

## QUALISYSTEMS SDK SOFTWARE LICENSE AGREEMENT

IMPORTANT - READ CAREFULLY THE FOLLOWING TERMS AND CONDITIONS (TOGETHER WITH ALL EXHIBITS, THESE "TERMS") BEFORE DOWNLOADING AND INSTALLING THE SDK SOFTWARE. BY CLICKING THE "I AGREE" BUTTON OR USING OR INSTALLING THE SDK SOFTWARE, YOU AGREE TO BE BOUND BY THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, CLICK THE "CANCEL" BUTTON AND THE INSTALLATION PROCESS WILL NOT BEGIN, OR DO NOT USE OR INSTALL THE SDK SOFTWARE. DO NOT SELECT "I AGREE," OR INSTALL OR USE THE SDK SOFTWARE UNTIL YOU HAVE CAREFULLY READ, UNDERSTOOD, AND AGREED TO THESE TERMS. FURTHERMORE, YOU HEREBY WAIVE ANY RIGHTS OR REQUIREMENTS UNDER ANY LAWS OR REGULATIONS IN ANY JURISDICTION WHICH REQUIRE AN ORIGINAL (NON-ELECTRONIC) SIGNATURE OR DELIVERY OR RETENTION OF NON-ELECTRONIC RECORDS, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW.

THESE TERMS CONSTITUTE THE COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN YOU, (COLLECTIVELY, "LICENSEE", "YOU" OR "YOUR") AND QUALISYSTEMS LTD. AND/OR ITS AFFILIATES ("QUALISYSTEMS"), WHICH SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, ORAL OR WRITTEN, AND ANY OTHER COMMUNICATION RELATING TO THE SUBJECT MATTER OF THESE TERMS. FOR AVOIDANCE OF DOUBT IT IS MADE CLEAR THAT THIS IS A PERSONAL NON TRANSFERABLE RIGHT OF USE. THE PERMISSION TO MAKE USE OF THE SDK SOFTWARE IS A PERSONAL NON TRANSFERABLE RIGHT PROVIDED SOLELY TO THE ONE WHO HAS REGISTERED AND HAS AGREED TO THESE TERMS. FOR AVOIDANCE OF DOUBT AND WITHOUT RESTRICTING THE GENERALITY OF THE ABOVE, IT IS MADE CLEAR THAT THIS RIGHT OF USE MAY NOT BE TRANSFERRED TO ANY EMPLOYEES, SUBLICENSEE, REPRESENTATIVE, AND ANY OTHER THIRD PARTY AND EACH ONE REQUESTING PERMISSION TO MAKE USE OF THE SDK SOFTWARE IS REQUIRED TO SEPARATELY REGISTER AND REQUEST SUCH RIGHTS OF USE.

YOU ASSUME ALL RESPONSIBILITY FOR THE SELECTION OF THE SDK SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS AND FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SDK SOFTWARE.

### 1. **Definitions.**

- (a) "Customer" means a customer of QualiSystems to which QualiSystems markets or sells, directly or indirectly, the QualiSystems Software.
- (b) "QualiSystems Software" shall mean all or any portion of TestShell™, CloudShell™, or other binary computer software programs and Documentation provided by QualiSystems or on its behalf, including all corrections or updates thereto that is marketed or licensed to QualiSystems end customers.
- (c) "Documentation" means the technical documentation and/or user guide provided along with the SDK Software or the QualiSystems Software, as applicable. For clarity, the term "Documentation" excludes marketing materials.
- (d) "Intellectual Property Rights" means all copyrights, trade secrets, patents, mask works and other intellectual property rights recognized in any jurisdiction worldwide, including all

applications and registrations with respect thereto, as well as trademarks, service marks, trade names and other product, service or company identifiers.

(e) "Contributions" means Shells, Orchestration Workflows, Drivers and Plug-ins, and any other code developed by You through the use of the SDK Software and under the Apache License to be used by QualiSystems and/or QualiSystems Customers solely for the purpose of interfacing with and providing additional functionality and uses for the QualiSystems Software. Contributions developed through the use of the SDK Software must be made available through either your public Github repository or uploaded to the QualiSystems public Github repository and then registered and shared through the QualiSystems Community Portal (<http://www.quali.com/wp-content/uploads/2016/06/communityTOU.pdf>) under such Apache License.

(f) "SDK Software" means QualiSystems software development kit (SDK), as well as any Documentation and updates, if any, made available to You by QualiSystems under this Agreement for the sole purpose of developing the Contributions to be shared on the QualiSystems Community Portal under the Apache License.

(g) "QualiSystems Community Portal" means the community portal located at (<http://www.quali.com/wp-content/uploads/2016/06/communityTOU.pdf>) which is intended to serve as an open community platform and as a centralized location for knowledge sharing, documentation and development of community content developed by registered users of the Community Portal according to the TOU therein under and in strict compliance with the Apache License terms.

(h) "Apache License" shall mean the Apache Software Foundation License Version 2.0, released in January 2004 as defined at [www.apache.org/licenses/LICENSE-2.0](http://www.apache.org/licenses/LICENSE-2.0).

(i) TOU shall mean the Terms Of Use for the QualiSystems Community Portal, as specified at <http://www.quali.com/wp-content/uploads/2016/06/communityTOU.pdf>.

## 2. **License; Licensee Obligations and Customer Restrictions.**

(a) **License.** Subject to Your compliance with the terms and conditions of this Agreement, the undertaking to share the Contributions on the QualiSystems Community Portal under the Apache License and payment of the fees specified hereunder, if applicable, QualiSystems hereby grants to You a restricted, personal, non-transferable, non-exclusive subscription for the period specified: (i) to use that portion of the SDK Software provided and/or hosted for Your internal use solely to develop and test the Contributions under the Apache License terms to be used by QualiSystems Customers to interface with and provide additional functionality and uses for the QualiSystems Software; and (ii) to make the Contributions available through either your public Github repository or uploaded to the QualiSystems public Github repository and then registered and shared through the QualiSystems Community Portal which is intended to serve as an open community platform and as a centralized location for knowledge sharing, documentation and development of community content developed by registered users of the Community Portal according to the TOU therein under and in strict compliance with the Apache License terms. When the SDK Software or portions of it are being provided on SAAS basis or hosted via a third party, License and use rights defined above will be seen as a right to access the hosted SDK Software services or those applicable portions of the hosted SDK Software on the applicable servers according to the same applicable usage and other limitations set forth herein, including any usage and other limitations that may be set forth by the hosting third party as detailed under

the Third Party Rights (<http://www.quali.com/wp-content/uploads/2016/07/THIRD-PARTY-COPYRIGHT-NOTICES.pdf> rights) and/or Licenses.

You hereby undertake and represent that you are aware the SDK Software License is given to You only subject to Your undertaking and commitment to upload and share any and all Contributions developed by You using the SDK Software License and/or the Community Portal and solely under and in strict compliance with the terms of the Apache License. Should it be known or brought to the attention of QualiSystems that such Contributions have not been shared via registration on the Community Portal and/or not under and/or in full compliance with the Apache License, that shall be considered a material breach of these Terms which shall result in immediate termination of the License.

For avoidance of doubt it is made clear that should you be interested in making use of the QualiSystems Software itself, this SDK Software License which is to be used solely to develop and test the Contributions to be used by QualiSystems Customers to interface with and provide additional functionality and uses for the QualiSystems Software, is not in lieu of purchasing a separate fully paid for license to the QualiSystems Software required for the right to make any use of the QualiSystems Software.

(b) Licensee Obligations.

(i) The SDK Software should be installed and/or used in accordance with the instructions of QualiSystems and for the sole purpose and according to the License restrictions detailed in section 2(a) above.

(ii) Licensee shall reproduce and include any and all copyright notices and proprietary rights and legends required to be included by the owner of any data reproduced and/or used as part of the Contributions, including as required by the Apache License when making Contributions under said license, and as such notice and legend appear in any data used as part of the Contributions.

(iii) The permission to make use of the SDK Software is a personal non transferable right provided solely to the one who has registered and has agreed to these Terms. For avoidance of doubt and without restricting the generality of the above, it is made clear that this right of use may not be transferred to any employees, sublicensee, representative, and any other third party and each one requesting permission to make use of the SDK Software is required to separately register and request such rights of use.

(iv) Licensee shall not (a) market, distribute, or otherwise transfer copies of the SDK Software; (b) rent, lease, timeshare or loan the SDK Software; (c) sell, sublicense, license, transfer or otherwise make available the SDK Software to any third party; or (d) modify, decompile, disassemble, reverse engineer or otherwise attempt to derive the source code of the SDK Software; (d) use the SDK Software for anything other than development and testing of the Contributions for use with the QualiSystems Software to be shared in the Community Portal under the Apache License.

(v) Licensee shall use its best efforts to protect the SDK Software from unauthorized access, reproduction, disclosure or use. In the event Licensee becomes aware of any unauthorized use or disclosure of SDK Software, Licensee shall notify QualiSystems immediately in writing and fully cooperate with QualiSystems, at Licensee's expense, to minimize the effects of such unauthorized use or disclosure.

(vi) Licensee represents and warrants that the Contributions are Licensee's own original creation and/or Licensee has full rights to make such contribution to the Community Portal under the Apache License on behalf of the owner of the rights to such Contributions and that Licensee is the copyright owner or legal entity authorized by the copyright owner of all Contributions to act accordingly.

(vii) **Support.** Licensee is not expected to provide support for Contributions, except to the extent Licensee desires to provide support. Licensee may provide support for free, for a fee, or not at all and such support shall be the sole and exclusive liability of Licensee and QualiSystems shall in no way be held responsible or liable or such support or lack of support and Licensee shall full indemnify QualiSystems for any claims relating to such support or non support, including from any third parties.

3. **Confidential Information.** Licensee acknowledges that anything confidential in nature provided or discussed between the Parties, and/or relating to this Agreement, the SDK Software, the QualiSystems Software, any terms and conditions of Licensee's business relationship with QualiSystems is QualiSystems' confidential information (collectively, the "Business Terms"), and that the SDK Software and the QualiSystems Software contains confidential and proprietary information and trade secrets of QualiSystems and agrees that any unauthorized disclosure, use, or copying of the SDK Software, the QualiSystems Software or the Business Terms may cause QualiSystems inestimable serious financial loss. Accordingly, Licensee shall treat the QualiSystems propriety information and Business Terms as confidential. The obligations set forth in this Section shall survive termination of these Terms.

4. **Ownership.**

(a) QualiSystems and its licensors shall retain exclusive ownership of all worldwide Intellectual Property Rights in and to the SDK Software and/or the QualiSystems Software and any copies thereof. All rights in and to the SDK Software and/or the QualiSystems Software not expressly granted to Licensee in this Agreement are expressly reserved for QualiSystems and its licensors.

(b) You shall retain sole and exclusive rights to the Contributions under the specific terms of the Apache License.

(c) **Grant of Back License to Contributions.** Subject to the terms and conditions of these Terms and the Apache License, You hereby grant to QualiSystems and/or any QualiSystems Customers and all third party recipients of the QualiSystems Software, including any and all registered users of the Community Portal, a perpetual, worldwide, non-exclusive, no-charge, royalty-free, irrevocable license to reproduce, modify, copy, delete, prepare derivative works of, publicly display, publicly perform, sublicense, and distribute the Contributions and such derivative works under the Apache License terms.

5. **Third-party Software.** The SDK Software and the QualiSystems Software includes embedded third party components which are licensed to You as part of the SDK Software and/or may be hosted or enabled through a third party and under such third party specific license terms and copyright notices located at <http://www.quali.com/wp-content/uploads/2016/07/THIRD-PARTY-COPYRIGHT-NOTICES.pdf> ("Third Party Rights and/or Licenses," as applicable). Those license terms will prevail over any license terms contained herein.

6. **License Fee; Taxes.** Currently the SDK License is provided at no charge. QualiSystems reserves the right to charge licensee fees for this SDK Software in the future, at any time by notice to You and upon its sole discretion.

7. **Records and Audits.** Licensee shall maintain complete, current and accurate records documenting the location of the SDK Software (in all forms) in Licensee's possession and all Contributions, including dates of upload to Community Portal.. To ensure compliance with these Terms, QualiSystems shall have the right, at its expense during regular business hours, to conduct an inspection and audit of all the relevant records of Licensee and Licensee's computer systems, and to obtain true and correct photocopies thereof.

8. **Term and Termination.** These Terms shall commence upon the earlier of: (i) the date of Your agreement to these Terms or (ii) installation and/or use of the SDK Software and continue for a period of 6 months, unless defined otherwise in the specific purchase order or invoice relating to such SDK Software (the "**Subscription Period**") and may be renewed through the Community Portal according to the then current terms, unless otherwise terminated as set forth below. QualiSystems may terminate these Terms immediately (i) upon Licensee's non material breach of this Agreement, unless such non material breach is curable and is cured by Licensee within ten (10) days after notice of such breach is provided by QualiSystems; (ii) if Licensee becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its businesses or assets, becomes subject to any proceedings under any bankruptcy or insolvency laws, or has wound up or liquidated, voluntarily or otherwise; or (iii) immediately upon breach of these Terms. Notwithstanding the above, either Party may terminate these Terms for any for any reason upon thirty (30) day prior written notice to the other Party. Upon termination, Licensee agrees: (i) not to continue use of the SDK Software for any purpose whatsoever; (ii) in QualiSystems' discretion, either to return to QualiSystems the SDK Software, any Confidential Information, and any copy or copies then in Licensee's possession, or to destroy the SDK Software, Confidential Information, and any such copy or copies; and (iii) to certify to QualiSystems that Licensee has returned to QualiSystems or destroyed, as the case may be, the SDK Software, and all such copies. Termination of these Terms shall not affect any QualiSystems Customer, third party, user of the Community Portal and/or QualiSystems rights to continue to make use of the Contributions perpetually and irrevocable pursuant to Section 2 and 4(iii) above. The remedies in this section 8 shall be cumulative and in addition to any other remedies available to QualiSystems. Any provisions of these Terms that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

9. **Warranty.**

(a) THE SDK SOFTWARE IS PROVIDED TO YOU WITH NO WARRANTY OR LIABILITY WHATSOEVER. QUALISYSTEMS AND ITS LICENSORS DISCLAIM ALL WARRANTIES, EXPRESS, IMPLIED AND STATUTORY INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ANY STANDARD COMPLIANCE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR THAT THE SDK SOFTWARE AND/OR QUALISYSTEMS SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY YOU, INCLUDING WITH REGARDS TO THE CONTRIBUTIONS, QUALISYSTEMS, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY.

(b) **Licensee Warranty.** Licensee represents and warrants that it will not take any action that would create obligations that would conflict with Licensee's obligations hereunder, including without limitation, (i) using the SDK Software to merge with, link to, share data structures and/or the Contributions with software available under any license other than the QualiSystems Software. (ii) sharing the Contributions under any terms other than the Apache License, and in

any place other than through either your public Github repository or uploaded to the QualiSystems public Github repository and then registered and shared through the Community Portal strictly for use with the QualiSystems Software; (iii) breach of any third party Intellectual Property through the use of or in relation to the Contributions or (iv) embed or use the Contributions in any way that may contaminate and/or effect the QualiSystems Software and/or SDK Software. Licensee shall defend and indemnify QualiSystems against all liabilities, losses, damages, costs and expenses relating to or arising out of a breach by Licensee of the foregoing representation and warranty or breach of any other terms and conditions contained in these Terms, including in relation to Section 2.

10. **Indemnification.** Licensee agrees to indemnify, defend and hold harmless QualiSystems, its officers, directors, employees, agents, shareholders, and licensors from and against any losses, damages, fines and expenses (including attorneys' fees and costs) arising out of or relating to any third party claims that arise from or are in connection with: (i) Licensee's violation of these Terms; (ii) Licensee's distribution of the Contributions, including any breach of the Apache License and/or third party rights; and/or (iii) the Contributions, including with regards to any support services, warranty etc. provided or not provided in relation thereto. QualiSystems shall provide Licensee with written notice of the claim, permit Licensee to control the defense, settlement, adjustment or compromise of any such claim, and reasonably cooperate with Licensee in the defense and any related settlement action. QualiSystems reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by Licensee.

11. **Limitation of Liability.**

(a) NEITHER QUALISYSTEMS NOR ITS LICENSORS SHALL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND, DAMAGES FOR INTERRUPTION OF BUSINESS, PROCUREMENT OF SUBSTITUTE GOODS, OR LOSS OF PROFITS REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY EVEN IF QUALISYSTEMS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) IN NO EVENT WILL QUALISYSTEMS AGGREGATE CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR RELATED TO THESE TERMS EXCEED THE AMOUNTS PAID TO QUALISYSTEMS BY LICENSEE PURSUANT TO THESE TERMS AS A LICENSE FEE FOR THE SDK SOFTWARE. THE LIMITED WARRANTY, LIMITED REMEDIES, WARRANTY DISCLAIMER AND LIMITED LIABILITY ARE FUNDAMENTAL ELEMENTS OF THE BASIS OF THE BARGAIN BETWEEN QUALISYSTEMS AND YOU. QUALISYSTEMS WOULD NOT BE ABLE TO PROVIDE THE SDK SOFTWARE WITHOUT SUCH LIMITATIONS.

12. **General.**

(a) **Government Customers.** The SDK Software and any related Documentation are each a "commercial item," as that term is defined at 48 C.F.R. §2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. §12.212 (Sep 1995) and are provided to U.S. Government end users with only those rights set forth herein.

(b) **Export Control.** All SDK Software and technical information delivered under this Agreement are subject to U.S. export control laws and may be subject to export or import

regulations in other countries. Licensee agrees to strictly comply with all such laws and regulations.

(c) Other. All notices or demands shall be in writing and sent registered mail, return receipt requested and sent to the address set forth in the Purchase Order. No agency, partnership or employment between QualiSystems and Licensee is created by these. These Terms and the relationship between You and QualiSystems shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to its principles of conflict of laws. You agree to submit to the exclusive jurisdiction of the courts located in Delaware and waive any jurisdictional, venue, or inconvenient forum objections to such courts, provided that QualiSystems may seek injunctive relief in any court of competent jurisdiction. If any provision of these Terms of Use are found to be unlawful or unenforceable in any respect, the court shall reform such provision so as to render it enforceable (or, if it is not possible to reform such provision so as to make it enforceable, then delete such provision). As so reformed or modified, the court shall fully enforce these Terms of Use. You and QualiSystems are independent contractors and nothing in these Terms creates a partnership, joint venture, agency, or employment relationship between you and QualiSystems. You must not make or undertake any warranties, representations, or obligations on behalf of QualiSystems. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by You but may be assigned and/or transferred by QualiSystems without restriction or notification to You. No waiver of any term of these Terms shall be deemed a waiver of any other term, and a party's failure to assert any right under these Terms shall not constitute a waiver of such right or provision. Except for Licensee's obligation to pay QualiSystems, if applicable, neither party shall be liable for any failure to perform due to force majeure or causes beyond its reasonable control. Any provisions of these Terms that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of these Terms, shall be deemed to survive for as long as necessary to fulfill such purposes. These Terms constitute the entire agreement between the parties, supersedes all other agreements between the parties concerning the subject matter hereof and may only be modified by a written instrument signed by each party's authorized signatories.

Last Updated: February 14, 2017