



Testmo Terms of Service

The Testmo Terms of Service governs all Testmo subscriptions purchased before December 1, 2023.

Last updated: February 1, 2022

1. Scope

Please read these Terms of Service (these "**Terms**") carefully as they constitute a legal and enforceable contract and govern your use of (which includes access to) the Testmo Software-as-a-Service test management tool (the "**Software**"). In the context of these Terms, you as the company or legal entity that will be utilizing the Software will be referred to as the "**Customer**". These Terms are between you and Testmo GmbH, Wilhelmine-Gemberg-Weg 11a, 10179 Berlin, Germany ("**Testmo**"). Testmo and Customer are individually referred to as a "**Party**", and collectively as the "**Parties**".

Please note that the Software offer is not directed at consumers within the meaning of European consumer law. By using the Software and accepting these Terms, you confirm that you are not a consumer.

2. Definitions

The following capitalized terms, whether used in the singular or the plural, shall have the following meanings as used in these Terms unless specifically defined otherwise herein:

- 2.1 "**Account Data**" is defined in Sec. 3.2.2.
- 2.2 "**Actual Availability**" is defined in Sec. 7.5.
- 2.3 "**Agreed Scope**" is defined in Sec. 3.4.1.
- 2.4 "**Annual Payment**" is defined in Sec. 4.2.1.
- 2.5 "**Assignment**" is defined in Sec. 11.3.
- 2.6 "**Auto Renewal**" is defined in Sec. 5.1.
- 2.7 "**Beta Version**" is defined in Sec. 3.5.1.
- 2.8 "**Company Account**" is defined in Sec. 3.2.1.
- 2.9 "**Customer**" is defined in Sec. 1.
- 2.10 "**Customer Content**" is defined in Sec. 6.2.1.



- 2.11 "**Feedback**" is defined in Sec. 6.3.1.
- 2.12 "**Feedback Rights**" is defined in Sec. 6.3.1.
- 2.13 "**Free Trial**" is defined in Sec. 3.3.1.
- 2.14 "**GDPR**" is defined in Sec. 10.2.
- 2.15 "**High Impact Downtime**" is defined in Sec. 7.5.
- 2.16 "**Maintenance Time**" is defined in Sec. 7.1.
- 2.17 "**Monthly Fee**" is defined in Sec. 4.1.1.
- 2.18 "**Monthly Payment**" is defined in Sec. 4.2.1.
- 2.19 "**Party**" is defined in Sec. 1.
- 2.20 "**Personal Data**" is defined in Sec. 10.2.
- 2.21 "**Prepayment**" is defined in Sec. 4.2.4.
- 2.22 "**Price Page**" is defined in Sec. 4.1.1.
- 2.23 "**Prohibited Use**" is defined in Sec. 8.5.1.
- 2.24 "**Rate Limit**" is defined in Sec. 8.2.
- 2.25 "**SaaS**" is defined in Sec. 3.1.1.
- 2.26 "**Software**" is defined in Sec. 1.
- 2.27 "**Storage Space**" is defined in Sec. 8.2.
- 2.28 "**Subscriptions**" is defined in Sec.3.4.1.
- 2.29 "**Terms**" is defined in Sec. 1.
- 2.30 "**Testmo**" is defined in Sec. 1.
- 2.31 "**User Account**" is defined in Sec. 3.2.2.
- 2.32 "**Website**" is defined in Sec. 3.1.1.

3. Subject Matter

3.1 General Scope of Services

3.1.1 Testmo provides the Software as Software-as-a-Service ("**SaaS**"), which means that the Software will be made available to Customers via the Internet (i.e. accessible with a web browser). Usage of the Software is only possible if the Customer has access to the Internet and uses one of the web browsers recommended by Testmo on its website (<https://www.testmo.com> and subdomains; the "**Website**").

3.1.2 The Software can be used to manage software testing. In particular, it allows you to manage test cases, testing sessions and report test automation results. The Software is provided as part of different paid subscriptions (including different additional features), and



may be subject to a Free Trial version, all as specified in the following sub-sections. The Customer hereby confirms that it is informed about the Software, its functions, features and scope, about how the Software can be used and what can be achieved by using the Software. The Customer hereby confirms that the functions, features and scope of the Software are sufficient for the purposes that the Customer intends to use the Software.

3.1.3 Testmo may in its own discretion enhance and improve the Software through updates and upgrades without prior notification of the Customer, provided that the essential functions of the Software as provided herein are maintained. However, the Customer is not entitled to any such updates or upgrades.

3.2 Accounts

3.2.1 Each Customer who wishes to use the Software has to register and create an account ("**Company Account**") through the Website at no cost. By creating or using a Company Account or by accessing and/or using the Software, the Customer agrees to be bound by these Terms.

3.2.2 The Customer gains access to its Company Account and the Software by logging in at the Website using its password and email address (the "**Account Data**"). Once the Customer has created a Company Account and logged in, the Customer may add users and create additional user accounts ("**User Accounts**"). Each User Account shall be used only by one single person and the Customer is obliged to activate a new User Account for each individual using the Software. The Customer can select a different user access type for each User Account which may have an impact on the applicable fees (see Sec. 4.1.3d). The Customer shall impose the same obligations and duties as under these Terms on each individual to whom it assigns a User Account; however, the Customer shall remain fully liable to Testmo for any conduct of the users to whom the Customer assigns a User Account.

3.3 Free Trial

3.3.1 If the Customer is granted a free trial, the Software is provided as a free trial version for the period of time that is specified on the Website



prior to commencing the free trial, or such other limited period of time as explicitly agreed between Customer and Testmo ("**Free Trial**"). During the Free Trial, the Customer does not need to pay any fees for the use of the Software, and after the Free Trial ends, the Customer is not obliged to purchase a subscription.

3.3.2 During the Free Trial, the Customer is only permitted to use the Software to try out its functionalities and not for production use. Testmo may limit any functionalities of the Software or restrict provided resources during the Free Trial in its sole discretion. The provision of the Software during a Free Trial by Testmo is entirely voluntary, and the Customer is not entitled to any features, functionalities or generally availability of the Software during a Free Trial. Other than for registering an account, the Customer must not use any Personal Data when using the Software; Testmo does not agree to receive, store or otherwise process any Personal Data for the Customer. Testmo is also not responsible for any (other) data created and/or stored by the Customer using the Software, and does not warrant or promise to return such data or keep its integrity. Therefore, the Customer should only use test data to test the Software during a Free Trial.

3.3.3 The Free Trial automatically ends at the end of the specified or agreed period of time. Upon the end of the Free Trial, the Customer loses access to all included services, functionalities, and possibly stored data.

3.4 Subscriptions

3.4.1 Other than for a Free Trial, the Software is provided on a subscription basis pursuant to the subscription plan, edition and other features you have selected (the "**Subscription**"). The available editions and other features, as well as prices, available at any given time are described on our website. Depending on the Subscription you select, the respective user counts, user tier pricing and Software features (the "**Agreed Scope**"), shall apply.

3.4.2 If a Free Trial was used prior to the start of the Subscription, the Company Account created for the Free Trial will be converted to a Company Account for the Subscription, with the respective Agreed



Scope, provided that the account has not yet been deleted pursuant to Sec. 5.5.

3.5 Beta Versions

3.5.1 Testmo may, in its sole discretion, offer experimental versions of the Software and/or specific Software related features to the Customer ("**Beta Version**"), either in connection with a Free Trial or a Subscription. Beta Versions are clearly marked as such (e.g. with the terms Alpha, Beta, Experimental, Pre-Release or similar terms).

3.5.2 Use of Beta Versions is in the sole discretion of the Customer, and at the Customer's sole risk. Testmo does not take any responsibility for Beta Versions, their performance or any data used with, created through or stored in Beta versions. Beta Versions are still under development and therefore usually still contain bugs/errors. They may be inoperable or incomplete, may not be supported and may be changed or removed at any time without notice. Any and all data created or stored by the Customer in connection with or by using Beta Versions may be damaged, removed or lost. Beta Versions may not be as reliable or available to the same extent as the (regular) Software. Beta Versions have not been subjected to the same security measures and auditing as the (regular) Software. If you choose to use a Beta Version and have a Subscription for the Software, you may not be able to use the Software or all parts thereof. This may also apply after the end of the provision of the Beta Version, and any data or specifications created, stored or used in connection with the Beta Version may be lost. Beta Versions therefore shall not be used for production use. Section 7 of these Terms shall not apply to Beta Versions.

4. Payment and Invoicing

4.1 Pricing

4.1.1 The fee for the use of the Software for one month ("**Monthly Fee**") is determined in the price list on the Website ("**Price Page**"). Unless agreed otherwise, the relevant period for a Monthly Fee is a calendar



month. New Subscriptions will be charged pro rata for the first calendar month.

4.1.2 All prices on the Price Page and on the Website or any other documents issued by Testmo do not include applicable VAT, sales tax, withholding tax or similar tax as applicable by law.

4.1.3 The Monthly Fee will be calculated each month based on the fees stated on the Price Page for (i) the selected Subscription, (ii) the number of activated/enabled User Accounts within the relevant billing month and (iii) any optional features booked by the Customer.

a) The number of activated/enabled User Accounts relevant for calculating any Monthly Fee shall be equal to the highest number of simultaneously activated/enabled User Accounts (users marked as activated/enabled in the administration area of the Software) at any point in time during the relevant billing month, even if not all activated/enabled User Accounts were actually used or accessed.

b) Alternatively and in its sole discretion and without being obliged to do so, Testmo may calculate the Monthly Fee based on the number of activated/enabled User Accounts per each day of the given month.

c) Different Subscriptions include different user tiers (contingents) of simultaneously activated/enabled User Accounts, as specified on the Price Page. If the Customer activates/enables one or more User Accounts in excess of the user tier contingent included in a Subscription, the price for the next user tier (contingent) of the Subscription becomes payable.

d) Deactivated User Accounts, User Accounts configured with the Viewer access type (an optional feature of some editions), and User Accounts created as API users (a feature of some editions) are not taken into account for the calculation of the Monthly Fee.

4.2 Invoices and Payment of Invoices

4.2.1 At the Customer's choice, Monthly Fees can be either pre-paid based on a one-year estimate ("**Annual Payment**"), or paid monthly ("**Monthly Payment**"). For Monthly Payment, the Customer is obliged to



provide valid payment information (e.g. credit card details) in its Company Account.

4.2.2 If the Customer has selected Monthly Payment, then, at the beginning of each following month, an invoice on the Monthly Fee will be provided for download in the Company Account.

4.2.3 Monthly Payment is made by charging the payment method entered by the Customer in its Company Account (e.g., credit card). If a payment cannot be processed for any reason (e.g., expired credit card), Testmo will notify the Customer of such payment failure, and the Customer is obliged to update the payment information or provide an alternative payment method. If the Monthly Fee has not been received by Testmo within 7 days after the notification of failure of the Monthly Payment, Testmo may, in its sole discretion, suspend or terminate the Customer's Subscription and access to the Software and related services.

4.2.4 If the Customer selects Annual Payment, it will receive an invoice for an advance payment ("**Prepayment**") at the beginning of a Subscription. The amount of the Prepayment will be calculated based on an estimate of Monthly Fees incurred by the Customer in the first twelve-month period of the Subscription.

4.2.5 The Prepayment does not constitute a full payment of all Monthly Fees for the full twelve-month period of the Subscription, but constitutes a prepayment for all Monthly Fees incurred by Customer in the following months of the Subscription which add up to an amount that equals the Prepayment. For this purpose, at the beginning of each month, a statement of the Monthly Fee incurred for the previous month and calculated in accordance with Sec. 4.1 and Sec. 4.2.1 above, will be provided for download in the Company Account, and the amount of such Monthly Fee will be set-off against the Prepayment. If the Monthly Fees incurred in any month of the Subscription exceed the amount of the (remaining) Prepayment, the Customer shall be obliged to pay the balance of the Monthly Fee for such month to Testmo.

4.2.6 If the Prepayment is likely not to be sufficient to settle the next Monthly Fee, Testmo will notify the Customer and provide the Customer



with an estimate for the next twelve-month period. If the Customer decides not to agree and pay the next Annual Payment, or does not respond, Testmo may, in its sole discretion, suspend or terminate the Customer's Subscription and access to the Software and related services, from the moment the Prepayment is exhausted. If Testmo does not suspend or terminate the Customer's Subscription, the Subscription will automatically convert to a subscription with Monthly Payment, from the date on which the Prepayment was exhausted.

4.2.7 If after the termination of the Subscription and issuance of the last statement by Testmo the Prepayment has not been fully used, the Customer may request a refund of such remaining amount upon 4 weeks' notice to Testmo.

4.3 Payment Due Date

Monthly Payment is due to be paid upon invoicing, in accordance with Sec. 4.2.3. Annual Payments are due to be paid within 30 days of the date of the invoice or as otherwise agreed. If any invoices remain unpaid past the due date, Testmo will notify the Customer thereof, and may, without limiting its other rights and remedies, (i) suspend or terminate Customer's access to the Software and related services, and (ii) charge late payment interest on the unpaid fees from their due date until payment is received in full, at the rate of the lesser of 1.5% per month and the highest rate permitted by applicable law.

5. Term and Termination

5.1 Unless otherwise agreed, the term of each Subscription is one month. All Subscriptions will automatically be renewed for additional periods of one month ("**Auto Renewal**") unless Auto Renewal is cancelled in accordance with Sec. 5.2.

5.2 Auto Renewal may be cancelled at any time by the Customer giving notice to Testmo. If Auto Renewal is cancelled, the respective Subscription will continue for the remainder of the calendar month, and will then terminate.



5.3 Testmo may terminate a Subscription for convenience in its sole discretion by giving the Customer not less than one (1) month's notice. Testmo may terminate a Free Trial at any time in its sole discretion.

5.4 In addition, each Party may terminate a Subscription for good cause with immediate effect. Good cause for termination by Testmo includes, but is not limited to, the following:

- the Customer commits a material breach of a provision of these Terms;
- the Customer repeatedly breaches any other provision of these Terms, or breaches several other provisions of these Terms;
- the Customer is in default of payment of any Monthly Payment for more than seven (7) days after the due date, or of any Annual Payment for more than two (2) weeks after the due date, or of an amount that equals at least two Monthly Fees;
- the Customer is in breach of its obligation pursuant to Sec. 8.1 in such a way that this results in a security risk to Testmo or other customers or jeopardizes Testmo's provision of the Software;
- (i) the Customer is or becomes unable to pay its debts as they fall due; or (ii) the Customer files for the commencement of insolvency proceedings; or (iii) the commencement of insolvency proceedings regarding the Customer is refused for lack of assets.

5.5 Without prejudice to any other rights of Testmo, instead of exercising a termination right pursuant to Sec. 5.4 above Testmo may, in its sole discretion, only suspend a Subscription and access to the Software and related services.

5.6 During the suspension of a Subscription, Customer is not entitled to access or use the Software or the Company or User Accounts, and Testmo shall have no obligation to provide such access or to enable Customer to use the Software or any other rights, benefits or privileges from the Subscription.

5.7 Upon termination all licenses and access rights granted to the Customer and any user shall immediately terminate, and the Customer



shall (and shall procure that all users shall) immediately cease all use of the Software. Company Accounts, User Accounts, any data created and/or stored by the Customer using the Software, may be deleted immediately after the termination of the Subscription.

6. Intellectual Property

6.1 Limited License

6.1.1 All intellectual property rights in respect of the Software and all associated documentation and other materials made available by Testmo are and will remain vested in Testmo or its licensors. These Terms do not in any way constitute a transfer of rights to the Customer.

6.1.2 The Customer is solely granted a limited, non-exclusive, non-transferable, non-sublicensable right to use the Software under the conditions set out in these Terms.

For the avoidance of doubt, this license does not include the right to reproduce the Software, to transform, adapt, edit, shorten, decompile, translate, arrange or otherwise change the Software in its entirety or in part decompile, or reverse engineer it, unless such action is required to load, display, run, or otherwise perform the intended use of the Software according to the respective current Software and Subscription description on the Website.

6.1.3 Other than to registered Users, the Customer is not entitled to make the Software available to third parties for use (regardless of whether for a fee or free of charge). Thus, the Customer is explicitly not allowed to sublet the Software.

6.1.4 Without limitation to the foregoing, the Customer is specifically not entitled to remove, or make alterations to, copyright notices, serial numbers or other features which serve to identify the Software.

6.2 Customer Content and logo

6.2.1 Vis-à-vis Testmo, the Customer retains ownership of all its intellectual property rights in all data (including but not limited to test



related data) which Customer uploads, stores, or otherwise processes with the Software ("Customer Content"). Other than provided herein, Testmo does not claim ownership in any Customer Content.

6.2.2 The Customer grants Testmo a limited and non-exclusive license to use, reproduce, distribute, modify, adapt, and otherwise exploit Customer Content for the limited purpose of providing the Software to the Customer and the Customer using the Software as provided in these Terms. Other than the foregoing, these Terms do not grant Testmo any licenses or rights to Customer Content, and the use of the Software does not result in any loss of the Customer's rights in Customer Content.

6.2.3 The Customer represents and warrants that: (a) the Customer owns or controls the appropriate rights in and to the Customer Content, including to any third-party intellectual property; and (b) will not submit, upload, or otherwise make available via the Software, any Customer Content or materials that are in breach of its obligations pursuant to Sec. 8.

6.2.4 The Customer grants Testmo a limited and non-exclusive license, which is perpetual but revocable by the Customer at any time by giving 14 days' prior notice, to use the Customer's business logo on Testmo's Website for the purpose of presenting sample customers of the Software in a neutral way. Testmo is not allowed to use the logo for other than this purpose. The license is not transferable nor sublicensable. Testmo hereby accepts this grant of rights.

6.3 Feedback

6.3.1 The Customer and its assigned users are under no obligation to provide feedback, make improvements, or make other suggestions that may improve the Software or related services (the "**Feedback**"). However, if they do so, the Customer acknowledges and agrees that Testmo is free to use such Feedback in any manner it chooses. The Customer hereby irrevocably transfers, assigns and grants to Testmo all intellectual property rights that exist or may arise in or to the Feedback without limitation as to time, place or scope, and whether such Feedback is created by the Customer or any of its assigned user (the "**Feedback Rights**"). The Customer warrants and represents that it has acquired the



Feedback Rights in and to any Feedback created by any of its assigned users and is entitled to transfer these rights to Testmo, and that all users have waived (to the extent such waiver is possible under applicable laws) any moral rights, revocation and withdrawal rights.

6.3.2 Testmo may assign and sublicense the Feedback Rights to any third party. Without limitation to the foregoing, the Feedback Rights include, but are not limited to, the right to use and exploit the Feedback or any portion thereof, including any uses already known or unknown or later developed, and including the right to adapt, edit, modify, reproduce, publish, perform, present, distribute, make available to the public, broadcast, translate, enhance, transmit, dispense, reverse engineer, decompile, disassemble, profile, analyze, error correct, sell, or permanently or temporarily store the Feedback. Customer shall receive no compensation for the grant of the Feedback Rights other than the grant of the rights pursuant to Sec. 6.1.2 and the performance of services under these Terms. Testmo hereby accepts this grant of rights.

7. Testmo's Responsibilities; Warranties; Service Level

7.1 For the term of a Subscription, Testmo shall make available the Software on an "as is" basis. Testmo does not make any representation or warranty as to the results that may be obtained from use of the Software. Testmo reserves the right to temporarily suspend access to the Software in full or in part due to maintenance work, capacity matters, occurrences that are beyond its control, adjustments, changes, and updates or upgrades of the Software (collectively "**Maintenance Time**").

7.2 Testmo will use reasonable efforts that are consistent with prevailing industry standards in providing the Software. While Testmo strives to provide an uninterrupted operation of the Software, Testmo does not represent or warrant that the Software will be uninterrupted or error-free at all times.

7.3 To the best of its knowledge, Testmo owns, or has licensed, all intellectual property rights required to make available the Software to the Customer as provided in these Terms. In the event of any claims by third



parties that their intellectual property rights are being infringed through Customer's use of the Software as provided herein, Testmo will, at its discretion, either provide the Customer with alternative and lawful means of using the Software, or provide the Customer with equivalent software.

7.4 Testmo will provide the Customer with the use of the Software during the term of the Subscription. Testmo will provide the Software to the Customer in a condition suitable for contractual use and maintain it in this condition during the term of the Subscription. If at the time the Software is initially provided to the Customer (for purposes of the Subscription), it has a defect that renders it unsuitable for the contractual use, or if such defect occurs during the term of the Subscription, the Customer is exempt from paying the Monthly Fee for the period during which the Software cannot be used for the contractual purpose. The Customer shall notify Testmo of any defects without delay. Any warranty for insignificant reductions in the contractual usability of the Software is excluded. Any liability without fault for defects that already existed at the time of the conclusion of these Terms is excluded. To the extent that Testmo's obligations hereunder constitute services (e.g. support services), Testmo shall only be liable for the proper provision of the services, but not for a particular deliverable.

7.5 Optional Service Level Agreement

If you have selected the Enterprise Edition that contains an optional Service Level Agreement, Testmo will use commercially reasonable efforts to provide availability and accessibility of the Software of 99 per cent on average per calendar month of the Subscription. Maintenance Times do not count as downtime and are not taken into account when measuring the availability of the Software ("**Actual Availability**"). Furthermore, as part of the Enterprise Edition only, Testmo provides the following:

In the event that in any calendar month during the term of the Subscription there is no Actual Availability of the Software for more than six consecutive hours ("**High Impact Downtime**"), the Customer may request, within 30 days from the end of the calendar month that the default relates to, a refund of such portion of the Monthly Fee that



corresponds to the High Impact Downtime in relation to full availability less Maintenance Times. It is the sole responsibility of the Customer to assess the Actual Availability in order to make any refund claims under this Service Level Agreement.

8. Customer's Responsibilities

8.1 Backup of Customer Content

The Customer is responsible for backups of its Customer Data. Testmo does not provide any backups or other copies and may delete, and remove further access to, all Customer Data upon the end of the Subscription (see Section 5.7).

8.2 Fair use policy

The availability of the Software and its pricing are based on certain assumptions regarding the average use of the Software by each customer and user. If the use by Customer exceeds these assumptions, this may affect the experience of other customers and generate high cost for providing the Software. The Customer therefore agrees to the following fair use policy:

- Testmo provides the Customer with storage space on a server to store Customer Content ("**Storage Space**"). The size of the Storage Space depends on and is limited by the respective Subscription and additionally booked features.
- The use of the Software, including the associated APIs, is subject to certain limits regarding the rate of overall requests and/or amount of network traffic sent or received by the Customer and its users ("**Rate Limits**"). The Customer may not exceed the Rate Limits as documented on our Website, or as returned in API replies, which is the case if its use leads to an impairment of the functioning of the Software or an impairment of the use of the Software by other customers.
- If the Customer requires additional Storage Space or increased Rate Limits, the Customer may request a quote from Testmo, and if possible and available, Testmo may provide an offer on



such additional Storage Space or increased Rate Limits which Customer may accept.

8.3 No Illegal or Offensive Use or Personal Data

The Customer represents and warrants not to use the Software for any purposes or activities that are illegal or offensive in any jurisdiction applicable thereto, and in particular not to store any Customer Content that is illegal or offensive in any jurisdiction applicable thereto, or contains any Personal Data (other than user login data and payment/billing data). If any illegal or offensive Customer Content, or Personal Data, is stored on Testmo's facilities, and regardless whether Customer is responsible or has any knowledge thereof, Customer shall immediately prevent any access to, and remove, such illegal or offensive Customer Content or Personal Data. Testmo does not agree to receive, store or otherwise process any Personal Data for the Customer.

8.4 Account data

8.4.1 The Customer warrants that (a) the details provided upon registration are true and accurate; (b) the Customer will maintain the accuracy of information in its Company Account; (c) the Customer (or its legal representative) is at least eighteen (18) years of age and has the capacity and authority to enter into these Terms; and (d) the Customer's use of the Software does not violate any applicable law or regulation.

8.4.2 The Customer will maintain the security of the Customer's Account for using the Software, in particular, handle the identification (login) data and all provided API keys with due care and keep this information secret; the Customer shall procure that all persons to whom it assigns a User Account equally comply with this provision.

8.4.3 If it can be reasonably suspected that abuse or unlawful use has been made or will be made of the identification data or API keys provided to the Customer by Testmo, or such data has been lost by the Customer or its assigned users, the Customer will immediately inform Testmo and will immediately take effective measures, and permit Testmo to take such measures, to prevent and combat (repetition of) misuse or unlawful use of the same or other identification data. Testmo



shall not be liable for the misuse or unlawful use of the identification data or API keys, except in cases where the cause of the misuse or unlawful use, and responsibility therefor, is demonstrably with Testmo or one of its employees.

8.5 Prohibited Use

8.5.1 The Software is not suitable to be used for high-risk applications, i.e., any applications in, for or in context with areas in which significant damage to property or personal injury may occur in the event of a malfunction. Therefore, the Software must not be used for purposes of testing software that will be used in or for high-risk applications, for example, medical products, defense technology or weapons, or energy supply facilities ("**Prohibited Use**"). If Customer is in doubt whether any intended use constitutes a Prohibited Use, Customer shall notify Testmo thereof and Testmo shall determine, in its sole discretion, whether such use constitutes a Prohibited Use. If Customer uses the Software for any Prohibited Use, and without limitation of Testmo's other rights and remedies, Testmo's liability for any damages resulting from or in context with such Prohibited Use shall be excluded.

8.5.2 Customer shall not, under any circumstances, repackage, rent or resell the Software or any features or facilities Customer is granted hereunder (including its use). Customer is not permitted to use the Software in any manner that does or could potentially undermine the security of the Software. In addition, Customer shall not, and shall not attempt to, interfere with, modify or disable any features, functionality or security controls of the Software, defeat, avoid, bypass, remove, deactivate or otherwise circumvent any protection mechanisms for the Software, or reverse engineer, decompile, disassemble or derive source code, underlying ideas, algorithms, structure or organizational form from the Software.

8.6 Breach of Customer's obligations

A breach of Customer's obligations pursuant to this Sec. 8 (except for Sec. 8.1) constitutes a material breach. Without prejudice to any other rights or remedies, Testmo may immediately suspend access to the Software, and related services, at its sole discretion, and may remove or



block any Customer Content that causes or contributes to such breach. Upon suspension of access, Testmo shall notify the Customer without undue delay of the suspension and the reasons. If the Customer's breach is remediable, the notice of suspension shall offer the Customer a reasonable period of at least three (3) days to remedy the breach.

9. Limitation of Liability

Testmo shall be liable under these Terms only in accordance with the following provisions:

9.1 Unless expressly stated to the contrary, and to the fullest extent permitted by law, Testmo hereby expressly excludes all conditions, warranties and other terms which might otherwise be implied by statutory law or otherwise applicable law and shall not be liable for any damages. Other than specifically provided in Sec. 8.5, this does not include claims for damages arising from injury to life, body, health or from the breach of essential contractual obligations and liability for other damages based on an intentional or grossly negligent breach of duty by Testmo, its legal representatives, employees or vicarious agents. Essential contractual obligations are those which must be fulfilled to achieve the purpose of the contract and on which the Customer may rely.

9.2 Where Testmo has liability hereunder, Testmo shall only be liable for the foreseeable damage typical for the type of contract. Any liability for damages caused in any contract year shall be limited up to the amount of fees received by Testmo from Customer in that contract year for the services provided under this contract.

9.3 To the extent permitted by applicable law, Testmo will not be liable for any failure to store, or for loss or corruption of, Customer Content. Under no circumstances shall Testmo be liable for loss of data exceeding the amount of typical recovery costs which would have arisen had proper and regular data backup measures been taken by the Customer pursuant to Sec. 8.1.

9.4 Subject to any applicable mandatory statutory provisions, including, but not limited, to the provisions pursuant to EU Product Liability



Directive or applicable national laws concerning liability for defective products, all additional information on the Website is provided without any guarantees, conditions, or warranties as to its accuracy.

9.5 The limitation of liability shall also apply in favor of Testmo's legal representatives, employees and vicarious agents if claims are asserted directly against them.

10. Privacy and Security

10.1 Testmo processes Personal Data relating to the Customer or users only in accordance with its Privacy Policy available on its Website (at <https://www.testmo.com/about/privacy>).

10.2 The Customer warrants not to upload or otherwise make available any Personal Data (as defined by the General Data Protection Regulation (EU) 2016/679 ("GDPR")) other than user login data and payment/billing data.

10.3 Subject to Sec. 9, Testmo shall not be liable with regard to any use of Personal Data by the Customer in breach of its obligation in Sec. 10.2.

10.4 The Customer agrees to indemnify Testmo against all cost, fines, damages, actions, suits, or disputes incurred by Testmo in connection with the use of Personal Data by the Customer in breach of its obligation in Sec. 10.2.

11. Miscellaneous

11.1 Amendment

These Terms, including external references (e.g., to the Website) and prices, may be amended by Testmo from time to time. Testmo shall notify the Customer of upcoming changes to these Terms (including prices, if applicable) in advance by email or in writing. In its notification, Testmo will grant the Customer a reasonable period of at least four weeks to object to the changes. If the Customer does not object to the changes (including prices, if applicable) within the specified period of time, the amended Terms shall be deemed to be approved by the



Customer, and shall apply. In the notification, Testmo will inform the Customer of the consequences of the Customer's objection, or non-objection to the notification of amendments.

11.2 Entire agreement

These Terms, including external sources, where included by reference (e.g. the Website) and as applicable at the time the Free Trial or Subscription was agreed or Auto Renewal became effective, constitute the exclusive statement of agreement and understanding between the Parties. These Terms exclude all prior or contemporaneous proposals, understandings, agreements, or representations about its subject matter. Each Party agrees that in entering into these Terms, neither Party relies on, and will have no remedy in respect of, any proposal, understanding, agreement, or representation other than as set out in these Terms. For the avoidance of doubt, general terms and conditions of the Customer shall not apply.

11.3 Assignment

Testmo may assign any or all of these Terms, and may assign or delegate, in whole or in part, any of its rights or obligations under these Terms, to any third party, but remains responsible for the fulfillment of its obligations unless the assignee has undertaken, vis-à-vis the Customer and in writing, to assume full liability and responsibility for all assumed obligations. You may not assign, transfer, charge or otherwise encumber, these Terms, or any right, benefit, or interest under it, nor transfer, sub-license or novate in whole or in part (each an "**Assignment**"), without Testmo's prior written consent.

11.4 Force Majeure

11.4.1 In the event of force majeure on either Party's side, the obligations under this Agreement will be suspended for as long as the force majeure situation continues. Force majeure is understood to mean any circumstance beyond the Parties' control which permanently or temporarily prevents the performance of these Terms and which should not be at the relevant Party's risk, either pursuant to the law or according to the standards of reasonableness and fairness.



11.4.2 The suspension will not apply to obligations to which the force majeure does not relate, including payment obligations.

11.4.3 If a force majeure situation has lasted for more than ninety (90) consecutive calendar days or adds up to more than one hundred and twenty (120) days within a calendar year, or as soon as it is clear that the force majeure situation will exceed that period, the counterparty of the Party invoking force majeure will be entitled to terminate this Agreement prematurely with immediate effect.

11.5 Severability

In the event that any provision of this Agreement should in whole or in part be held invalid, illegal or void, such invalidity, illegality or unenforceability shall not affect the applicability of other provisions of this Agreement which shall remain in full force and effect. In such case, the Parties shall make every reasonable effort to make an agreement in lieu of the ineffective provision, which shall, to the greatest extent possible, ensure the same effect as the ineffective provision.

11.6 Form Requirements

11.6.1 Any notice, notification, termination, request or other communication from one Party to the other hereunder must be made in text form which includes communication by email to the email address deposited by the Customer in the Company Account (for the Customer), or to contact@testmo.com (for Testmo).

11.6.2 Any waiver, addition, amendment or other modification of this Agreement, including to this Section, must be in made in text form (including email).

11.7 Governing Law and Jurisdiction

11.7.1 This Agreement shall be governed by and construed in accordance with German law without regard to conflict of law principles and to the United Nations Convention of Contracts for the International Sale of Goods.



11.7.2 The Parties agree to the exclusive jurisdiction of the courts of Berlin, Germany, for any actions arising out of or relating to this Agreement.