

## CUSTOMER TERMS OF USE

Last update: January 15, 2025

Thank you for choosing Katalon's products and services. These Customer Terms of Use ("**Customer Terms**") govern your access to and use of the Offering provided by Katalon, Inc. and/or its Affiliates ("**Katalon**", "**we**", "**us**", or "**our**"). "**You**" or "**your**" refers to the entity you represent (e.g., your employer).

This Agreement ("**Agreement**") comprises these Customer Terms, your Order(s), applicable Supplemental Terms, and any written amendments to these documents. This Agreement constitutes the entire agreement between you and Katalon regarding the Offering.

By accessing or using the Offering (including by clicking "I Agree" or similar indication of your acceptance), you represent and warrant that: (a) you have full legal authority to bind the entity you represent to this Agreement; and (b) you have read, understood, and agree to this Agreement on behalf of that entity. This Agreement is legally binding on the entity you represent. You are considered an authorized representative if you use your employer's or entity's email address for registration or manage Offering access for your employer or entity. If you do not agree to this Agreement, you are not authorized to access or use the Offering.

A glossary of defined terms is provided at the end of these Customer Terms of Use.

### SCOPE OF AGREEMENT

This Agreement governs your and your Users' use of the Offering, as specified in each accepted Order. Each Order incorporates all components of this Agreement and constitutes a separate and independent agreement between you and us.

### LICENSE GRANT AND RESTRICTIONS

License Grant. Subject to this Agreement, during your applicable Subscription Term, we grant you a non-exclusive, non-sublicensable, and non-transferable license under our intellectual property rights to the Offering as follows:

- **For Cloud Service**: You and your Users may access and use the Cloud Service.
- **For Software**: You may deploy, operate, and use the Software within your computing environment, and your Users may access and use the Software as deployed by you.

Authorized Use: You may only use the Offering: (a) within the defined Scope of Use outlined in your Order; and (b) to support the internal operations of (i) your and your Affiliates' businesses, and (ii) Your Customers, but only as part of the services you provide to them (and not as a standalone product or service).

Documentation: You may make a reasonable number of copies of the Documentation solely as necessary to use the Offering in accordance with this Agreement. You must include all our proprietary notices on all copies.

Use by Affiliates, Contractors, and Customers. Only Users may access the Offering. You may add your Affiliates, contractors, and Your Customers as Users ("**Additional Users**"), provided that:

- Each Additional User's use is subject to this Agreement, and you are responsible for their compliance.
- Contractors may only use the Offering on your behalf to provide services to you.
- Your Customers may only use the Offering as part of the services you provide to them, solely in relation to your products and services.

Offering Delivery and Activation. Activation of the Cloud Service will occur upon the creation of an account for the Cloud Service for your use. Delivery of the Software will occur via a download link for the installation package and instructions, which you will receive upon execution of the applicable Order. Software license files and activation will be provided once you furnish us with your machine ID. You are responsible for providing this ID so we can generate your license file.

Ownership and Restrictions. As between the parties, we exclusively own and retain all right, title, and interest in and to the Licensed Materials, our Confidential Information, and the System Data. All rights not expressly granted to you are reserved by us and our licensors. Without limiting the generality of the foregoing and except as otherwise expressly permitted in this Agreement, you will not: (a) distribute copies of the Licensed Materials, in whole or in part, to any third party; (b) use the Licensed Materials for the benefit of any third party, or permit any third party to use the Licensed Materials (except as expressly permitted with respect to your Additional Users); (c) copy, modify, or create derivative works of the Licensed Materials; (d) reverse engineer, disassemble, decompile, translate or otherwise attempt to derive the source code, underlying ideas, algorithms, file formats or non-public APIs to the Offering (except to the extent expressly permitted by applicable law and only after giving us prior written notice); (e) remove or obscure any proprietary or other notices on the Licensed Materials; (f) attempt to gain unauthorized access to the Licensed Materials, circumvent any security measures, or interfere with any mechanisms intended to limit your use; (g) use the Licensed Materials for competitive analysis, product benchmark or to build competing products; (h) publicly disseminate information about the performance of the Licensed Materials; (i) use the Licensed Materials to transmit or store any malicious code, files, scripts, agents or programs intended to do harm (e.g., viruses, worms, time bombs, Trojan horses); or (j) encourage or assist any third party to do any of the foregoing.

Open Source Software. The Offering may contain or be provided with Open Source Software. If your use of the Offering subjects you to the terms of any license governing the use of Open Source Software, then information identifying such Open Source Software and the applicable license shall be incorporated or referenced in the Documentation. This Agreement applies to Open Source Software (i) to the extent not prohibited by the license to which the Open Source Software is subject, including without limitation, warranties and indemnification, and (ii) except to the extent required by the license to which the Open Source Software is subject, in which case the terms of such license will apply in lieu of the terms of these only with respect to such Open Source Software, and not to the entire Offering, including without limitation, any provisions governing attribution, access to source code, modification and reverse-engineering.

## FEES AND PAYMENT

**Fees.** You agree to pay the fees for the Offering as specified in your Order. If no fees are specified in the Order, our standard rates, available at <https://www.katalon.com/pricing> or otherwise made available to you, will apply.

**Payment Terms.** Unless otherwise stated in an Order, payment is due within thirty (30) days of your receipt of our invoice. Invoices will be sent to your administrator User Account or to the email address(es) you designate. All payments must be made in United States dollars. Once paid, fees are non-refundable, and payment obligations cannot be canceled, except in the case of a valid payment dispute as outlined below. Any discounts or promotional pricing are contingent upon your timely payment of all fees.

**Late Payment.** If any undisputed amount is not paid by the due date, we may charge a late fee of 1.5% per month (or the maximum rate permitted by law, whichever is less) on the outstanding balance. We may also suspend your access to the Offering (including all User Accounts) until all overdue amounts are paid in full. You are prohibited from creating new accounts while any fees remain outstanding.

**Taxes.** All fees are exclusive of Taxes. Amounts payable to us under this Agreement are payable in full to us without deduction and are net of Taxes. You are responsible for paying all Taxes associated with the Offering and this Agreement, except for taxes based on our net income, property, or employees. We may invoice you for Taxes if required by law unless you provide a valid tax exemption certificate.

**Increasing Usage.** You may increase your Scope of Use (e.g., add users, increase usage limits) by placing a new Order or modifying an existing one. Unless your Order specifies otherwise, we will charge you for any increased usage at our then-current rates, prorated for the remainder of your current Subscription Term.

**Payment Disputes.** If you wish to dispute any invoiced amount, you must notify us in writing within thirty (30) days of the invoice date. You agree to act reasonably and in good faith, and to cooperate with us to resolve any such dispute. We will not charge late fees or suspend your access to the Offering for fees that are under a good-faith dispute, provided you cooperate diligently with us in the resolution process.

## TERM, TERMINATION, AND SUSPENSION

**Term.** This Agreement begins when you accept an Order, create or access a User Account, or download, install, activate, or use the Offering. It remains in effect until it is terminated as described below.

**Termination.** Either party may terminate a specific Order upon written notice if the other party commits a material breach of such Order that cannot be cured, or fails to cure a curable material breach of such Order within thirty (30) days after receiving written notice. We may terminate an Order or this Agreement immediately upon written notice if you fail to make any payment of fees when such payments are due. Either party may terminate this Agreement immediately upon written notice if the other party: (a) files for bankruptcy, makes an assignment for the benefit of

creditors, or seeks reorganization or similar actions regarding insolvency or relief for debtors; (b) has a receiver, trustee, or similar officer appointed for its business or property; or (c) decides to discontinue its business. Terminating a specific Order only terminates that particular Order and its associated agreement. It does not affect other active Orders or this Agreement. Terminating this Agreement automatically terminates all outstanding Orders. Either party may terminate this Agreement for any reason by providing at least thirty (30) days' written notice, if at such time there are no outstanding Orders then currently in effect.

Suspension of the Offering. We may suspend your or a User's right to access or use any portion or all of the Offering immediately upon notice to you if: (a) we, after reasonable due diligence given the nature and severity of the issue, reasonably determine that your or your Users' use of the Offering: (i) poses a material risk to the security, availability or operation of our systems, the Offering, or other customers' systems or data, or (ii) materially violates the terms of this Agreement or is illegal or fraudulent; (b) you fail to pay any undisputed amounts when due; (c) providing the Offering (or any part of it) is prohibited by law; or (d) information in your or your User Accounts is false, inaccurate, or fraudulent. We will limit the scope of any suspension to the extent reasonably possible to address the specific issue. We will promptly restore your access to the Offering after the issue is resolved and/or payment is received (as applicable).

Effect of Termination. When an Order or this Agreement terminates or expires: (a) we will stop providing the applicable Offering, and you and your Users must immediately stop using it; (b) both parties must either return or destroy the other party's Confidential Information applicable to that Order or this Agreement, except that each party may keep a copy for archival purposes, to comply with internal record-keeping procedures, or as required by law, and neither party is required to delete copies stored in its regular data backups; and (c) we are not obligated to store or provide access to Your Data related to that Order or this Agreement, as applicable, and we may delete it, unless otherwise required by law or agreed upon by both parties. Provisions of this Agreement that, by their nature, should reasonably survive termination or expiration (such as confidentiality obligations, limitations of liability, etc.) will remain in effect.

Subscription Auto-Renewal. Your subscription to the Offering includes automatic renewal to prevent any interruption in service. This means that your subscription will automatically renew for successive periods (either annual or monthly, depending on your initial Subscription Term) unless you disable auto-renewal or cancel your subscription before the current term expires. Canceling your subscription prevents charges for the next billing cycle, but no refunds or credits will be issued for amounts already charged. Unless otherwise stated in your Order: (a) renewals are contingent upon the continued availability of the Offering; (b) renewal fees will be charged at our then-current prices; (c) discounts or promotions from prior terms do not apply to renewals; and (d) renewals are subject to any changes in usage policies, limits or other Scope of Use. You authorize us to charge your credit card or other payment method on file for renewals, additional users, usage overages, expenses, and any unpaid fees. You or we may elect to not renew an Order by giving the other party at least thirty (30) days written notice before the beginning of the next Subscription Term.

## **WARRANTIES AND DISCLAIMERS**

Offering Warranty. We warrant that the Offering will materially conform to the Documentation as follows: (a) during your Subscription Term, for the Cloud Service; and (b) for thirty (30) days

after delivery, for the Software. These warranties only apply if you have used the Offering according to the Order, the Documentation, and this Agreement. For any breach of these warranties, your exclusive remedies are those described in the “Termination” section.

Power, Authority and Compliance with Laws. Each party represents and warrants to the other party that: (a) it has the full power and authority to enter into and perform this Agreement, and the execution of this Agreement has been duly authorized; (b) entering into and performing under this Agreement will not violate any other agreement to which it is bound by or any obligation owed to a third party; and (c) it will comply with all applicable laws in performing its obligations under this Agreement.

Disclaimer. EXCEPT FOR THE WARRANTIES EXPLICITLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, AND EACH PARTY DISCLAIMS ALL OTHER WARRANTIES TO THE FULLEST EXTENT PERMITTED BY LAW. THIS INCLUDES, BUT IS NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND FITNESS FOR A PARTICULAR PURPOSE. SPECIFICALLY, WE DO NOT WARRANT THAT: (A) THE OFFERING WILL BE ERROR-FREE; (B) THE OFFERING WILL MEET YOUR OR YOUR USERS’ SPECIFIC REQUIREMENTS; OR (C) ALL ERRORS IN THE OFFERING CAN BE CORRECTED. WE MAKE NO WARRANTIES AND DISCLAIM ALL WARRANTIES WITH RESPECT TO ANY COMPONENTS OR APPLICATIONS CREATED OR PROVIDED BY A PARTY OTHER THAN US. The Offering is not designed for use in high-risk environments requiring fail-safe performance, such as nuclear facilities, aircraft navigation or control, air traffic control, weapons systems, or any other application where the failure of the Offering could lead to severe physical or environmental damages (“**High-Risk Activities**”). You agree not to use the Offering for any High-Risk Activities. Your decision to use or purchase our products or services should not be based on any anticipated future functionality or features, or on any statements we make about future functionality or features.

## INDEMNIFICATION

Our Indemnification. We will defend you and your Affiliates (and your respective officers, directors, employees, and agents) (collectively, “**Customer Indemnitees**”) against any third-party claim that the Offering infringes a U.S. intellectual property right or is based on our gross negligence, willful misconduct, or fraud (“**Claim Against Customer**”). We will also indemnify you from any damages, including reasonable attorney’s fees and costs, finally awarded against you or agreed upon in a court-approved settlement of a Claim Against Customer. If an infringement claim is brought or likely to be brought, we may, at our expense: (a) obtain the right for you to continue using the Offering; (b) replace or modify the affected part of the Offering to make it non-infringing; or (c) terminate this Agreement or your use of the affected Offering and refund any prepaid, unused fees for the terminated Offering. We are not responsible for claims arising from: (i) any products, services, technology, materials or data created or provided by a party other than us (including Your Data); (ii) parts of the Offering made to your specifications; (iii) modifications to the Offering not made by us; (iv) combinations of the Offering with other products or materials not provided by us, if the claim arises from that combination; (v) your continued use of the Offering after being notified of the alleged infringement or after being provided with modifications that would have avoided the

infringement; or (vi) your use of the Offering that violates this Agreement, the Scope of Use, or the Documentation (subsection (i) to (vi), collectively, the “**Excluded Claims**”)

Your Indemnification. You will defend us and our Affiliates (and our respective officers, directors, employees, and agents) (collectively, "Katalon Indemnitees") against any third-party claim arising from the Excluded Claims or based on your gross negligence, willful misconduct, or fraud. You will also indemnify us from any damages, including reasonable attorney's fees and costs, finally awarded against us or agreed upon in a court-approved settlement of such a claim.

Indemnification Procedure. To receive indemnification, the party seeking indemnification must: (a) promptly notify the other party in writing of the claim, provided that failure to so notify will not remove the indemnifying party's obligation except to the extent it is prejudiced thereby; (b) allow the other party to solely control the defense and settlement of the claim, provided that the indemnifying party shall not settle a claim that requires the indemnified party to admit fault without the indemnified party's prior written consent, not to be unreasonably withheld or delayed; and (c) provide reasonable assistance in the defense and settlement of the claim.

Sole Remedy. The foregoing indemnity obligations state the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this section (Indemnification).

## **LIMITATION OF LIABILITY**

General Limitation. Neither party will be liable to the other party under this Agreement (regardless of the form of claim or action) for: (a) an amount exceeding the fees you paid for the Offering under the applicable Order in the 12 months prior to the event giving rise to the liability; or (b) any special, consequential, exemplary, or indirect damages or costs (including without limitations, business interruption or loss of goodwill, profit, or business), even if the party was aware of the possibility of such damages or costs.

Exceptions to Limitation. The limitations in the paragraph above (General Limitation) do not apply to: (a) any violations of the other party's intellectual property rights; (b) your obligation to pay fees owed; (c) either party's liability arising from: (i) indemnification obligations; (ii) breach of confidentiality obligations; (iii) breach of restrictions on access or use of the Offering; (iv) gross negligence, willful misconduct, or fraud; or (v) breach of security and data protection obligations (which are subject to the specific limitation set forth below); or (d) any liability that cannot be limited under applicable law.

Specific Limitation for Cloud Service Security Incidents. For Cloud Service only, our total liability for any Security Incident arising from a breach of our security and data protection obligations under this Agreement or a violation of Privacy Laws (including government fines and your reasonable out-of-pocket, documented costs) will not exceed the amount covered by our cyber liability insurance. This limit is in place of, not in addition to, the amount set forth in subsection (a) of the General Limitation paragraph above.

Insurance. We will maintain cyber liability insurance with limits of at least \$5,000,000 per claim and in the annual aggregate during your Cloud Service Subscription Term and for one year thereafter. This insurance will cover: (a) system attacks; (b) denial or loss of service attacks; (c) spread of malicious code; (d) unauthorized access and use of computer systems; (e) loss or

disclosure of personal or confidential data; (f) cyber extortion; (g) breach response and management; (h) business interruption; and (i) invasion of privacy.

Risk Allocation: Both parties acknowledge that these limitations of liability fairly allocate the risks under this Agreement and any applicable Order, and that our pricing reflects this allocation of risk.

## CONFIDENTIALITY

Non-Use and Nondisclosure. Each party agrees to treat all Confidential Information received from the other party as strictly confidential. The receiving party will not use the disclosing party's Confidential Information except as necessary to exercise its rights or perform its obligations under this Agreement. The receiving party will not disclose the Confidential Information to any third party, except to its employees, advisors, or representatives ("**Representatives**") who need to know the information for the purposes of this Agreement and who are bound by confidentiality obligations at least as protective as those in this Agreement. The receiving party is responsible for its Representatives' compliance with these confidentiality obligations. Each party will use at least the same degree of care to protect the other party's Confidential Information as it uses to protect its own confidential information of similar importance, but no less than reasonable care.

Exceptions. The receiving party may disclose Confidential Information if required by law, regulation, subpoena, or court order ("**Compelled Disclosures**"). In such cases, the receiving party will, to the extent legally permitted, provide the disclosing party with prompt notice of the Compelled Disclosure and reasonably cooperate with the disclosing party (at the disclosing party's expense) to limit the scope of the disclosure or seek a protective order.

Feedback. You may choose to provide us with suggestions or feedback about the Offering ("**Feedback**"). If you do, you grant us a perpetual, irrevocable, sublicensable, royalty-free, worldwide license to use, copy, modify, create derivative works of, and otherwise exploit the Feedback for any purpose, including to improve our products and services and to commercialize those products and services. You are not obligated to provide any Feedback, and any Feedback you provide is given "as is" without any warranty.

## GENERAL PROVISIONS

Governing Law. This Agreement will be governed by the laws of the State of Georgia, USA, without regard to its conflict of law principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. If any lawsuit is permitted under this Agreement, both parties agree to the exclusive jurisdiction and venue of the state and federal courts located in Fulton County, Georgia, USA.

Dispute Resolution: In the event of any dispute arising out of or relating to this Agreement, senior representatives from each party will first attempt to resolve the dispute in good faith. If the parties cannot resolve the dispute within thirty (30) days (or another mutually agreed-upon timeframe), either party may initiate binding arbitration under the JAMS Comprehensive Arbitration Rules and Procedures. The parties will equally share the fees and expenses of the JAMS arbitrator. The arbitration will be conducted by a single arbitrator mutually agreed upon by

the parties within twenty (20) days of the request for arbitration. If the parties cannot agree, JAMS will appoint an arbitrator according to its rules. The arbitrator may award any legal or equitable remedy, including specific performance and provisional remedies, but may not award punitive, consequential, or liquidated damages. Each party is responsible for its own expenses related to the dispute resolution process. The arbitration proceedings will be conducted in English in Fulton County, Georgia, USA. The arbitrator's award may be enforced in any court with appropriate jurisdiction.

Injunctive Relief. Notwithstanding the above dispute resolution process, either party may immediately seek injunctive or other equitable relief from a court of competent jurisdiction to: (a) address an emergency situation or prevent irreparable harm while a dispute is being resolved; or (b) protect or enforce intellectual property rights, confidential information, or business non-interference. Such an action may be filed even if discussions or arbitration proceedings are ongoing.

Assignment. Neither this Agreement nor any rights or obligations under this Agreement may be assigned or otherwise transferred by either party without the prior written consent of the other party; provided that, such prior written consent is not required for any assignment by either party to its Affiliates or to any successor of substantially all of its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns.

Notice. All notices, consents and other communications hereunder shall be provided in writing and shall be delivered in person, by email, or by registered or certified mail (return receipt requested) to the parties at the addresses set forth on any Order or in any User Account (or such other address as may have been furnished by or on behalf of such party by like notice); provided that, for any notice sent to us, a copy of the notice will be sent to [legal@katalon.com](mailto:legal@katalon.com). We may send notices to you through your User Account, in-product notifications, or to the contact information (including email address) of your account administrator. Notices sent by email or through your User Account are considered delivered when sent. Notices sent by registered or certified mail are considered delivered upon receipt. Both parties agree that any electronic communication will satisfy any legal requirement that such communication be in writing.

Publicity Rights. You agree that we may identify you as a customer and use your company name, logo, and a description of your use case in our website and marketing materials, in accordance with any trademark usage guidelines you provide. You may revoke this permission at any time by sending a request to [legal@katalon.com](mailto:legal@katalon.com).

Supplemental Terms. In addition to these main Customer Terms, specific products, services, or customer types may be subject to additional terms and conditions, which are detailed in separate addenda ("**Supplemental Terms**"). Current Supplemental Terms include: (a) the Data Processing Addendum (DPA), applicable to your use of the Cloud Service; (b) the Digital Operational Resilience Act (DORA) Terms, applicable to financial entities as defined under DORA; (c) the Service Level and Support Agreement; (d) the Professional Services Terms, applicable to your use of our Professional Services; (e) the Security Measures; and (f) product and service-specific terms ("**Product-Specific Terms**") attached to these Customer Terms. If you use a product or service or fall under a customer type governed by Supplemental Terms,



those terms will apply and form part of this Agreement. The applicable Supplemental Terms are fully incorporated into this Agreement by reference, as if they were written directly within it. Your use of such products or services constitutes acceptance of the relevant Supplemental Terms.

Changes to Agreement. We may update this Agreement (including the Supplemental Terms) from time to time. We will notify you of these changes as described in the “Notices” section of this Agreement or by posting the revised Agreement on our website. Generally, modifications to this Agreement will take effect at the beginning of your next Subscription Term renewal and will automatically apply from the renewal date, unless you choose not to renew. However, in some cases, such as changes required for legal compliance or related to new features, products, or services, we may specify that modifications become effective during your current Subscription Term. Changes to terms for new Offerings or features are effective upon your use of such Offerings or features. If we make changes that become effective during your current Subscription Term and you object to them, you have the right to terminate the affected Order for the impacted Offering. As your sole remedy in such a case, we will refund any fees you have prepaid for the unused portion of the terminated Subscription Term. To exercise your right to object and terminate, you must provide us with written notice of your objection and termination within thirty (30) days of the date we notified you of the changes. Each Order is subject to the version of this Agreement that is in effect at the time the Order is placed.

Export Compliance. The Offering, including any software, technical data, and services, is subject to U.S. export control laws and regulations, including the Export Administration Regulations (EAR) administered by the U.S. Department of Commerce and economic sanctions administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury. The Offering may also be subject to import restrictions in certain countries. You agree to comply with all applicable U.S. and foreign export and import laws and regulations in your access to, use of, and download of the Offering. You will not, directly or indirectly, export, re-export, transship, or otherwise make available the Offering, related services, or technical data in violation of any applicable export control laws or economic sanctions. You will not use or provide the Offering for any prohibited end-use, including but not limited to, the development, production, or use of nuclear, chemical, or biological weapons, missile technology, or for military-intelligence purposes. You represent and warrant that: (a) you are not located in, under the control of, or a national or resident of any country subject to comprehensive U.S. sanctions (currently Cuba, Iran, North Korea, Syria, and the Crimea, Donetsk, and Luhansk regions of Ukraine, Belarus, and Russia) and are not on any U.S. government restricted parties list, including the Specially Designated Nationals and Blocked Persons List (SDN List) administered by OFAC; (b) none of Your Data is controlled under the U.S. International Traffic in Arms Regulations (ITAR) or similar laws in other jurisdictions; and (c) you will not export, re-export, or transfer the Offering to any prohibited destination, entity, or individual without prior authorization from the U.S. government. You acknowledge that the list of embargoed destinations may change from time to time, and it is your responsibility to ensure compliance with current restrictions. You agree to indemnify, defend, and hold us harmless from any claims against us arising from your violation of any applicable export control laws or regulations. We may suspend or terminate your access to the Offering immediately if we have reason to believe you are violating any export control or economic sanctions laws or regulations.

U.S. Government End-Use Provisions. The Offering and Documentation are “commercial items” as defined in Federal Acquisition Regulation (FAR) 2.101, consisting of “commercial computer

software” and “commercial computer software documentation,” as such terms are used in FAR 12.212 and Defense Federal Acquisition Regulation Supplement (DFARS) 227.7202. If the Offering or Documentation is being acquired by or on behalf of the U.S. Government, then, consistent with FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Offering and Documentation will be only those specified in this Agreement. The Offering and Documentation shall not be acquired by the U.S. Government pursuant to any contract incorporating clauses prescribed by FAR Subpart 27.4 or DFARS Subpart 227.4 unless specifically authorized in a separate written agreement signed by an authorized representative of Katalon. The U.S. Government shall have no rights to use, modify, reproduce, release, perform, display, or disclose technical data related to the Offering or Documentation except as expressly permitted by this Agreement. We shall not be required to comply with any government-specific data marking requirements unless such requirements are explicitly agreed upon in a separate written agreement. The U.S. Government shall have no audit rights beyond those expressly granted in this Agreement, if any. The Offering and Documentation are provided with restricted rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable.

Force Majeure. Neither party will be liable for failure to perform its obligations under this Agreement (except for payment obligations) if such failure is caused by events beyond its reasonable control, including, but not limited to, strikes, fire, flood, earthquake, governmental actions, cyber-attacks, data breaches caused by third parties, failure of cloud services, supplier failures, and other similar events (“**Force Majeure Events**”). The affected party will take reasonable steps to mitigate the impact of any Force Majeure Event.

Entire Agreement and Amendment. This Agreement (including any Orders and the relevant Supplemental Terms) is the complete and exclusive agreement between you and us regarding its subject matter. This Agreement supersedes all prior or contemporaneous agreements, proposals, understandings, and communications, whether written or oral, relating to the same subject. Except as expressly set forth in this Agreement, this Agreement may only be modified by a written document signed by authorized representatives of both parties that explicitly states the intention to amend, and clearly references, this Agreement. For online versions of this Agreement, your electronic acceptance of the modified terms will be considered binding. If there is a conflict between the documents that form this Agreement, the following order of precedence will apply: (a) any written amendment effectuated in accordance with this section; (b) the Data Processing Addendum as applicable for Cloud Service; (c) the applicable Order(s); (d) any other applicable Supplemental Terms; and (e) these main Customer Terms. Purchase orders or other documents issued by you are for administrative purposes only. Any terms in your purchase orders that add to or conflict with this Agreement are void and have no effect, even if signed by us. Any purchase order or similar document accepted by us is accepted expressly subject to the terms and conditions of this Agreement only. Terms and conditions set forth in an Order shall solely be applicable to such Order and shall not affect any other Orders between the parties.

Miscellaneous Terms. The relationship between the parties to this Agreement is and shall be that of independent contractors. It is expressly agreed that nothing in this Agreement shall be construed to create or imply a partnership, joint venture, agency relationship or contract of

employment. There are no third-party beneficiaries to this Agreement. Any waiver of a provision of this Agreement or a party's rights must be in writing and explicitly reference this Agreement to be effective. A party's failure to enforce a provision or exercise a right does not waive that provision or right, and a waiver in one instance does not constitute a waiver for future instances. If any part of this Agreement is found to be invalid or unenforceable, that part will be severed, and the rest of the Agreement will remain in full force and effect. This Agreement is written in English, which is the governing language for interpretation, notices, and dispute resolution. Any translations are for convenience only and are not legally binding.

## DEFINITIONS

Capitalized terms used in this Agreement have the meanings given below or within the section where they are first used.

**“Affiliate”** means any entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. For purposes of this definition, “control” means owning more than 50% of the voting interests of an entity or having the power to direct its management and policies.

**“AI Product”** means any component, application, feature, capability, or functionality within the Offering that uses artificial intelligence or machine learning, including any feature described as “AI-powered” or “AI-assisted.”

**“Cloud Service”** means any online service that is part of the Offering and hosted on our (or our service providers’) computing infrastructure, including any associated software or technology that is integral to the service and not offered as a separate product.

**“Confidential Information”** means any non-public information disclosed by one party to the other, either directly or indirectly, in writing, orally, or by inspection of tangible objects, that is designated as “Confidential” or “Proprietary” or that, under the circumstances, a reasonable person would understand to be confidential. This includes, but is not limited to, information about a party’s business, products, services, customers, technology, and trade secrets. Confidential Information does not include information that: (a) is or becomes publicly known through no fault of the receiving party; (b) was rightfully known to the receiving party before disclosure; (c) is independently developed by the receiving party without use of the disclosing party’s Confidential Information; or (d) is rightfully obtained from a third party without restriction on disclosure.

**“Data Processing Addendum”** means the agreement incorporated herein by reference, available at <https://katalon.com/terms#dpa>, or as otherwise provided to you, which sets forth the terms and conditions relating to the privacy, security, and processing of Personal Data in connection with the Offering.

**“Documentation”** means our official user guides, manuals, and specifications for the Offering, as updated from time to time, currently available at <https://docs.katalon.com/>.

**“Input”** means, in relation to your use of any AI Product, any of Your Data that you or your Users upload, submit, provide or make available to be processed by such AI Product.

**“Licensed Materials”** means the Offering, Documentation and any other materials or deliverables that we provide, or are obligated to provide, as part of an applicable Order.

**“Offering”** means the specific Katalon software, cloud service, or other product or service that you have ordered, subscribed to, or are otherwise using under this Agreement, as identified in the applicable Order, including any patches, bug fixes, corrections, remediation of security vulnerabilities, updates, upgrades, modifications, enhancements, derivative works, new releases and new versions of the foregoing that we provide or is obligated to provide.

**“Open Source Software”** means software distributed under a licensing or distribution model that is publicly available and makes the source code to such software available to licensees for use, modification and redistribution.

**“Order”** means any applicable online order form, flow, in-product screen or other ordering document or process approved by us that specifies, as applicable, mutually agreed upon (a) Offering you are ordering from us, (b) Scope of Use, and (c) (for a paid Offering) the amount or rate you will be charged, the billing and renewal terms, applicable currency, and form of payment.

**“Output”** means, in relation to your use of any AI Product, any output generated and returned to you or your User, as applicable, by such AI Product, based on Input.

**“Personal Data”** means information that identifies, relates to, describes, is capable of being associated with, or could reasonably be linked, directly or indirectly, to or with an identified or identifiable natural person or consumer, or which otherwise constitutes “personal data”, “personal information”, “personally identifiable information” or similar terms as defined in Privacy Laws.

**“Privacy Laws”** means all applicable laws and regulations governing the privacy, security, confidentiality, and protection of Personal Data, including but not limited to, European Union Regulation 2016/679 (General Data Protection Regulation) (“**GDPR**”) and Cal. Civ. Code 1798.100 et seq. (California Consumer Privacy Act) (“**CCPA**”).

**“Professional Services”** means the standalone Offering encompassing advisory, deployment, implementation, installation, testing, or other consulting services that we provide to assist you with the deployment and use of other Offerings, as described in an Order and/or statement of work, and subject to the Professional Services Terms available at <https://katalon.com/terms#professional-services-terms> or as otherwise provided to you.

**“Restricted Data”** means the following categories of data: (a) “special categories of personal data,” “sensitive personal information,” or “Sensitive Personal Data” as defined under applicable Privacy Laws, including the GDPR; (b) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (HIPAA), as amended; (c) any production data that is used by you or your Users in test cases; (d) payment card information that, if stored, processed, or transmitted by us, would require us to be compliant with the Payment Card Industry Data Security Standard (PCI DSS), excluding your card information used for payment processing which is securely handled by our third-party payment processor; and/or (e) data subject to heightened protection under specific laws and regulations, such as the Children’s Online Privacy Protection Act (COPPA), the Gramm-Leach-Bliley Act (GLBA) or their implementing regulations.

**“Scope of Use”** means the specific limitations on your use of the Offering, as set forth in the applicable Order or Documentation, which may include the number of Users, usage volume, Subscription Term, authorized use cases, or other restrictions.

**“Security Incident”** means a confirmed breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Your Data on the Cloud Service.

**“Security Measures”** means the technical and organizational safeguards we implement to protect Your Data on the Cloud Service from unauthorized access, use, disclosure, alteration, or destruction. These measures are described in our security documentation, available at

<https://katalon.com/terms#security-measures> or as otherwise provided to you, and are designed to meet or exceed industry standards for SaaS providers.

**“Service Level and Support Agreement”** means the agreement, available at <https://katalon.com/terms#support-policy> or as otherwise provided to you, that describes the service levels applicable to the Cloud Service and the support terms applicable to the Offering.

**“Software”** means any downloadable, on-premises or installable software provided by us as part of the Offering that you deploy and run on your own (or your chosen) computing environment, as opposed to being hosted by us as a Cloud Service.

**“Subscription Term”** means the period during which you are authorized to use the Offering, as set forth in the applicable Order, and any renewal thereof.

**“System Data”** means data generated and collected by the Offering, or by our computing infrastructure, regarding the configuration, environment, usage, performance, vulnerabilities, and security of the Offering itself. This data is owned by us and may be used to generate logs, statistics, and reports to monitor, maintain, and improve the Offering’s performance, availability, integrity, and security. System Data does not include Your Data. Notwithstanding the foregoing, to the extent that System Data is derived from the processing of Your Data but does not reveal the substance of Your Data and cannot be reverse-engineered to reconstruct Your Data, such derived data shall be considered System Data.

**“Taxes”** means any applicable taxes, levies, duties, or other similar exactions imposed by a legal, governmental, or regulatory authority in any applicable jurisdiction, including, without limitation, sales, use, value-added, consumption, communications, or withholding taxes.

**“User”** means a specific natural person that is your employee or an Additional User, whom you permit and invite to use the applicable Offering for your benefit or as otherwise permitted for such Additional User, and for whom you have paid the required fees (as applicable for a paid Offering).

**“User Account”** means an account associated with a User that contains an account profile, established by you (or a User who administers the Offering on your behalf) to enable the User of the account to use or access the Offering within your organization. You shall maintain true and accurate account profiles and information for all User Accounts, and you shall not permit the sharing of a User Account with multiple Users.

**“Your Customer”** means any customer who (a) has purchased your services that involve the use of the Offering, and (b) has their own separate subscription to the Offering.

**“Your Data”** means any data, content, information, test scripts, Input provided to AI Products, and Output generated by AI Products that you or your Users upload, submit, store, create, or otherwise process using the Offering. Your Data is owned by you.

## **ADDENDUM: PRODUCT-SPECIFIC TERMS**

If you use any of the Offering below, these Product-Specific Terms will apply with respect to such Offering. All defined terms used herein but not otherwise defined, shall have the meanings given to them in the Customer Terms.

### **CLOUD SERVICE TERMS**

These Cloud Service Terms apply only to your use of the Cloud Service.

#### Acceptable Use

You agree not to use the Cloud Service to: (a) store, download, or transmit anything that infringes on someone else's rights, is illegal, or contains harmful code; (b) engage in phishing, spamming, denial-of-service attacks, or any fraudulent or illegal activity; (c) interfere with the operation of the Cloud Service, its components, or our systems, or try to bypass security features; or (d) perform any security testing (like penetration testing or vulnerability scanning) on the Cloud Service or our systems, or otherwise try to gain unauthorized access.

#### Restricted Data

You will not use the Cloud Service to store or process Restricted Data. We are not responsible for any Restricted Data stored on a Cloud Service that is not approved for such use.

#### Your Data

You retain all ownership rights to Your Data, including any modifications made while using the Offering. You grant us a non-exclusive, worldwide license to use, copy, store, transmit, modify, create derivative works of, and display Your Data, but only as needed to (a) provide the Cloud Service to you, (b) improve your experience with the Cloud Service, (c) prevent or address technical or service issues, (d) detect and prevent fraud, and (e) comply with legal requirements.

You are responsible for ensuring that Your Data and your use of the Cloud Service comply with this Agreement, your privacy policies, and all applicable laws and regulations, including Privacy Law. You are solely responsible for the quality, accuracy, and legality of Your Data. You represent and warrant that you have the necessary rights and consents to use Your Data with the Cloud Service and that it does not violate any third-party rights. Your Data will be handled according to our Data Processing Addendum.

Removals and Suspension. We have no obligation to monitor content uploaded to the Cloud Service. Nonetheless, we may remove Your Data or suspend your access if you violate this Agreement or in response to valid takedown requests related to intellectual property infringement. We will try to give you advance notice when possible, but we may act immediately without notice if your actions pose a risk to the Cloud Service or other users.

Service Level. The Service Level and Support Agreement sets forth the service level objectives for the Cloud Service.

Security Measures and Breach Notification. We will follow the security practices outlined in our Security Measures. We will, consistent with our Security Measures, maintain physical, administrative, and technical safeguards to protect the security, confidentiality, availability, and integrity of Your Data from unauthorized access, use, or disclosure. If we discover any Security Incident, we will notify you promptly, unless prohibited by law. We will investigate the Security Incident and take reasonable steps to prevent future occurrences. Our notification of a Security Incident is not an admission of fault or liability.

Data Processing and Protection. Both you and we will comply with all applicable Privacy Laws in performing our obligations under this Agreement. Our Data Processing Addendum will govern the processing of Your Data under this Agreement. If our processing of Your Data requires additional privacy and security terms to comply with applicable Privacy Laws, both parties agree to implement supplemental terms consistent with those laws.

## **SOFTWARE TERMS**

These Software Terms apply to Software only:

- When an Order for Software terminates, you must either return or destroy, at our option, all copies of the Software and related Documentation in your possession or control related to that Order.
- If your Software license is for online mode, you must maintain an internet connection to allow the Software to connect to our licensing server for activation, management, subscription tracking, support, and updates. If your license is for offline mode, you may disconnect the Software from the internet. However, you must either: (a) provide us with information to verify your compliance with the Scope of Use; or (b) download and install the Katalon License Server to enable us to manage your license. If you use the Software offline, you agree to give us remote access to the Katalon License Server twice a year, or provide us with a server-generated report in the format we specify, so we can verify your usage complies with this Agreement, the Scope of Use, and the Documentation.
- Use of the Software is limited to use in object-code form only. With respect to your use of the Software for Your Customers as permitted in this Agreement, you may not provide access or use of your copies of the Software to Your Customers or include the Software as part of a product, service or other offering you provide to Your Customers. In addition, you must verify that each of Your Customers has its own copy of the Software.
- If you believe local law entitles you to reverse engineer the Software (e.g., under EU Directive 2009/24/EC), you must first request the necessary technical information from us. Any such information provided is our Confidential Information and may only be used to ensure interoperability and compatibility.
- You are responsible for ensuring your systems for deploying the Software meet the hardware, software, and other system requirements specified in the Documentation.
- We may verify that your use of the Software is in compliance with this Agreement and the Scope of Use. You agree to provide reasonable assistance, cooperation, and access



to relevant information during any such verification. If you exceed your Scope of Use, we may invoice you for any past or ongoing overuse, and you agree to pay the invoice promptly upon receipt.

## **AI PRODUCT TERMS**

Our AI Products offer exciting possibilities for content creation and test automation. However, they also involve new, evolving and unsettled legal and business risks. We encourage you to carefully consider these risks before using the AI Products.

Use of AI Products is entirely optional. You must actively choose to enable them. You can turn them off at any time. By enabling or using AI Products, you agree to these terms.

### Input and Output.

The AI Product provides Output in response to Input. Both Input and Output are considered Your Data, and you retain ownership of them as outlined in this Agreement. We will not use your Input or Output to train or improve our AI Products for other customers.

We use technology from third-party service providers (such as OpenAI) to power our AI Products. By using the AI Products, you consent to your Input and Output being shared with and processed by these providers solely for the purpose of providing the AI Products to you. We will contractually obligate such third-party providers to not use Input or Output to train or improve their models.

You agree not to: (a) provide Input that violates any third-party rights or any applicable law, or that is intended to generate Output that does so; or (b) use Output in a way that you know, or reasonably should know, violates any third-party rights or any applicable law.

Disclaimer. AI-GENERATED OUTPUT IS PRODUCED BY ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING, WHICH MAY INCLUDE TECHNOLOGY FROM THIRD-PARTY PROVIDERS. WE DO NOT GUARANTEE THE ACCURACY, COMPLETENESS, OR RELIABILITY OF ANY OUTPUT, NOR DO WE GUARANTEE THAT OUTPUT WILL NOT VIOLATE ANY THIRD-PARTY RIGHTS OR LAW. WE ARE NOT LIABLE FOR ANY USE OF AI PRODUCTS OR THEIR OUTPUT. Due to the nature of AI: (a) Output may not be unique, and different users may receive similar or identical Output; (b) Output does not represent our views or opinions and is not our professional advice; (c) you acknowledge that Output will not be considered Confidential Information under this Agreement; and (d) you will not (and will ensure your Users do not) represent that Output is human-generated or that it is approved or endorsed by us or our third-party providers. You are solely responsible for your use of any Output and for determining its appropriateness for your intended use.

## **FREE AND PRE-RELEASED OFFERING**

Free Offering. From time to time, we may offer parts or all of the Offering for free (“**Free Offering**”). Free Offerings are intended for trial purposes only. The specific terms for each Free Offering will be as communicated within the Offering or in an applicable Order.

Free Offerings cannot be combined with paid Offerings. Specifically, you may not: (a) use a Free Offering alongside a paid Offering within the same organizational account or within your organization; (b) mix any Free Offering and any paid Offering within a single User Account or across multiple User Accounts; (c) combine User Accounts for any Free Offering with User Accounts for any paid Offering; (d) use any results, outputs, tests, or data from a Free Offering with a paid Offering or within a paid account. For example, you cannot use a free version of Katalon Studio to generate scripts, tests or outputs that are then used within a paid Katalon Runtime Engine account.

Pre-Released Offering. We may also offer certain products or services that are still under development (“**Pre-Released Offering**”). These may be designated as Alpha, Beta, or pre-release versions. We will make reasonable efforts to identify them as such. Pre-Released Offerings may not be fully functional, may contain bugs, and may not operate as intended.

Governing Terms of Free and Pre-Released Offering. Your use of Free Offerings and Pre-Released Offerings (collectively, the “**Free and Pre-Released Offerings**”) is subject to this Agreement and any applicable Scope of Use, with the following important exceptions: (a) Free and Pre-Released Offerings are provided “as is,” “with all faults,” and “as available,” with no warranties of any kind; (b) our indemnification obligations under this Agreement do not apply to Free or Pre-Released Offerings, and (c) our total liability related to Free and Pre-Released Offerings will not exceed US\$100. We are not obligated to make any Free or Pre-Released Offering available to you or to generally release it.

Changes to Terms. We may modify, limit, or discontinue any Free and Pre-Released Offering at any time without liability to you. We may also change the terms of this Agreement that apply to Free and Pre-Released Offerings. We will notify you of any changes as described in the “Notices” section of this Agreement or by posting the updated terms on our website, along with the effective date of the changes. To continue using any Free and Pre-Released Offering after changes are made, you must accept the modified terms. If you object to the changes, your exclusive remedy is to stop using the applicable Free and Pre-Released Offering.