



# YouTestMe

End-User License Agreement

## Table of Contents

1	INTRODUCTION.....	3
2	RECITALS.....	3
3	DEFINITIONS .....	3
4	SOFTWARE LICENSE .....	4
5	TERM .....	4
6	FEES.....	4
7	SPECIAL CONDITIONS .....	5
8	LICENSEE'S RIGHTS AND OBLIGATIONS.....	5
9	LIMITED WARRANTY .....	5
10	LIMITED REMEDY .....	5
11	TERMINATION.....	6
12	RETURN OR DESTRUCTION OF SOFTWARE UPON TERMINATION.....	6
13	TITLE TO SOFTWARE.....	6
14	MODIFICATIONS AND ENHANCEMENTS .....	6
15	DELIVERY.....	7
16	CONFIDENTIALITY.....	7
17	USE OF NAME AND LOGO.....	7
18	ASSIGNMENT .....	7
19	INDEMNITY .....	8
20	LIMITED LIABILITY .....	8
21	NOTICE.....	8
22	GOVERNING LAW .....	8
23	SEVERABILITY .....	8
24	NO WAIVER.....	9
25	COMPLETE AGREEMENT.....	9
26	BINDING EFFECT.....	10

## 1 INTRODUCTION

This End-User Software License Agreement is made on **DATE** (the "Effective Date") between YouTestMe, with its principal place of business at Toronto, Ontario, Canada, and **CLIENT**, with its principal place of business at **CITY, STATE, COUNTRY** (the "Licensee").

## 2 RECITALS

WHEREAS, Licensor has developed certain computer programs and related documentation (the "Products") and desires to grant Licensee a license to use the Software.

WHEREAS, Licensee wishes to use the Software under the conditions set forth in this agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Licensee and Licensor hereby agree as follows:

## 3 DEFINITIONS

The following definitions shall apply to this agreement:

**"Effective Date"** has the meaning specified in the introduction to this agreement.

**"Delivery Date"** means the date when the production instance was delivered to the client.

**"Licensee"** has the meaning specified in the introduction to this agreement.

**"Software"** means the YouTestMe System consisting of the following environments:

- A. Production environment - **name.youtestme.com**
- B. Training environment
- C. UAT environment

**"Install"** means deploying the Software on a computer's hard disk, server, or other storage mediums.

**"Use"** means (i) executing or loading the Software into computer RAM or other primary memory, and (ii) copying the Software for archival or emergency restart purposes.

**"Initial Term"** has the meaning specified in Section TERM.

**"Renewal Term"** has the meaning specified in Section TERM.

**"Term"** has the meaning specified in Section TERM.

## 4 SOFTWARE LICENSE

### Perpetual License

Licensor hereby grants to Licensee a **perpetual**, non-exclusive license to use the Software and Documentation (collectively, the "Software System"), subject to the terms and conditions hereinafter set forth. This License is effective when executed by both parties and the license granted to the Software remains in force until Licensee stops using the Software or until Licensor terminates this License because of Licensee's failure to comply with any of its terms and conditions.

### One Standalone Computer

Licensor hereby grants to Licensee a non-exclusive license to install the Software on one computer (the Server) in its possession and access the software from any number of single-user computers.

### Network License

Licensor hereby grants to Licensee a non-exclusive license to install and use the Software on the Local Area Network with or without the access to the software over the internet.

## 5 TERM

The initial term of this agreement will begin on the Delivery Date and continue for **TIME**, unless terminated earlier (the "Initial Term").

At the end of each Term, the license will automatically renew for an additional period of **TIME**, unless terminated earlier ("Renewal Term").

"Term" means either the Initial Term or the then-current Renewal Term.

## 6 FEES

The following prices shall apply:

#	Item	Price (USD)
1.	Annual rental of YouTestMe Enterprise Edition.	

#	Item	Price (USD)
2.	Price per non-proctored test attempt	
3.	Price per AI-proctored test attempt	

The prices may be adjusted each Term and upon written notice from Licensor to Licensee. Such adjustment shall be based on but not limited to inflation and an increase in software value.

## 7 SPECIAL CONDITIONS

Add any special conditions we defined during the negotiations or leave “No special conditions.”

## 8 LICENSEE'S RIGHTS AND OBLIGATIONS

Licensee may:

- A. Use only the single copy of the Software provided to them and may not create additional copies for any purpose.

The Software and Documentation are protected by Canadian copyright laws and international treaties. The licensee must treat the Software and Documentation like any other copyrighted material - for example, a book. Licensee may not:

- A. Copy the Software
- B. Modify or adapt the Software or merge it into another program
- C. Reverse engineer, disassemble, decompile or make any attempt to discover the source code of the Software
- D. Sublicense, rent, lease or lend any portion of the Software or Documentation

## 9 LIMITED WARRANTY

Licensor warrants that for **the duration of the Term / a period of at least 90 days after the Delivery Date, and thereafter as long as the Licensee has an active support plan:**

- A. The Software will perform in substantial accordance with the Documentation.

To the extent permitted by law, THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND LICENSOR DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, regardless of whether Licensor knows or had reason to know of Licensee particular needs. No employee, agent, or distributor of Licensor is authorized to modify this warranty or to make any additional warranties.

## 10 LIMITED REMEDY

Licensor's entire liability and Licensee's exclusive remedy shall be:

- A. The replacement of any software or media not meeting the Limited Warranty, which is reported to Licensor or an authorized Dealer or Distributor, along with a copy of Licensee's receipt; or
- B. If Licensor or an authorized Dealer or Distributor are unable to provide a replacement that is free of defects in materials, workmanship, or performance, Licensee may terminate this agreement by returning the Software and Documentation or discontinuing access to the Software, and Licensee's payment will be refunded.

IN NO EVENT WILL LICENSOR BE LIABLE TO LICENSEE FOR ANY DAMAGES, INCLUDING ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE OR THE INABILITY TO USE THE SOFTWARE (EVEN IF LICENSOR OR AN AUTHORIZED DEALER OR DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, OR FOR ANY CLAIM BY ANY OTHER PARTY).

## **11 TERMINATION**

Licensor shall have the right to immediately terminate this License if Licensee fails to perform any obligation required of Licensee under this agreement or if Licensee becomes bankrupt or insolvent.

Licensee may terminate this agreement at the end of the Term, by providing written notification to Licensor, ceasing all use of the Software, and destroying all copies of the Software and Documentation in its possession.

It will also automatically terminate if Licensee fails to comply with any term or condition of this License agreement.

## **12 RETURN OR DESTRUCTION OF SOFTWARE UPON TERMINATION**

Upon termination of this License, Licensee shall return to Licensor or destroy the original and all copies of the Software including partial copies and modifications.

## **13 TITLE TO SOFTWARE**

Licensor retains title to and ownership of the Software, its source code and all enhancements, modifications, and updates of the Software.

## **14 MODIFICATIONS AND ENHANCEMENTS**

Licensee will make no efforts to reverse engineer the Software or make any modifications or enhancements without Licensor's express written consent.

## 15 DELIVERY

Licensor shall deliver the Software System to the Licensee via email or through a secure download link. Licensor may postpone the delivery of the Software System to a mutually agreed-upon date. During the warranty period, Licensor shall provide to Licensee, without additional charge, all reasonably necessary telephone or written consultation requested by Licensee in connection with its use and operation of the Software System or any problems therewith.

## 16 CONFIDENTIALITY

Each party agrees that it shall not disclose to any third party any information concerning the customers, trade secrets, methods, processes or procedures or any other confidential, financial or business information of the other party which it learns during the course of its performance of this agreement, without the prior written consent of such other party. This obligation shall survive the cancellation or other termination of this agreement.

The Software contains trade secrets and proprietary know-how that belong to Licensor and it is being made available to Licensee in strict confidence.

ANY USE OR DISCLOSURE OF THE SOFTWARE, OR OF ITS ALGORITHMS, PROTOCOLS OR INTERFACES, OTHER THAN IN STRICT ACCORDANCE WITH THIS LICENSE AGREEMENT, MAY BE ACTIONABLE AS A VIOLATION OF OUR TRADE SECRET RIGHTS.

## 17 USE OF NAME AND LOGO

Licensee grants to Licensor the express right to use Licensee's company name and/or logo in marketing, sales, financial, and public relations materials, its website, and other communications solely to identify Licensee as a Licensor customer. Licensor grants to Licensee the express right to use Licensor company name and logo solely to identify Licensor as a provider of services to the Licensee. Other than as expressly stated herein, neither party shall use the other party's names, marks, codes, drawings or specifications without the prior permission of the other party.

## 18 ASSIGNMENT

Licensee may assign this agreement to any subsidiary or affiliate under its control, or as part of the sale of that part of its business which includes the Hardware or any substantial portion of its data processing facilities, or pursuant to any merger, consolidation or other reorganization, without Licensor's consent, upon notice to Licensor. Licensor shall not assign this agreement without Licensee's prior written consent, which shall not be unreasonably withheld. An assignee of either party, if authorized hereunder, shall have all of the rights and obligations of the assigning party set forth in this agreement.

## 19 INDEMNITY

The Licensor shall indemnify the Licensee against third-party claims solely alleging intellectual property infringement arising from the Licensee's authorized use of the Software, provided the Licensee promptly notifies the Licensor and cooperates fully in the defense.

The Licensor shall not be liable for any claims or damages resulting from:

- A. Unauthorized modifications to the Software,
- B. Misuse of the Software, or
- C. Use outside the scope of this Agreement.

The Licensee shall indemnify and hold the Licensor harmless against any claims arising from the Licensee's misuse, non-compliance, or breach of this Agreement.

## 20 LIMITED LIABILITY

Unless otherwise expressly stated herein, neither party shall be liable to the other party for any consequential damages arising out of its own breach of this agreement.

## 21 NOTICE

All notices required or permitted to be given by one party to the other under this agreement shall be sufficient if sent by certified mail, return receipt requested, to the parties at the respective addresses or to such other address as the party to receive the notice has designated by notice to the other party.

## 22 GOVERNING LAW

The parties shall comply with all applicable laws, rules and regulations in the performance of their own obligations in this agreement. This agreement shall be governed by and construed under the laws of the State of Ontario, Canada.

## 23 SEVERABILITY

If any provision of this agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby.



## **24 NO WAIVER**

The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

## **25 COMPLETE AGREEMENT**

This agreement sets forth the entire understanding of the parties as to its subject matter and may not be modified except in a writing executed by both parties.

## 26 BINDING EFFECT

This agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of both the Licensee and Licensor.

**IN WITNESS WHEREOF**, the parties have executed this agreement as of the date first above written.

**YouTestMe**

by its authorized signatory:

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Zoran Kukoljac, Chief Executive Officer

**CLIENT**

by its authorized signatory:

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(Signature of Authorized Signatory)

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(Print Name and Position of Authorized Signatory)