applicable Law; (ix) store or process Personal Information characterized as sensitive information under applicable Privacy Laws, including any health information, social insurance, social security, employee ID’s, salary information or credit card numbers; (x) intentionally use the TestAssure Platform in order to build a competitive solution or service; (xi) remove any proprietary notices, labels, or marks from the TestAssure Platform; (xii) access (or attempt to access) the TestAssure Platform by means other than through the UserID that is provided; or (xiii) access the TestAssure Platform if you are a competitor of ours. If we have documented evidence that you have violated any material provision of these terms and conditions, including the Use Restrictions, and such violation caused the suspension of the TestAssure Platform, we will not be responsible to you for any damages or be obligated to repay any fees to you for that period of suspension.

(e) Notification. You will notify us if you become aware of a breach of the restrictions on the use of the TestAssure Platform in the Agreement, including the Use Restrictions.

3. PRIVACY

(a) Access to your User Account Information. During the course of making available the TestAssure Platform to you we may host, disclose, collect, store and use Personal Information of your authorized users granted access by you to the TestAssure Platform (each, a “**User**”) in accordance with our Privacy Policy, including: (i) if required by Applicable Law or any Governmental or Regulatory Authority; or (ii) if necessary to perform our obligations or to exercise our rights under the Agreement, including to monitor usage by your Users, and detect, investigate or prevent any actual or potential violation of the Agreement, including the Use Restrictions.

(b) Personal Information. The primary purpose of the TestAssure Platform is not to host, process or store Personal Information of third parties uploaded by you, and we do not actively access, monitor, process or amend such Personal Information except to the extent requested by you in connection with our performance of the User Support Services or as an incidental part of the automated processing performed by the TestAssure Platform. To the extent that you upload such Personal Information you are responsible for ensuring that your use of the TestAssure Platform and provision of such Personal Information is in compliance with all applicable Privacy Laws and that you have provided all necessary notice, obtained all necessary consents, and otherwise have all authority to provide such Personal Information to TestAssure for the purposes of this Agreement.

(c) Privacy Policy. Customer understands that any Personal Information will be treated in accordance with TestAssure’s Privacy Policy, the then-current version is accessible via <https://testassure.com/privacy> (the “**Privacy Policy**”). We reserve the right to update the Privacy Policy and an up-to-date version of our then current Privacy Policy will be made accessible via the Website. We will provide you with notice of any material changes by sending an email to the contract address in the Order Form or through the TestAssure Platform.

(d) Use. In the course of rendering the Services, TestAssure shall: (i) only use Personal Information for the purposes of rendering the TestAssure Platform in accordance with the Agreement and as otherwise instructed by Customer in writing from time to time; (ii) not disclose any Personal Information to any third party without the prior written consent of Customer; (iii) where any disclosure or transfer of Personal Information is required by law, promptly notify Customer in writing before complying with any such requirement for disclosure (except where legally prohibited to do so); (iv) limit access to Personal Information only to those employees and sub-processors who need to have access to the Personal Information for the purposes providing the TestAssure Platform; (v) notify Customer in writing immediately upon TestAssure becoming aware of, or suspecting, any loss, theft, damage or unauthorized or unlawful access or processing, and comply with all instructions of Customer in connection therewith; (vi) provide Customer (or its representatives) with access to the records, facilities and premises of TestAssure for the purposes of auditing, inspecting, examining and otherwise verifying TestAssure’s compliance with this Section 3; and (vii) enter into a written agreement with each subcontractor or third party that has access to Personal Information that imposes obligations on the sub-contractor or third party that are substantially similar to those imposed on TestAssure under this Section 3.

4. SUPPORTED BROWSERS; USER SUPPORT; MAINTENANCE AND UPGRADES

(a) Supported Browsers. Although the TestAssure Platform is designed to operate with most internet browsers including Google Chrome, Safari and FireFox, our recommended internet browser is Google Chrome. Although the TestAssure Platform may be accessible through Internet Explorer, we do not support Internet Explorer and will not be responsible

for your use of the TestAssure Platform through Internet Explorer. Accordingly, any support requests for Internet Explorer may result in our recommendation that you migrate to Google Chrome.

(b) User Support Services. We make available support via telephone and email at the phone number and email address located on our Help Center section of the TestAssure Platform, during our normal business hours on Monday through Friday from 8am ET to 8pm ET, except for telephone support during statutory holidays observed in Ontario.

(c) Training and Onboarding - TestAssure Training & Onboarding consists of 3 virtual training Sessions, delivered by our Customer Success team. Each Session is 2 hours in length and may be attended by up to 10 people. Each Session is recorded and can be made available digitally via download.

(d) Maintenance and Upgrades. You acknowledge and agree that the TestAssure Platform is made available to you as a software-as-a-service. Accordingly, due to the nature of software-as-a-service, you are not subscribing to fixed set of specifications and functionality or the expectation of any future functionality. We may perform maintenance or provide upgrades to the TestAssure Platform from time to time to provide enhanced features and improvements, bug fixes and error corrections. Our regularly scheduled maintenance window is every Tuesday from 15:00 to 21:00 EST. The extent of the new features or functionality that may be made available to you will depend on your then current subscription plan.

(e) Service Levels – Customer understands that Services Levels are in accordance with TestAssure’s Services Level Agreement, the then-current version is accessible via <https://testassure.com/sla/> (the “**Service Levels**”).

5. OWNERSHIP AND LICENSE TO CONTENT

(a) Exclusive Ownership. Except for the rights and licenses granted in the Agreement, you acknowledge and agree that we and our licensors own (and will own) any and all intellectual property rights in and to: (i) the TestAssure Platform & Automation Library; (ii) the Statistical Information; (iii) Feedback; and (iv) any modifications, improvements, customizations, updates, enhancements, aggregations, compilations, translations, adaptations or derivative works in the foregoing subsections (i) through (iii) (together, the “**TestAssure Property**”). All rights not expressly granted by us under the Agreement are reserved.

(b) Content. As between you and TestAssure, you own any and all intellectual property rights in and to the content you provide, create, store and process through the TestAssure Platform (the “**Content**”). You hereby grant TestAssure a worldwide, royalty-free, fully paid-up, non-exclusive license during the Term to host, collect, use and store the Content: (i) for the purpose of making available the TestAssure Platform to you and to provide related services to you; (ii) to exercise our rights and perform our obligations under the Agreement; and (iii) to generate anonymized and aggregated information for various purposes including permitting us to monitor the performance, use and stability of the TestAssure Platform, and to improve the TestAssure Platform (the “**Statistical Information**”).

(c) Professional Services. TestAssure shall own all rights, title and interest in and to the Deliverables (excluding any Customer Confidential Information provided to TestAssure for its provisioning of Professional Services), and related intellectual property rights. TestAssure shall have the right to use any such Customer Confidential Information solely for the purpose of providing the Professional Services to Customer hereunder. Deliverables are TestAssure’s Confidential Information and Customer may not assign, sell, lease, rent, license or sublicense all or any portion of the Deliverables. Subject to terms and conditions of the Agreement TestAssure hereby provides Customer with a limited, perpetual, non-exclusive, non-transferable (except in connection with an assignment under Section 12(I)) and terminable license to use the Deliverables solely for Customer’s internal operations.

6. CONFIDENTIALITY

(a) Confidentiality. “Confidential Information” means information of a Party (the “**Disclosing Party**”) that the other Party (the “**Receiving Party**”) receives in connection with the provision or receipt of the TestAssure Platform under the Agreement, which based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential to the Disclosing Party, including, with respect to you, your Content and Personal Information, and with respect to TestAssure, information concerning TestAssure Property and the provisions of the Agreement. Notwithstanding the foregoing, Confidential Information (other than Personal Information) does not include information that is: (i) previously known to the Receiving Party prior to disclosure by the Disclosing Party, without any obligation of confidentiality; (ii) publicly known or becomes publicly known through no breach of the Agreement by the Receiving Party; (iii) rightfully received from a third party under no confidentiality obligation with respect to the Confidential Information; or (iv) independently developed by the Receiving Party without use of the Disclosing Party’s Confidential Information, will not be considered Confidential Information under the Agreement.

(b) Obligation to Protect Confidential Information. A Receiving Party will: (i) limit access and use of Disclosing Party’s Confidential Information to those of the Receiving Party’s employees and agents that require such access and use in connection with the Agreement; (ii) not disclose the Disclosing Party’s Confidential Information to third parties, unless authorized pursuant to this Section 6; (iii) protect the Disclosing Party’s Confidential Information as it protects its own Confidential Information, but in any event with not less than a reasonable degree of care; and (iv) not use the Disclosing Party’s Confidential Information for any purpose except as required to exercise its rights or perform its obligations hereunder or as otherwise specifically permitted by the other Party.

(c) TestAssure Permitted Disclosures. We may disclose your Confidential Information: (i) if and to the extent required by a Governmental or Regulatory Authority or otherwise as required by Applicable Law, provided that we must first give you notice of such compelled disclosure (except where prohibited by Applicable Law from doing so) and must use commercially reasonable efforts to provide you, unless prohibited by Applicable Law, with an opportunity to take such steps as you desire to challenge or contest such disclosure or seek a protective order. Thereafter, we may disclose the applicable Confidential Information, but only to the extent required by the applicable Governmental or Regulatory Authority or Applicable Law and subject to any protective order that applies to such disclosure; and (ii) to: (A) our accountants, auditors, legal counsel and other professional advisors if and to the extent that such Persons need to know such Confidential Information in order to provide the applicable professional advisory services relating to our business; (B) Personnel if and to the extent that such Personnel need to know such Confidential Information for purposes relating to the provision of the TestAssure Platform to you or the exercise of our rights under the Agreement; provided that such Person has entered into a written agreement with us that includes confidentiality obligations in respect of your Confidential Information that are no less stringent than those contained in the Agreement. We may also disclose your identity and the terms of the Agreement, but not your Content, to potential permitted assignees or successors if and to the extent that such Persons need to know such Confidential Information in connection with a potential sale, merger, amalgamation or other corporate transaction involving our business or assets.

(d) Feedback. If you provide suggestions, comments and feedback regarding the TestAssure Platform (“**Feedback**”) you covenant that any Feedback provided by Customer or its Users, including, in each case all intellectual property rights therein or relating thereto, are and shall remain the exclusive property of Us or our licensors. Customer hereby assigns to Us all of its right, title, and interest in and to any Feedback, including all intellectual property rights therein or relating thereto

7. NETWORK SECURITY AND DATA BREACH

We will use commercially reasonable physical, organizational and technical measures to protect your Confidential Information against unlawful access, use or disclosure. Despite such efforts, you acknowledge that our collection, storage, use, and disclosure of Content and Personal Information as contemplated hereunder, will involve transmission over the Internet and over various networks, only part of which may be owned or operated by us. Customer acknowledges and understands that Content or Personal Information may be accessed by unauthorized persons when communicated across the Internet, network communications facilities or other electronic means. We are not responsible for any Content or Personal Information that is delayed, lost, destroyed, altered, intercepted or stored during the transmission of such data across network infrastructure not owned or operated by us, including the Internet, third party websites or your or Users' local networks. You agree that we are not in any way responsible for any interference with you or your Users' use of or access to the TestAssure Platform via such means or security breaches arising from or attributable to such network infrastructure and, to the fullest extent permitted by Applicable Law, we waive any and all claims against us in connection therewith.

8. FEES AND PAYMENT TERMS

Unless otherwise set out in the Order Form: **(a) Fees, Payment & Charges.** You will pay the applicable fees set out in the Order Form, our invoices to you or as otherwise agreed pursuant to the Agreement (the "**Fees**") and said Fees shall auto-renew unless you provide us notice of non-renewal at least 30 days prior to the renewal date. We will provide you with notice of your auto-renewal date and of your right to opt out of auto-renewal at least 60 days prior to the renewal date. We reserve the right to change the Fees for any Renewal Term by providing you with not less than 60 days' notice prior to the commencement of each Renewal Term, provided that we will not increase the Fees by more than the then-current list prices at which we generally make available the TestAssure Platform to our customers. In the event that Customer requires a purchase order number issued prior to payment of any TestAssure invoices issued pursuant to the applicable Order Form, then such purchase order number must be provided to TestAssure prior to the activation of the TestAssure Platform. Customer's execution and return of the applicable Order Form to TestAssure without designating a purchase order number is deemed an acknowledgment that no purchase order is required for payment of invoices hereunder. Terms, provisions or conditions on any purchase order, if any, together with any acknowledgments or other business processes, forms or writing that Customer may use or require in connection with the provision of the TestAssure Platform from TestAssure are of no force and effect and will have no effect on the rights, duties and obligations of the parties hereunder, regardless of any failure of TestAssure to object to such matters.

(b) Invoicing. We will send you an invoice for any Fees that become due and payable. You will pay all invoiced amounts in accordance with the terms set out in the Order Form and as referenced in each invoice.

(c) Set-off; Suspension Rights and Additional Costs for Late Payment. You may not withhold or setoff any amounts due under the Agreement. We reserve the right to suspend your access to the TestAssure Platform or for the provision of Professional Services, after providing written notice of overdue payment, until all due amounts are paid in full. To offset our additional processing costs arising from late payment, we may invoice you for reasonable administrative charges as set from time to time for administrative or account activities, including collection efforts due to non-payment, bounced checks or rejected payments.

(d) Taxes. The Fees and any other amounts quoted in the Agreement do not include tax. You are responsible for paying all governmental sales, use, value-added, commodity, harmonized and other taxes imposed on your access to and use of the TestAssure Platform or for the provision of Professional Services, and all applicable duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with the Agreement, other than taxes based on our net income or profits. To the extent we are required to collect such taxes, the applicable tax will be added to your invoice.

9. TERM AND TERMINATION

(a) Term. The Agreement will commence on the Effective Date as captured on the Order Form and will continue throughout the Initial Term, and thereafter, will automatically renew for successive renewal periods at the same duration as the Initial Term, except as otherwise agreed in the Order Form (each, a “Renewal Term”, and together with the Initial Term, the “Term”), unless and until: (i) the Agreement is terminated or expires pursuant to this Section 9; or (ii) either Party notifies the other Party of its intention not to renew the Agreement, which notice must be provided no less than 30 days prior to the date of expiry of the Initial Term or any then-current Renewal Term.

(b) Termination for Cause. Either Party may terminate the Agreement for cause if the other Party commits a material breach of a material provision of the Agreement, and fails, within 30 days after receipt of notice of such breach, to cure such breach, except that a Party may terminate the Agreement for cause with immediate effect if such breach is not capable of remedy or if you breach any Use Restriction. If we terminate the agreement for your uncured breach as set forth herein, then any pre-paid fees are non-refundable. If you terminate the Agreement for our uncured material breach, we will provide you with a refund for any prepaid Fees on a pro-rata basis calculated from the effective date of termination.

(d) Other Termination by Us. We may immediately terminate the Agreement (in whole or in part) on written notice to you if the provision of the TestAssure Platform becomes, in our opinion, prohibited under Applicable Law or to comply with an order of a Governmental or Regulatory Authority requiring us to cease making available the TestAssure Platform to you, in which case your sole and exclusive remedy will be to receive a refund of any pre-paid Fees attributable to the period after the effective date of termination.

(e) Effect of Termination. Upon expiration or termination of the Agreement your access to and rights to use the TestAssure Platform will immediately terminate. Upon payment of all applicable Fees under the Agreement and provided that you notify us within 30 days of the effective date of termination or expiry of the Agreement, you may request and receive a copy of your Content and Personal Information from the TestAssure Platform (subject to a legal requirement to maintain such information), and we will use commercially reasonable efforts to fulfill such request within 30 days of your request in a text formatted file. If you do not notify us within 30 days of the effective date of termination or expiry of the Agreement your Content will be deleted.

(f) Effects of Expiration or Termination of Statement of Work. Upon expiration or termination of a Statement of Work, for any reason whatsoever: (i) Customer will pay all outstanding invoices in accordance with Section 8. In addition, TestAssure will invoice Customer for all Professional Services provided, on or before the date such termination is effective at the rates for such Professional Services provided for in the relevant Statement of Work, and Customer shall pay such invoice in accordance with Section 8; and (ii) Subject to any terms or conditions of the Statement of Work, TestAssure shall have no obligation to provide further Professional Services under such Statement of Work, or any other Statement of Work pursuant to which the Professional Services provided under such terminated Statement of Work are required.

(g) Survival. The following Sections, together with any other provision of the Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of the Agreement, will survive expiration or termination of the Agreement for any reason: Section 1 (Definitions), Section 5 (Ownership), Section 6 (Confidentiality), Section 7 (Internet Security and Data Breach), Section 8

(Fees and Payment Terms), Section 10 (Indemnification), Section 11 (Warranties; Disclaimers; Limitation of Liabilities), this Section 9(g) (Survival), and Section 12 (General Terms).

10. INDEMNIFICATION

(a) Your Indemnity to Us. You will defend and hold harmless us and our affiliates, employees, officers, directors, agents, successors and assigns, at your own expense, against any and all third party liability (including damages, recoveries, deficiencies, interest, penalties and legal fees), directly or indirectly arising from or in connection with: (i) your Content; (ii) your violation of any third party rights (including third party intellectual property rights or privacy rights); and (iii) your use of the TestAssure Platform or Professional Services contrary to the Agreement.

(b) Our Indemnity to You. We will defend and hold harmless you and your employees, officers, directors, agents, successors and assigns, at our own expense, against any and all third party liability (including damages, recoveries, deficiencies, interest, penalties and legal fees), directly or indirectly arising from or in connection with any third party claims that your use of the TestAssure Platform as permitted hereunder infringes or misappropriates the intellectual property rights of a third party. under the laws of the United States, Canada or England and Wales (“Infringement Claim”) In the event of an Infringement Claim, or if TestAssure reasonably believes the TestAssure Platform may infringe or misappropriate, TestAssure may in its discretion and at no cost to Customer (i) modify the TestAssure Platform so that they no longer infringe or misappropriate, (ii) obtain a license for Customer’s continued use of the TestAssure Platform in accordance with this Agreement, or (iii) terminate the applicable Order Form for the TestAssure Solution upon written notice and refund to Customer any prepaid Fees covering the remainder of the term of such Order Forms after the effective date of termination. This section 10(b) states TestAssure’s sole liability to, and Customer’s exclusive remedy, in respect of any Infringement Claim.

(c) Indemnification Procedures. The indemnifying Party under Section 10(a) or 10(b), as applicable, will pay all damages finally awarded by a court of competent jurisdiction to the third party claimant or any settlement amounts agreed by the indemnifying Party along with all fees, costs and expenses (including reasonable attorneys’ fees) incurred. The indemnifying Party’s obligations under this Section 10 are subject to the condition that the indemnified Party will: (i) notify the indemnifying Party promptly of any claims within 10 days of being served with a claim; and (ii) permit the indemnifying Party to control the defense and settlement of such claims (provided that the indemnifying Party will not settle or compromise any claim that requires the indemnified Party to make any admission of liability or take any actions, without the indemnified Party’s consent). Without limiting the foregoing, the indemnified Party will assist and cooperate with the indemnifying Party, as requested by the indemnifying Party at the indemnifying Party’s expense, in defending or settling the applicable claim.

11. WARRANTIES; DISCLAIMERS; LIMITATION OF LIABILITY.

(a) Your Warranties. You covenant, represent and warrant to us that: (i) the Content you provide to us or through the TestAssure Platform or for Professional Services will only contain Personal Information in respect of which you have provided all notices and disclosures, obtained all applicable third party consents and permissions and otherwise have all authority, in each case as required by Applicable Law, to enable us to provide the TestAssure Platform or Professional Services to you and your users; (ii) the Content will not infringe, violate or misappropriate the rights of any third parties, including the intellectual property rights and moral rights of such third parties; and (iii) you will, at all times, comply with Applicable Law in connection with your use of the TestAssure Platform or the Professional Services.

(b) Our Warranties. We hereby covenant and warrant to you that: (i) we have the right to make available to you the TestAssure Platform and appropriate Automation Libraries under the terms of the Agreement; and (ii) the User Support

Services and Professional Services will be performed in a professional and workmanlike manner. TestAssure will re-perform any Professional Services that are not so performed at no additional cost to Customer, provided that Customer notifies Test Assure in writing of any failure to so provide Professional Services within thirty (30) days following the date of invoice for such Professional Services (or within such other period of time as indicated in the applicable Statement of Work). The foregoing sets out Customer's exclusive remedy with respect to the performance of the Professional Services. Except for Professional Services, You acknowledge and agree that your right to terminate the Agreement pursuant to Section 9(b) will be the sole and exclusive remedy for any breach of the foregoing covenants and warranties.

(c) DISCLAIMER. EXCEPT AS EXPRESSLY SET OUT IN THE AGREEMENT, THE TESTASSURE PLATFORM AND ANY DELIVERABLES ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND WE DO NOT MAKE ANY EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, CLAIMS OR REPRESENTATIONS WITH RESPECT TO THE TESTASSURE PLATFORM OR DELIVERABLES INCLUDING ANY WARRANTIES OR CONDITIONS OF QUALITY, RELIABILITY, COMPATIBILITY, PERFORMANCE, INTEGRITY OF DATA, SECURITY, MERCHANTABILITY OR FITNESS FOR USE FOR A PARTICULAR PURPOSE OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING. TESTASSURE FURTHER DOES NOT REPRESENT OR WARRANT THAT THE TESTASSURE PLATFORM WILL ALWAYS BE AVAILABLE, ACCESSIBLE, UNINTERRUPTED, TIMELY, SECURE, ACCURATE, COMPLETE AND ERROR-FREE OR WILL OPERATE WITHOUT DATA LOSS (INCLUDING PACKET LOSS).

(d) Limitation of Liability – Type. To the maximum extent permitted by Applicable Law, neither Party nor any of its affiliates, licensors or subcontractors will have any liability to the other or any other Person or entity under the Agreement for: (i) any indirect, reliance, incidental, special, punitive, exemplary or consequential damages; (ii) loss of revenue or profit, loss of or damage to data, business interruption, replacement or recovery costs (whether direct or indirect losses); or (iii) any third party breach pursuant to Section 7, or any other unauthorized access to the TestAssure Platform and Content (except to the extent that such unauthorized access is directly attributable to our gross negligence or willful misconduct) (whether direct or indirect losses); in each case, whether arising from contract, equity, tort (including negligence or strict liability) or any other theory of liability, even if a Party has been advised of the possibility of such damages, or they are foreseeable.

(e) Limitation of Liability - Amount. To the maximum extent permitted by Applicable Law, in no event will either Party's (including its licensors and subcontractors) total aggregate liability to the other Party arising out of or related to the Agreement, whether in contract, tort or under any other theory of liability, exceed the total amount paid by you hereunder in the 12 months preceding the incident giving rise to the claim.

(f) Fair Allocation of Risk. The disclaimer of representations, warranties and conditions and limitation of liability constitute an essential part of the Agreement and reflect a fair allocation of risk between us. You acknowledge and agree that but for the disclaimer of representations, warranties and conditions and limitation of liability, neither TestAssure nor any of its licensors would enter into (including granting the rights granted in) the Agreement.

12. GENERAL TERMS

(a) Notices. Notices sent to either Party will be effective when received by the other Party. Notices must be in writing and sent to the other Party's address or email set forth in the Order Form. You will notify us of any changes if your contact for notices changes.

(b) Construction. Except as otherwise provided in the Agreement, each of our rights and remedies under the Agreement are cumulative. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of the Agreement are for reference purposes only and have no substantive

effect. The terms “consent” or “discretion”, when used in respect to TestAssure in the Agreement, means our right to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain our decision.

(c) Subcontractors. We may use subcontractors and sub-processors to assist us with the provision of the TestAssure Platform or Professional Services to you, including the hosting and back-up of your Content and Personal Information, as detailed in our Privacy Policy.

(d) Independent Contractors. The Agreement does not create a partnership, agency, franchise, joint venture or employment relationship between the Parties. Our relationship to you is that of an independent contractor and neither of us will have, or will represent to any third party that it has, any authority to act on behalf of the other Party.

(e) Logos. You hereby grant us to the non-exclusive right and license to use your name, logo, trademark and tradenames (the “**Client Brand**”) for sales and marketing purposes to reference you as our customer, including on our Website. For the avoidance of doubt, we will not use your Client Brand for any other purposes without your prior consent.

(f) Force Majeure. Neither you (except for payment due under the Agreement) nor us will be liable for delays caused by any event or circumstance beyond our reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems or Internet service provider failures or delays.

(g) Severability. If any term or provision hereof be deemed unlawful, invalid, void or un-enforceable by a court of competent jurisdiction, either in its entirety or in a particular application, the remainder of the Agreement will nonetheless remain in full force and effect and the invalid, void or unenforceable portion will be severed from the Agreement.

(h) Export Control. Use of the TestAssure Platform may be subject to the export and import laws of Canada, the United States and other countries. You agree to comply with all applicable export and import laws and regulations that may apply to the TestAssure Platform.

(i) Applicable Law and Venue. The Agreement and any action related thereto will be governed by and construed in accordance with the laws of the State of Minnesota and the federal laws of the United States applicable therein, without giving effect to any conflict of laws principles. Any legal proceedings arising out of or relating to the Agreement will be subject to the jurisdiction of the courts sitting in the United States, and the Parties irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to the Agreement. Each Party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to the Agreement.

(j) Entire Agreement. The Agreement constitutes the entire agreement governing your use of the TestAssure Platform between us and supersedes all prior or contemporaneous agreements, representations or other communications, whether written or oral, including any non-disclosure and pilot agreements. The Agreement will not be modified except by written agreement of the Parties or by us to the extent set out in the Agreement.

(k) Waiver. Our failure to exercise or enforce any right or provision under the Agreement will not constitute a waiver of such right or provision.

(l) Assignment. You may not assign any part of the Agreement or any rights or licenses granted hereunder, whether voluntarily, by operation of law, or otherwise without our prior written consent. We may, without your consent, assign any part of the Agreement our rights hereunder. Any assignment in violation of this Section will be void. The Agreement will ensure to the benefit of, and be binding upon, each of us and each of our permitted successors and assigns.

(m) Order of Precedence. To the extent of any conflict or inconsistency between these Terms and Conditions and the terms and conditions in the Order Form, the terms and conditions in the Order Form will prevail to the extent of such conflict or inconsistency.

(n) Electronic Execution. The Agreement may be executed in one or more counterparts (including electronically), each of which will be deemed an original and all of which will be taken together and deemed to be one instrument.

13. PROFESSIONAL SERVICES

(a) Provision. TestAssure shall provide the Professional Services in accordance with the applicable SOW. TestAssure shall have no obligation to commence any Professional Services unless and until an SOW for such services has been executed by both Parties.

(b) Fees and Payment. For the purposes of this Agreement, all fees set forth in each SOW shall be deemed “Fees”.

(c) Program Change Request. If either Party wishes to make any changes to an SOW, it shall notify the other Party in writing and TestAssure shall prepare a “Change Order”. If Customer approves the Change Order, the SOW shall be amended to include such Change Order upon both Parties’ execution thereof; otherwise, the Professional Services shall continue pursuant to the original SOW.

(d) Deliverable. Each SOW shall set forth the delivery and acceptance criteria, if any, for each Deliverable. If no acceptance criteria are specified, the acceptance criteria for a Deliverable shall be such Deliverable’s conformance to the description of it set forth in the SOW. Unless otherwise stated in an SOW, Customer must accept or provide a written explanation as to how it believes the Deliverable does not conform to the applicable acceptance criteria within 5 business days of receiving a copy; otherwise the deliverable will be deemed accepted. TestAssure shall have a reasonable period of time in which to correct the Deliverable and resubmit it to Customer. This process shall be repeated until the Deliverable is accepted by Customer.

(e) Project Contact, Business Sponsors. Each Party shall designate (a) a “Project Contact” for each SOW who shall be the principal point of contact between the Parties for all matters relating to such SOW and (b) a “Business Sponsor” who shall be the principal point of contact between the Parties for all matters relating to the parties overall relationship with respect to Professional Services. Each Party may designate a new Project Contact or Business Sponsor by notice to the other party.

(f) Issue Resolution. If an issue arises with respect to the Professional Services (an “Issue”), the Project Contacts shall meet to resolve the Issue in good faith. If the Issue is not resolved within three (3) Business Days after such meeting, the Parties’ Business Sponsors shall meet to resolve the Issue. If the parties’ Business Sponsors are unable to resolve the Issue within ten (10) Business Days after it is submitted to them for resolution, the Issue shall be escalated to a senior executive of each Party identified by notice to the other party. If the executives are unable to resolve the Issue within ten (10) Business Days after submission to them, either Party may pursue dispute resolution in accordance with the Agreement. If resolution of an Issue requires changes to the applicable SOW, the Parties shall enter into a Change Order with respect thereto. During negotiation of an Issue, the Parties shall continue to perform their obligations under this Agreement; provided however, that TestAssure may, without liability, suspend performance of any Services related to or dependent on the resolution of such Issue until such time as the Issue is resolved. Meetings under this Section shall occur in person, by telephone, or by videoconference, as the parties agree.

(g) Access to Customer Facilities and Systems. Customer shall provide TestAssure with access to Customer’s data and telecommunications networks and Customer Systems as required for TestAssure to perform the Professional Services. Customer shall, if Professional Services are to be performed onsite at Customer’s facilities, provide TestAssure’s Personnel with reasonable workspace and other resources at such facilities, as reasonably required for TestAssure to perform such Professional Services.

(h) Data Security. Subject to TestAssure’s and its Personnel’s material compliance with the Customer Policies, Customer is solely responsible for the protection and security of Customer’s networks, the Customer Systems, and all Customer Data made available to TestAssure or its Personnel for use in the Professional Services.

(i) Cooperation. Customer shall provide TestAssure with reasonable cooperation with respect to the Professional Services and as further described in each SOW, including providing prompt review and feedback with respect to all Deliverables.

(j) Delays. TestAssure shall not be in breach of this Agreement or any SOW to the extent such breach results from Customer's failure to: (a) provide Content, information, approvals, or feedback as specified in the applicable SOW; (b) provide other reasonable assistance as requested by TestAssure; or (c) perform any of its obligations set forth in this Agreement. If TestAssure is delayed in the performance of any of its obligations under any SOW for any of the causes described in the preceding sentence, the due dates for all subsequent milestones and Deliverables shall be extended day for day for the number of days that Customer is late in fulfilling its obligations.

(k) Compliance. Customer shall be responsible for the identification of, interpretation of, and compliance with, any applicable laws, regulations, and statutes that affect your existing systems, applications, programs, or data to which TestAssure will have access during the Professional Services, including applicable data privacy, export, import laws and regulations, and product safety and regulatory compliance for non-TestAssure products. You are solely responsible for obtaining advice of legal counsel as to the compliance with such laws, and regulations.

(l) Term of SOWs. The term of each SOW shall commence on the SOW Effective Date set forth therein and continue for the applicable term set forth therein or until completion of the Professional Services set forth therein, whichever occurs earlier (the "SOW Term"), unless extended in accordance with the SOW or earlier terminated in accordance with this Agreement.

(m) Termination by Either Party. Either Party may terminate any SOW immediately upon notice if the other Party is in material breach of such SOW or this Agreement and the breaching Party has failed to cure such breach within thirty (30) days after receipt of notice from the non-breaching Party describing the breach in reasonable detail.

APPENDIX 1

DEFINITIONS

1. Defined Terms

"Action" means an individual statement, that is written and managed by the TestAssure Platform as part of an Automation Library, for the purposes of performing an activity as part of a Test Case for the purposes of performing testing on 3rd party software.

"Automation Library" means the collective set of Actions that are subscribed to by the Customer (as specified in the Order Form) to support testing a specific third party software.

"Automation Library Restrictions" means any restrictions, or unlicensed use of, an Automation Library for which the Customer does not have a license (as specified in the Order Form).

"Agreement" has the meaning set out in the Order Form. If no Order Form applies at the time of use, then the agreement shall be the terms and conditions set forth herein until such time as an Order Form is entered into by you.

"Applicable Law" means all applicable provisions of all statutes, laws, rules, regulations, administrative codes, ordinances, decrees, orders, decisions, injunctions, awards judgments or other requirements of any Governmental or Regulatory Authority, including Privacy Laws.

"Automated Action" means an Action that has been designated by TestAssure to support automation against a specific 3rd party software.

"Client Brand" has the meaning set out in Subsection 12(e).

“Confidential Information” has the meaning set out in Section 6(a).

“Content” has the meaning set out in Section 5(b).

“Customer” or **“you”** or **“your”** each has the meaning set out in the Order Form.

“Statistical Information” has the meaning set out in Section 5(b).

“Deliverables” means those items to be delivered to Customer under a SOW means any report, document, template, study, operating model, technical architecture, system, specification, requirement, software, documentation, abstract, summary, manual, formula, chart, design, drawing, graphic, plan, rule, data, information, Training Materials, or other item or material that TestAssure has agreed to deliver to Customer pursuant to a Statement of Work and is identified in such Statement of Work as a Deliverable.

“Disclosing Party” has the meaning set out in Section 6(a).

“Effective Date” has the meaning set out in the Order Form.

“Feedback” has the meaning set out in Subsection 6(d).

“Fees” has the meaning set out in Subsection 8(a).

“Governmental or Regulatory Authority” means any national, provincial, state, county, municipal, quasi-governmental or self-regulatory department, authority, organization, agency, commission, board, tribunal, dispute settlement panel or body, bureau, official, minister, Crown corporation, or court or other law, rule, or regulation-making entity having jurisdiction over us, you, or any other Person, property, activity, event or other matter in connection with or related to the Agreement, including subdivisions of, political subdivisions of and other entities created by, such entities.

“Initial Term” has the meaning set out in the Order Form.

“Order Form” means the order form agreed by you and us detailing the commercial terms governing your access to or use of the TestAssure Platform or for the provision of Professional Services.

“Party” or **“Parties”** has the meaning set out in the Order Form.

“Person” means any individual, sole proprietorship, partnership, firm, entity, unincorporated association, unincorporated syndicate, unincorporated organization, trust, body corporate, or Governmental or Regulatory Authority, and where the context requires, any of the foregoing when they are acting as trustee, executor, administrator or other legal representative.

“Personal Information” means information about an identifiable individual that is transferred by Customer, or its permitted agents, to TestAssure hereunder.

“Personnel” means our employees, individual contractors engaged on a staff augmentation basis, agents and representatives, and our subcontractors, including sub-processors.

“Professional Services” means the services that TestAssure agrees to perform pursuant to a Statement of Work.

“Professional Service Fees” means the fees payable by Customer for Professional Services provided under a Statement of Work, as set out in such Statement of Work.

“Privacy Laws” means any applicable privacy, personal data protection, or other similar laws.

“Privacy Policy” has the meaning set out in Section 3(c).

“Program Change Request” or **“PCR”** means a request to amend a Statement of Work, as described in Section 13.

“Receiving Party” has the meaning set out in Section 6(a).

“Renewal Term” has the meaning set out in Sections 8 and 9(a).

“Test Case” means a unique combination of Actions and their respective parameters, captured and displayed in the TestAssure Platform and grouped into a Given, When, Then format. A Test Case will support automation when all of its Actions are ‘Automated Actions’.

“Test Case Limitations” means any use of developing or using more Test Cases that are licensed (as specified in the Order Form).

“Statement of Work” or **“SOW”** means a statement of work that sets out specific Professional Services to be provided by TestAssure to Customer and the terms and conditions applicable thereto. Each Statement of Work shall (i) form a separate contract between TestAssure and Customer; (ii) be substantially in the format attached hereto as Exhibit D, except as otherwise agreed; (iii) incorporate the terms of this Agreement, except to the extent that the Statement of Work specifies sections of this Agreement that, for the purposes of such Statement of Work only, are overridden by such Statement of Work; and (iv) be executed by TestAssure and Customer. A Statement of Work includes any amendments thereto made by way of Program Change Requests.

“Term” has the meaning set out in Subsection 9(a).

“Terms and Conditions” means these terms and conditions set out in this document or, if amended by agreement of the Parties, as appended to or associated with your Order Form.

“TestAssure” or **“our”** or **“us”** or **“we”** have the meaning set out in the Order Form.

“TestAssure Platform” means our core testing software-as-a-service platform developed by TestAssure including, without limitation, the REST API that enables interaction with TestAssure Platform via HTTPS requests and all development API, including all Automation Libraries, that enables integration of TestAssure Platform with other web applications.

“TestAssure Property” has the meaning set out in Subsection 5(a).

“Use Restrictions” has the meaning set out in Subsection 2(d).

“User” has the meaning set out in Subsection 3(a).

“User Support Services” means the User support services described in Subsection 4(b).

“Website” means the website located at www.TestAssure.com or such other URL that we use to make the TestAssure Platform accessible to you from time-to-time.