

## TORQUE - MASTER SUBSCRIPTION AGREEMENT

Please read this agreement carefully before using this service.

By using the service or clicking “Agree” you as customer are agreeing to be bound by this agreement and its Schedules (as well as the QualiSystems Torque SLA Policy, Third Party Rights and Licenses and Privacy Policy all located at <http://quali.com/legal> and the Usage Restrictions located at <http://quali.com/legal>). If you are agreeing to this agreement on behalf of or for the benefit of your employer, company or any other entity or person, then you represent and warrant that you have the necessary authority to agree to this agreement on their behalf and you and they will remain fully liable, jointly and severally, as if they were the ones to directly agreeing to the terms herein.

This agreement is between QualiSystems Ltd. (“QualiSystems”), its affiliates and the customer agreeing to these terms (or anyone it is acting on behalf of) (“Customer/You”) or anyone making use of the Services provided to Customer or making use of Customer’s Account including its employees, interested parties, contractors or any third party, all subject to limitations of use and specific Service terms detailed herein. For avoidance of doubt it is made clear that Your service hosting facility may have additional limitations and may charge You separately, in addition to any charged made by QualiSystems under this Agreement, for any use made by You (or QualiSystems on your behalf) of any of the services provided by Your service hosting facility, including the Cloud and/or other Customer environments and/or services for purpose of Services herein, and all such charges shall be solely born by You and shall be Your sole and exclusive liability, in addition to anything set forth herein.

### 1. SOFTWARE SERVICE

This agreement provides Customer access and usage of proprietary Software as a Service as specified on a specific purchase order separately signed between Customer and QualiSystems and any specific limitation or exclusion of use detailed under <http://quali.com/legal> (“Usage Restriction”), which may be changed from time to time by written notification to Customer, and Schedule 1, which all form an integral part of this Agreement, as this all relates to the Licensed Software. QualiSystems will provide the services through the Licensed Software as described in Schedule 1, or through other QualiSystems approved interfaces under the terms below. “Service” means the online web based service offered by QualiSystems through the Service Hosting Facility which enables the use of the Licensed Software together with the Customer Data, systems and Clouds as further detailed in the purchase order and any specific limitation or exclusion of use detailed under <http://quali.com/legal>, which may be changed from time to time by written notification to Customer. “Service Hosting Facility” means Amazon Web Service (AWS) on which QualiSystems hosts the Service, or any other place where QualiSystems may choose to host its Services from.

### 2. USE OF SERVICE

2.1 **Customer Owned Data.** All data, information and content submitted or uploaded by Customer and/or collected by the Service or the Licensed Software (defined below) for use with the Service (“Customer Data”), remains the sole property of Customer, as between QualiSystems and Customer. Customer grants QualiSystems or anyone on its behalf the right to use and store the Customer Data for purpose of the Services (but not in lieu of Customer’s sole liability for Customer Data storage), and to access Customer cloud environments and/or systems (“Cloud”) solely for purposes of QualiSystems performing the Services under this agreement as well as have the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, security and availability (including any private information that may be contained therein) and as further detailed under Section 1(d), 1(e) and Section 2 of Schedule 1. In addition to rights granted under Section 1 of Schedule 1, Customer hereby grants QualiSystems a non-exclusive, non-sublicensable, non-transferable, royalty-free, irrevocable, limited license to copy, store, process, edit, create derivative work of, and otherwise use Customer Data for the

purposes stated herein ("**Data License**"). In addition, Customer hereby authorizes QualiSystem's advisors, consultants, employees, service providers, and other third parties to access, receive and/or be exposed to the Customer Data for the purpose of performing the Services and/or for having the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, security, availability and privacy. For avoidance of doubt it is made clear that such Customer Data will remain on QualiSystems systems after expiry or termination of this Agreement for archival and backup purposes only (unless Customer has specifically requested in writing after expiry or termination of this Agreement that QualiSystems delete or remove such Customer Data from QualiSystems systems) but QualiSystems will not make use of such Customer Data for purpose of this Agreement after such date of expiry or termination of this Agreement, unless required by law or court ruling.

2.2 Customer hereby warrants to QualiSystems that it either owns or licenses the Customer Data it provides, has the authority to grant QualiSystems such usage rights and access rights, including to its systems and Cloud environments and that there are no additional approvals required for granting such usage or access rights and that such access or use will not violate any third party's privacy rights. It is acknowledged by both Parties that Customer alone controls what Customer Data is submitted to, or accessed by, the Service, and is fully and solely liable for such Customer Data and access and use of it by QualiSystems or on its behalf, including its storage and what is in such Customer Data and QualiSystems has no knowledge or way to know what such Customer Data contains. Customer represent sand warrant that it has obtained, and will maintain, all rights and authority, consents, permissions, and licenses necessary for granting the Data License.

**2.3 As further detailed in Schedule 1, QualiSystems may choose to host the Services, provide them through a cloud or engage third party providers to host or provide features of the Service, including through their cloud or hosting services as well as have the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, security and availability. This means that data you provide QualiSystems, including Customer Data or that QualiSystems has access to or collects from You (including any Personal Information, as defined below and as further described in QualiSystems Privacy Policy <http://quali.com/legal>, and as referred to in Section 2 of Schedule 1) – may be transferred or exposed to such third parties or hosted with such third party service providers on servers that they own or control. Regardless of where such third party service providers are located (and some may be located anywhere in the world including in Europe, England or United States), they or their servers may be located anywhere in the world (including in Europe, England or United States). Your Customer Data and Personal Information may even be replicated or transferred across multiple servers located in multiple countries and outside England, the European Economic Area / European Union. So please be aware that by using the Services You are expressly, freely, affirmatively and unequivocally consenting to Your data, including Your Customer Data being transferred or exposed to various third party service providers around the world (including anywhere in the world including, England, United States European Economic Area / European Union). If You do not agree to this do not use the Services or provide Personal Information to QualiSystems or onto the Account or through Licensed Software. Your receipt of the Services are a full agreement to all these terms, including expressly, freely, affirmatively and unequivocally consenting to such exposer, transfer and storage of Personal Information including in England, Europe, the US and outside the European Economic Area / European Union as detailed herein, including as detailed under Section 2 of Schedule 1 and in Our Privacy Policy.**

2.4 **Customer Access and Usage.** Customer may authorize its employees, service providers, and other third parties to access the Services, which access must be for the sole benefit of

Customer and in compliance with this Agreement. Customer is responsible and solely and fully liable for such representative's compliance with this agreement and for set up and management of such access and usage by such Users as further detailed in this Agreement, under Section 1 above, under Schedule 1 and any specific limitation or exclusion of use detailed under <http://quali.com/legal>, which may be changed from time to time by written notification to Customer.

**2.5 Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is responsible for Customer Data, its systems, its Cloud environment and all activity in its Account in the Service, including by its Users; (iii) must use commercially reasonable efforts to prevent unauthorized access to its Account, and notify QualiSystems promptly of any such unauthorized access; (iv) may use the Service only in accordance with applicable law and under the usage restrictions further detailed in this Agreement, under Section 1 above, under Schedule 1 and any specific limitation or exclusion of use detailed under <http://quali.com/legal>, which may be changed from time to time by written notification to Customer and (v) be solely liable to maintain and pay hosting facility all charges required by such hosting facility for use of Customer Cloud environments and/or services for purpose of Services herein, including by Customer or by QualiSystems (which are in addition to any charges QualiSystems may charge for the Service).

**2.6 QualiSystems Support.** Other than for a Trial Licenses, QualiSystems provides customer the Service under the terms of QualiSystems' Customer **Torque** Service Level Agreement ("**Torque SLA**"), which is located at <http://quali.com/legal>.

**2.7 Hardware.** The Services do not include a license to use the hardware which may be used in conjunction with the Services (the "**Hardware**"). **QUALISYSTEMS MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON- INFRINGEMENT WITH RESPECT TO HARDWARE OR ITS USE WITH THE SYSTEMS OR SERVICES.**

**2.8 Trial.** If Customer has registered for a Trial License use of the Service, Customer may access the Service for solely for non production and trial purposes only for the time period specified by QualiSystems under such registration. At the end of such trial, Customer may request to continue to a full license by signing a specific purchase order with QualiSystems for such ongoing Services, according to the specific terms therein. "**Trial License**" means an evaluation period under which Customer is granted a temporary, non-exclusive, revocable, non-transferable, non-sublicensable, limited right for the term specified in the registration to use the Service for internal testing and evaluation purposes only and for non production use. At the end of the Trial License, QualiSystems, may, upon its sole discretion, terminate the Account, extend the Trial License for a limited time and/or allow the Service to be continued under limited functionality. In addition to any other limitations or disclaimers detailed in this Agreement regarding the Trial License, during and under a Trial License QualiSystems is not committed to support the Service and is not liable for any use made by during such Trial License by Customer, on its behalf or any other User and provides no liability, representations, indemnification, or warranty whatsoever or other commitments it may choose to provide its full licensees users (including as detailed in this Agreement), including any undertaking under the **Torque** SLA. QualiSystems may decide not to charge for the Trial Licenses but note that Your service hosting facility may have additional limitations and may charge You for any use made by You (or QualiSystems on your behalf) of any of the services provided by Your service hosting facility, including the Cloud and/or other Customer environments and/or services for purpose of Services under such Trial License, and all such charges shall be solely born by You and shall be Your sole and exclusive liability, in addition to anything set forth herein.

### 3. WARRANTY

3.1 **Warranty.** Other than for a Trial Licenses, QualiSystems warrants that (i) it will not materially decrease the overall security of the Services during a subscription term, (ii) it will not materially decrease the functionality of the Services during a subscription term, and (iii) the Services will not introduce Malicious Code into Customers systems. **Malicious Code** means any code, files, scripts or programs designed to do harm (e.g. viruses, worms, time bombs or trojan horses).

3.2 **GENERAL DISCLAIMER.** OTHER THAN THE WARRANTIES PROVIDED IN SECTION 3.1 ABOVE THE SERVICE AND LICENSED SOFTWARE ARE PROVIDED AS IS AND QUALISYSTEMS DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, QUIET POSSESSION, NON-INFRINGEMENT, OR QUALITY OF SERVICE, OR THAT OTHERWISE ARISE FROM A COURSE OF PERFORMANCE OR USAGE OF TRADE, ARE HEREBY DISCLAIMED. CUSTOMER ACKNOWLEDGES THAT USE OF SERVICE MAY NOT BE UNINTERRUPTED OR ERROR FREE. WHILE QUALISYSTEMS TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, QUALISYSTEMS DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED. QUALISYSTEMS IS NOT LIABLE FOR ANY CONTENT USED WITH THE SERVICES, INCLUDING CUSTOMER DATA AND SHALL BE LIABLE ONLY FOR DEPLOYMENT OF THE SERVICES SPECIFICALLY ACCORDING TO THE TERMS OF THIS AGREEMENT. QUALISYSTEMS IS NOT OBLIGATED TO MAINTAIN OR SUPPORT THE SERVICE OTHER THEN AS EXPLICITLY SET FORT IN THIS AGREEMENT, INCLUDING NO BACKWARDS COMPATIBILITY, OR TO PROVIDE THE SERVICE FOR ONGOING OR ADDITIONAL SERVICE TERMS. AT ANY TIME, THE SERVICE MAY NO LONGER BECOME AVAILABLE AND YOU MAY BE REQUIRED TO IMMEDIATELY STOP MAKING ANY FURTHER USE OF IT FOLLOWING SUCH WRITTEN NOTICE FROM QUALISYSTEMS AND YOU SHALL HAVE NO CLAIMS OR DEMANDS TOWARDS QUALISYSTEMS FOR SUCH POSSIBLE EARLY TERMINATION. YOU ACKNOWLEDGE THAT YOU ARE AWARE THAT THE SERVICES ARE PROVIDED THROUGH AWS CLOUD SERVICES (OR MAY BE PROVIDED THROUGH DIFFERENT SERVICE HOSTING FACILITY) AND QUALISYSTEMS DOES NOT WARRANT ANYTHING THAT IS OUT OF ITS DIRECT CONTROL. THE SERVICES AND LICENSED SOFTWARE WILL BE PROVIDED TO YOU SUBJECT TO AWS' (OR OTHER SERVICE HOSTING FACILITY) THEN APPLICABLE TERMS OF USE WITH NO LIABILITY ON QUALISYSTEM'S BEHALF AND UNDER YOUR SOLE AND EXCLUSIVE LIABILITY AND FULL UNDERTAKING TO FULLY INDEMNIFY QUALISYSTEMS FOR ANY BREACH OR CLAIMS AGAINST YOU OR QUALISYSTEMS WITH REGARDS TO YOUR OR YOUR USERS USE.

3.3 **THIRD PARTY SERVICE DISCLAIMER.** CERTAIN SUPPORTED THIRD-PARTY WEB SERVICES OR TECHNOLOGY THAT THE SERVICE INTEGRATES WITH MAY BE MADE AVAILABLE WITHIN THE SERVICE, IF CUSTOMER HAS AN ACCOUNT AND CONTRACT WITH THE APPLICABLE THIRD PARTY (THIRD PARTY SERVICES). QUALISYSTEMS HAS NO LIABILITY REGARDING THOSE THIRD PARTY SERVICES OR TECHNOLOGY, AND CUSTOMER'S CONTRACT WITH THAT THIRD-PARTY SOLELY GOVERNS CUSTOMER'S ACCESS, PAYMENT AND USAGE OF THAT THIRD PARTY SERVICE OR TECHNOLOGY. IN ADDITION, QUALISYSTEMS HAS NO LIABILITY FOR ANY THIRD PARTY OR EXTERNAL SERVICES, INCLUDING CUSTOMER DATA, CUSTOMER SYSTEMS OR CLOUD SERVICES WHICH THE CUSTOMER CHOOSES TO USE OR WHICH HIS SYSTEMS, CLOUD OR CUSTOMER DATA ACCESS, USE OR ARE STORED

ON, INCLUDING THE SERVICES INABILITY TO ACCESS SUCH SYSTEMS, CLOUD OR CUSTOMER DATA FOR ANY REASON NOT DUE TO QUALISYSTEMS. ADDITIONAL TERMS APPLY TO USE OF SUCH THIRD PARTY RIGHTS AND LICENSE AS FURTHER DETAILED IN SEC 2 AND 3 OF SCHEDULE 1 AND APPLY AS AN INTEGRAL PART OF THIS AGREEMENT

#### **4. MUTUAL CONFIDENTIALITY AND DATA SECURITY**

4.1 **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). QualiSystems' Confidential Information includes without limitation the Service and Licensed Software (including without limitation the Service user interface design and layout), and Customer's Confidential Information includes without limitation the Customer Data.

4.2 **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.

4.3 **Exclusions.** Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information, as can be demonstrated. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to enable Discloser to seek a protective order.

#### **5. PRIVACY**

5.1 Customer hereby warrants and represents that it will provide all appropriate notices, obtain all required informed consents, comply at all times with all applicable privacy and data protection laws and regulations (including the EU General Data Protection Regulation ("**GDPR**")) for allowing QualiSystems to use the data in accordance with this Agreement (including, without limitation, the provision of such data to QualiSystems, the transfer of such data by QualiSystems to its affiliates and subcontractors, including transfers outside of the European Economic Area).

5.2 To the extent that Customer is subject to the GDPR, Customer shall download the QualiSystems' Data Processing Agreement ("**DPA**") available on QualiSystems' website and return it signed to QualiSystems as described therein.

5.3 In the event Customer fails to comply with any data protection or privacy law or regulation, the GDPR and/or any provision of the DPA, and/or fails to return an executed version of the DPA to QualiSystems, then: (a) to the maximum extent permitted by law, Customer shall be fully liable for any such breach, violation, infringement and/or processing of personal data without a DPA by QualiSystems and QualiSystems' affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents); (b) in the event of any claim of any kind related to any such breach, violation or

infringement and/or any claim related to processing of personal data without a DPA, Customer shall defend, hold harmless and indemnify QualiSystems and QualiSystems' affiliates and subsidiaries (including, without limitation, their employees, officers, directors, subcontractors and agents) from and against any and all losses, penalties, fines, damages, liabilities, settlements, costs and expenses, including reasonable attorneys' fees; and (c) the limitation of Customer's liability under Section 9 below shall not apply in connection with Sections 5.3(a) and 5.3(b) above.

## **6. PAYMENT**

Within 30 days of receipt of an invoice, or in a different timeframe if specified on the purchase order, Customer must pay all fees agreed to on the purchase order. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes as well as any additional fees that may be charged by any of Customer's hosting facility for use of Customer Cloud environments and/or services for purpose of Services herein, including use made by Customer or by QualiSystems of Customer's hosting facility for use of Customer Cloud environments and/or systems (which are in addition to any charges QualiSystems may charge for the Service). This agreement may contemplate one or more orders for the Service, which orders are governed by the terms of this Agreement jointly and severally. If Customer does not pay the amounts due within 10 days of the due date, QualiSystems may suspend or terminate the Service, or both. All payments shall be made by You to QualiSystems in the currency stated in the purchase order to QualiSystems's address on the purchase order or such other address as indicated by QualiSystems. Payment obligations are non-cancellable and amounts paid are non-refundable except as otherwise stated herein. Any amount not paid when due will accrue interest on a daily basis until paid in full, at the lesser of: (i) the rate of one and a half percent (1.5%) per month; and (ii) the highest amount permitted by applicable law. If You are legally required to withhold any income or remittance tax from amounts payable to QualiSystems, then (a) You will promptly notify QualiSystems, (b) the amount payable will be automatically increased to the full extent required to offset such tax, so that the amount remitted to QualiSystems, net of all taxes, equals the amount stated in the invoice, and (c) You will provide QualiSystems with the official receipt of payment of such taxes to the appropriate taxing authority. You will be responsible for payment of any withholding taxes and shall indemnify QualiSystems from and against any claim for unpaid withholding taxes, interest and penalties, which may be claimed by the applicable tax authorities relating to payment of such taxes.

## **7. QUALISYSTEMS PROPERTY**

7.1 **Reservation of Rights.** The Service and Licensed Software, and any other information, content, data, or technologies provided by QualiSystems as part of the Service are the property of QualiSystems and its licensors, including the software code, scripts, graphics, form, text, content of text, workflow processes, user interface, and designs, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with QualiSystems. Customer may not remove or modify any proprietary marking or restrictive legends in the Service or Licensed Software.

7.2 QualiSystems owns and may use during and after the Term all anonymized and aggregate data within the Service or in relation to Customer use of the Services, only at a statistical level, regarding the level of use, performance of features of the Service or the Licensed Software (for example without limitation, location of access, number of access and times of access, duration of use, average time to resolution of an incident) for purposes of enhancing the Service or the Licensed Software as well as for technical support and other business purposes. The way this data is captured by QualiSystems will not allow for re-identification.

7.3 QualiSystems, Colony, CloudShell Colony, Torque, TestShell, CloudShell and the

QualiSystems logo, and all other QualiSystems product names are trademarks are registered trademarks of QualiSystems Ltd or its affiliates. The absence of trademark from this list does not constitute a waiver of Qualisystems intellectual property rights concerning that trademark. All other company, brand and product names and logos are marks of their respective holders.

7.4 **Restrictions.** In addition to specific usage restriction set forth in this Agreement, Section 1 above, Schedule 1 and any specific limitation or exclusion of use detailed under <http://quali.com/legal>, which may be changed from time to time by written notification to Customer, Customer may not (i) sell, resell, rent or lease or otherwise exploit, reproduce, distribute the Service or the Licensed Software or use it in a non internal hosting or service provider capacity, unless otherwise provided under an order; (ii) use the Service or the Licensed Software to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service or the Licensed Software; (iv) attempt to gain unauthorized access to the Service or the Licensed Software or their related systems or networks; (v) reverse engineer the Service or the Licensed Software; or (vi) access the Service or use the Licensed Software to build a competing service or product, or copy any feature, function or graphic for competitive purposes. QualiSystems may, without notice or liability to Customer or any other third party, suspend or terminate Customer's access to the Service or the Licensed Software for any breach or inappropriate use or reason to suspect such inappropriate use. Grounds for such termination may include, but are not limited to, breach of the restrictions stated above.

7.5 **Licensed Software.** All QualiSystems software provided as part of the Service ("**Licensed Software**") is licensed as follows: QualiSystems grants Customer a non-exclusive, nontransferable license, during the term of the Service as detailed in the applicable purchase order, to use the Licensed Software thorough the Service on the applicable Cloud environments, according to the same applicable usage and other limitations set forth in this Agreement, under Section 1 above, under Schedule 1 and any specific limitation or exclusion of use detailed under <http://quali.com/legal>, which may be changed from time to time by written notification to Customer, and for the agreed upon License Term (as defined below) purchased under the purchase order. For the avoidance of doubt, any components of the Service or the Licensed Software are only licensed hereunder, and no title in or to such components pass to the Customer. QualiSystems reserves all rights not expressly granted herein.

7.6 **Audit.** QualiSystems reserves the right to audit the Customer's use of the Services or the Licensed Software during normal business hours and with reasonable notice and to include means within the software to remotely monitor and/or limit Customer's use of the Services and the Licensed Software to those licensed under the purchase order.

## 8. **LIABILITY LIMIT**

8.1 **EXCLUSION OF INDIRECT DAMAGES.** NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR CUSTOMER DATA, INCLUDING WITHOUT LIMITATION, COSTS OF DELAY; LOSS OR UNAUTHORIZED ACCESS OF DATA OR INFORMATION; AND LOST PROFITS OR ANTICIPATED COST SAVINGS.

8.2 **LIMIT ON LIABILITY.** QUALISYSTEMS'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) DOES NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO QUALISYSTEMS UNDER THIS AGREEMENT WITHIN THE 12 MONTH PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM EXCEPT FOR QUALISYSTEMS DEFENSE OF THIRD PARTY CLAIMS UNDER



SECTION 11.1 UNDER WHICH QUALISYSTEMS TOTAL LIABILITY WILL BE LIMITED TO THE LESSER OF 3 TIMES THE AMOUNT PAID BY CUSTOMER TO QUALISYSTEMS UNDER THIS AGREEMENT WITHIN THE 12 MONTHS PERIOD PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM OR \$500,000. NOTWITHSTANDING THE ABOVE, IT IS MADE CLEAR THAT UNDER A TRIAL LICENSE QUALISYSTEMS HAS NO LIABILITY WHATSOEVER, INCLUDING UNDER SECTION 11.1.

## **9. TERM AND TERMINATION**

9.1 **Term.** This Agreement continues until applicable purchase orders expire and may not be terminated by Customer prior to expiration of such applicable purchase order term. All purchase orders automatically renew for additional one year terms at the end of the applicable term, unless a Party has notified the other that it is not interested in such renewal at least 30 days prior to the expiration of the purchase order term.

9.2 **Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this Agreement with immediate effect. If breach is a curable breach and the breach has not been cured within 10 business days following written notification from the non breaching party to the breaching party, such non breaching party may terminate the Agreement with immediate effect.

9.3 **Return or Destroy QualiSystems Property Upon Termination.** Upon termination of this Agreement for any reason, Customer must pay QualiSystems any amount owed to QualiSystems, immediately stop any access and use of the Services or the Licensed Software and uninstall and destroy any access to the Services or the Licensed Software and return all property of QualiSystems. Customer will confirm its compliance with this destruction or return requirement in writing upon request by QualiSystems. For avoidance of doubt it is made clear that Customer Data will remain on QualiSystems systems after expiry or termination of this Agreement for archival and backup purposes only (unless Customer has specifically requested in writing after expiry or termination of this Agreement that QualiSystems delete or remove such Customer Data from QualiSystems systems) but QualiSystems will not make use of such Customer Data for purpose of this Agreement after such date of expiry or termination of this Agreement, unless required by law or court ruling.

9.4 **Suspension of Service for Violations of Law.** QualiSystems may temporarily or permanently suspend the Service or remove the applicable Customer Data it may be holding (if any), or both, if it in good faith believes that, as part of using the Service, Customer has violated or may violate a law or any provision of this Agreement. QualiSystems will attempt to provide prior notice but not providing such prior notice shall not harm QualiSystems immediate ability to suspend or terminate the Services as detailed above. In addition, Your right to the Services may be immediately terminated and/or suspended upon notice due to a breach of the terms of this Agreement by You or any User. In no case will any such termination or suspension give rise to any liability of QualiSystems to You for a refund or other compensation.

## **10. GOVERNING LAW AND FORUM**

10.1 **This** agreement is governed by the laws of the State of New York, without regard to conflict of laws principles. Any dispute arising out of or related to this agreement must be exclusively determined by in the courts of New York, New York.

## **11. DEFENSE OF THIRD PARTY CLAIMS**



11.1 Other than under Trial Licenses, QualiSystems will defend or settle any third-party claims against Customer that claim that the Service, not related to Customer Data, used strictly in accordance with this Agreement, violates a copyright, patent, trademark or other intellectual property right of a third party, if Customer: promptly notifies QualiSystems of the claim in writing; cooperates with QualiSystems in the defense; and allows QualiSystems to solely control the defense or settlement of the claim. QualiSystems will only settle a claim without consulting Customer if it contains no admission of liability or financial obligation on the part of Customer. QualiSystems shall have no liability if the Customer has licensed the services under a Trial License; if alleged claim is based on a modification of the Services or the Licensed Software by anyone other than QualiSystems; is based upon Third Party Rights and Licenses contained in the Licensed Software or the Services (except to the extent QualiSystems is indemnified by the third party vendor); is based on use of the Services or the Licensed Software with software or equipment not supplied by QualiSystems; or is based on the use of the Service or Licensed Software other than in accordance with this Agreement or documentation. QualiSystems has no obligation for any claim arising from: Customer Data; a combination of the Service or Licensed Software with other services, technology, aspects or processes where the claim would not occur but for the combination; or services, technology, aspects or processes not provided by QualiSystems. This Section states QualiSystems' entire liability and Your exclusive remedy for such third party claims.

11.2 If a claim appears likely, then QualiSystems may modify the Service, procure the necessary rights, or replace the Service with the functional equivalent or terminate the Service and provide a refund of any prepaid and unused amounts, upon its sole discretion.

11.3 Customer will indemnify, defend or settle any claims against QualiSystems in relation to the Customer Data or any access or use by QualiSystems of the Customer Data, Customer systems or customer Cloud (including any third party service providers related thereto) for the performance of or in relation to the Services, or the Licensed Software, including any claims of non payment, breach of privacy, intellectual property or breach of any other laws or rights and including and use of any third party application or services as further detailed under Section 3 of Schedule 1, including in connection with the Services or the Licensed Software. In addition, You hereby agree to defend, indemnify and hold harmless QualiSystems and its affiliates and their respective officers, directors, agents and employees from any and all claims, damages, liabilities, costs, and expenses (including attorney's fees) arising from claims related to Your or Your Users use of the Service, the Licensed Software or the Account or any third party applications or services, including in connection with the Services or Licensed Software, as well as from Your failure to comply with these Terms, the Third Party Rights and/or Licenses or the AWS (or other Service Hosting Facility Terms, other than QualiSystems liability to defend and settle third party claims as detailed in section 11.1 above.

11.4 If You have received the Account under a Trial License, in which case QualiSystems shall have no liability whatsoever, including no liability to defend or settle such third party claims for IP infringement detailed above.

### **11.5 EXCLUSIONS**

THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND QUALISYSTEMS'S SOLE LIABILITY FOR ANY CLAIMS, INCLUDING INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS. Other than as specifically stated above in this section 11.1, You agree that QualiSystems shall have no liability whatsoever for any use by You or Your Users of the Services or the Licensed Software.

## **12. MISCELLANEOUS**

12.1 **Further Contact.** QUALISYSTEMS may contact You regarding new Service features

and offerings, including by way of email or any format QualiSystems sees appropriate.

12.2 **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

12.3 **Entire Agreement and Changes.** This agreement and each order constitute the entire agreement between the parties, and supersede all prior or contemporaneous negotiations, agreements and representations, whether oral or written, related to this subject matter. Neither party is relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it or agree to it as part of an online electronic process, and no waiver is effective unless the party waiving the right signs a waiver in writing.

12.4 **No Assignment.** Customer may not assign or transfer this agreement or an order in any way or manner including to a third party. QualiSystems has no limitation on assignment or transfer of this Agreement.

12.5 **Independent Contractors.** The parties are independent contractors with respect to each other.

12.6 **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond their reasonable control, including without limitation, force majeure events.

12.7 **No Additional Terms.** QualiSystems rejects additional or conflicting terms of any Customer form or purchasing document.

12.8 **Order of Precedence.** If there is an inconsistency between this agreement and a purchase order, the purchase order prevails.

12.9 **Survival of Terms and no CISG.** Any terms that by their nature survive termination or expiration of this agreement, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.

12.10 **Export Control.** Each party must comply with the export control laws of the United States and other applicable countries.

## Schedule 1 – QUALISYSTEMS Service Agreement

"**Account**" an account set up for Customer for use with the Services

"**Third-Party Components**" means components and software products that are an integral part of the Service but are owned or licensed by third parties, including but not limited to those listed on the Third Party Rights and/or Licenses.

"**Users**" means Your employees, representatives, consultants, contractors, agents who You have authorized to use the Service only for Your internal business needs and Your sole benefit (and at Your sole liability) subject to the terms of the Agreement and this Service Agreement as a result of a subscription having been purchased or a Trial License having been activated, and Your account administrator adding in such specific users, which have been supplied user identifications and passwords by You (or by QualiSystems). Each User shall use the Service, subject to the terms of the Agreement, this Service Agreement and any specific limitation or exclusion of use detailed under <http://quali.com/legal> ("**Usage Restriction**"), which may be changed from time to time by written notification to Customer.

### 1. Account Setup

- (a) In order to make use of the Services You will be required to register and have an account opened ("**Account**"). You will be requested to provide certain mandatory information, including among other things, Your full name, email, company name, address, country, phone number ("**Registration Data**"). Once You signup online by self registration, or through a QualiSystems' sale representative, QualiSystems will set up initial access to the Services through Your Account on Your behalf (or set up by You in case of self registration). You agree to provide true, accurate, current and complete Registration Data as prompted by the registration process and to maintain the security and confidentiality of your user name and password and any other security or access information used by You to access Account. You agree that Your password shall be non-transferable. You further agree not to impersonate another person in Your use of the Account. You shall designate a person on Your behalf to act as Account administrator for purpose of managing and overlooking the Account, including adding or erasing Users. After initial set up by QualiSystems, all Accounts shall be fully managed by You. You will access the Services through Your Account.
- (b) As part of the setup process, QualiSystems will initiate some service/s on Your hosting facility for use of Customer Cloud environments and/or services, which is required in order to enable the Service. You are required to enable such set up process. In addition, use of such hosting facility Customer Cloud environments and/or services, are usually charged for by the hosting facility and You shall be solely liable to maintain and pay hosting facility all charges required by such hosting facility for such set up process, including for such time period before QualiSystems starts to provide the Services themselves.
- (c) You (i) are responsible for all activities occurring under Your Accounts; (ii) are responsible for the content of all Customer Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Account and the Service, and shall notify QualiSystems promptly of any such unauthorized use You become aware of; (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Account and/or the Services and (v) be solely liable to maintain and pay hosting facility all charges required by such hosting facility for use of Customer Cloud environments and/or services for purpose of Services herein, including by Customer or by QualiSystems (which are in addition to any charges QualiSystems may charge for the Service).
- (d) Customer shall use the Account and the Service as specifically defined in the Agreement,

including any use limitations set forth therein or under <http://quali.com/legal> ("**Usage Restriction**"), which may be changed from time to time by written notification to Customer, and solely for Your internal business purposes, and Customer shall not (and shall procure that each authorized User does not) do any of the following, except as expressly permitted by this Agreement shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, publicly perform, display or communicate, frame, mirror, link, use in a time share, host, outsourcing, or service bureau environment or otherwise commercially exploit or make the Account or the Service available to any third party, other than to Users to be used strictly according to the terms of this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights, including as part of your Customer Data; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs, including as part of Your Customer Data; (v) interfere with or disrupt the integrity or performance of the Account or the Service or the data contained therein; (vi) attempt to gain unauthorized access to the Account or the Service or its related systems or network; (vii) copy any functions, features, or graphics of the Service or the Licensed Software; (viii) modify, alter, adapt, arrange, or translate the Service or the Licensed Software; (ix) decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or non-literal aspects of, the Service or Licensed Software; (x) remove, alter, or conceal, in whole or in part, any copyright, trademark, or other proprietary notices displayed or contained on or in the Service or Licensed Software; (xi) circumvent, disable or otherwise interfere with security-related or technical features or protocols of the Service or Licensed Software, such as features that restrict or monitor access or use thereof; (xii) make a derivative work of the Service or Licensed Software, or use them to develop any service or product that is the same as (or substantially similar to) the Service or Licensed Software; (xiii) take any action that imposes or may impose (as determined in QualiSystems sole discretion) an unreasonable or disproportionately large load on the servers, network, bandwidth, or other cloud infrastructure which operate or support the Service or Licensed Software, or otherwise systematically abuse or disrupt the integrity of such servers, network, bandwidth, or infrastructure; and/or (xiv) use the Service or Licensed Software to infringe, misappropriate or violate any third party's intellectual property rights, moral rights, privacy or other personal right, or any applicable law or regulation; or (xv) copy any ideas, features, functions or graphics of the Service or the Licensed Software.

- (e) You understand that QualiSystems' obligations hereunder cannot be met without access to Your systems, Cloud and Customer Data solely for the purpose of providing the Services. You therefore agree to maintain and separately pay as required by applicable hosting facility (in addition to any payments to be made to QualiSystems for the Services) for all such systems, Cloud and Customer Data as needed and provide QualiSystems such needed access for purpose of enabling it to fulfill its obligation and rights under this Agreement, including supporting Your Account and providing all Services as an integral part of the Data License under the Agreement.
- (f) QualiSystems or anyone on its behalf will not access Your systems or Cloud, except as necessary to maintain and/or provide its obligations and rights under this Agreement including as necessary to support Your Account or provide the Services (as well as to have the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, privacy, security and availability) or as necessary to comply with the law or a binding order of a governmental body. Such access by QualiSystems or on its behalf shall in no way change QualiSystems limited liabilities and disclaimers under this Agreement and all use of the Account shall remain at Your sole and exclusive liability as detailed herein and You shall remain fully liable for any such use by QualiSystems or on its behalf, including all payments required to be made to the applicable hosting

facility.

## 2. **PRIVACY AND CONSENT**

2.1 **Privacy.** QualiSystems will use any Personal Information that You may provide QualiSystems (including through the Customer Data), that You may upload onto the Licensed Software or through the Account or Services or that QualiSystems may collect or obtain in connection with the Services, as well as to have the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, security, availability and privacy, and in relation to QualiSystems Support Services or Professional Services (if applicable) and in accordance with QualiSystems Privacy Policy which is available at <http://quali.com/legal> ("**Privacy Policy**"), and You agree that QualiSystems may do so. Notwithstanding, You are aware that You are not legally obligated to provide QualiSystems Personal Information, and You hereby confirm that providing QualiSystems Personal Information is at Your own free will. In those cases where it should become applicable, You should request from QualiSystems their Data Processing Agreement to be signed by You.

2.2 Subject to QualiSystems' Privacy Policy at <http://quali.com/legal>, You hereby acknowledge and accept that QualiSystems shall be entitled to make use of the Registration Data, Customer Data, and Data in Your Account or any other Personal Information for the purposes detailed in the Agreement and this Schedule as well as for the purpose of sending QualiSystems newsletters, marketing and promotional material, use instructions, registration and other instructions or answer to your questions and specifically opt in to receiving such information.

- (a) **Choice.** At all times, You may choose whether or not to provide or disclose Personal Information. If you choose not to provide mandatory Personal Information, You may be unable to access certain options, programs, offers, and services that involve QualiSystems interaction with You, including but not limited to the Services or Your Account
- (b) **Opting Out.** You may choose not to receive future promotional, advertising, or other Service-related emails from QualiSystems by selecting an unsubscribe link at the bottom of each email that QualiSystems sends. Please note that even if You opt out of receiving the foregoing emails, QualiSystems may still send You a response to any service questions, Your use of the Services or the Account, "Contact Us" request as well as administrative emails (for example, in connection with a password reset request) that are necessary to facilitate Your use of the services or the Account

2.3 **Data Transfer.** As detailed in the Privacy Policy, this Agreement and in this Schedule, making use of such Services, including in such hosted and Cloud environment means that You are aware and you expressly, freely, affirmatively and unequivocally consent that QualiSystems may expose and/or transfer your information and Your Customer Data, including your Personal Information, and process it on servers outside your country of residence and outside of the European Economic Area / European Union, including on the Service Hosting Facility (as defined in the Agreement) servers anywhere in the world including in Europe, England or United States and QualiSystems may engage third parties to perform necessary business functions on its behalf, such as by outside contractors or service providers (e.g. hosting company, data servers, storage facilities, consultants, advisors, auditors) for example, in connection with , having the Services reviewed and tested by third party advisors or auditors, including to ensure internal procedures, security and availability, communications to You, Users, data storage facilities, and other aspects of the Services or the Account operations. If it is necessary for the performance of their duties, these third parties may be exposed

to receive, be transferred and/or have access to Your information, Customer Data, Your Personal Information and Your Confidential Information. These third parties are required not to use any information for any purpose other than to provide services to QualiSystems or to Customer on QualiSystems behalf. They are also required to protect the information with adequate reasonable security measures. Your information, Customer Data and Personal Information may be exposed, transferred in and out of, stored, maintained, and processed in and out of anywhere in the world including Europe, England or United States or in and out of other countries, including where You are located, where You access or use the services from or where QualiSystems has facilities or where QualiSystems has engaged a service provider. This exposure, storage, maintenance or processing will be performed under privacy and security laws and standards that may not be as protective as those in Your jurisdiction. Your use of the Services and Account is an affirmative and complete consent to such exposure, transfer and storing, including outside of your territory and to anywhere in the world including Europe, England or United States. If You have any concern about the above, do not make use of the Services or the Account, provide QualiSystems with such Personal Information, Customer Data, or upload onto the Account, Licensed Software or Services any Personal Information. For full detail of QualiSystems use of Private Information please see QualiSystems Privacy Policy at <http://quali.com/legal>. Additionally, to the extent that any Personal Information is collected, stored or transferred You hereby represents that You have has received any required consents from the data subjects for use and for the purpose for which this Personal Information is exposed, collected, stored or transferred, including by informing the data subjects the following, among others, as required under any applicable law, including any applicable privacy laws.

BY AGREEING TO THE TERMS YOU ACCEPT AND ACKNOWLEDGE THAT YOU ARE NOT ALLOWED, AND IT IS EXPLICITLY PROHIBITED BY QUALISYSTEMS THAT YOU UPLOAD ANY PERSONAL INFORMATION TO THE SERVICES OR ACCOUNT UNDER THIS AGREEMENT.

### 3. **Third-Party Providers**

3.1 The Service includes embedded third party components which are licensed to you as part of QualiSystems Service and under such third party specific license terms and copyright notices located at <http://quali.com/legal> titled THIRD PARTY COPYRIGHT NOTICES ("**Third Party Rights and/or Licenses**" as applicable"). Those license terms will prevail over any license terms contained herein.

3.2 **Integration with Third-Party Applications or Services.** The Services and/or Licensed Software may enable You to integrate with third party services or applications and those integrations shall be at Your sole and exclusive responsibility and liability and are in no way or manner under the liability of QualiSystems, including liability of QualiSystems to how such applications or services shall effect the Services, Licensed Software or Your ability or inability to use them, even if recommended, linked through or found thorough QualiSystems, its website, products or services, its documentation, by its representatives, etc.. Such third party services or applications are standalone and follow their own licenses and guidelines which You undertake to abide by. Among other things, such services or applications will or may be (i) getting information from QualiSystems and QualiSystems Services or Licensed Software or controlling QualiSystems services or Licensed Software either via a dedicated plugin or API, in which cases such third party applications these applications must be authorized by You to access the Services or Licensed Software and/or (ii) accessed by the Services or Licensed Software to pull data required for the Service, in which case You should authorize the Service or Licensed Software to access the third party application or service. If You install or enable third-party services or application for use with the Service or the Licensed Software, You acknowledge that QualiSystems may allow providers of those third-party applications or components to access Customer

Data as required for the interoperation of such third party applications or components with the Service, including any Personal Information that may be contained therein. QualiSystems shall not be responsible for any disclosure, modification or deletion of Customer Data resulting from any such access by third-party application or component providers (including any Personal Information that may be contained therein). In addition, the Service or the Licensed Software may contain features designed to interoperate with third-party applications or components (e.g., Github, GitLab, Bitbucket or Jenkins applications). To use such features, You may be required to obtain access to such third-party applications from their providers. If the provider of any such third-party application ceases to make the third-party application available for interoperation with the corresponding Service features, QualiSystems may cease providing such Service features without entitling You to any refund, credit, or other compensation. Any such use of third party applications or components is at Your sole risk and sole discretion and QualiSystems does not warrant, is not liable for and does not provide any specific recommendations for such uses. Such third-party application or service providers, some of which may be listed on pages within website and including providers listed under the Third-Party Rights and/or Licenses, offer products and services related to the Service, and or the services, including implementation, customization and other services related to Customers' use of the Service or the Licensed Software, and applications (both offline and online) that interoperate with the Service such as by exchanging data with the Licensed Software and/or the Service or by offering additional functionality within the user interface of the Licensed Software and/or the Service. QualiSystems does not warrant any such third party providers or any of their products or services, whether or not such products, applications or services are designated by QualiSystems as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, and any purchase by You of any application, product or service offered by such third party provider, is solely between You and such third-party provider and You shall fully indemnify QualiSystems and be fully liable for any claims by any such third party providers for any such use made, including in connection with the Services or the Licensed Software.

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