TestRail Server Annual License Terms

Please read the following provisions carefully.

BY ORDERING, DOWNLOADING, INSTALLING OR USING THE ANNUAL LICENSED SOFTWARE FROM GUROCK SOFTWARE GMBH (HEREINAFTER: GUROCK), THE INDIVIDUAL ITSELF OR THE COMPANY/ORGANIZATION THE INDIVIDUAL IS ACTING FOR (TOGETHER HEREINAFTER: THE CUSTOMER) IS ACCEPTING THE FOLLOWING SOFTWARE ANNUAL LICENSE TERMS (HEREINAFTER: THE TERMS). IF CUSTOMER DOES NOT ACCEPT THE FOLLOWING TERMS, CUSTOMER MAY NOT DOWNLOAD, INSTALL, COPY OR USE THE LICENSED SOFTWARE. THE EFFECTIVE DATE FOR THESE TERMS IS THE DAY CUSTOMER EITHER ORDERS OR DOWNLOADS OR INSTALLS THE LICENSED SOFTWARE, WHICHEVER OCCURS FIRST.

1. Subject Matter

Subject of these Terms is TestRail Server Annual, any update or upgrade of it or any test version (hereinafter: the Licensed Software). The Licensed Software is test management software that may be used by software teams to manage software testing efforts.

Under these terms Gurock grants to the Customer a temporary, non-exclusive license to use the Licensed Software, subject to the terms hereinafter set forth (hereinafter: the License). The License remains in force for the duration of the applicable term or until Gurock terminates the License because of Customer's failure to comply with these Terms. Unless otherwise agreed the applicable term is 12 months commencing with the issuing of the license key for the Licensed Software to the Customer by Gurock.

Any conflicting, supplementary or deviating terms of the Customer shall not become an integral part of any agreement between Gurock and the Customer, unless Gurock explicitly agrees to such terms in written form.

2. Industrial Property Rights and Denotations Thereof

The Licensed Software is the property of Gurock, and protected by copyright laws, industrial property rights, and other national statutory provisions, plus laws and agreements concerning intellectual property.

Gurock reserves all rights, particularly copyrights, patent rights, brand rights and further industrial and other property rights to the Licensed Software, the documentation thereof, and changes to and derivations from these. The Customer receives merely a usage right to the Licensed Software and documentation thereof, and not ownership.

Identifications, brands, or references denoting industrial property rights or other forms of legal ownership within the Licensed Software may be neither removed nor altered. They must be transferred together with the Licensed Software on every copy.

3. Usage Rights

Gurock grants to the Customer the temporary, non-exclusive right to install, to load, to run and to use the Licensed Software, in object-code form only, on a single computer server system for the applicable term

and solely for the Customer to use the Licensed Software for its intended purpose in accordance with the following provisions. No further rights are granted.

The Customer is entitled to install and to use the Licensed Software solely for the number of activated users for which the Customer has paid the applicable license fee for. The activation of a user requires the creation of a user account.

Therefore Customer is obliged to obtain one user license for each person using the Licensed Software. The Customer is entitled to deactivate a user account to add and activate another user account instead. The Customer may add additional authorized user accounts for Licensed Software by obtaining further Licenses from Gurock. The Customer is not authorized to use one user account for multiple users.

The Customer shall be entitled to additionally create a backup copy and customary data backups in reasonable numbers.

Customer shall adopt appropriate measures to prevent unauthorized access to license keys provided to the Customer.

Customer shall not translate the program code into other forms of code (decompilation) or employ other methods aimed at revealing the software's code in the various stages of its development (reverse engineering).

Customer shall be entitled to pass on or sell the Licensed Software to a third party once in all under complete transfer of the granted rights to the third party if the third party agrees the continuous validity of these Terms in written form. In this case, the Customer shall transfer to the purchaser or acquirer all copies of the Licensed Software the Customer has created, or erase them. The identity of the third party must be disclosed to Gurock. The Customer is not entitled to transfer the Licensed Software and the granted right to the third party in case of substantial grounds for suspecting that the third party will breach these Terms or infringe Gurock's industrial property rights.

The Licensed Software may be neither rented out, nor leased, nor loaned nor transferred in the form of sub-licenses.

Any further utilization of the Licensed Software shall require an additional granting of rights by Gurock.

The right to use the software shall only become valid once Customer has paid the applicable license fee and by using the license key provided by Gurock.

The usage rights cease once the applicable term has expired or with termination. Upon expiry of the license the Customer may renew the license based on the then valid conditions offered by Gurock. Gurock has no obligation to offer a license renewal to the Customer.

4. Test Versions

The TestRail Trial version of the Licensed Software is handed over to the Customer solely for testing and evaluation purposes. It is prohibited to pass on this software package to third parties. This test software is made available under exclusion of any warranty and liability whatsoever. Gurock may limit the functionality of the test version at its sole discretion.

The TestRail Beta version of the Licensed Software is handed over to the Customer solely for testing purposes. It is prohibited to pass on this software package to third parties. This test software is made

available under exclusion of any warranty and liability whatsoever. Gurock may limit the functionality of the test version at its sole discretion.

Deviating from section 3 Customer is only entitled to use test versions for the agreed limited period of TestRail Trial or TestRail Beta.

5. Restrictions on Use and Utilization

The use and utilization of the Licensed Software for military, nuclear-engineering, aviation and automotive-engineering purposes are explicitly prohibited. If the Licensed Software are to be used directly or indirectly in one of the above-mentioned fields or in other software-controlled or influenced fields where human life or health may be at risk, this shall require a prior explicit agreement with Gurock.

6. Warranty

6.1 The Customer shall examine the Licensed Software immediately upon installation and shall report any defect without delay. Software defects are solely reproducible faults, whose causes are to be found in defects in the Licensed Software concerned, and in substantial deviations of functionality between the Licensed Software supplied and the documentation.

6.2 For defects in the licensed programs, Gurock will initially at its own discretion, provide a warranty either by remedying the defect or by supplying a new software release (rectification). Instructions from Gurock for bypassing a software defect (a workaround) shall be construed as sufficient remediation.

6.3 The Customer shall only be entitled to terminate the agreement, on the basis of an inability to use the Licensed Software pursuant to its intended purpose, if Gurock has been given sufficient opportunity for rectification and Gurock refuses to rectify, or the attempt to rectify is unsuccessful, or if the rectification is unreasonable for the Customer.

6.4 The liability for defects existing at the effective date of these terms irrespective of fault is excluded.

6.5 The agreed qualities of the Licensed Software shall in all cases be construed as only those particulars provided in the documentation for the licensed programs concerned. Public statements, recommendations or advertising from Gurock shall not additionally constitute any contractual qualities regarding the licensed programs involved.

7. Liability

7.1 The pre-contractual, contractual and non-contractual liability of Gurock is limited to cases of intent and gross negligence.

7.2 In cases of ordinary negligence Gurock's liability shall be limited to the breach of contractual obligations which are cardinal obligations. Cardinal obligations are those obligations for which due fulfilment is essential to the proper implementation of the contract as a whole, and the contractual partner may depend upon their fulfilment.

7.3 Furthermore, the amount of damages shall be limited to those losses which are generally foreseeable and typical in connection with providing the Licensed Software at the effective date.

The amount of damages to be claimed from Gurock is capped at the amount paid by the Customer for transfer of the Licensed Software.

7.4 The liability for loss of data shall be restricted to typical recovery expenses which would have arisen if regular backup copies had been made by the Customer commensurate with the risks associated with the loss of such data.

7.5 The above limitations of liability shall also apply where Gurock is vicariously responsible for its employees and agents.

7.6 The limitations of liability in this section shall not apply to liability resulting from injury to the life, body or health of a person or under the German Product Liability Law.

7.7 Any claims for damages by the Customer relating to defects in the supplied Licensed Software shall be subject to a limitation period of 12 months. This does not apply to defects which have been intentionally concealed by Gurock.

7.8 The liability for a test version is in any case limited to intent and gross negligence.

8. Support

Gurock provides detailed TestRail documentation and guides on its website and supplies Customer at its discretion and at intervals specified by Gurock with updates and further limited technical support within the term of the license.

9. Publicity

Customer grants Gurock the right to include the Customer's organization name and logo as a customer on Gurock's website and other promotional and advertising materials. Within thirty business days after written request, Gurock will remove the Customer's organization name and logo from Gurock's website and will cease to include the Customer's organization name and logo in Gurock's other promotional and advertising materials.

10. Disputes, Applicable Law, Notices

10.1 These Terms (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to these Terms or its formation) shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

10.2 The parties agree that the courts of the seat of Gurock shall have exclusive jurisdiction to settle any dispute arising out of these Terms, and so far this is permitted by law.

10.3 Notices made by Gurock to the Customer may be posted on the Website, at gurock.com and/or sent to the email address specified by the Customer when registering or to any updated email address the Customer provides. Notices to Gurock must be directed to contact@gurock.com and/or Gurock Software GmbH, Heinrich-Roller-Str. 16b, 10405 Berlin, Germany.

10.4 The official text of these Terms and any annexes attached here to and any notices given here shall be in English.

11. Final Provisions

11.1 The Customer may set off only legally, binding and recognized claims. The rights and obligations arising from these Terms are generally not transferable. However Gurock may transfer this agreement with all rights and obligations to a company of its choice. If the Customer does not expressly disagree with this in writing within one month from a corresponding notice this is deemed to be his acceptance.

11.2 If any provision of these Terms is or later becomes invalid, or contains omissions, the validity of the other provisions shall remain unaffected. The parties shall agree upon a new provision, which shall resemble the invalid provision as closely as possible in purpose and meaning, to replace the invalid provision. In the event of an omission in the agreement, a provision shall be agreed upon which shall correspond with that which would have been agreed, pursuant to the purpose and meaning of the agreement, if the matter had been considered by the parties when the agreement was formed.

TestRail Server Perpetual License Terms

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Therefore Customer is obliged to obtain one user license for each person using the Licensed Software. The Customer is entitled to deactivate a user account to add and activate another user account instead. The Customer may add additional authorized user accounts for Licensed Software by obtaining further Licenses from Gurock. The Customer is not authorized to use one user account for multiple users.

The Customer shall be entitled to additionally create a backup copy and customary data backups in reasonable numbers.

Customer shall adopt appropriate measures to prevent unauthorized access to license keys provided to the Customer.

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Customer shall be entitled to pass on or sell the Licensed Software to a third party once in all under complete transfer of the granted rights to the third party if the third party agrees the continuous validity of these Terms in written form. In this case, the Customer shall transfer to the purchaser or acquirer all copies of the Licensed Software the Customer has created, or erases them. The identity of the third party must be disclosed to Gurock. The Customer is not entitled to transfer the Licensed Software and the granted right to the third party in case of substantial grounds for suspecting that the third party will breach these Terms or infringe Gurock's industrial property rights.

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5. Restrictions on Use and Utilization

The use and utilization of the Licensed Software for military, nuclear-engineering, aviation and automotive-engineering purposes are explicitly prohibited. If the Licensed Software are to be used directly or indirectly in one of the above-mentioned fields or in other software-controlled or influenced fields where human life or health may be at risk, this shall require a prior explicit agreement with Gurock.

6. Warranty

6.1 The Customer shall examine the Licensed Software immediately upon installation and shall report any defect without delay. Software defects are solely reproducible faults, whose causes are to be found in defects in the Licensed Software concerned, and in substantial deviations of functionality between the Licensed Software supplied and the documentation. In respect of updates or upgrades, Customer's rights in case of defects shall be limited to the new feature of the update or upgrade.

6.2 For defects in the licensed programs, Gurock will initially at its own discretion, provide a warranty either by remedying the defect or by supplying a new software release (rectification). Instructions from Gurock for bypassing a software defect (a workaround) shall be construed as sufficient remediation.

6.3 If the rectification attempted by Gurock has failed, the Customer may, at his discretion, demand a reduction in the price (diminution) or cancellation of the agreement (revocation). A rectification is deemed to have failed after the second unsuccessful attempt, unless circumstances lead to a different conclusion. In cases of minor defects, the Customer shall not have any right of revocation.

If the Customer revokes the agreement because of a legal or substantive defect following a failed attempt to rectification, the Customer shall not be additionally entitled to claim damages by reason of the defect concerned.

6.4 The limitation period for all warranty claims shall be 12 months commencing with the download of the Licensed Software onto the Customer's computer system for the first time. In respect of the delivery of updates or upgrades, the period for such deliverables shall in each case commence with download of the update or upgrade.

6.5 The agreed qualities of the Licensed Software shall in all cases be construed as only those particulars provided in the documentation for the licensed programs concerned. Public statements, recommendations or advertising from Gurock shall not additionally constitute any contractual qualities regarding the licensed programs involved.

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7.3   Furthermore, the amount of damages shall be limited to those losses which are generally foreseeable and typical in connection with providing the Licensed Software at the effective date. The amount of damages to be claimed from Gurock is capped at the amount paid by the Customer for transfer of the Licensed Software.

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7.5   The above limitations of liability shall also apply where Gurock is vicariously responsible for its employees and agents.

7.6   The limitations of liability in this section shall not apply to liability resulting from injury to the life, body or health of a person or under the German Product Liability Law.

7.7   Any claims for damages by the Customer relating to defects in the supplied Licensed Software shall be subject to a limitation period of 12 months. This does not apply to defects which have been intentionally concealed by Gurock.

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8. Support

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10.4 The official text of these Terms and any annexes attached here to and any notices given here shall be in English.

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11.2 If any provision of these Terms is or later becomes invalid, or contains omissions, the validity of the other provisions shall remain unaffected. The parties shall agree upon a new provision, which shall resemble the invalid provision as closely as possible in purpose and meaning, to replace the invalid provision. In the event of an omission in the agreement, a provision shall be agreed upon which shall correspond with that which would have been agreed, pursuant to the purpose and meaning of the agreement, if the matter had been considered by the parties when the agreement was formed.