TestRail Cloud Terms of Service

Of Gurock Software GmbH (Gurock), regarding the software TestRail Cloud.

1. Subject Matter

1.1 The subject matter of this Agreement is the use of the software 'TestRail Cloud' (hereinafter: the Software), formerly also called 'TestRail Hosted', by the Customer. This Agreement regulates all relations between Gurock and the Customer regarding the use of the Software. Conflicting, supplementary or deviating terms of the Customer shall not become an integral part of the agreement unless this is explicitly agreed between Gurock and the Customer in written form.

1.2 The Software is web-based test management software that may be used by software teams to manage software testing efforts.

2. Scope of Services

2.1 Gurock provides the Software as a service. This means that the Software may be used over the Internet only. The Software will be operated by Gurock on servers and be made available to the Customer via the Internet.

2.2 The service of Gurock includes the use of the Software, support, updates and providing the server infrastructure (hereinafter: the Services). Gurock will take reasonable measures to protect the Services against denial of service attacks and other hacker attacks from outside; given the accessibility of the Services via the Internet it cannot be guaranteed however that these or similar fraudulent actions by third parties will never occur.

2.3 Unless otherwise agreed no consultancy or training is within the scope of the services offered by Gurock under this Agreement.

3. Concluding of the Agreement

3.1 Using the Services requires the opening of an Account via Gurock's website at gurock.com by registering the Customer with its name and a valid e-mail address. In addition the Customer needs to choose a web address name for its own TestRail access at the website of the Services (hereinafter: the Website). The Account and the Services will be available under this Website.

3.2 The opening of an Account by the Customer is deemed an offer to conclude this Agreement. Gurock may at its own discretion accept this offer by explicitly accepting it or rendering services under this Agreement. The same applies to the issue of a purchase order by the Customer, a purchase request sent by the Customer via letter, email or fax or the renewal of a contract when registering payment details within the Customer's Account or at gurock.com.

3.3 The person opening the account represents that he/she has got the legal authority to bind the legal entity he/she acts for to this Agreement, with respect to Gurock.

3.4 The Customer gains access to its Account and the Services by logging in at the Website using its password and e-mail address (hereinafter: the Account Data). Once the Customer opened an Account and logged in, it is possible to add further users and set a User Account for each user. This agreement with the Customer applies for each activation of a User Account and the Customer is responsible for any obligations resulting from such activation under this agreement. Each User Account shall be used only by one single person and the Customer is obliged to activate a new User Account for every staff using the Services of Gurock.

3.5 In connection with the registration the Customer is obliged to

- make precise and correct allegations and to correct the data if changes accrue;
- keep any Account Data and User Account login information confidential at all times and to do everything to avoid any third party getting hold of this information. In this respect 'third party' also includes all employees of the Customer that are not designated to use the Services;
- immediately inform Gurock in case of loss, theft or other disclosure of the Account Data to a third party or in a suspicion of misuse of the Account Data and to immediately change the password;
- allow the use of the Account Data only designated users added or invited to the Account.

4. Trial Period

4.1 If the Customer is explicitly granted a Trial Period for a number of days after the registration Gurock will provide the Services without any remuneration for the duration of the Trial Period. The Customer shall use the Services during the Trial Period only for the purposes of trying its functionalities and not for operational use. Gurock may limit the functionality of the Services or restrict provided resources during the Trial Period at its sole discretion.

4.2 After the termination of Trial Period the Services will be disrupted and the Customer's Account deactivated unless the Customer chooses to continue using the Services for a monthly or yearly fee based on the number of active users. If the Customer does not submit valid credit card details or arrange for an alternate payment method with Gurock within three month after the termination of the Trial Period this contract automatically terminates after the Trial Period ends.

5. Obligations of the Customer

5.1 The Customer is obliged to make agreed payments in due time.

5.2 The Customer has to submit valid credit card details or arrange for an alternate payment method with Gurock.

5.3 To use the Services the customer must use a Web browser Gurock recommends on its website.

5.4 The Customer must not interfere or intent to interfere in any manner with the functionality or proper working of the Services. This includes but is not limited to taking any action that

imposes an unreasonable or disproportionately large load on the server infrastructure, e.g. unreasonable amount of server requests or upload of unreasonable volume of data.

5.5   The Customer must not use and/or utilize the Services for military, nuclear-engineering, aviation and/or automotive-engineering purposes. If the Services are to be used directly or indirectly in one of the above-mentioned sectors 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.

5.6   The Customer will indemnify and hold harmless Gurock, its officers and directors, employees and agents from any and all third party claims, damages, costs and (including reasonable attorney fees) arising out of the Customer's use of the Services in a manner not authorized by this Agreement, and/or applicable law, or the Customer's or its employees' or personnel's negligence or wilful misconduct.

5.7   In order to limit data loss the Customer is obliged to download backups in regular intervals by using the provided export and backup mechanisms.

5.8   The Customer grants Gurock the right to include the Customer's organization name and logo as a customer's reference on Gurock's website and other promotional and advertising materials. Within 10 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.

5.9   The Customer shall inform Gurock without delay in case of any occurring fault when using the Services of Gurock.

6.   Downtime, Updates and Services Suspensions

6.1   Gurock will make every reasonable effort to provide an uninterrupted operation of the Services on a continuous basis. This is naturally confined to services which Gurock can influence. The Customer recognises that complete, uninterrupted availability of the Services cannot be achieved for technical reasons. Therefore Gurock reserves the right to limit access to the Services in full or partly due to maintenance work, capacity matters or due to other occurrences that are beyond its control.

6.2   Adjustments, changes and updates of the Services may lead to temporary service suspensions. Gurock may at its own discretion upgrade the Software to new versions without prior notification of the Customer. When upgrading or updating the Software Gurock will make sure that the essential functions of the Software do not cease to exist in future versions of the Software.

6.3   The Customer is aware that the Services rely on a working Internet infrastructure. Downtime of the Services can also occur if the website is not available and at any other time with restrictive access to the Internet.

6.4   Gurock will try to achieve an availability of the Services and its accessibility of 98 per cent in the annual average. Scheduled maintenance times do not count as downtime and are not to be taken into account when measuring availability.

7. Rights to Use

7.1 The Customer is granted a limited, non-exclusive, non-transferable, non-sublicenseable right to use the Software as a service on the Website under the conditions set out in this agreement.

7.2 The Customer is not granted any additional right to the Software or any other intellectual property of Gurock. This especially means that the Customer shall not be entitled to make copies of the Software. The 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).

7.3 The Customer is not entitled to remove or make alterations to copyright notices, serial numbers or other features which serve to identify the Software.

7.4 The use of the Services does not result in any loss of ownership of the Customer's rights on uploaded data. The Customer grants Gurock a limited and non-exclusive right, which is revocable by the Customer at any time, to use such data for the purpose to provide the Services to the Customer pursuant to this Agreement and within the scope of the Services offered.

8. Payments

8.1 The Amount of the monthly fee depends on the number of active users (cf. no. 3.4). For the calculation of the number of active users the highest simultaneous number of activated user logins during the previous month is to be taken into account, even if the activated user login has not actually been used or accessed. Deactivated user logins are not taken into account for this calculation.

8.2 The price of the Services is shown on the current price list of Gurock that is available at gurock.com. All prices in the price list or on any other documents issued by Gurock at any specific time are net-price.

8.3 If a Trial Period is granted and ends on a day other than the first of a month, the monthly fee will be charged only according to the remaining days of the month.

8.4 For the calculation of the monthly fee the local time of Berlin, Germany is decisive.

8.5 If not otherwise agreed the monthly fee for the previous month is due to be paid on the first day of the month and will – if not provided otherwise – be charged to the credit card account of the Customer.

8.6 If the Customer chooses to pay for the Service up-front instead of paying for the Service monthly by credit card, Gurock deducts the monthly fee for the Service from the Customer's balance. If the Customer's balance isn't sufficient to pay for the previous monthly fee, Gurock will invoice the customer for the remaining amount and will contact the customer to arrange for a payment for the continued use of the Service.

8.7 Gurock may alter the current price list and/or the structuring of prices. Gurock will inform the Customer via email about the price change. If the Customer does not expressly disagree in writing within two weeks from the notification of change this is deemed to be his acceptance

of the change. The Customer will be informed about this circumstance in the notification of change.

9. Warranty

9.1   Defects in the Services which have a substantial effect on the ability to run the Software shall be remediated within a reasonable time following a detailed notification of such defect that allows Gurock to reproduce the defect being given to Gurock by the Customer.

9.2   For the purpose of remedying defects, Gurock may choose to replace the defective Software with a version of the Software which is free of defects.

9.3   Unless Gurock fails to repair or replace the Software, the right of the Customer to terminate the contract due to an inability to use the Software shall be excluded.

9.4   The limitation period for all warranty claims shall be 12 months commencing with the first coming to show of the defect.

9.5   If the availability mentioned in section 6.4 is not met in the average of one calendar year the Customer may as a sole remedy deduct an accordant amount from the remuneration. The proportionate deduction maybe withheld from the next payment due.

10. Liability

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

10.2   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.

10.3   Furthermore, the amount of damages shall be limited to those losses which are generally foreseeable in connection with providing the Services. The amount of damages to be claimed from Gurock is capped at the amount paid by the Customer for the Service offered by Gurock within the last 12 month before the damage occurred.

10.4   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.

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

10.6   The limitations of liability in this section 10 shall not apply to liability resulting from injury to the life, body or health of a person or under the German Product Liability Law.

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

10.8 Gurock is not liable for damages resulting from defects of server infrastructure, hardware failure, network outages or any other circumstances out of Gurock's control and not directly caused by Gurock or its employees.

10.9 The liability during the Trial Period is in any case limited to intent and gross negligence.

11. Processing of Data

11.1 If the Customer processes personal data, the Customer is responsible to obey data protection regulations. Gurock will only process the data transmitted by the Customer as directed by the Customer.

11.2 The Customer agrees to only upload actual test data when using the Software. The Customer explicitly guarantees not to upload any personal data. Gurock rules out any and all liability with respect of the disclosure of personal date. The Customer agrees to hold Gurock harmless from all costs and damages Gurock may have in connection with the upload of personal data.

12. Term and Termination

12.1 The Agreement runs for an indefinite time and will remain in effect until terminated by one of Parties in accordance with this section 12.

12.2 The Parties may terminate this Agreement for any or no reason at all at their convenience with at least one day notice to the end of each month. Termination must be issued in text form (e.g. letter, email or fax) or by using the provided account closing mechanism, if Gurock provides one.

12.3 In addition each Party's right to terminate this Agreement for a good cause remains unaffected. A good cause for termination of the Agreement by Gurock shall include, but is not limited to, the following:

- a serious breach of the obligations arising from this Agreement by the Customer;
- a default in payment of the Customer with an amount that equals at least the compensation of two months;
- including, but not limited to, the failure to settle outstanding invoices;
- a serious breach of contract leading to the loss of mutual trust or renders the continuation of this Agreement in consideration of the purpose of the Agreement unreasonable;
- an attempt of a denial of service attack on any of the Services by the Customer or any attempt to hack or break any security mechanism on any of the Services;
- determination that the Customer's use of the Services imposes a security or service risk to Gurock, or to any user of services offered by Gurock;
- an application for the initiation of insolvency proceedings concerning the Customer, as well as the refusal to open insolvency proceedings for lack of assets, or the issue of a declaration in lieu of an oath, or any similar proceedings.

12.4 Gurock may at its own discretion instead also temporarily quit providing the Services until the cause has been remedied by the Customer. In this case the contract shall be deemed on hold

until the Customer makes the necessary payments or the contract is terminated. If the Customer does not make payments or enters (new) payment details when explicitly requested to do so this is deemed a termination of the contract by the Customer.

13. Disputes, Applicable Law, Notices

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

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

13.3 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.

13.4 The official text of this Agreement and any annexes attached here to and any notices given here shall be in English.

14. Final Provisions

14.1 This agreement, together with any documents referred to in it, or expressed to be entered into in connection with it, constitutes the whole agreement between the Parties concerning the subject matter of this Agreement.

14.2 The Customer may set off only legally, binding and recognized claims. The rights and obligations arising from this Agreement 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.

14.3 If any provision of this agreement 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.

14.4 These Terms of Service may be modified by Gurock at any time. Gurock will inform the Customer via email that these Terms of Service have altered without necessarily including the new version or alteration in this email. If the Customer does not expressly disagree in writing within a month from the notification of change this is deemed to be his acceptance of the change. The Customer will be informed about this circumstance in the notification of change.