REPORT PORTAL
TERMS AND CONDITIONS

The following Terms and Conditions ("**Terms**") govern Customer's use of the Report Portal Platform and any Services provided by Test IO, Inc ("Test IO"). The Report Portal Platform and any other software is licensed and not sold.

1. Definitions. Capitalized terms in this Agreement have the following meanings when used in this Agreement or any exhibit or attachment hereto:

"**Content**" means Customer data or any other data, information, text or graphics, or software provided to Test IO by Customer and/or its Users.

"**Effective Date**" means the date these Terms are accepted by Customer.

"**Intellectual Property Right**" means all tangible and intangible rights associated with works of authorship throughout the world, including but not limited to, copyrights, moral rights, and mask works; trademarks and trade name rights and similar rights; trade secret rights; patents, designs, algorithms, and other intellectual or industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and all registrations, initial Platform, renewals, extensions, continuations, divisions, or reissues now or hereafter in force (including any rights in the foregoing) anywhere in the world, that exist as of the Effective Date or hereafter come into existence, regardless of whether or not such rights have been registered with the appropriate authorities in such jurisdictions in accordance with the relevant legislation.

"**Open Source Software**" means software that is openly and freely licensed under the terms of a public license and as defined by the Open Source Initiative (http://opensource.org) or the Free Software Foundation (http://www.fsf.org).

"**Platform**" means Report Portal cloud-based services including any related mobile applications, and all upgrades and enhancements to the Platform that may be provided by Test IO under this Agreement.

"**User**" means a single person with a unique ID and password provided by Customer enabling access to a Site. A User may be (i) a Customer employee; or (ii) any contractors or other staff who are working for Customer; and (iii) any other person working with, or on behalf, of Customer; provided that (a) such User is accessing and using the Services exclusively on Customer's behalf, and (b) Customer will at all times be responsible for the actions and omissions of each User as if such actions and omissions were that of Customer.

"**Services**" means any services provided by Test IO through the Platform.

"**Site**" means a section of the Platform configured for use by Customer intended to enable Users to create and implement tests specific to Customer. The Site may contain information on multiple tests designated by Customer.

2. Licenses and Restrictions.

2.1. Platform License. Subject to the terms and conditions of this Agreement, Test IO grants to Customer during the subscription term, a limited, worldwide, non-exclusive, non-transferable, royalty bearing license, without right of sublicense, to access and use the Platform solely for Customer's internal business purposes of software testing.

2.2. Customer grants Test IO a world-wide, perpetual, irrevocable, royalty-free, license to use, display, reproduce and distribute the Content on the Site solely (a) for archival purposes and to carry out Test IO's obligations under this Agreement, and (b) for Test IO's internal use in improving the Site and Services so long as it does not disclose the identity of the Customer.

2.3. Restrictions and Customer Obligations. Customer may not use the Platform in any manner that could damage, disable, overburden, or impair servers, networks or other devices running, or connected to, the Platform. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to use the Platform (a) to reproduce, modify, translate, enhance, decompile, disassemble, reverse engineer, or create derivative works of the Platform, (b) rent, lease, or sublicense the Platform, (c) on a service bureau or Platform service provider basis, (d) to provide, divulge, disclose, or make available to, or permit the use of the Platform by any third party, or (e) to circumvent or disable any technological features or measures in the Platform. Customer may not publish any benchmark or comparison information regarding the Platform or Services without the prior written consent of Test IO. Customer will neither alter nor remove any copyright notice or other proprietary rights notices that may appear on any part of the Platform. Customer will always comply with all applicable laws, statutes, ordinances, and regulations in connection with its use of the Platform.

2.4. Use of Open Source Software within the Services will be governed by the respective Open Source Software license. Customer acknowledges and agrees that any use of Open Source Software, shall be made at Customer's own risk.

3. Reservation of Rights. Access and use of the Platform is licensed by Test IO to Customer, not sold, and nothing in this Agreement will be interpreted or construed as a sale of the Platform. Customer will not have any rights in or to the Platform, except as expressly granted in this Agreement, and Test IO retains all Intellectual Property Rights in and to the Platform and Services. Other than in relation to Open Source Software, the Platform, all copies thereof, any derivative works, compilations, and collective works of the Platform, and any know-how and trade secrets related thereto are the sole and exclusive property of Test IO and contain Test IO's confidential and proprietary materials. Customer will take appropriate steps and precautions for the protection of the Platform. Without limiting the generality of the foregoing, Customer will use its

best efforts to prevent any use, possession, knowledge, examination, copying, disclosure, or other activity involving any part of the Platform that is not expressly authorized by this Agreement ("Unauthorized Use") and immediately notify Test IO in writing of any Unauthorized Use that comes to Customer's attention and will take all steps reasonably necessary to terminate such Unauthorized Use.

4. Customer Obligations. Customer acknowledges that certain services provided by Test IO are dependent on Customer providing Test IO certain data, Content, information and/or assistance.

5. Services and Technical Support. As of the Effective Date, Test IO will make available to Customer the Platform and any Services specified in the Order that have been purchased by Customer. Unless expressly purchased as managed services work, Services will not include the setting up and/or configuration of the Site or the configuration of any tests and such activity will be the responsibility of Customer. Additional Services may be purchased by Customer upon written agreement of the parties at the Test IO pricing current at the effective date of the Order.

6. Feedback. Customer may, during the term, provide Test IO with verbal feedback and/or written feedback related to Customer's use of the Test IO Platform or Services, including, but not limited to, a report of any errors which Customer may discover. Such reports, and any other materials, information, ideas, concepts, feedback and know-how provided by Customer to Test IO concerning the Platform, Services or any other Test IO products or services, and any information reported automatically through the Platform or Services to Test IO ("Feedback") will be the property of Test IO. Customer agrees to assign, and hereby assigns, all right, title and interest worldwide in the Feedback, and the related intellectual property rights, to Test IO and agrees to assist Test IO, at Test IO' expense, in perfecting and enforcing such rights.

7. Payments.

7.1. Fees. The Customer agrees to pay the fees set forth in any Order. Unless otherwise stated in the Order, all undisputed fees are due within 14 days of the date of invoice. All Orders are non-cancelable and non-refundable unless otherwise expressly stated in this Agreement. Invoices for periods less than the subscription term may occasionally be issued as a convenience, but an invoice does not shorten a subscription term or give any early termination right to Customer. All payments will be made in United States dollars in immediately available funds. Any amounts not paid when due will bear interest at a rate of 18% per annum, compounded monthly, or the maximum rate permitted by law, whichever is lower. Test IO reserves the right to suspend any Services or Customer access to Platform if any undisputed fees are more than 10 days past due.

7.2. Disputed Invoices. In the event Customer reasonably and in good faith disputes any fee(s) set forth on any invoice or record of payment issued by Test IO, Customer must notify Test IO in writing, setting forth the reasons for non-payment and the amount of such dispute (a "Dispute Notice"), no later than 30 days following the receipt of the invoice or record of payment.

Upon receipt of a Dispute Notice, both parties will promptly make available appropriate personnel to work in good faith to resolve the dispute within 15 days. Upon resolution of the dispute by the parties, additional agreed amounts due from Customer, if any, in relation to the applicable invoice must be remitted to Test IO within 10 days following such resolution. If the dispute remains unresolved 60 days after the date of the invoice at issue, either party may declare the other party in breach of this Agreement and pursue any or all legal remedies available to it.

7.3. Taxes. The fees hereunder are exclusive of, and Customer will pay, any sales, use and other taxes and similar charges based on or arising from the Services or any Platform, this Agreement or its performance, other than taxes based on Test IO's net income.

8. Confidentiality

8.1. Generally. "Confidential Information" will mean confidential or other non-public proprietary information that is disclosed by either party to the other under this Agreement, including without limitation, Platform, software code and designs, hardware, product specifications and documentation, financial data, business, marketing and product plans, or technology.

8.2. Obligations of Confidentiality. Each party agrees that it will hold in strict confidence and not disclose the Confidential Information of the other party to any third party and to use the Confidential Information of the other party for no purpose other than the purposes expressly permitted by this Agreement. Each party will only permit access to the other party's Confidential Information to those of its or its affiliates' employees, contractors and advisors having a need to know and who have signed or are bound by confidentiality obligations or agreements containing terms at least as restrictive as those contained in this Agreement. Each party will maintain the confidentiality and prevent accidental or other loss or disclosure of any Confidential Information of the other party with at least the same degree of care as it uses to protect its own Confidential Information, but in no event with less than reasonable care.

8.3. Exclusions from Obligations. A party's obligations of confidentiality under this Agreement will not apply to information which such party can document the information (a) is in the public domain without the breach of any agreement or fiduciary duty or the violation of any law, (b) was known to the party prior to the time of disclosure without the breach of any agreement or fiduciary duty or the violation of any law, (c) is proven by contemporaneous records to be independently developed by the party prior to receiving such Confidential Information and without use or reference to the Confidential Information.

8.4. Legally Required Disclosure. In the event either party is required to disclose, pursuant to a judicial order, a requirement of a governmental agency or by operation of law, any Confidential Information provided to it by the other party then such party will provide the other party written notice of any such requirement immediately after learning of any such requirement, and take commercially reasonable measures to

avoid or limit disclosure under such requirements and to obtain confidential treatment or a protective order and allow the other party to participate in the proceeding. Any disclosure will be the minimum disclosure as recommended by a party's legal counsel and no disclosure will remove the obligations of confidentiality to any remaining Confidential Information nor permit any other disclosure of the Confidential Information in other circumstances.

8.5. **Injunctive Relief**. Each party recognizes and acknowledges that any use or disclosure of the Confidential Information of the other party in a manner inconsistent with the provisions of this Agreement will cause the other party irreparable damage for which remedies at law may be inadequate. Accordingly, the non-breaching party will have the right to seek an immediate injunction in respect of any breach of these confidentiality obligations to obtain such relief. Notwithstanding the foregoing, this paragraph will not in any way limit the remedies in law or equity otherwise available to the non-breaching party.

8.6. **Return of Confidential Information**. Upon written request by either party hereto, the other party will promptly return all documents and other tangible materials representing the requesting party's Confidential Information and all copies thereof, except for any archived materials that are required to be retained by law or that are not easily retrievable from secured archival systems, or records created in the ordinary course of business that are kept by a party and used only for contract compliance and enforcement purposes subject to continuing confidentiality.

9. **Warranties and Disclaimers**.

9.1. **Warranty of Conformity**. Test IO warrants that except for scheduled maintenance the Platform and Services will be generally available 99.9% of the time subject to Customer's internet availability, and that Services will be performed in a professional manner. Test IO backs up all Report Portal data for disaster recovery purposes, and that it retains seven (7) days of full daily backups. Backups are used for disaster recovery procedures, not recovery from user error. Backups reside in a physically separate facility and are GPG encrypted. Test IO will use commercially reasonable efforts to correct, replace or re-perform the Platform and Services if they are not conforming to these warranties. This will be Customer's sole and exclusive remedy for a breach of these warranties. Customer acknowledges that any Open Source Software provided by Test IO or EPAM Systems is provided "as is" and the warranties provided by Test IO or EPAM to Customer under this Agreement do not apply to any Open Source Software.

9.2. **Warranty by the Customer**. The Customer warrants to Test IO that it has adequate rights to provide the Content it provides to the applicable Site and to authorize Report Portal to use and transmit such Content in the manner contemplated in these Terms.

9.3. **Disclaimer of Warranties**. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, REPORT PORTAL DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND REGARDING THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. THE PLATFORM, SERVICES, AND ALL DATA, MATERIALS AND DOCUMENTATION PROVIDED BY REPORT PORTAL IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" AND "AS AVAILABLE" WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND. REPORT PORTAL AND ITS SUPPLIERS AND LICENSORS DO NOT WARRANT THAT THE PLATFORM, SERVICES, OR MATERIALS AND DOCUMENTATION OR THE FUNCTIONS CONTAINED THEREIN WILL BE CORRECT, UNINTERRUPTED, ERROR-FREE, COMPLETELY SECURE, FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS, OR THAT DEFECTS WILL BE CORRECTED. THE PLATFORM AND SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. TEST IO IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGES RESULTING FROM SUCH PROBLEMS. EACH PARTY ACKNOWLEDGES THAT IT HAS RELIED ON NO REPRESENTATIONS OR WARRANTIES OTHER THAN THE EXPRESS WARRANTIES IN THIS AGREEMENT.

10. **Term and Termination**.

10.1. **Term**. The term of this Agreement will commence upon the Effective Date and will continue for each product or service specified in the Order for the subscription period(s) specified in the Order, unless earlier terminated as set forth below, after which it will automatically renew for subsequent periods equal to the subscription period(s) in the Order, unless either party gives the other party not less than 30 days prior written notice of its intent not to renew, in which case the Agreement will terminate at the end of its then current term. Test IO does not send reminders about renewals or termination rights.

10.2. **Termination**. Either party may terminate this Agreement (a) 30 days after notice to the other party of a material breach if such breach remains uncured at the expiration of such thirty day period, or (b) in the event that the other party files any petition in bankruptcy or for reorganization, insolvency or debt consolidation under the federal bankruptcy laws, or under any comparable law, which filing is not dismissed within 60 days, (c) in the event that the other party makes an assignment of its assets for the benefit of creditors, (d) in the event that the other party applies for the appointment of a receiver or a trustee of its assets, or (e) in the event that the other party is being liquidated or dissolved. Notwithstanding any other provision of this Agreement, either party may immediately terminate this Agreement, with or without notice to the other party, for any breach of the other party's confidentiality obligations under this Agreement.

10.3. **Effect of Termination**. Immediately upon expiration or termination of this Agreement, Customer's rights to use the Services will terminate and each party will have 30 days to return or destroy all Confidential Information it holds that belongs to the other party. For a period of 10 days after expiration or termination of the Agreement, Customer may request a download of its Content after which Test IO will have no

obligation to retain or preserve such Content and may destroy it as part of its confidentiality obligation as provided herein. Customer will remain liable for all amounts due, and all such sums will become immediately due and payable upon termination or expiration of this Agreement. Except for termination arising from a breach or default by Test IO, no refund will be due Customer for any termination. Any other provisions which by their nature should survive termination or expiration of this Agreement, will so survive.

11. Limitations of Liability.

11.1. Exclusion of Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR DAMAGES ARISING PURSUANT TO A BREACH OF THE PROVISIONS OF CONFIDENTIALITY, OR BREACH OF ANY APPLICABLE LICENSE GRANT OR RESTRICTION, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA OR OTHER ECONOMIC ADVANTAGE AND ANY NON-ECONOMIC LOSSES, EVEN IF A PARTY HAS BEEN ADVISED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

11.2. Limitation of Damages. EXCEPT FOR DAMAGES ARISING PURSUANT TO A BREACH OF THE PROVISIONS OF CONFIDENTIALITY, OR BREACH OF ANY APPLICABLE LICENSE GRANT, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES (INCLUDING ATTORNEYS' FEES) ARISING OUT OF THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, OR ANY OTHER THEORY OF LIABILITY, OR ANY INDEMNITY OBLIGATION, WILL BE LIMITED TO THE FEES PAID AND PAYABLE BY CUSTOMER TO TEST IO DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE ACT OR OMISSION FIRST GIVING RISE TO THE LIABILITY.

11.3. Allocation of Risk and Material Term. THE PROVISIONS OF THIS SECTION 11 ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND ARE AN INTRINSIC PART OF THE BARGAIN BETWEEN THE PARTIES. THE FEES PROVIDED FOR IN THIS AGREEMENT REFLECT THIS ALLOCATION OF RISKS AND THE LIMITATION OF LIABILITY AND SUCH LIMITATION WILL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW.

12. Indemnity.

12.1. Intellectual Property Indemnity. Test IO will defend, indemnify and hold the Customer harmless from any settlements or judgments finally awarded in favor of a third party against the Customer to the extent such claim is based on the Platform (excluding any Open Source Software) infringing or misappropriating any valid copyright, trade secret, or United States patent issued or published as of the Effective Date. The indemnity provided hereunder will not apply to amounts paid in settlement of any claim if such settlement is made without Test IO's prior written consent, which will not be unreasonably withheld. This indemnity does not apply to, and Test IO will have no obligation to the Customer for, any infringement claims

arising out of, or resulting from (a) any software not developed by Test IO, (b) any software, product or service developed in accordance with Customer specifications; (c) any modifications of the Platform or Services made by Customer or any third party, if the alleged infringement relates to such modification, (d) a combination of the Platform or Services with other products, services, processes or materials of Customer, its affiliates, or any third party, where the alleged infringement relates to such combination, (e) Customer's continued alleged infringing activity, after having been notified by Test IO and/or failing to use a more current release of the Platform or Services where applicable and where such release would prevent or avoid the alleged infringement without significant loss of performance or functionality, (f) use of the Platform or Services not strictly in accordance with this or any other written agreement signed by an officer of Test IO, or (g) any Open Source Software included in the Platform or Services.

12.2. Customer Indemnity. Customer will defend, indemnify, and hold Test IO harmless from and against all claims, suits, actions, damages, settlements, losses, liabilities, costs (including without limitation reasonable attorney's fees) and expenses in connection with (a) any breach by Customer of this Agreement, or (b) Customer's gross negligence or willful misconduct.

12.3. Procedure. As an express condition to the indemnifying party's obligation under this Section, the party seeking indemnification must (a) promptly notify the indemnifying party in writing of the applicable claim for which indemnification is sought, and (b) provide the indemnifying party with all non-monetary assistance, information, and authority reasonably required for the defense and settlement of such claim. The indemnifying party may select counsel for defense of the claim and direct the course of any litigation or other disputed proceedings concerning the claim. The indemnified party may select its own counsel and direct its own defense of a claim if it chooses to do so, but it must bear the costs of its own counsel and any activities in any disputed proceeding conducted by counsel of its choosing. The indemnifying party may settle any claim, to the extent it seeks a money payment, with or without the consent of the indemnified party providing the settlement is a full and complete settlement of all claims against the indemnified party. The indemnifying party must obtain the indemnified party's prior written consent to any settlement to the extent it consents to injunctive relief or requires any admission of fault or any public statement or contains contract terms governing future activities that would materially affect the indemnified party's business or interests, said consent not to be unreasonably withheld, conditioned, or delayed.

13. Export Control. Customer represents and warrants that it will at all times during the term of this Agreement comply with all applicable U.S. and foreign export control laws and regulations governing export or re-export of the Content, and all applicable U.S. and foreign laws and regulations which restrict access to controlled technical data by foreign nationals.

14. General

14.1. Governing Law; Attorneys' Fees. This Agreement will be governed by and interpreted in accordance with the laws of

the State of New York, without giving effect to any conflict of law principles that would require the Platform of the laws of a different jurisdiction. If any dispute between the parties arises out of or is related to any of the provisions of this Agreement, and/or the performance or termination thereof, the prevailing party in any such action will recover all of its costs, including reasonable attorneys' fees. The parties agree that United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from Platform to this Agreement. Any claims for emergency or preliminary injunctive relief may be brought in any court of competent jurisdiction. All other disputes, claims or controversy arising out of or relating to this Agreement, or the interpretation, making, performance, breach or termination thereof, will be subject to the exclusive jurisdiction of the New York State Courts, or if there is federal jurisdiction, the United States District Court for the Southern District of New York, and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

14.2.   **Force Majeure**. Other than for payment of money, a party will be excused from any delay or failure in performance hereunder due to any labor dispute, government requirement, act of God, Internet congestion or breakdown, or any other cause beyond its control. Such party will use commercially reasonable efforts to cure any such failure or delay in performance arising from such a condition, and will timely advise the other party of such efforts. If such delay continues for more than 30 days, the performing party may, upon not less than 10 days prior written notice to the non- performing party, terminate this Agreement.

14.3.   **Public Announcements**. Neither party will issue or release any announcement, statement, press release or other publicity or marketing materials relating to the pricing and terms of this Agreement, without the prior written consent of the other party, which consent will not be unreasonably withheld, conditioned or delayed. During the term of this Agreement, Customer grants Test IO the right to include Customer's name and logo in any public list of its customers.

14.4.   **Contract Interpretation**.   Both parties to this Agreement have negotiated the provisions of this Agreement and have had access to counsel. Notwithstanding any rules of contract interpretation, both parties will be considered the "drafting party" and no provision of this Agreement will be construed against a party by reason of being the "drafting party". Captions in this Agreement are for the convenience of the parties only and will not affect the interpretation or construction of this Agreement. In the event of any conflict between the terms of this Agreement and any exhibit or attachment hereto, the terms of this Agreement will prevail.

14.5.   **Notices**. Any notice provided for or permitted under this Agreement will be in writing and will be treated as having been given (a) when delivered personally, (b) when sent by confirmed facsimile or telecopy, or (c) email one (1) business day after being sent by nationally recognized overnight courier with written verification of receipt, or (d) three (3) business days after being mailed postage prepaid by certified or registered mail, return receipt requested, to the party to be notified, at the address first set forth above, or at such other place of which the other party has been notified in accordance with the provisions of this Agreement.

14.6.   **Assignment**. Customer will not assign this Agreement by operation of law or otherwise without the prior written consent of Test IO, which consent will not be unreasonably withheld or delayed. Test IO may assign this Agreement to an affiliate or in the event of a merger, acquisition, or reorganization relating to all or substantially all of such party's assets. Any other attempt to assign this Agreement without prior consent will be void.

14.7.   **Waivers**. A waiver of any default hereunder or of any of the terms and conditions of this Agreement will not be deemed to be a continuing waiver or a waiver of any other default or of any other term or condition, but will apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in this Agreement will be without prejudice to the right to exercise any other right or remedy provided by law or equity, except as expressly limited by this Agreement.

14.8.   **Entire Agreement**. This Agreement, including any attachments or exhibits constitutes the entire agreement between the parties. All prior negotiations, proposals, and agreements between the parties concerning the subject matter contained in this Agreement, are canceled and superseded by this Agreement. Any changes to this Agreement must be agreed to by both parties in writing.

Test IO, Inc.   **Customer: _____**

By: _____   By: _____
           (Signature)   (Signature)

Name: Name:

Title: Title:

Date: Date: