

THIS TESSALINK LP MASTER SERVICES DEVELOPMENT AGREEMENT (“AGREEMENT”) GOVERNS CUSTOMER’S ACQUISITION AND USE OF TESSALINK PROFESSIONAL SERVICES (“SERVICES”). BY ACCEPTING THIS AGREEMENT, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM “CUSTOMER” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

TESSALink and Customer may be alternately referred to in this Agreement individually as “Party” and collectively as “Parties.”

- 1) **Purpose.** Customer desires to engage TESSALink to render certain professional and/or technical services related to the development of software in connection with or related to TESSALink product and/or service offerings; and TESSALink desires to render such services under the terms and conditions of this Agreement. The parties have determined that the services required by Customer will vary in scope, deliverables, requested personnel (including subcontractors) and performance period, and that such services may occur from time to time, at Customer’s request, throughout the term of this Agreement. To accommodate each request for services, TESSALink will issue to Customer and Customer will Approve and Sign “Task Orders” that shall identify in detail each expected service request and the associated requirements, including a “Scope of Work” (“SOW”) recitation. The terms and conditions of the Task Order shall be subject to mutual agreement of the parties; and thereafter, when fully executed, shall be bound to the terms of this agreement.
- 2) **Definitions.** Capitalized terms shall have the meanings set forth in the section where they are first used.
- 3) **Payment and Maximum Limits.** Customer agrees to pay TESSALink the total amount specified for the performance of the services described in a Task Order (collectively Services). Further, in the event Customer authorizes, in writing, TESSALink to travel in connection with the performance of the services in a Task Order, the costs and expenses incurred by TESSALink for such travel shall be reimbursed by Customer; provided that, such costs are reasonable and necessary. Travel costs shall include airfare, meals, hotel and associated incidental expenses. These expense amounts shall be considered to be above and beyond the total amount due and specified under a Task Order for services, unless otherwise indicated. Additionally, in the event Customer authorizes, in writing, TESSALink to obtain items or materials in connection with the provision of the services under a Task Order, the costs and expenses incurred by TESSALink for such items or materials shall be reimbursed by Customer; provided that, such costs are pre-approved, reasonable and necessary. These travel, items, and materials (collectively Expenses) amounts shall be considered to be above and beyond the total amount due and specified under a Task Order for services, unless otherwise indicated. Any limit for the amount Expenses that may be incurred by TESSALink shall not exceed the total amount specified in a Task Order (“Maximum Limit”). If Services or associated Expenses will be greater than the Maximum Limit specified in the Task Order, TESSALink and Customer shall negotiate in good faith an Addendum to the Task Order (“Change Order”); provided that, the terms and conditions of the Change Order are mutually agreeable and expressed as a writing signed by both parties hereto.
- 4) **Time and Materials (“T&M”).** Customer agrees to pay the TESSALink based upon the time spent by TESSALink’s employees and subcontractors to perform the Services, and for Expenses used in the execution of the Task Order, no matter how much work is required to complete the Task Order, in accordance to the provisions set forth in ARTICLE II.1.
- 5) **Payment Term.** TESSALink shall be paid the amount as specified in each Task Order, as follows: TESSALink shall invoice Customer for the Services and Expenses based on the amounts recited in a schedule of payments under a Task Order. The invoice shall contain reasonable and sufficient explanation or itemization of the Services rendered under an associated Task Order and/or the travel or item or material Expenses incurred in connection with the Services under the associated Task Order. TESSALink shall be paid by Customer within thirty (30) days of the date of TESSALink’s invoice, unless otherwise specified in the Task Order. Services as specified in the Task Order are on a Time and Materials basis (as hereinafter defined).
- 6) **Other Expenses.** Customer shall not be liable for any other expenses, costs or fees incurred by TESSALink in the performance of services under a Task Order other than those specifically identified herein or therein.

- 7) **Change Order.** If Customer desires to change or modify the services in any Task Order, Customer shall so advise TESSALink, in writing. If such a change or modification appears to substantially change the services as recited in a Task Order ("Change Order"), TESSALink and Customer shall negotiate in good faith an Addendum to the Task Order; provided that, the terms and conditions of the Addendum are mutually agreeable and expressed as a writing signed by both parties hereto.
- 8) **Taxes.** TESSALink shall be obligated to pay any taxes and/or fees associated with, including but not limited to relevant Federal Insurance Contributions Act (FICA) taxes and Federal Unemployment Tax Act (FUTA) taxes, applicable international, federal, state and local income taxes, and any other payroll taxes, Workers' Compensation, disability benefits and the like, the receipt of the monies or other types of compensation provided under each Task Order directly related to the services provided. It is understood that Customer shall have no liability for any such taxes and/or fees under any Task Order in connection with the provision of services and deliverables; however, Customer shall be liable for any and all fees (including any sales, customs, import or the like taxes) levied by any local, state, country or international taxing government authority as applicable to the receipt of services or any "Deliverable" hereunder, and TESSALink shall be entitled to invoice for such fees as such fees occur during or following the "Term".
- 9) **Term.** The "Term" of this Agreement shall be for a period of twelve (12) month(s) from the Effective Date as specified in the Task Order, unless earlier terminated under the termination provisions herein.
- 10) **Extension of Term.** The parties may extend, upon mutual written agreement, the Term of this Agreement for an additional period of time, as mutually determined by the parties, under the same terms and conditions as recited herein.
- 11) **Independence.** It is understood by the parties that a Task Order may be terminated independently of this Agreement, and that a termination of one or more Task Orders does not result in termination of this Agreement, unless this Agreement is terminated as specified hereinafter.
- 12) **Reporting.** TESSALink shall report to the Customer's designated representative per the terms of each Task Order.
- 13) **Deliverables.** TESSALink shall provide to Customer the "Deliverables" based on a schedule as specified in each Task Order. If Customer requires any other items, material, devices, software, documents, studies, data, analysis or reports which will be considered additional Deliverables, the creation and provision of such additional Deliverables shall be the subject of a Change Order as specified above.
- 14) **Subcontractors.** Customer acknowledges that TESSALink shall be entitled to engage subcontractors to perform certain services described in a Task Order, which subcontractor shall execute agreements with TESSALink commensurate with the terms and conditions recited under this Agreement.
- 15) **Information.** During the term of this Agreement, both Customer and TESSALink may be exposed either in writing, orally or through observation to the other party's confidential and/or proprietary information ("Information"). Information includes, but is not limited to: product/mechanical/electrical/process/technical specifications, system architectures, drawings, design plans, product blueprints and documentation; ideas, concepts, inventions, methods, processes, apparatus and devices; current and future product strategies and plans, business strategies, customer service plans, lines of business strategies; software (object, source or microcode), code listings, html, binaries, applications; scientific, research, technical or study data/reports; prototypes and demonstration packages; marketing strategies, customer lists, personnel information, business strategies and financial information and data; the above-described Deliverables; this Agreement and the parties hereto; and any other business and/or technical information related to TESSALink's product and/or service offerings and/or related to custom software development, including current and future business plans and strategies, current and future product/service offerings, or any information marked with a disclosing party's confidential or similar type legend.
- a) **Receipt.** The receiving party shall use the Information only for the purposes recited in this Agreement, and for no other purpose, whatsoever.
- b) **Disclosure.** The receiving party shall not disclose, disseminate or distribute the Information to any third party. However, receiving party shall be permitted to disclose Information to employees, subcontractors and consultants, who have a definable need to know, and who are under written obligations commensurate with the terms and conditions recited herein.
- c) **Exclusions.** The receiving party shall not be obligated to maintain the confidentiality of the Information if such Information: a) is or becomes a matter of public knowledge through no fault of the receiving party; b) is disclosed as required by law; provided that, receiving party promptly notifies the disclosing party of such request to disclose so that the disclosing party has the opportunity to seek a protective or similar order to prevent such disclosure of Information; c) is authorized, in writing, by the disclosing party for release; d) was rightfully in the receiving party's possession before receipt from the disclosing party; or e) is rightfully received by the receiving party from a third party without a duty of confidentiality.

- d) **Care.** The receiving party shall protect the Information by using the same degree of care, but no less than a reasonable degree of care, it would to protect its own information of a like nature.
 - e) **Period.** Information shall remain confidential for a period of two (2) year(s) following termination of this Agreement; except that any Information which is designated as a "trade secret" shall remain confidential until one of the events recited in Section 15) c) occurs.
 - f) **License.** No license under any trademark, patent, patent improvement, copyright or any other intellectual property right, whether statutory or common law, is either expressly or impliedly granted to the receiving party as a result of the disclosure of such Information by the disclosing party.
 - g) **Access.** In the event Customer requires certain TESSALink Information to access, use, copy, facilitate the creation of interfaces to or interoperability with existing software/hardware for the Deliverables, Customer shall be required to execute a separate license agreement with TESSALink to obtain limited rights to such Information solely for Customer's internal business needs and requirement.
 - h) **Responsibility.** In the event that Customer provides Information in connection with any Deliverables as provided under each Task Order, Customer assumes full responsibility and liability for the accuracy, integrity, correctness and veracity of any such information that is provided to TESSALink. TESSALink will perform services to provide the Deliverables that incorporate such information and use reasonable efforts to import and incorporate the provided information into the Deliverables. However, TESSALink shall not, in any manner, assume any responsibility or liability for confirming, maintaining or verifying the integrity, accuracy, correctness or veracity of the provided Information, or assume any responsibility or liability for any errors, inaccuracies, corruption, loss, modifications, alterations or omissions, whether or not negligent or inadvertent, that may occur with respect to any Information, in whole or in part, that is imported and incorporated into the Deliverables, or provide any warranty as to the integrity, correctness, accuracy, veracity or verifiability of any such Information that is imported and incorporated into the Deliverables once provided to the Customer. Customer shall assume the entire and full responsibility and liability for verifying, confirming and validating the accuracy, correctness, veracity and integrity of the Information incorporated into the Deliverables as a part of acceptance and testing as set forth in the Agreement and the relevant Task Order, and prior to any actual field use of the Deliverables by Customer. Further, following such acceptance, Customer assumes the entire responsibility and liability for any use of or reliance on, in any manner, the Information incorporated into the Deliverables, and TESSALink shall have no responsibility or liability, whatsoever, in connection therewith.
- 16) Intellectual Property.** Intellectual Property is defined as any ideas, concepts, know-how, techniques, methods, processes, research, developments, software, in whatever form, documents, apparatus, devices, work products or expressions, having either patent, copyright, trade secret, mask work or any other proprietary right, whether statutory or common law, associated therewith.
- 17) Ownership.** In the event that Intellectual Property is created, is generated, is developed, or is made by TESSALink, either solely or jointly, during the Term of this Agreement and in the performance of services under each Task Order that is associated with the Deliverables, TESSALink acknowledges that the Intellectual Property, with the Deliverable shall be held by, vested in and owned entirely by Customer. TESSALink shall execute, without additional consideration, all documents reasonably required to confirm Customer's ownership of such Intellectual Property in the Deliverable and to secure protection thereon for Customer. TESSALink acknowledges that this Agreement and the services rendered under any Task Order will be construed as a "work for hire" or, in the alternative, as applicable, the generation and/or development of a work product that will be solely for the benefit and ownership of Customer. Further, all associated and underlying Intellectual Property in any and all work products that comprise the Deliverables shall solely vest in and be for the benefit and ownership of Customer; and as a result, TESSALink assigns and hereby assigns, transfers and conveys all rights, title and interests therein from TESSALink to Customer, and this document shall be considered to confirm such assignment, transfer and conveyance.
- 18) Third-Party Products.** In addition to the foregoing Section 17), unless otherwise specified in a Task Order, if the Deliverable comprises original code created specifically for the Customer, the original code (both object and source) embodied in the Deliverable shall be owned by Customer and the underlying Intellectual Property shall also be owned by Customer. Any Deliverables that incorporate or access third-party products or Open Source shall be identified to Customer and any obligations associated therewith shall be subject to such third-party rights being directly passed through to Customer after Customer obtains rights thereto.
- 19) Background Technology.** It is understood by Customer that TESSALink shall retain all rights, title and interests in and to any pre-existing (prior to the Effective Date) proprietary technology, techniques, methods, algorithms, processes, code (in any format), tools, programs, software, services or applications, including but not limited to, TESSALink Information, and any improvements, enhancements, modifications or alterations thereto made during the Term, ("Background Technology"), and to associated Intellectual Property ("TESSALink IP"), which is utilized by TESSALink in performing the services under any Task Order. TESSALink grants no rights, either express or implied, to Customer to any TESSALink IP that is associated with such Background Technology.

- 20) Acknowledgement.** The parties acknowledge that this Agreement is solely a development agreement for the purposes of generating certain custom and unique Deliverables as requested by Customer. The Deliverables are accessible and usable with product and/or service offerings of TESSALink wherein such product and/or service offerings of TESSALink will be subject to the execution of independent, separate and additional agreements, which include but are not limited to formal Support and Maintenance agreements, Platform as a Service Agreement, and EULA, as applicable.
- 21) Termination.** This Agreement may be terminated, with or without cause, by either party with ten (10) days written notice. No payments shall be owed by Customer to TESSALink for services rendered under all validly executed and in-progress Task Orders after the date of termination, except that TESSALink shall be permitted to wind up any work in progress up to fourteen (14) days after the date of termination.
- a) Termination of Services.** In the event of termination of this Agreement either as provided herein or upon expiration of this Agreement: (1) all services shall terminate fourteen (14) days following the date of termination; (2) the receiving party shall promptly return all copies of Information to the disclosing party; (3) any Deliverables, in progress, whether or not complete, will be delivered, subject to the foregoing license as recited herein, by TESSALink to Customer if all amounts due and payable have been paid to TESSALink as provided hereunder; and (4) TESSALink shall submit a final invoice, including non-cancellable expense, and receive payment promptly as provided for under any and all Task Orders validly executed and in-progress.
 - b) Termination of Task Orders.** Individual Task Orders may be terminated without terminating this Agreement based on the discretion of each party relative to the services rendered under a particular Task Order.
 - c) Breach.** In the event a party breaches this Agreement, the aggrieved party shall provide written notice of such breach (identifying the type of breach) to the breaching party and the breaching party shall have a reasonable opportunity to cure (not to exceed ten (10) days) such breach to the non-breaching party's satisfaction. In the event the breach is not promptly cured, then either party may elect to terminate the Agreement as provided herein.
- 22) Use.** During the Term and following the termination of this Agreement, neither party shall use the name of the other party, or the name of any of its subsidiaries or affiliated entities, in any advertising, literature or other publication material or as a reference unless the party seeking to do so seeks written permission from the other party. Except that TESSALink may list Customer on its customer list in any marketing materials, and collaterals and in any advertising medium. In addition, neither party shall refer to any employee of the other without written permission to do so from the other party. This section shall survive termination of this Agreement.
- 23) Solicitation.** Neither party shall, directly or indirectly, solicit, hire, contract with or engage in employment of any employee or consultant of the other, who was connected with this Agreement or the services specified in any and all such Task Orders, during the Term of this Agreement and for a period of two (2) year(s) after termination and/or expiration of this Agreement. This Section 8.2 shall survive termination of this Agreement.
- 24) Independent Contractor.** TESSALink represents and warrants to Customer that it is an independent contractor that makes its services available to the general public, that it has its own regular place of business and that it maintains its own set of books and records, which reflect all items of income and expense of its business and trade. TESSALink shall operate as an independent contractor and shall not represent itself to be the agent, employee, partner or joint venture of Customer nor shall Customer represent itself to be the agent, employee, partner or joint venture of TESSALink. Neither party shall obligate the other party in any manner, nor cause the other party to be liable under any contract or under any other type of commitment.
- 25) Performance.** TESSALink represents and warrants that the services performed in connection with each Task Order issued hereunder shall be performed substantially in a good and workmanlike manner and in accordance with industry standards.
- 26) Third-Party Products.** TESSALink represents and warrants that the Deliverables developed, created and provided under the Task Orders will be original works. To the extent any third-party technology (including Open Source) is included in any such Deliverables, before such inclusion, TESSALink shall obtain written authorization from Customer to so include such third-party technology; and thereafter, Customer shall secure, without additional costs or expense to TESSALink, a license for Customer for such third-party technology commensurate with the needs and requirements recited in each Task Order under which such Deliverables are provided, and TESSALink shall be granted a worldwide, non-exclusive, irrevocable, fully paid-up, royalty-free license to use, in any manner, reproduce, modify and create derivative works thereof, in connection with the services and the provision of the Deliverables. The Deliverables, which do include third-party technology or code, will to the extent any third-party technology (including open source) is included in any such Deliverables, will be provided to Customer with the same rights as provided under such third-party obligations and TESSALink shall not grant any greater rights than provided by such third party.

- 27) **AS IS.** EXCEPT WHERE OTHERWISE STATED, THE DELIVERABLES ARE PROVIDED "AS IS". TESSALINK MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. TESSALINK MAKES NO WARRANTY THAT THE DELIVERABLES WILL MEET CUSTOMER'S REQUIREMENTS OR OPERATE UNDER CUSTOMER'S SPECIFIC CONDITIONS OF USE. TESSALINK MAKES NO WARRANTY THAT OPERATION OF THE DELIVERABLE WILL BE SECURE, FREE OF MALICIOUS CODE, VIRUSES, ERROR FREE, BUG FREE OR FREE FROM INTERRUPTION. CUSTOMER MUST DETERMINE WHETHER THE DELIVERABLE SUFFICIENTLY MEETS CUSTOMER'S REQUIREMENTS FOR SECURITY AND UNINTERRUPTABILITY. CUSTOMER SHALL BEAR SOLE RESPONSIBILITY AND ALL LIABILITY FOR ANY LOSS INCURRED DUE TO FAILURE OF THE DELIVERABLE TO MEET CUSTOMER'S REQUIREMENTS. TESSALINK WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE THAT UTILIZES OR ACCESSES THE DELIVERABLES.
- 28) **Acceptance.** If applicable, and as more particularly recited in or as addressed under a Task Order, TESSALink will provide the Deliverables, identified under each Task Order, for "Acceptance" by Customer. Except where otherwise recited in a Task Order, such "Acceptance" must occur within ten (10) days following the date of delivery of the Deliverables under the relevant Task Order. Acceptance comprises problem-free operation and substantial conformance to the criteria recited in the relevant Task Order associated with the Deliverable. Customer is responsible for performing Acceptance of the Deliverable promptly upon the date of delivery. During such ten (10) days if Customer identifies any problems or non-conformance, Customer shall notify, in writing, TESSALink of such problem or non-conformance and TESSALink shall be permitted ten (10) days to correct and remedy the problem or non-conformance. Thereafter, TESSALink will provide a new or corrected Deliverable and the Acceptance procedure will start again as provided herein. If no Acceptance occurs by Customer, Customer may choose to either terminate this Agreement or an individual Task Order. Notwithstanding the above, if Customer fails to provide notice of Acceptance or non-Acceptance within such ten (10) days, the Deliverable shall be deemed accepted under the Acceptance criteria or if Customer substantially modifies, without TESSALink's authorization, the Deliverable prior to Acceptance, then Acceptance shall be deemed to have occurred. Following Acceptance, the final payment shall be made per the agreed upon terms, and TESSALink shall have no further liability or obligation in connection with the Deliverable that was subject to Acceptance. Additionally, no further warranty, express or implied, is made in connection with the Deliverable or remedy is available.
- 29) **Negligence.** TESSALink will be permitted to enter Customer's premises and have access to Customer's personnel and/or equipment upon reasonable notice and during normal business hours; provided that, TESSALink complies with Customer's safety and security procedures. TESSALink shall maintain comprehensive liability insurance, including personal property, personal injury and accidental death and dismemberment coverage, and any other like-type of insurance coverage. TESSALink agrees to take all reasonable precautions to prevent any injury to persons or any damage to property in the performance of the service as rendered by the TESSALink under each and every Task Order. It is understood that Customer shall have no liability or obligation for any item recited herein except where Customer is negligent or engages in intentional misconduct or actions or is found to be non-compliant with applicable local laws and regulations in connection with its business operations or any non-compliance with local, country or international laws requirements.
- 30) **Indemnification.** Customer shall defend, indemnify and hold TESSALink harmless from any claims by a third party of liability, loss or damage resulting from claims of tort, contract, negligence or any other cause of action, including claims of infringement, from a third party as a result of TESSALink's activities with respect to the provision of services or Deliverables hereunder, or the use of third-party products or services as provided by Customer, or the request for services or Deliverables by Customer in violation of or non-compliance with applicable local, state, country or international laws and regulations in connection with its business operations. Additionally, Customer acknowledges that the Deliverables are custom developments that are specified by the Customer and Customer assumes the entire liability for such specified Deliverables, including functionality, operation and any claims of proprietary infringement, and TESSALink shall have no liability therefore and shall be held harmless, indemnified and defended by Customer from any third-party claims.
- 31) **Liability.** TESSALink's entire liability hereunder for the breach of this Agreement or any individual Task Order shall be limited only to actual and provable damages up to the amounts of monies payable hereunder or thereunder to TESSALink. This serves as the entire extent of Customer's claims, if any, against TESSALink, and the total extent of TESSALink's entire liability, hereunder, to Customer.
- 32) **Breach.** With regard to each party's Information and Intellectual Property, the holding party of the Information and Intellectual Property shall be entitled to pursue any and all available legal and/or equitable action, including injunctive relief and damages, against the breaching party with regard to any misuse, misappropriation or breach of any term or condition recited herein with regard to a party's Information and Intellectual Property. IN NO EVENT, HOWEVER, SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES ARISING FROM THE PERFORMANCE OF THE SERVICES UNDER ANY TASK ORDER, OR THE OBLIGATIONS RECITED IN THIS AGREEMENT OR ANY TASK ORDER,

EXCEPT WITH RESPECT TO DAMAGES INCURRED WITH REGARD TO CLAIMS OF MISUSE, UNAUTHORIZED USE OR MISAPPROPRIATION OF A PARTY'S INFORMATION AND INTELLECTUAL PROPERTY.

- 33) Actions.** TESSALink shall take, at its election, the following action in the event a claim, demand, suit, action or proceeding, made or filed by a third party against Customer, arising out of or in connection with allegations or claims that Customer's use of the Deliverables are directly infringing the U.S. Intellectual Property rights of a third party: 1) obtain a license to allow Customer to continue to use the Deliverable; 2) provide to Customer a non-infringing product that has substantially the same functionality; or 3) refund on a pro-rated basis based on use and benefit received by Customer of the monies paid subject to the limits of liability recited herein. The foregoing election is available only if the claim is not a result of: (i) the supplied Deliverables being, in any unauthorized way, altered, modified, or changed or subject to any misuse, unauthorized use or misappropriate use by Customer, its affiliates, client representatives or any unauthorized third-party; (ii) the supplied Deliverable is based on or resulting from the requirements or specifications outlined by the Customer; or (iii) the supplied Deliverables being subject to an unauthorized combination of, use to interface or interoperability with or use in conjunction with third-party devices or software by Customer, its affiliates, Customer representatives or unauthorized third-party, if the Deliverable alone, as an independent, stand-alone product, would not be directly infringing as set forth herein.
- 34) Delay.** Neither party shall be deemed to have breached this Agreement by reason of delay or failure in performance resulting from causes beyond the control, and without the fault or negligence, of the party. Such causes include, but may not be limited to, an act of God, an act of war, riot, epidemic, fire, flood or other disaster. This Agreement shall terminate if such delay or failure persists for ninety (90) consecutive days and there is no foreseeable remedy or cure available.
- 35) Survival.** No action arising out of this Agreement, regardless of the form of action, may be brought by either party more than two (2) years after the termination of this Agreement; excluding, however, actions arising under Sections 15-23 which shall survive termination of this Agreement and any claims of infringement, misuse or misappropriation of a party's Intellectual Property or Information. The prevailing party shall be entitled to reasonable and documented attorney's fees and administrative fees in the event an action is brought.
- 36) Export.** Both parties shall adhere to all applicable U.S. Export Administration Laws and Regulations and shall not export or re-export any technical data, software or work products or Deliverables received under this Agreement or the direct product of such technical data, software or work products or Deliverables to any proscribed country or person listed in the U.S. Export Administration Regulations unless properly authorized by the U.S. Government.
- 37) Understanding.** With regard to the subject matter recited herein, this Agreement, Exhibit 1, any agreements referenced herein and any addenda or amendments added hereto, comprise the entire understanding of the parties hereto and as such supersedes any oral or written agreement. In the event of conflict between any agreements incorporated herein, or any attachment, exhibits or addenda or amendments, and this Agreement, the terms and conditions of the Task Order as fully executed and thereafter, the Agreement shall control with regard to each service rendered under a Task Order until such service is completed. The terms and conditions for the services rendered under each Task Order shall be construed solely and independently for that Task Order for such service and shall not be applicable to any other Task Order issued hereunder for another service request.
- 38) Modification.** This Agreement shall not be modified or amended except by writing signed by both parties. The signatories below acknowledge that the signatories are authorized to bind each party. All requirements for notices hereunder must be in writing. The parties further acknowledge that facsimile signatures or signatures in PDF format are fully binding and constitute a legal method of executing this Agreement.
- 39) Validity.** If any of the provisions of this Agreement are declared to be invalid, such provisions shall be severed from this Agreement and the other provisions hereof shall remain in full force and effect.
- 40) Headings.** Article headings contained in this Agreement are for reference purposes only, and do not constitute part of this Agreement.
- 41) Transferability.** Neither party shall transfer, assign or hypothecate, in whole or in part, this Agreement or any rights or obligations hereunder, except this Agreement can be assigned to another party in the event of any merger, acquisition of substantially all the assets of a party or a reorganization. In the event of any permitted assignment or transfer of this Agreement or the obligations under this Agreement, the parties agree that such obligations shall be binding upon the assigning or transferring party's executors, administrators and legal representatives, and the rights of assignor or transferor shall inure to the benefit of assignee or transferee.
- 42) Compliance.** Customer shall warrant full compliance with all applicable local, state and national laws in connection with all applicable data privacy requirements with respect to any information or content that may be processed by the Deliverables and shall warrant that all access to and users of the Deliverables are authorized users of Customer.

- 43) Execution.** The Agreement may be executed in one or more counterparts, each of which shall be deemed to be a duplicate original, but all of which, taken together, shall be deemed to constitute a single instrument.
- 44) Data Privacy.** The parties acknowledge that, as applicable, certain U.S. and International Internet Laws may apply to the download, access and use of the Deliverables and associated documentation; and each party shall assume full responsibility for compliance with all such applicable laws in connection with access and use of the foregoing. Each party acknowledges that each party shall comply with all applicable Data Privacy Laws (e.g., Data Privacy and Security Acts, including GDPR, and Computer Fraud and Abuse Act, as the foregoing is amended from time to time throughout the Term) and take responsibility and liability for all appropriate levels of precaution in the collection of personal information.
- 45) Commercial Items.** In connection with a U.S. Government Customer, the Background Technology and TESSALink Information and TESSALink IP and any associated documentation qualify as “commercial items” as that term is defined at Federal Acquisition Regulation (“FAR”) 48 CFR 2.101, consisting of “commercial computer software” “and “commercial computer documentation” as such items are used in FAR 12.212, Consistent with FAR 12.212 and DoD Far Supp. 227.7202-1 through 227.7202-4, and notwithstanding any other FAR or other contractual clause to the contrary in any agreement into which this Agreement may be incorporated. U.S. Government Customer will acquire the Background Technology and TESSALink Information and TESSALink IP and any associated documentation with only those rights set forth in this Agreement. Further, any U.S. Government download, access and use of the Background Technology and TESSALink Information and TESSALink IP and any associated documentation constitutes the U.S. Government’s acknowledgement that the Background Technology and TESSALink Information and TESSALink IP and any associated documentation are “commercial computer software” and “commercial computer software documentation” developed at private expense. As applicable and so marked with respect to the Background Technology and TESSALink Information and TESSALink IP and any associated documentation, the U.S. Government shall acquire the Background Technology and TESSALink Information and TESSALink IP and any associated documentation with at least applicable Limited Rights and Restricted Rights as defined under the relevant and applicable FARs and DFARs.
- 46) Disputes.** This Agreement is made under and shall be construed according to the laws of the State of Texas, notwithstanding the conflicts of laws principles, and of the United States, as applicable, and the application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded and the Uniform Computer Information Act does not apply to this Agreement.; and any disputes between the parties with respect to this Agreement shall be decided by the competent courts in Harris County in the State of Texas or in the nearest county having the competent federal court. Notwithstanding the foregoing, in the event of a dispute, prior to any formal action being taken, the parties shall try and resolve this dispute at the executive level within thirty (30) days following receipt of written notice that a dispute exists. If such dispute is not resolved within such thirty (30) days, then the parties may resort to formal action.