

TRIAL AND EVALUATION AGREEMENT

TRIAL AND EVALUATION AGREEMENT (“**Agreement**”), by and between (“**Potential Customer**”), with an office at _____, and QualiSystems Ltd. (“**QualiSystems**”), with an office at _____, dated as of _____

In consideration of the mutual promises herein, Potential Customer and QualiSystems agree as follows:

1. SOFTWARE. QualiSystems agrees to provide Potential Customer the Software and related Software described below for evaluation purposes (the “**Software**”): QualiSystems’ automation suite (CloudShell Pro, CloudShell Colony, TestShell).

2. TRIAL PERIOD. The trial period (the “**Trial Period**”) will commence on the date that the Software is made available to Potential Customer, and will end within seven (7) days thereafter unless agreed otherwise.

3. FEES. There will be no charge to Potential Customer for use of the Material(s) or any services provided by QualiSystems to Potential Customer (including without limitation support) during the Trial Period. Nonetheless, and for the sake of clarity, any moneys received (if any) from Customer under this Agreement are non-refundable, including pre-payments for any future services.

4. TECHNICAL SUPPORT. QualiSystems shall provide Potential Customer with needed technical support services for the needed evaluation of the Software.

5. LICENSE. QualiSystems hereby grants Potential Customer a non-transferable, non-exclusive, fully paid-up, revocable, worldwide license to use the Software during the Trial Period for evaluation purposes only. The parties agree that, as between Potential Customer and QualiSystems, QualiSystems shall retain title to the Software and Potential Customer shall have no right, title or interest therein, except for the license rights provided herein.

6. LICENSE RESTRICTIONS.

6.1. The Software should be installed and/or used in accordance with the instructions of QualiSystems. Except as expressly and unambiguously permitted by this Agreement, Potential Customer may not, nor permit anyone else to, directly or indirectly to: (a) copy or modify any Software source code, either alone or in conjunction with any other product or program; (b) exceed the scope of license set forth in Section 5 and make use of it for anything other than internal evaluation purposes; (c) reverse compile or reverse assemble all or any portion of the Software; (d) distribute, disclose, market, rent, lease, lend, sublicense, or transfer to any third party the Software or use the Software in any timeshare, hosting or service bureau arrangement; (e) export the Software in violation of the U.S. export laws or any other applicable laws or regulations; (f) remove any identification, including copyright, trademark, patent or other notices, contained in or on the Software or documentation; (g) use the QualiSystems, TestSell, CloudShell or any other QualiSystems name, logo or trademarks without prior written consent from QualiSystems.

6.2. Any right not explicitly granted to Potential Customer is reserved to QualiSystems or its suppliers. No license, right or interest in any QualiSystems trademark, trade name or service mark is granted hereunder.

7. THIRD-PARTY SOFTWARE.

The Software includes embedded third party components which are licensed to you as part of our Software and under such third party specific license terms and copyright notices located at

<https://www.quali.com/legal> titled THIRD PARTY COPYRIGHT NOTICES (“Third Party Rights and/or Licenses,” as applicable”).

8. PROVISION OF SOFTWARE. QualiSystems shall, at QualiSystems’s expense: (a) make the Software available to Potential Customer; and (b) provide Potential Customer with all manuals and other documentation required to enable Potential Customer to use and maintain the Software. Potential Customer may make no more than 1 (one) copy of all manuals and other documentation provided by QualiSystems for use solely in relation to the Software. In so doing, Potential Customer agrees that any copyright and other proprietary notices on such manuals and other documentation will be reproduced. Upon the earlier of, QualiSystems’s written request, or upon the termination or expiration of this Agreement, Potential Customer promptly shall stop making any use of the Software and (i) return to QualiSystems any Confidential Information and Software of QualiSystems that is in Potential Customer’s possession or control, or (ii) purge, delete or destroy, to the extent reasonably practical, any Software and Confidential Information of QualiSystems that cannot feasibly be returned to QualiSystems certifying in writing the destruction of the same to QualiSystems, and (iii) safeguard all other documents or media, containing Software Confidential Information of QualiSystems, that cannot be returned, purged, deleted or destroyed.

9. CONFIDENTIAL INFORMATION.

9.1. As used herein, “**Potential Customer Confidential Information**” shall mean all Potential Customer information which is confidential in nature or marked as confidential to which QualiSystems has had access to in connection with performance of this Agreement, whether in oral, written, graphic or machine-readable form, including without limitation, specifications, user, operations or systems manuals, diagrams, graphs, models, sketches, technical data, research, business and financial information, plans, strategies, forecasts, forecast assumptions, business practices, marketing information and material, names, proprietary ideas, concepts, know-how, methodologies and all other information related to Potential Customer’s or any of its affiliates’ businesses. Potential Customer Confidential Information shall also include confidential information received by Potential Customer or any of its affiliates from a third party.

9.2. As used herein, “**QualiSystems Confidential Information**” shall mean all QualiSystems information which is confidential in nature or marked as confidential to which Potential Customer has had access to in connection with performance of this Agreement, whether in oral, written, graphic or machine-readable form, including without limitation, specifications, user, operations or systems manuals, diagrams, graphs, models, sketches, technical data, research, business and financial information, plans, strategies, forecasts, forecast assumptions, business practices, marketing information and material, names, proprietary ideas, concepts, know-how, methodologies and all other information related to QualiSystems or any of its affiliates’ businesses. QualiSystems Confidential Information shall also include confidential information received by QualiSystems or any of its affiliates from a third party.

9.3. Potential Customer Confidential Information and QualiSystems Confidential Information are hereinafter be referred to as the “**Confidential Information**.”

9.4. Notwithstanding anything to the contrary contained in this Agreement, Confidential Information shall not include information that: (i) is in the public domain at the time of disclosure; (ii) was in the possession of or demonstrably known by the recipient prior to its receipt from the disclosing party; (iii) is independently developed by the recipient without use of the Confidential Information; or (iv) becomes known to the recipient from a source other than the disclosing party without breach of this Agreement.

9.5. Each party agrees to maintain the confidentiality of the other party’s Confidential Information using procedures no less rigorous than those used to protect and preserve the confidentiality of its own similar proprietary information and shall not, directly or indirectly: (i) transfer or disclose any Confidential Information to any third party, except as otherwise permitted under this Agreement; (ii) use any Confidential Information other than as contemplated under this Agreement; or (iii) take any other action with respect to the Confidential Information inconsistent with the confidential and proprietary nature of such information. Potential Customer and QualiSystems shall maintain an industry-standard information security program that includes commercially reasonable practices and controls (such as reasonable encryption, access controls, and periodic testing) and apply such program, as applicable, to protect the other Party’s Confidential Information, but in any case no less than is uses to protect its own Confidential Information.

10. REPRESENTATIONS AND WARRANTIES.

10.1. **Non-infringement.** QualiSystems represents and warrants that: (a) it has and will have all rights, titles, licenses, intellectual property, permissions and approvals necessary in connection with its performance under this Agreement and to grant the rights granted hereunder; (b) neither the Software (or any of them) nor their use as contemplated under this Agreement, do or will infringe, violate, trespass or in any manner contravene or breach any patent, copyright, trademark, license or other property or proprietary right or constitute the unauthorized use or misappropriation of any trade secret of any third party; and (c) the Software and their use as contemplated hereunder comply with all applicable laws.

10.2. **Disclaimer.** QualiSystems disclaims the implied warranties of merchantability and fitness for a particular purpose.

10.3. **Viruses.** QualiSystems represents and warrants that it routinely uses up-to-date anti-virus software and anti-spyware in accordance with common industry practices to detect any computer code designed to disrupt, disable, harm, or otherwise impede in any manner, including aesthetical disruptions or distortions, the operation of the Software or any other computer system, software, device, or network (sometimes referred to as “viruses” or “worms”).

10.4. **Other Code.** QualiSystems represents and warrants that the Software do not and will not contain any computer code that: (a) would disable the Software or any computer system, software, device or network or impair in any way their operation based on the elapsing of a period of time, the exceeding of an authorized number of copies, or the advancement to a particular date or other numeral in a way that limits the right of use of the Software beyond the allowed right of use detailed in Section 5 above

(sometimes referred to as “time bombs”, “time locks”, or “drop dead” devices); or (b) would permit QualiSystems or another person to access Potential Customer’s computer system, software, devices or network (sometimes referred to as “traps”, “access codes” or “trap door” devices), or contain any other similar harmful, malicious or hidden procedures, routines or mechanisms that would cause Potential Customer’s computer system, software, device or network to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with Potential Customer operations.

11. LIMITATION OF LIABILITY. EACH PARTY’S LIABILITY TO THE OTHER OR ANY OTHER PARTY FOR DIRECT DAMAGES IN CONNECTION WITH THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, SHALL BE LIMITED \$1,000US (ONE THOUSAND) US DOLLARS, EXCEPT IN THE CASE OF BREACH OF THIS AGREEMENT’S CONFIDENTIALITY OR SECURITY PROVISIONS, OR IN CONNECTION WITH THE SATISFACTION OF THE INDEMNITY OBLIGATIONS CONTAINED HEREIN, WHICH SHALL BE LIMITED TO \$10,000 (TEN THOUSAND) US DOLLARS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PARTY FOR LOST PROFITS OR FOR SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THE FOREGOING, NO LIMITATION OR EXCLUSION OF EITHER PARTY’S LIABILITY WILL APPLY WITH RESPECT TO ANY CLAIMS ARISING OUT OF OR RELATING TO ITS WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OR CLAIMS FOR PERSONAL INJURY .

12. TERMINATION. During the Trial Period only, and subject to the non-refund terms in Section 3 above, Potential Customer may terminate this Agreement at any time upon written notice to QualiSystems. In no event shall either party have any obligation to enter into a license or any other agreement with respect to the Software.

13. GENERAL.

13.1. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard to choice of law rules. THE PARTIES HEREBY UNCONDITIONALLY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF, DIRECTLY OR INDIRECTLY, THIS AGREEMENT, ANY RELATED DOCUMENTS, AND/OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT OR ANY TRANSACTIONS RELATED TO THIS AGREEMENT.

13.2. **No Assignment.** Neither party may assign its rights or obligations under this Agreement, in whole or in part, without express written consent of the other party and any assignment in violation of the provisions of this Section shall be deemed null and void other than each party’s right to assign its rights or obligations under this Agreement to any of its affiliates, or to any entity which acquires all or substantially all of the party’s assets or due to a change of control or merger and acquisition or to any entity that is otherwise a successor in interest to such Party.

13.3. **Survival.** Any provision of this Agreement which, by its nature, would survive termination or expiration of this Agreement, shall survive any such termination or expiration of this Agreement.

13.4. **Entire Agreement.** This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, and may be modified or amended only by a written agreement signed by authorized representatives of each party.

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the Effective Date by their duly authorized representatives.

[POTENTIAL CUSTOMER]

(Authorized Representative)

Name

Title

Date

[QUALISYSTEMS]

(Authorized Representative)

Name

Title

Date