

TESSALINK TERMS OF SERVICE

The following Terms of Service (the “**Terms**”) govern Customer’s use of the System licensed in the Quote. The Terms, together with the Quote and any other referenced documents, shall be referred to as the “**Agreement**.”

1. Access to Software.

- 1.1. License Grant. Subject to the terms and conditions of the Agreement, TESSALink grants to Customer a non-exclusive, non-transferable, limited term, license to access and use the proprietary software of TESSALink, which may be accessed through a desktop application, mobile application, internet browser or other means as identified on the Quote (the “**System**”) solely for Customer’s internal business purposes. TESSALink and its licensors reserve all rights in and to the System not expressly granted to Customer. Unless otherwise provided in the Quote or under an equipment purchase order, Customer will provide all hardware, software, and communications equipment which will allow Customer to access and use the System. Customer will be responsible for providing all additional equipment and internet connectivity at its own expense.
 - 1.2. Updates. From time to time, TESSALink may make scheduled and/or unscheduled deployments of updates to the System. During such deployments, all or selected portions of the System may be unavailable. In the event TESSALink provides Customer with updates, Customer agrees that any such updates will be governed by these Terms.
 - 1.3. Customer End-Users. The term “Customer” shall apply to the purchaser of the System, whether an individual or an entity, and any end-users who are granted permission to use the System under the Customer’s license (separately referred to “**End-Users**”). Customer shall be responsible for ensuring each End-User granted access to the System by Customer adheres to these Terms. End-Users may be required enter into and agree to the terms of an End-User License Agreement prior to gaining access to the System.
 - 1.4. Account Security. TESSALink employs reasonable commercial efforts to deploy and maintain reasonable administrative, physical, and technical safeguards to keep Customer data and other information confidential and secure. Each End-User will be required to create their own unique account prior to gaining access to the System. Customer and each End-User shall be responsible for appropriately securing their accounts, computers, and other electronic devices accessing the System and for protect their passwords and other access rights to the System. Customer and End-User may not interfere with others’ legitimate access to and use of the System. TESSALink may monitor use of the System for security and technical support purposes and for validating compliance with the terms of the Agreement. TESSALink may at any time remove access rights to the System or require End-Users and Customers to change their passwords if TESSALink determines, in its sole discretion, that the Customer or End-Users use or access to the System poses an imminent threat to the System, to others’ use of the System or of a violation of law. TESSALink will restore connectivity and functionality as soon as practicable after they identify and neutralize the threat and implement any measures to ensure the threat does not reoccur.
2. **Restrictions on Use**. Customer may not: (a) copy or otherwise reproduce or permit the copying or other reproduction of all or any part of the System except as otherwise permitted herein; (b) reverse engineer, decompile, disassemble or create derived works based on the System;

(c) modify, adapt, translate into other programming forms or languages or extend the System to operate in other environments or on other platforms, except in accordance with these Terms; or (d) allow access to the System by other software products for any purpose without prior approval of TESSALink.

3. **Fees and Payment**. Customer will pay TESSALink for the System in accordance with the terms set forth in the Quote. Rates described on the Quote are exclusive of taxes, levies, duties, governmental charges or expenses. Any invoices remaining unpaid for more than 30 days from receipt will accrue interest at a rate of the lesser of 1.5% percent per month or the highest rate allowed by law, whichever is less. Customer will be liable for all costs and expenses related to collection of past due amounts, including legal and other professional fees and expenses of litigation. TESSALink’s rights under this section will be in addition to all other rights and remedies available to TESSALink upon Customer’s default.
4. **Proprietary Rights**.
 - 4.1. Customer Data. Customer retains ownership of Customer and End-User supplied information or data that is specific to Customer and is used to populate TESSALink formats or data models hosted by or input into the System (“**Customer Data**”). Customer may export the Customer Data at any time and for a period of 14 days following termination of this Agreement. Customer grants to TESSALink the non-exclusive right to maintain and use Customer Data in de-identified and aggregated form to improve its services, develop new services, show trends about general use of services, and for statistical analysis and business measures.
 - 4.2. Software Applications. All right, title and interest (including all intellectual property rights embodied therein) in and to the System and will remain the sole and exclusive property of TESSALink. These Terms grant Customer no title or right of ownership in or to the System, or any component thereof including source code, or to any associated materials, documentation, intellectual property, or in or to any derivatives of the System, enhancements, modifications or improvements thereto. Customer will not, at any time, take or cause any action, which would be inconsistent with or tend to impair the rights of TESSALink or its affiliates in the System. Customer may not remove or alter any of TESSALink’s proprietary or copyright notices, trademarks or logos.
 - 4.3. Confidentiality. Customer acknowledges that the existence and the terms of this Agreement and any oral or written information exchanged between the parties in connection with the preparation and performance this Agreement are regarded as confidential information. Customer shall maintain confidentiality of all such confidential information, and without obtaining the written consent of TESSALink, it shall not disclose any relevant confidential information to any third parties, except for the information that: (a) is or will be in the public domain (other than through Customer’s unauthorized disclosure); (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations, rules of any stock exchange, or orders of the court or other government authorities; or (c) is required to be disclosed by any party to its shareholders, investors, legal counsels or

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financial advisors regarding the transaction contemplated hereunder, provided that such shareholders, investors, legal counsels or financial advisors shall be bound by the confidentiality obligations similar to those set forth in this Section. Disclosure of any confidential information by the staff members or agencies hired by Customer shall be deemed disclosure of such confidential information by Customer, and Customer shall be held liable for breach of this Agreement.

5. **Term and Termination.** The Agreement will commence upon the Effective Date as stated on the Quote and remain effective for 12 months unless terminated as permitted in this Section (the “**Initial Term**”). Unless otherwise agreed upon in the Quote, the Initial Term will automatically renew for successive 12-month periods (together, the “**Term**”), unless either party gives the other party written notice of non-renewal at least 90 days prior to the end of the then-current Term, or terminates the Agreement pursuant to this Section. Either party may terminate the Agreement for cause if the other party (a) materially breaches the Agreement and fails to cure such breach within 30 calendar days of receiving a written notice of breach from the non-breaching party; (b) ceases to do business in the normal course, (c) becomes or is declared insolvent or bankrupt, (d) is the subject of any proceeding related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within 90 calendar days or (e) makes an assignment for the benefit of creditors. This Section contains the parties’ exclusive termination rights, unless otherwise provided in a Quote. Termination of the Agreement will relieve TESSALink of all obligations to provide Customer access to the System and any licenses granted under the Agreement will immediately cease.

6. **Indemnification.**

6.1. By TESSALink. TESSALink will indemnify and defend Customer and its affiliates, directors, officers, employees and agents with respect to any claims, liabilities, damages and expenses, including reasonable attorneys’ fees, arising out of any third-party claim that the System as provided by TESSALink infringes on any copyright, patent, trademark, trade secret or other intellectual property right of any third party. Notwithstanding the foregoing, TESSALink will have no obligation pursuant to the foregoing indemnification provision to the extent that any claim is based on or related to: (a) any use of the System in violation of the Agreement, (b) any use of the System in conjunction with any third party service, data, hardware or software not provided by TESSALink, or (c) any material or data provided by Customer. If Customer’s use of the System becomes, or is likely to become, the subject of an infringement claim, TESSALink may, at its option and expense (i) procure the right for Customer to continue using the System, (ii) replace or modify the infringing components of the System with non-infringing components of substantially equivalent functionality. The foregoing states the entire liability of TESSALink with respect to this Section, and Customer hereby expressly waives any other remedies for infringement claims.

6.2. By Customer. Customer will indemnify and defend TESSALink and its affiliates, directors, officers, employees and agents with respect to any claims, liabilities, damages

and expenses, including reasonable attorneys’ fees, arising out of (a) any material or data provided by Customer, or (b) a breach of any of Customer’s representations, warranties, obligations, covenants or agreements under the Agreement.

6.3. Indemnification Procedures. A party seeking indemnification hereunder (an “**Indemnified Party**”) will give the Party from whom indemnification is sought (the “**Indemnifying Party**”): (a) reasonably prompt notice of the relevant claim; (b) reasonable cooperation and assistance, at the Indemnifying Party’s request and expense, in the defense or settlement of such claim; and (c) sole control the defense and settlement of any such claim; provided, however, that the Indemnifying Party will not, without the prior written approval of the Indemnified Party, settle or dispose of any claims in a manner that affects the Indemnified Party’s rights or interest. The Indemnified Party will have the right to participate in the defense at its own expense.

7. **WARRANTY DISCLAIMER.** ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COMMON LAW OR IN ANY OTHER WAY, INCLUDING ANY IMPLIED WARRANTIES AS TO QUALITY, PERFORMANCE, TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, ARE EXCLUDED FROM THE AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE SYSTEM IS PROVIDED ON AN “AS IS” BASIS AND CUSTOMER’S USE OF THE SYSTEM IS AT ITS OWN RISK. TESSALINK DOES NOT WARRANT THAT THE SYSTEM WILL MEET CUSTOMER’S REQUIREMENTS OR THAT THE OPERATION OF THE SYSTEM WILL BE UNINTERRUPTED OR COMPLETELY SECURE OR ERROR-FREE. CUSTOMER ASSUMES RESPONSIBILITY FOR TAKING ADEQUATE PRECAUTIONS AGAINST DAMAGES WHICH COULD BE CAUSED BY DEFECTS, INTERRUPTIONS OR MALFUNCTIONS IN THE SYSTEM OR THE HARDWARE ON WHICH IT IS INSTALLED.

8. **Limitation of Liability.** TESSALINK WILL NOT BE LIABLE FOR VIOLATION OF ANY APPLICABLE LAW, RULE OR REGULATION OR TO ANY THIRD PARTY FOR CLAIMS ARISING OUT OF OR RELATED TO CUSTOMER DATA PROVIDED TO TESSALINK OR PLACED ON THE SYSTEM BY CUSTOMER OR AT CUSTOMER’S DIRECTION. IN NO EVENT WILL (A) TESSALINK BY LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SYSTEM; AND (B) TESSALINK’S TOTAL CUMULATIVE LIABILITY TO CUSTOMER EXCEED THE AMOUNT PAID TO TESSALINK UNDER THE AGREEMENT DURING THE PREVIOUS 12-MONTH PERIOD.

9. **Miscellaneous.**

9.1. Assignment. Customer may not assign the Agreement or any right created hereunder without the prior written consent of

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TESSALink. Any prohibited assignment is void. The Agreement shall inure to the benefit of the parties' respective permitted successors and assigns

- 9.2. Amendments; Waiver; Severability. The Agreement may only be amended or modified in a writing duly executed by authorized representatives of both parties. Any waiver of any breach of any term or any condition of the Agreement will not be construed as a waiver of any subsequent breach of any term or condition of the Agreement. If any part, term or provision of the Agreement will be held to be illegal or unenforceable it will not affect the validity or enforceability of the remainder of the Agreement. The parties will replace any invalid provision with a valid provision, which most closely approximates the intent and economic effect of the invalid provision.
- 9.3. Publicity. TESSALink may disclose in its advertising and marketing materials that: (a) Customer has entered into the Agreement with TESSALink; and (b) Customer is a customer of TESSALink.
- 9.4. Disputes. The Agreement will be governed and construed in accordance with the laws of the State of Texas without giving effect its conflict of law principles. The 1980 U.N.

Convention on Contracts for the International Sale of Goods does not apply to the Agreement. All disputes arising from or relating to the Agreement will be within the exclusive jurisdiction of the state and/or federal courts located in Harris County, Texas. Any claim arising from or related to the Agreement must be brought in the state or federal courts located in Harris County, Texas.

- 9.5. Entire Agreement. The Agreement, including the Quote and any other exhibits, comprises the entire agreement between the parties relating to the subject matter hereof. The Agreement supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of the Agreement. If there is any conflict between the Quote and these Terms, the provisions of the Quote will control. The Agreement may be executed in several counterparts, each of which will be deemed to be an original, and all of which, when taken together, will constitute one and the same instrument. Sections 4 (Proprietary Rights), 7 (Warranty Disclaimer), 8 (Limitation of Liability), and 9 (Miscellaneous) survive termination of the Agreement.