

General Terms and Conditions TestMonitor

Version 01-01-2024

TestMonitor (a brand of Testmanagement BV) develops, maintains, and operates a Software-as-a-Service platform that provides on-demand online test management (hereinafter referred to as “Services”). These general terms and conditions (hereinafter referred to as T&Cs), including any appendices such as diagrams and/or job descriptions, together with any order confirmation (as defined in Article 1) jointly constitute a binding agreement (hereinafter referred to as “Agreement”). This Agreement sets forth the terms and conditions under which TestMonitor provides its Services (as defined in Article 1) to the customer. TestMonitor and the customer are collectively referred to as the “Parties” and individually as a “Party.”

Article 1. Definitions

1.1 Unless otherwise defined, the terms used in these T&Cs have the following meanings:

- **Subscription:** Access and use of the TestMonitor system, as well as any support services as defined in the respective order confirmation.
- **Subscription Period:** The period for which the customer has acquired TestMonitor Services, as defined in the respective order confirmation.
- **T&Cs:** These present general terms and conditions.
- **Order Confirmation:** The digital document through which the customer orders a trial subscription, subscription, and/or professional services in accordance with the Agreement. The term “order confirmation” refers to both the online-ordered trial subscription and the online order of a final subscription. If another (digital) order confirmation is provided, it explicitly does not constitute acceptance of the customer’s terms or any other terms that are in addition to or in conflict with the terms of these General Terms and Conditions.
- **Authorised Representatives:** Individuals designated in writing by a party to sign/execute order confirmations on their behalf.
- **Users:** All individuals, functional accounts, and machine accounts registered as user objects in the TestMonitor user database for the customer.
- **Services:** All services (including initial setup) defined in the order confirmation and delivered by TestMonitor to the customer using the TestMonitor system, as well as any additional professional services defined in the order confirmation and agreed upon between the parties. TestMonitor offers on-demand, cloud-based test management solution on a software-as-a-service basis.
- **GDPR:** The General Data Protection Regulation (Regulation (EU) 2016/679) and all other EU laws governing the processing of personal data, which laws may be updated, amended, and replaced by the respective EU institutions from time to time.
- **Documentation:** The currently available performance descriptions, guides, online materials, data sheets, forms, and related documentation provided by TestMonitor to the customer as part of the subscription, describing the features, technology, functionality, and operation of the TestMonitor system.
- **Intellectual Property Rights:** All patents, patent rights, design rights, copyrights, database rights, trade secrets, know-how, trademarks, trade names, trademark rights, service mark rights, author’s personality rights, contract rights, related protection rights, and any applications and rights to registration or protection thereof, that exist at that time or will exist in the future.
- **Costs:** The costs described in the order confirmation for the subscription.

- Customer: The natural or legal person who subscribes to the Services.
- Licence: A limited, non-exclusive, non-transferable, non-sublicensable permission to access and use the TestMonitor system during the subscription period.
- Notification: Any notification, consent, approval, or other communication that is intended to have legal effects and must be made in the context of the Agreement.
- Personal Data: The meaning is described in accordance with the relevant data protection laws and includes, without limitation, all data or information (regardless of the medium in which it is contained and whether it stands alone or in combination) that relates to an identified or identifiable natural person.
- Trial Subscription: TestMonitor offers the opportunity to enter into a non-binding trial subscription. A trial subscription is a subscription without an obligation to use or pay and is limited to a specified period. After this period, the trial subscription is not automatically converted into a paid subscription.
- Professional Services: All professional services, including but not limited to consultancy, training, development, implementation assistance, technical support, or customisation of IT services, provided by TestMonitor to the customer on a time-and-materials basis or on a fixed-price basis, as specified and defined in the respective order confirmation.
- Service Level Agreement: The agreement governing maintenance and support services that the customer enters into with TestMonitor regarding the TestMonitor system as part of the subscription.
- Software: The object code version of the TestMonitor programs or modules specified in an order confirmation, as well as any modified, updated, or enhanced versions thereof provided by TestMonitor to the customer as part of the subscription.
- Start Date: The date from which the customer can use the subscription, with the subscription period being determined according to the information in the respective order confirmation.
- Support: The provision of oral (online) and written advice and support regarding the use and operation of the Services.
- Support Services: The maintenance and support services that the customer uses within the framework of the subscription with TestMonitor regarding the TestMonitor system and as defined in the Service Level Agreement.
- TestMonitor System: The TestMonitor platform, including any software used to provide the Services to customers in accordance with these T&Cs.
- Agreement: The combination of an accepted order confirmation and the acknowledged General Terms and Conditions, including all related appendices, diagrams, and job descriptions.
- Confidential Information: Non-publicly accessible information received by one party from the other party or to which it has access under the Agreement, including but not limited to each party's data and its proprietary software and computer operations, machinery and operating instructions, all codes, inventions, algorithms, business concepts, workflows, marketing, financial, business, and technical information, terms and prices under the Agreement, verification data regarding the use of the software, and other information related to the business or technology of either party that is either clearly marked as confidential or is of a nature that an expert would understand to be confidential.
- Website: The TestMonitor website, accessible at www.testmonitor.com, and all subsidiary pages.

1.2 For the interpretation of the Agreement or the T&Cs, it is irrelevant whether the above-defined terms or other words are used in the singular or plural or in a specific composition. A reference to a

“person” includes a reference to an individual, a company, an association, or a partnership (whether registered or not), as well as the legal representatives and/or successors of that person.

1.3 The headings of the sections are for clarity only and do not affect the content or interpretation of the T&Cs and the Agreement.

Article 2. Applicability

2.1 These T&Cs apply to any use of the Service and the Website, subscriptions, as well as any other services provided to the customer by TestMonitor. Any terms and conditions of the customer are expressly rejected or separately included in Agreement.

2.2 These T&Cs and the subscription can only be amended and/or supplemented by TestMonitor.

2.3 TestMonitor is entitled to change and/or supplement these T&Cs and/or additions thereto annually. The most up-to-date T&Cs can be found on the website or will be brought to the attention of the customer and/or user during the use of the Services. If the customer continues to use the Service after the amendment and/or supplementation of these T&Cs, the customer irrevocably accepts the amended and/or supplemented T&Cs.

2.4 If any provision of these T&Cs is found to be void or unenforceable or is otherwise invalid or partially invalid for any other reason, the remaining provisions of the T&Cs shall remain unaffected. TestMonitor will replace the invalid provision with a valid provision whose legal effects, taking into account the content and purpose of these T&Cs, correspond as closely as possible to those of the invalid provision.

Article 3. TestMonitor System

3.1 After the (digital) acceptance of the order confirmation and agreement to the T&Cs of the Agreement, TestMonitor enables the customer to access and use the TestMonitor system on the basis of a subscription or trial subscription.

3.2 A subscription concluded by the customer commences on the start date specified in the respective order confirmation and is valid for the (initial) subscription period. Unless otherwise specified in the respective order confirmation, the subscription period automatically renews for the same period each time, unless one of the parties informs the other party in writing at least ninety (90) days before the expiry of the respective subscription period that it does not wish to renew.

3.3 The customer acknowledges that the Agreement is primarily a service agreement and that TestMonitor will not deliver copies of the software as part of the subscription.

3.4 The customer acknowledges that each subscription is provided on a non-exclusive basis. Nothing shall prevent or limit TestMonitor from providing subscription services or other technology, including all features or functions developed for the customer, to other parties.

Article 4. Order Confirmation

4.1 An order confirmation is the digital document that forms the legal basis for the provision of the Services to the customer. The order confirmation refers to these T&Cs (including appendices) and describes the respective completed subscription, start date, and subscription costs.

4.2 An order confirmation is digitally signed by the authorised representatives of the parties. Each party will inform the other of those individuals who have been designated as authorised representatives, either singly or jointly.

4.3 If the parties wish to impose supplementary or additional terms other than those set out in these T&Cs, this must be expressly stated in writing in the respective order confirmation, including a declaration that this has been jointly agreed upon as a deviation from the (specific section(s) of these) T&Cs.

Article 5. Licence

5.1 Subject to the terms of the Agreement, including but not limited to the payment of all applicable fees, TestMonitor hereby grants the customer a limited, non-exclusive, non-transferable, and non-sublicensable right (hereinafter referred to as “Licence”) to access and use the TestMonitor system during the subscription period for the number of users specified in the respective order confirmation.

5.2 No licence is granted for the source code of the software.

5.3 Unless jointly agreed otherwise:

- a) The customer may not copy, edit, adapt, modify, translate, or create derivative works from the software.
- b) The customer may not distribute, sell, resell, lend, rent, license, operate as a service bureau, offer as a managed service, sublicense, or otherwise use the software for third parties (including through multiplexing or pooling), unless expressly agreed upon by TestMonitor.
- c) The customer may not conduct reverse engineering, decompilation, or disassembly of the software or otherwise attempt to derive the source code of the software (except to the extent expressly permitted by applicable law).
- d) The customer may not disclose results of benchmark tests, technical results, or other performance data regarding the software without the prior written consent of the licensors.
- e) The customer may not take actions that would make the software publicly accessible.
- f) The customer may not remove, modify, or obscure trademarks of TestMonitor, its licensors, or suppliers contained in the software.
- g) The customer may not use the software in a manner that violates the terms of the Agreement.
- h) The customer may not use the software for unlawful purposes.

5.4 The customer may not grant access to or use of the TestMonitor system to anyone other than the customer, its employees, and business partners. Usage must comply with the terms and restrictions in these T&Cs.

5.5 The customer agrees to be responsible for the compliance with the agreed terms by all employees, suppliers, and agents of the customer. The customer further agrees to indemnify, hold harmless, and defend TestMonitor and its licensors against any claims or suits, including legal costs and expenses arising from or in connection with the customer’s unlawful use of the TestMonitor system.

5.6 TestMonitor reserves the right to refuse the Service and/or a subscription to parties for evidenced breach of these terms not being remedied within reasonable period upon written notice.

5.7 The subscription becomes effective when confirmed by TestMonitor. TestMonitor will provide the customer with login details at a mutually agreed time or, if no time has been agreed, within a reasonable time after the subscription becomes effective.

Article 6. Support

6.1 Subject to the payment of all applicable fees by the customer, TestMonitor will provide support services to the customer as part of the subscription, in accordance with the then-current [Service Level Agreement](#). The corresponding fees are specified in the respective order confirmation.

6.2 TestMonitor may suspend the provision of support services if substantial undisputed amounts owed by the customer to TestMonitor under the Agreement are overdue, and TestMonitor has notified the customer in writing of its intention to suspend support services for this reason.

- Support does not include (full) explanations of the application possibilities of the service to users, the provision of implementation assistance, advice on configuration and/or security of workstations and/or infrastructure, or the setup or development of templates. Additionally, no support is provided for other software or services other than those provided by TestMonitor or for the use of the service on mobile devices.
- Support is provided via email (support@testmonitor.com) or online screen sharing. Online screen sharing support is provided to Enterprise subscriptions only and only specifically upon request. TestMonitor will make reasonable efforts to respond to inquiries and advise users. However, TestMonitor makes no guarantee of the accuracy and completeness of the responses to questions and/or advice provided to the user. TestMonitor is not liable for damages arising from or related to the provision of the support described in this article, including but not limited to remote support, answering questions, providing advice, and taking over the user's computer or other devices.

6.5 TestMonitor uses a data backup system. The customer accepts that the data backup system includes only the functionality and other features as they exist and that the data is stored only in the manner and location it is found at the time of use of the service (on an “as-is” basis). The customer or the user can access this data backup and/or any other material contained therein. However, data or other material processing is excluded. In individual cases, TestMonitor may decide to offer the service exclusively through the data backup system.

- TestMonitor is never obligated to read and/or perform any other investigation regarding a data backup. However, upon the customer's request, TestMonitor may read and/or investigate a data backup and/or log files or perform a complete restoration of the data backup. TestMonitor will charge the customer additional costs for reading, investigating, and/or restoring a backup copy and/or log file.

Article 7. Processing of Personal Data

7.1 The parties commit at all times to fulfilling their own obligations under the General Data Protection Regulation (GDPR) and/or other applicable data protection laws and regulations. The parties are responsible for compliance with these laws and regulations when processing personal data under the contract. TestMonitor has outlined its obligations in a [Privacy Policy](#).

7.2 If, as part of the contract performance, TestMonitor has access to personal data, it will act as a data processor on behalf of the customer for its processing. TestMonitor will process personal data at all times in full compliance with the GDPR and other applicable data protection laws. If TestMonitor processes personal data of individuals from the European Economic Area, the parties hereby agree that such processing will be carried out in accordance with the terms of the [Data Processing Agreement](#).

7.3 The customer shall indemnify TestMonitor from third-party claims arising from or in connection with the processing of data and/or (other) personal data.

Article 8. Duration and Termination

8.1 The Agreement is concluded on the date specified in the order confirmation (hereinafter referred to as the “Effective Date”) and commences on that day, remaining in force until all subscriptions have expired or been terminated.

8.2 The customer has the right to terminate the Agreement upon observing a termination notice period as agreed upon and specified in the order confirmation. If the customer does not terminate the subscription, it will be automatically extended for the duration specified in the order confirmation.

8.3 Regardless of the provisions of Article 6:265 of the Dutch Civil Code (Nederlandse Burgerlijk Wetboek), the parties may immediately terminate and/or suspend the Agreement and/or their obligations under this Agreement if the other party:

- a) is declared insolvent;
- b) requests or is granted (temporary) suspension of payment or offers a (WHOA – Homologation of Private Agreements) agreement;
- c) is in (involuntary) liquidation or dissolution;
- d) has ceased or terminated its business activities;
- e) breaches a material provision of the Agreement, which has not been remedied within 30 (thirty) days after receiving notice;
- f) behaves fraudulently, violates the law and/or regulations, or behaves in a manner that is inappropriate and reasonably expected to be unacceptable for the other party to continue the contract.

8.4 Upon expiration or termination of the contract for any reason:

- a) All subscription(s) will be automatically terminated, and the customer will no longer have access to the TestMonitor system.
- b) The customer’s payment obligation for all costs due up to the termination date will remain in full force and will not be suspended or canceled.
- c) Any unpaid undisputed amount owed by the customer under the contract will become due immediately upon termination of the contract and must be paid by the customer within 30 (thirty) days after termination.
- d) Articles 4, 5, 6, 7, 8, 9, and 10 of these terms and conditions shall continue to be in effect after termination of the contract.
- e) The termination/termination of the Agreement does not affect the rights or obligations of the parties that are intended to remain in effect after termination under the nature and scope of the Agreement.

8.5 The customer is responsible for properly storing and retaining all data entered into the TestMonitor system before expiration or termination of the Agreement. TestMonitor will not retain the data. Upon written request from the customer and for an additional fee, data may be provided to the customer by download and/or other means, at the discretion of TestMonitor and only if TestMonitor still has this data available. However, TestMonitor is not obligated to comply with such a request, regardless of an offer to reimburse the costs.

Article 9. Rates and Payment

9.1 The customer shall pay to TestMonitor the rates specified in the order confirmation in accordance with this section and other terms of the Agreement. The mentioned prices are always exclusive of value-added tax.

9.2 The customer shall pay to TestMonitor all amounts due under this Agreement within fourteen (14) days after receipt of the invoice for these amounts. All payments must be made in euros unless otherwise stated in the order confirmation. Late payment of any amounts due shall incur default interest at the minimum rate of 1.5% per month or the maximum rate allowed by applicable law, from the due date until payment.

9.3 If the customer is in arrears with two installment undisputed payments and has received the third reminder, TestMonitor has the right to temporarily suspend the account. The customer will receive instructions by email on how to pay the invoices and when the customer's account will be reactivated.

9.4 In the event that TestMonitor's employees or subcontractors need to travel to the customer's facilities in connection with the provision of the services, the customer shall reimburse TestMonitor for all reasonable travel expenses and related expenses.

9.5 When the customer pays by direct debit, the customer must ensure that there are sufficient funds in the account. Payment by direct debit will be debited within seven (7) days after the invoice is sent, regardless of the applicable payment period. In case of a failed direct debit and/or revocation of a direct debit, TestMonitor is entitled to charge the customer an administrative fee of up to €5 per invoice.

9.6 All undisputed Fees are non-refundable. For purposes of clarity, there are no refunds or credits for periods where the Client did not use an activated Subscription, used it only partially, deactivated the Subscription or terminated these Terms during an ongoing payment interval, or where a Subscription is terminated or suspended by TestMonitor in accordance with Section 8.

9.7 TestMonitor reserves the right to change rates. TestMonitor will send the customer a corresponding announcement by email at least 1 month in advance.

9.8 If a customer has objections to an invoice, they must notify TestMonitor by email at invoicing@testmonitor.com within one month of the invoice date. Objections to an (partial) invoice do not release the payment obligation.

Article 10. Force Majeure

10.1 Failure to fulfill the obligations under the subscription cannot be attributed to TestMonitor, and TestMonitor will not assert any claims for damages if the failure is due to force majeure as referred to in Article 6:75 of the Dutch Civil Code (Nederlandse Burgerlijk Wetboek). Force majeure includes, but is not limited to, failures by TestMonitor's suppliers who are themselves in a state of force majeure, power failures, internet, telephone, cable, and other connection disruptions, disturbances due to excavation work not carried out by TestMonitor, (distributed) denial-of-service attacks, license refusals, government actions, regulations, and strikes, as well as other events that reasonably prevent TestMonitor from providing services beyond its control.

- If a failure to fulfill the obligations under the subscription by TestMonitor due to force majeure lasts for more than 14 days, either party may terminate the subscription, provided that they

have notified their intention to terminate at least 14 days before the termination, and TestMonitor has not fulfilled the obligations under the subscription in the meantime.

Article 11. Intellectual Property

11.1 The TestMonitor system, including all copies, improvements, adaptations, modifications, and derivative works thereof, as well as the documentation, is protected by (international) copyrights, patents, trade secrets, and other intellectual property rights. TestMonitor owns and retains all rights, titles, and interests in the intellectual property rights of the TestMonitor system, as well as any improvements, adaptations, or derivative works thereof. The Customer data remains at all time exclusive to Customer.

11.2 The license does not grant ownership rights to the TestMonitor system, software, or documentation and does not constitute a sale of rights. The customer does not acquire any express or implied rights to the TestMonitor system, except as expressly set forth in the Agreement. The license does not grant the customer any rights to any improvement or update of the TestMonitor system, unless expressly agreed upon in the respective order confirmation.

11.3 To the extent that new intellectual property is created as part of a subscription, this will exclusively belong to TestMonitor. If such intellectual property does not automatically belong to TestMonitor, the customer shall provide all necessary cooperation to transfer full intellectual property rights to TestMonitor.

11.4 TestMonitor is entitled to take technical measures to protect its subscriptions from unauthorized use. The customer is not allowed to remove or bypass such technical measures.

11.5 The customer warrants not to take any action that infringes on the intellectual property rights of TestMonitor and/or its licensors and/or suppliers or renders these rights invalid or jeopardizes them.

11.6 TestMonitor, as well as its licensors and suppliers, reserve all rights to the TestMonitor system not expressly granted to the customer in the Agreement, and no other licenses or rights are granted by implication, estoppel, or otherwise.

Article 12. Responsibilities of the Customer

12.1. The Customer agrees to comply with all relevant local, national, and international laws and regulations pertaining to the utilization of the TestMonitor system and Subscription. These laws and regulations include those concerning data protection, privacy, international communications, and the transmission of technical or personal data. The Customer acknowledges that TestMonitor bears no control over the content of information transmitted by the Customer or its customers through the Subscription. The Customer shall refrain from uploading, posting, reproducing, or distributing any information, software, or other material protected by copyright, privacy rights, or any other intellectual property right without obtaining prior permission from the owner of such rights.

12.2. The Customer shall: (a) promptly notify TestMonitor in writing of any unauthorized use of any password or user ID or any other known or suspected breach of security; (b) expeditiously notify TestMonitor and exert reasonable efforts to halt any unauthorized use of the TestMonitor system and/or Subscription known or suspected by the Customer or its customers; and (c) refrain from providing false identity information to access or use the Subscription.

12.3. The Customer bears sole responsibility for all actions and omissions of its administrators. TestMonitor shall not be held liable for any loss of data or functionality resulting from such administrators' actions, whether directly or indirectly.

12.4. The Customer bears sole responsibility for the proper use of strong passwords. TestMonitor recommends regular password changes.

Article 13. Warranties

13.1. TestMonitor declares and guarantees that it will provide the subscription in accordance with the general industry standards in a professional manner.

13.2. TestMonitor does not guarantee that the subscription will run error-free or without interruptions, that TestMonitor will correct all errors, or that the software is error-free. The software is provided without any warranty of defects, and TestMonitor, on its own behalf and on behalf of its partners, disclaims all express or implied warranties and liabilities regarding the software, including but not limited to warranties of merchantability, design, or fitness for a particular purpose, warranties arising from the course of dealing, usage, or trade practice, or warranties regarding non-infringement of third-party rights. The customer acknowledges that TestMonitor has no control over the transmission of data via communication facilities, including the internet, and that the subscription may be subject to limitations, delays, and other issues associated with the use of such communication facilities. This section sets forth the sole and exclusive warranty provided by TestMonitor (express or implied) with respect to the subject matter of the agreement. Neither TestMonitor nor its licensors or other suppliers guarantee or warrant that the operation of the subscription will be uninterrupted, virus-free, or error-free, nor will TestMonitor or its service providers be liable for unauthorized modifications, theft, or destruction of customer or user data, files, or programs. Furthermore, TestMonitor makes no warranty regarding the use or results of the use of the TestMonitor system, software, or related documentation in terms of correctness, accuracy, reliability, or otherwise. No oral or written information or advice from TestMonitor or its authorized representatives creates a warranty or extends the scope of this warranty in any way.

13.3. TestMonitor's sole obligation with respect to an error in the services is, if applicable, to take the actions specified in the Service Level Agreement and, where applicable, in the corresponding order confirmation, to remedy the error.

Article 14. Infringement

14.1. TestMonitor will, at its own expense, defend any claim brought by a third party against the customer alleging that the TestMonitor system infringes a patent, intellectual property right, or copyright or misappropriates a third party's trade secret. Furthermore, TestMonitor will pay the costs and damages awarded to the customer in such a claim that are specifically attributable to such claim, or the costs and damages agreed upon in a financial settlement of such claim. The foregoing obligations are conditioned on the customer:

- a) promptly notifying TestMonitor in writing of such a claim;
- b) allowing TestMonitor to have exclusive control over the defense and any related settlement negotiations; and
- c) cooperating and, at TestMonitor's request and expense, contributing to such defense. In such legal action, defense, or settlement, TestMonitor will take into account the customer's commercial interests.

14.2. Notwithstanding the above, TestMonitor has no obligations under this Article or otherwise with respect to any claim based on:

- a) any use of the TestMonitor system not in accordance with the Agreement;
- b) any use of the TestMonitor system in conjunction with products, devices, software, or data not provided by TestMonitor, where such infringement would have been avoided by the use of other products, devices, software, or data;
- c) any use of a version of the TestMonitor system that does not correspond to the most recent version provided to the customer; or
- d) any alteration to the TestMonitor system or software by any person other than TestMonitor or its authorized representatives or subcontractors.

14.3. This Article governs TestMonitor's entire liability and the customer's exclusive remedy for infringement claims by third parties.

Article 15. Liability

15.1. TestMonitor's liability to the customer is limited to direct damages arising from an attributable failure to perform the Agreement.

15.2. TestMonitor is in no way liable for the reimbursement of indirect or consequential damages of any kind, including, but not limited to, loss of revenue or profit, damages due to savings not achieved, damages due to delay, or data loss, whether such damages arise from contract, tort, or any other liability theory, whether or not the party was aware of the possibility of such damages.

15.3. Notwithstanding the foregoing, TestMonitor's liability for damages of any kind is limited to a maximum of the amount (excluding VAT) of the fees paid by the customer in the twelve (12) months preceding the date of the damage event. In no event shall the total compensation for any damages exceed the amount paid by TestMonitor's liability insurance.

15.4. TestMonitor is not liable for damages caused by the acts or omissions of third parties engaged by the customer in the performance of the Agreement.

15.5. TestMonitor's limitation of liability under this Agreement shall not apply if and to the extent the damage is caused by intent or gross negligence on the part of TestMonitor's management. The burden of proof for intent or gross negligence lies with the Customer.

15.6. TestMonitor's liability for an attributable failure to perform the Agreement shall only arise if the customer promptly and reasonably notifies TestMonitor in writing and sets a reasonable period for remedying the failure, and TestMonitor continues to fail to meet its obligations after that period has expired. The notice of non-performance must include a detailed description of the failure so that TestMonitor can respond appropriately.

15.7. A prerequisite for any claim for damages is that the customer reports the damage to TestMonitor in writing within thirty (30) days of discovery. Any claim for damages arising from damage caused by TestMonitor shall expire in any event twelve (12) months after the event giving rise to the liability. This does not affect the provisions of Section 6:89 of the Dutch Civil Code.

15.8. The customer indemnifies TestMonitor from claims by third parties arising from a breach of this Agreement by the customer.

Article 16. Confidentiality

16.1. During the term of this Agreement and for a period of 5 (five) years after its termination, both parties shall maintain confidentiality and shall not use the confidential information of the other party for

purposes unrelated to this Agreement or disclose such information to third parties (except to employees, authorized representatives, or contractors of the party who need the information and are subject to confidentiality obligations at least as restrictive as those contained herein). Each party agrees to take all reasonable measures to ensure that confidential information is not disclosed or disseminated by its employees, contractors, or authorized representatives in violation of the terms of the Agreement.

16.2. Both parties may disclose the confidential information of the other party:

- a) in response to a valid order or request of a court or other governmental or regulatory authority,
- b) as otherwise required by law; or
- c) as necessary to preserve the rights of one of the parties under this Agreement.

16.3. The party making a disclosure shall promptly notify the other party and provide an opportunity to object or seek a protective order to the extent permitted by applicable law.

16.4. Confidential information does not include information that:

- a) is or becomes part of the public domain through no action or omission of the receiving party;
- b) was in the receiving party's lawful possession without restriction prior to disclosure and was not directly or indirectly received from the disclosing party;
- c) was lawfully disclosed to the receiving party by a third party without restriction; or
- d) was independently developed by the receiving party without access to the confidential information.

16.5. Unless otherwise permitted or necessary to achieve the purposes of the Agreement, upon request of the disclosing party, the receiving party shall, at its expense and at its option, either destroy (and confirm in writing) or return to the disclosing party all confidential information, including all documents or media containing such confidential information, as well as all copies or extracts thereof; provided, however, that the receiving party may retain copies of computer records and files of confidential information created as part of automatic archival and backup processes or retain a backup copy of such confidential information as required by law or regulation; in which case, such confidential information shall continue to be subject to the confidentiality obligation even after the termination of the Agreement.

16.6. TestMonitor may identify the customer as a TestMonitor customer on the TestMonitor website as well as in written and/or electronic marketing materials, press releases, case studies, whitepapers, and webinars related to TestMonitor products and/or services. Any such use shall be in accordance with the Customer's branding guidelines or requirements.

Article 17. Notification

17.1. Any notice, consent, approval, or other communication with legal effect required by this Agreement to be given (hereinafter "Notice") must be in writing, including via email to the address(es) specified in the relevant order confirmation.

17.2. Either party may change the addresses to which Notices shall be sent by giving notice to the other party in the manner provided in this Article. Notices shall be written in the Dutch or English language.

Article 18. Assignment

18.1. The customer may not assign the license or any portion of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of TestMonitor. Any attempted assignment in violation of the foregoing is null and void.

18.2. TestMonitor shall have the right to assign this Agreement to a successor of its business or assets related to the Agreement, whether by merger, sale of assets, sale of business shares, reorganization, or otherwise.

18.3. All of the provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of TestMonitor and the customer.

Article 19. Miscellaneous

19.1. This Agreement (including all appendices, attachments, schedules, and work orders) constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements between them with respect to the subject matter of the Agreement. Amendments, supplements, or modifications to this Agreement shall be binding only if made in writing and signed by both parties. In the event of any conflicts, inaccuracies, errors, or omissions between these terms and conditions and an order confirmation, the documents and the changes contained therein shall prevail and apply in the following order: (a) order confirmation; (b) terms and conditions; and (c) appendix (if applicable). The provisions of a purchase order or similar document provided by the customer to TestMonitor shall not be effective unless fully agreed upon and signed by TestMonitor.

19.2. If any provision of this Agreement is found to be invalid or unenforceable, this shall not affect the lawful validity of any other provisions of this Agreement. The unenforceability or invalidity of a provision shall not affect the enforceability or validity of any other provision of the Agreement.

19.3. Failure by a party to exercise or enforce a right or remedy under the Agreement does not constitute a waiver of that right or remedy and does not prevent the future exercise or enforcement of that right or remedy.

19.4. The relationship between the parties is that of independent contractors. This Agreement is not to be construed as creating a joint venture, partnership, agency, or employment relationship between the parties.

19.5. This Agreement shall be governed by and construed in accordance with Dutch law. All claims, lawsuits, or proceedings arising out of the Agreement or its subject matter shall be litigated in the competent court in Amsterdam, the Netherlands.

(These terms and conditions shall enter into force as of 01-01-2024 (CET)). Subscriptions concluded prior to that date shall be subject to the terms and conditions in effect at that time, which may be provided by TestMonitor upon request at legal@testmonitor.com)