

TESSALink Software as a Service Agreement

THIS TESSALINK LP SOFTWARE AS A SERVICE AGREEMENT (“AGREEMENT”) GOVERNS CUSTOMER’S ACQUISITION AND USE OF TESSALINK SOFTWARE AND SERVICES (“SERVICES”). IF CUSTOMER REGISTERS FOR A FREE TRIAL OF TESSALINK SERVICES OR FOR FREE SERVICES, THE APPLICABLE PROVISIONS OF THIS AGREEMENT WILL ALSO GOVERN THAT FREE TRIAL OR THOSE FREE SERVICES. BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, 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.** The purpose of this Agreement is to recite the terms and conditions under which TESSALink will provide Customer with:
- access and use the Software Product, as specified in the Quote;
 - certain onboarding assistance for the Software Product (“Onboarding Service” or “Onboarding Services”), and
 - an agreed upon measure of the average response and resolution times that TESSALink’s customer support will provide to Customer (“Service Level Agreement” or “SLA”), as specified in the Policies and described in the Quote.

The Software Product, Onboarding Services and SLA are collectively referred to in this Agreement as the “Purchased Items.”

The Policies and TESSALink’s written quote (when accepted by Customer, the “Quote”) are incorporated into this Agreement by this reference and provide further clarification, details, terms and conditions regarding the Purchased Items.

This Agreement **DOES NOT** cover any additional services, such as further training or custom development. If such additional services are requested and agreed to, Customer and TESSALink shall enter into a Master Software Development Agreement.

- 2) **Definitions.** The following terms when used in this Agreement shall have the following meanings:
- “Acceptable Use Policies” or “AUP” are a subset of the Policies and further defined as detailed, supplemental and additional information, terms and conditions in connection with the scope of the Purchased Items. AUPs are located at www.TESSALink.com.
 - “Affiliate” means any direct or indirect parent or subsidiary, or any other entity in which a Party has a controlling interest.
 - “Customer Data” or “Data” means End-User supplied information or data that is specific to Customer and is used to populate TESSALink formats or data models based on customized queries to provide custom representations of such data or information in the form of generated work products to accomplish certain Customer customized tasks. Data is collected, stored, processed and manipulated through the access and use of the Software Product. End-User supplied Data is confidential and proprietary to Customer.
 - “End-Users” mean the individuals who access and use the Purchased Items consistent with the terms and conditions recited in this Agreement and under the Quote. Direct competitors of TESSALink and individuals who desire to access the Purchased Items for the purposes of monitoring availability, performance or functionality of the Software Product or SLA, or for any other benchmarking competitive purpose, cannot be End-Users.
 - “End-User Documentation” is defined as any operating or user manuals or other embodiment of information (either in hard copy or electronic form) that TESSALink provides to End-Users explaining the performance, use and operation of the Purchased Items.
 - “EULA” means the End-User License Agreement that End-Users of the desktop and mobile versions of the Software Product will click-through or otherwise accept when accessing the Software Product, under which they will, among other actions, become bound by the Policies.
 - “Policies” mean the TESSALink policies published at www.TESSALink.com. All Policies are incorporated into this Agreement by this reference and are subject to change from time to time at TESSALink’s discretion, provided such changes do not materially alter Customer’s rights as set forth in the Quote and this Agreement. In the event of conflict between the Policies and this Agreement, the terms of this Agreement shall prevail.
 - “Purchase Order” or “P.O.” means the ordering document generated by Customer based on the Quote to obtain from TESSALink the Purchased Items, which P.O. terms are superseded in their entirety by this Agreement.
 - “Software Product” means the multiple add-on features (“Add-ons”) that comprise TESSALink’s asset management software, related materials, and End-User Documentation.
 - “Third-Party Products” means third-party software products that TESSALink incorporated in or used to build the Software Product. With respect to the Third-Party Products, this Agreement comprises and incorporates by reference the terms and

conditions accepted by TESSALink for use of the Third-Party Products, to the extent such terms and conditions are transferable to Customer and/or End-Users.

3) **Term.** The term of this Agreement shall be for an initial term of one (1) year from the Effective Date (as set forth in the Quote), unless earlier terminated under Section 11 (as extended or earlier terminated, the "Term"). Additionally, unless earlier terminated as provided for in this Agreement, this Agreement shall automatically extend as the for additional one (1) year Terms ("Renewal Term") under the same terms and conditions as recited in this Agreement subject to cost adjustments and modifications, if any, to the Purchased Items, as provided in the subsequent Quotes and invoices issued therefrom. Each Party may elect not to enter into a Renewal Term but such election must be provided for in writing as provided under Section 11.

4) Purchase of the Software Product, Onboarding Service and SLA.

- a) This Agreement shall apply to the purchase of access to the Software Product as set forth in a Quote, the Onboarding Service as set forth in the Quote, and the SLA as set forth in the Quote. Customer acknowledges that the Software Product is NOT sold but licensed for access and use as set forth in the EULA terms and conditions and supplemented by this Agreement, and the AUP. In the event of conflict between this Agreement, the EULA, and the AUP, the terms of this Agreement shall control.
- b) The cost, including applicable taxes, fees, costs and charges, for the Purchased Items is contained in the Quote. The full cost of the Purchased Items shall be due and payable by Customer to TESSALink per the terms set forth in the Quote, and when paid, such payment shall be non-refundable except as provided under the EULA. Acceptance of the Software Product is as provided under the EULA. Following the foregoing acceptance, the warranty period (including, without the limitation, under the EULA and Section 5 below) applies to the Software Product. Notwithstanding the foregoing, if the costs do not include taxes, levies, duties or similar government assessments of any nature ("taxes"), Customer will be responsible and liable for any taxes due and payable in connection with the purchase of the Purchased Items. If TESSALink has the legal obligation to collect or pay taxes for which Customer is responsible, TESSALINK shall be permitted to invoice Customer and receive payment thereof unless Customer can provide TESSALink with a valid tax exemption certificate authorized by the appropriate tax authority. TESSALink acknowledges that TESSALink is responsible for taxes assessed against TESSALink based on TESSALink's receipt of income, use of TESSALink property or in connection with TESSALink employees.
- c) If Customer is delinquent in payment, TESSALink, without limiting any other rights and remedies available to it, shall be entitled to charge interest on all outstanding delinquent amounts, in an amount equal to 18% per annum (or such lesser amount that is the maximum legally allowable interest rate), until such amounts are paid. All exchange, interest, banking, collection and other charges shall be at Customer's expense. TESSALink may require an irrevocable letter of credit from a bank acceptable to TESSALink regarding payment if Customer's payments are delinquent beyond thirty (30) days. In the event of conflicts between the terms of any P.O. and this Agreement and any referenced AUP, the terms of this Agreement shall prevail and supersede the terms of the P.O. If Customer cancels any P.O. after TESSALink accepts such P.O., then Customer shall reimburse TESSALink for any costs and expenses incurred incident to such efforts and activities that occurred under the P.O.
- d) Except as otherwise recited in the Quote, if any amount that is due and owing is more than thirty (30) days overdue under this or any other related agreement for the Purchased Items, TESSALink, without limiting any other rights and remedies available to it, may (i) accelerate all payments that are due and owing so that all such payments become due and owing immediately, and (ii) suspend all access and use of the Purchased Items until all amounts are paid in full. Notwithstanding the foregoing, TESSALink will provide at least ten (10) days' prior written notification to Customer that access and use of the Purchased Items will be suspended.
- e) Except as otherwise recited in the Quote, TESSALink will not take either of the actions described in Section 4(d) if Customer is disputing the applicable unpaid charges reasonably and in good faith and is cooperating diligently to resolve the dispute within thirty (30) days after the date that written notice of such dispute is forwarded from Customer to TESSALink. Failure by the Parties to resolve the dispute in such thirty (30) day period shall be grounds for termination of this Agreement as provided in Section 11. Further, Customer acknowledges that timely payment of amounts due under this Agreement is not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by TESSALink regarding future Add-ons, other software products or improved performance.

5) Warranty/Disclaimer of Warranties.

- a) Each of the Parties represents and warrants to the other Party that it has full power and authority to enter into this Agreement without restriction and has the legal authority to do so; and that its execution and delivery of this Agreement (by executing and delivering the Quote), and its performance of its obligations under this Agreement, do not or will not conflict with any agreement, obligation or understanding, whether written or oral, to which it is a party or by which it may be bound.
- b) TESSALink warrants and represents that the Software Product will be accessible and usable by End-Users once End-Users are identified by Customer, which Customer must access and use promptly by End-User to verify access and use. If such access and use is not promptly achieved by the End-User, Customer shall promptly, in writing, notify TESSALink and TESSALink shall remedy such access and use so as to allow End-User access and use; provided that such non-access or non-use is directly traceable to the Software Product. No warranty applies where the Software Product has been modified, altered or changed by Customer or any third party or used inconsistently with TESSALink provided specifications or used with non-recommended or non-authorized third-party software or hardware. Once the Software Product is accessed and used, TESSALink provides no other warranties, express or implied with respect to the Software Product. Any breach of this warranty shall be subject solely to the following available remedies to be provided by TESSALink, which election of remedy shall be at TESSALink's election, which shall be to either: (i) fix the access and use problem or (ii) issue a refund of only the amount of money that is equal to the exact

price paid for only the Software Product line item as evidenced on the associated Software Product invoice. The foregoing warranty covers only problems arising under normal use and does not include malfunctions or failure resulting from misuse, abuse, neglect, alteration, problems with electrical power, acts of nature, unusual temperatures or humidity, improper installation, or damage determined by TESSALink to have been caused by Customer. All limited warranties on the Software Product are granted only to Customer and are non-transferable and non-assignable. The foregoing serves as TESSALink's entire liability for the Software Product with respect to function, operation or performance or any other problem with the Software Product and shall serve as Customer's sole and entire remedy with respect to the authorized access and use of the Software Product.

- c) TESSALINK warrants to Customer that support provided per the SLA will be performed in a commercially reasonable manner, subject to professional standards, and substantially compliant with the Customer elected serviceability level. Except where otherwise recited in the Quote or in the Policies located at www.TESSALink.com, TESSALink warrants to Customer that any deliverables (error corrections, bug fixes, updates or modifications) under the SLA will be operational and perform free of defects, bugs or errors, and TESSALink will remedy any problem that is directly attributable to the Software Product. For the breach of this warranty, TESSALink will provide a fix such as an error correction or bug fix. This warranty serves as TESSALink's entire liability with respect to the function, operation or performance of the Software Product and/or the SLA and Customer's sole remedy with respect to any breach of this warranty. EXCEPT WHERE OTHERWISE STATED, THE SUPPORT PROVIDED PER THE SLA, INCLUDING ANY DELIVERED ERROR CORRECTION, BUG FIXES, UPDATES OR MODIFICATIONS, ARE PROVIDED "AS IS" AND THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE EXPECTATIONS OR NON-INFRINGEMENT OR CLAIMS OF INFRINGEMENT, MISAPPROPRIATION, MISUSE OR UNAUTHORIZED USE FROM A THIRD-PARTY.
- d) Customer acknowledges that Customer's access to the Software Product and TESSALINK's ability to perform support per the terms of the SLA may be adversely affected by certain events such as scheduled maintenance; network or equipment failure outside of TESSALink's control; Third-Party Product problems, affects or issues or third-party acts of negligence or omissions; unauthorized access, breach or use by any third party of the Software Product; and other events and circumstances beyond TESSALink's control. The occurrence of such events and circumstances shall not be considered a breach by TESSALink.
- e) EXCEPT WHERE OTHERWISE STATED, THE PURCHASED ITEMS ARE PROVIDED "AS IS". TESSALINK MAKES NO (AND DISCLAIMS ALL) OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR CLAIMS OF INFRINGEMENT, MISAPPROPRIATION, MISUSE OR UNAUTHORIZED USE FROM A THIRD-PARTY OTHER THAN AS SET FORTH IN THIS AGREEMENT, INCLUDING THE LIMITED WARRANTY RECITED IN SECTION 5.
- f) TESSALINK MAKES NO WARRANTY THAT THE PURCHASED ITEMS WILL MEET CUSTOMER'S REQUIREMENTS OR OPERATE UNDER CUSTOMER'S SPECIFIC CONDITIONS OF USE. TESSALINK MAKES NO WARRANTY THAT OPERATION OF THE PURCHASED ITEMS WILL BE SECURE, ERROR FREE, BUG FREE OR FREE FROM INTERRUPTION. CUSTOMER MUST DETERMINE WHETHER THE PURCHASED ITEMS 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 PURCHASED ITEMS TO MEET CUSTOMER'S REQUIREMENTS. TESSALINK WILL NOT, UNDER ANY CIRCUMSTANCES, BE RESPONSIBLE OR LIABLE FOR THE LOSS OR CORRUPTION OF DATA ON ANY COMPUTER OR INFORMATION STORAGE DEVICE OR IN CONNECTION WITH THE PURCHASED ITEMS THAT IS ACCESSED AND USED BY CUSTOMER. CUSTOMER SHALL ASSUME ENTIRE LIABILITY FOR ANY OF CUSTOMER'S DATA OR INFORMATION WHICH IS IMPORTED, PROCESSED AND/OR EXPORTED IN CONNECTION WITH THE PURCHASED ITEMS. THE PURCHASED ITEMS DO NOT GUARANTEE OR MAKE ANY REPRESENTATIONS REGARDING THE USE OR ACCURACY OF THE PURCHASED ITEMS. NO ORAL OR WRITTEN INFORMATION OR ADVICE FROM TESSALINK PERSONNEL, EMPLOYEES, AGENTS, REPRESENTATIVES OR CONSULTANTS SHALL CREATE ANY WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF TESSALINK'S OBLIGATIONS HEREUNDER. FURTHER, IN NO EVENT SHALL TESSALINK WARRANT ANY UPTIME OR BE LIABLE FOR DOWNTIME, LOST PROFITS, BUSINESS INTERRUPTION, REPLACEMENT PURCHASED ITEMS OR REPLACEMENT SOFTWARE PRODUCTS THAT FUNCTION WITH THE ASSOCIATED PURCHASED ITEMS.
- g) During the Term and except as otherwise provided herein or under the EULA, TESSALink makes no warranty or representation (and disclaims all warranties and representations) regarding the applicable administrative, physical and technical safe guards for the protection of security, confidentiality and integrity of Data; or that TESSALink will maintain the standards and security of the Data. TESSALink has implemented reasonable security measures, systems and procedures to protect against anticipated hazards to the security, integrity or compromise of Data as provided under its Policies located at www.TESSALink.com.

6) Data and Security.

- a) Customer assumes all responsibility and liability for the Data that is imported, exported, uploaded, provided, accessed, used, processed, stored or displayed through the use of Purchased Items. TESSALink assumes no (and disclaims all) responsibility for the accuracy, completeness or veracity of the Data. Customer grants TESSALink the non-exclusive right to use Customer Data to: (i) provide the Purchased items (including reporting to Customer on their use of the Purchased items), (ii) use aggregated and/or anonymized information to improve its services, develop new services, show trends about general use of services, and for statistical analysis and business measures, (iii) monitor Customer's use of the Purchased items for security and technical support purposes and for validating Customer's compliance with usage/Storage limitations, and for purposes of otherwise complying with TESSALink's obligations to Customer, (iv) enforce this Agreement, and (v) share with any of TESSALink's

affiliates, third party service providers and subcontractors who need to know such information in order to provide the Purchased items, provided that they are bound by similar confidentiality obligations. For purposes of clarity, TESSALink's obligation to keep Customer Data confidential shall not apply to information that TESSALink is required to disclose by law (but only to the extent of such required disclosure). TESSALink shall follow its applicable published Policies in connection with the foregoing.

- b) Customer shall assume all responsibility and liability for End-Users and any account set up by End-Users, and any negligent acts or omissions of End-Users shall be the sole responsibility of Customer; Customer shall bear all liability in connection therewith. End-Users shall comply with all terms and conditions of this Agreement referencing End-Users, and shall not share, transfer or use account information with any third party or any other End-User.
- c) TESSALink will use reasonable commercial efforts to maintain reasonable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Data to which TESSALink may have access, as recited at www.TESSALink.com. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Data by TESSALink personnel except (a) to provide any custom services and to prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permits in writing. When Customer's use of the Purchased Items includes the processing of personal data (as described in the EU Data Protection Directive 95/46/EC) within the European Economic Area (EEA). For the purposes of the Standard Contractual Clauses in Schedule 3 to the DPA, Customer is the data exporter, and Customer's acceptance of this Agreement shall be treated as Customer's signature of the Standard Contractual Clauses and appendices. Within fourteen (14) days after the date of termination, TESSALink, at the request of Customer, will export or download Data and provide said Data to Customer as per the policy terms set forth at www.TESSALink.com; or in the alternative, delete, destroy and erase all Data, except for dependent Data used by other licensed Customers. After the lapse of such fourteen (14) day period, TESSALink will have no further obligation to maintain the Data or return any Data to Customer and will delete, destroy and erase the Data.
- d) Customer will: (a) be responsible for End-Users' compliance with this Agreement; (b) be responsible for the accuracy, quality and legality of Data and the means by which Customer acquired Data; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Purchased Items, and notify TESSALink promptly of any such unauthorized access or use; (d) use Purchased Items only in accordance with this Agreement, AUPs and applicable laws and government regulations; and (e) comply with terms of service of any Third-Party Products with which Purchased Items are used.
- e) Neither Customer nor any End-User shall (a) sell, resell, rent or lease any of the Purchased Items, or include any of the Purchased Items in a service bureau or outsourcing offering, (b) use any of the Purchased Items or any Third-Party Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (c) use any of the Purchased Items or any Third-Party Product to store or transmit Malicious Code (code, files, scripts, agents or programs intended to do harm, including but not limited to viruses, worms, time bombs or Trojan horses), (d) interfere with or disrupt the integrity or performance of any of the Purchased Items or third-party data contained therein, (e) attempt to gain unauthorized access to the Software Product or its related systems or networks, (f) use the Software Product or its related systems or networks to access or use any of TESSALink's intellectual property except as permitted under this Agreement, a Quote, or associated AUPs, (g) copy the Software Product or any part, feature, function or user interface thereof, (h) frame or mirror any part of any Software Product, (i) access the Software Product in order to build a competitive product or service or to benchmark with a another software product or service, or (j) disassemble, decompile, reverse engineer or alter the Software Product. Any use of the Software Product in breach of this Agreement, associated AUPs or Quote, by Customer, End-Users that in TESSALink's judgment threatens the security, integrity or availability of TESSALink's Software Product, may result in Customer's immediate loss of access to the Software Product, however TESSALink will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to such suspension.

7) Proprietary Interest/Authorization/Confidentiality.

- a) Customer acknowledges that TESSALink owns all right, title and interest in and to Information (as subsequently defined), inventions, research, developments, concepts, ideas, methods, processes, interfaces, techniques, technology, know-how, software, in whatever form, designs, improvements, enhancements, modifications, versions, releases, updates, bug fixes, error corrections, system(s), architecture, expressions, documents (whether in tangible or electronic form) and/or derivative works related to the Purchased Items (collectively, "Intellectual Property") that is in existence as of the Effective Date or that is developed or created by TESSALink, Customer or End-User, whether or not jointly, during the Term and the Renewal Term of this Agreement and is related to the Purchased Items. Customer acknowledges that any improvement, enhancements, bug fixes, modifications or derivative works that are developed, created or generated by TESSALink, and/or Customer or End-User from the preceding, during the Term and each Renewal Term of this Agreement, shall also be owned by TESSALink and Customer and End-User assigns, without further action or documentation, the foregoing to TESSALINK to confirm TESSALink's ownership of all rights, title and interests therein. Additionally, all Intellectual Property that TESSALINK, whether solely or jointly with Customer or End-User and during the Term of this Agreement or while performing support per the SLA, develops, creates or generates that is derived from any TESSALink background Intellectual Property or TESSALink Information shall be wholly owned by TESSALINK, and all right, title and interest therein shall vest entirely in TESSALink (collectively, "TESSALink Property").
- b) During the effective Term of this Agreement, TESSALink grants to Customer a non-exclusive, non-sublicensable, non-transferable, limited right solely to access and use, internal to Customer, the Software Product only as provided under the EULA, to access and use the Onboarding Services, and to receive support per the SLA. Customer will not be permitted to reverse engineer, create derivative works, copy, distribute or modify the Purchased Items. All deliverables provided under the SLA,

including updates, versions, releases, error corrections, modifications, bug fixes or any other derivative works, shall be subject to the license granted herein. No other rights or interests are granted, express or implied, to Customer by TESSALink as a result of Customer's receipt of any information from TESSALink under this Agreement.

- c) During the effective Term of this Agreement, TESSALink grants to Customer the non-exclusive, non-sublicensable, non-transferable, limited right solely (i) to use certain items of TESSALink Property only for the purposes of this Agreement; (ii) to copy, disseminate and distribute, either in tangible form or electronic form, End-User Documentation under end user license agreements substantially similar in form and substance to the EULA; (iii) to create derivative works (including translations) of End-User Documentation; and (iv) to copy, disseminate and distribute (whether in electronic or tangible form) End-User Documentation or such derivative works bearing TESSALink's copyright notice in the form as displayed on TESSALink's website; provided, however, that such end user license agreements, derivative works and copies of End-User Documentation and derivative works thereof shall be subject to TESSALink's prior written consent and, if TESSALink objects, Customer shall modify the item that presents a concern to TESSALink to conform to TESSALink's requirements. The licenses and rights described in this [Section 7\(c\)](#) do not diminish, in any manner, TESSALink's rights, title and interests in TESSALINK Property, and Customer's use is limited to the scope of the rights and authorizations described in this [Section 7\(c\)](#). Customer must include all proprietary notices on any and all Purchased Items. TESSALink does not grant Customer any other licenses, express or implied, to any TESSALink Property, except as otherwise provided in this [Section 7\(c\)](#).
- d) During the Term, Customer shall not remove any of TESSALink's trademarks (nor notices associated therewith) applied to the Purchased Items. Except as set forth in this [Section 7\(d\)](#), nothing contained in this Agreement grants to Customer any right, title or interest in TESSALink's trademarks or copyrighted material, and Customer shall not assert any right, title or interest in or to any of such trademarks or copyrighted material, including derivative works and any translations thereof. Customer acknowledges the validity of TESSALINK's trademarks and copyrights; and at no time during or after the Term shall Customer (i) register or attempt to register any trademarks identical to or confusingly similar to those trademarks of TESSALink or to any copyrighted TESSALink materials or documentation, whether tangible or electronic, or (ii) challenge or assist others to challenge TESSALink's trademarks or the registration thereof. Customer shall promptly notify TESSALink of any apparent infringement or threatened infringement of any TESSALINK trademark or copyright or any other TESSALink Property, and shall, upon request by TESSALink, and at TESSALink's expense, use its best efforts to assist TESSALink to restrain any such infringement or threatened infringement. Customer shall include and display on all Software Products, End-User Documentation and derivatives and copies thereof all copyright notices as requested by TESSALink, and shall retain such notices intact and unaltered.
- e) TESSALink information ("[Information](#)"), whether disclosed in oral, visual or written form, is defined as, but not limited to, Specifications, drawings, designs, Software Product plans, Software Product blueprints; service offerings; TESSALINK Property, mechanical/electrical specifications, equipment; current and future product plans; system architectures; product strategies; algorithms, programs and software (object, source, microcode, binary or HTML), including any associated improvements, updates, error corrections, new versions, revisions, new releases, enhancements, modifications; scientific and technical data; equations, prototypes, demonstration packages; user manuals, instruction sheets and documents; marketing strategy, customer lists, personnel information, business strategies; financial information and data; and any other technical and/or business information related to the support per the SLA, custom services deliverables, TESSALink Property, Software Product, or any information marked with a TESSALink confidential or similar legend. Such Information is considered to be confidential and proprietary to TESSALink. Customer shall exercise at least a reasonable standard of care to protect the confidentiality of the Information, and to prevent the unauthorized use, dissemination, disclosure or publication of the Information to any third party. However, Customer 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. Customer shall use the Information only for the purposes recited in this Agreement, and for no other purposes whatsoever. The term of confidentiality shall include the Term of this Agreement and extend beyond the expiration and/or termination date of this Agreement for five (5) years, except for "trade secrets," which confidentiality shall remain an obligation on Customer as provided under applicable law. Information shall not include information that Customer can demonstrate (i) was rightfully in Customer's possession before receipt from TESSALink; (ii) is or becomes a matter of public knowledge through no fault of Customer; (iii) is rightfully received by Customer from a third party without a duty of confidentiality; (iv) is disclosed under operation of law; or (v) is disclosed with TESSALink's prior written approval. Customer acknowledges that TESSALink deems the terms and conditions recited in this Agreement, but not the parties to or the existence of this Agreement, to be confidential.
- f) Any Customer or End-User suggestions, feedback, requests, recommendations and other opinions and submissions in connection with the Purchased Items shall be considered the proprietary and confidential information of TESSALink.

8) Non-Solicitation.

- a) During the Term of this Agreement and for one (1) year following termination of this Agreement, the Parties agree that neither Party shall solicit or recruit, directly or indirectly, any employee, consultant, sub-contractor or representative of the other for employment, consulting or other engagement where such employee, consultant, sub-contractor or representative is or was connected, in any manner, with this Agreement. This provision shall not prohibit the hiring of any person who responds to general solicitations, including but not limited to, job postings published in newspapers, trade publications or on websites that did not target that person directly, provided that no hiring of prohibited persons occurs. This [Section 9\(b\)](#) shall survive termination of this Agreement.

9) Indemnity/Limitation of Liability.

- a) TESSALINK, at its expense, shall, indemnify, hold harmless and defend Customer with respect to any claims, suits or proceedings brought against Customer on the issue of infringement of patents or copyrights, or at its option, shall settle, any

claim, suit or proceeding brought against Customer on the issue of infringement of any patent or copyright by the Software Product provided hereunder or the use thereof, subject to the limitations hereinafter set forth. TESSALink shall have sole control of any such action or settlement negotiations, and TESSALink agrees to pay, subject to the limitations hereinafter set forth, any final judgment entered against Customer on such issue in any such suit or proceeding defended by TESSALink. Customer agrees that TESSALink, at its sole option, shall be relieved of the foregoing obligations unless Customer notifies TESSALink in writing of such claim, suit or proceeding, and gives TESSALink authority to proceed as contemplated herein and, at TESSALink's expense, gives TESSALink proper and full information and assistance to settle and/or defend any such claim suit or proceeding. If the Software Product, or any part thereof, are, or in the opinion of TESSALink may become, the subject of any claim, suit or proceeding for infringement of any patent or copyright, or if adjudicated, a non-appealable judgment indicates that the Software Product, or any part thereof, infringe any patent or copyright, or if the use of the Software Product, or any part thereof, is, as a result, enjoined, then TESSALink may, at its option and expense either: (i) procure for Customer the right under such patent or copyright to access or use, as appropriate, the Software Product; or (ii) replace the Purchased Items with other comparable products or services; or (iii) modify the Software Product to operate substantially the same as the original Software Product but in a non-infringing manner; or (iv) if the use of the Software Product is prevented by injunction, remove the Software Product, and provide a refund of monies for the fees paid by Customer under this Agreement for the twelve (12) months immediately preceding the date on which the claim arose for use of the Software Product. TESSALink shall not be liable for any costs or expenses incurred by Customer without its prior written authorization.

- b) Notwithstanding the above, TESSALink assumes no liability for any third party claims to the extent they are attributable to: (i) infringement combinations, methods or processes in which the Software Product is used without authorization; (ii) infringement for Software Product when used alone are not infringing; (iii) infringement involving the unauthorized modification, alterations, changes or misuse of the Software Product, (iii) use of the Software Product in combination with other unauthorized software or hardware; or (iv) accessing, using, copying, creating derivative works or distributing material or work derived from the Software Product that was not authorized by TESSALink.
- c) The foregoing provisions state the entire liability and obligations of TESSALink regarding any claim of infringement and the exclusive remedy of Customer with respect to any alleged infringement of patents or copyrights in connection with the Software Product.
- d) Customer shall indemnify, defend and hold harmless TESSALink from and against all claims, costs, liabilities, damages, and judgments (including attorney's fees and court costs) that TESSALink may suffer or incur arising out of third party claims to the extent arising from or relating to: (i) Customer's business and commercial activities (including Customer's business arrangements with any third party, including End-Users); (ii) Customer's or any End-User's access to, use of, possession of, or operation of any of the Purchased Items; (iii) Customer's or any End-User's failure to access or use the Purchased Items in accordance with this Agreement; (iv) Customer's or any End-User's unauthorized use, misuse, modification or alteration of the Software Product; or (v) Customer's misuse or unauthorized use of TESSALink Property.
- e) EXCEPT WHERE STATED HEREINABOVE, THE PURCHASED ITEMS ARE PROVIDED BY TESSALINK "AS IS," AND THERE ARE NO OTHER (AND TESSALINK DISCLAIMS ALL) WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR CLAIMS OF INFRINGEMENT, MISAPPROPRIATION, MISUSE, OR UNAUTHORIZED USE BY A THIRD-PARTY.
- f) EXCEPT WHERE OTHERWISE RECITED IN THIS AGREEMENT WITH RESPECT TO BREACHES OF TESSALINK PROPERTY, IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, OR TORT, OR OTHERWISE, SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES ASSOCIATED WITH OR ARISING FROM LOSS OF PROFIT OR REVENUES, OR UNREALIZED SAVINGS, WITH RESPECT TO THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT OR RESULTING FROM THE ACCESS, POSSESSION, USE OR OPERATION OF THE PURCHASED ITEMS.
- g) TESSALINK'S ENTIRE LIABILITY TO CUSTOMER AND ALL END-USERS FOR ANY CLAIM FOR ANY KIND OF LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM ANY BREACH OF THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT OR FROM THE PURCHASED ITEMS SHALL BE LIMITED ONLY TO ACTUAL AND PROVABLE DAMAGES UP TO AND NOT EXCEEDING THE AMOUNT OF MONIES PAID BY CUSTOMER TO TESSALINK UNDER THIS AGREEMENT IN THE PRECEDING TWELVE (12) MONTHS RELATING TO THE PURCHASED ITEM THAT GAVE RISE TO THE CLAIM. THE FOREGOING SHALL SERVE AS THE ENTIRE LIABILITY AND AMOUNT OF DAMAGES AVAILABLE FROM TESSALINK WITH RESPECT TO ANY CLAIM MADE UNDER THIS AGREEMENT.

10) Termination.

- a) Either Party may terminate this Agreement effective on the anniversary of the Effective Date, without cause, upon at least ninety (90) days' prior written notice. Failure to so terminate shall result in this Agreement extending for another twelve (12) month term with all amounts due and owing as provided in the applicable Quote or herein.
- b) If either Party materially defaults in the performance of any of its obligations under this Agreement, or otherwise breaches this Agreement, the breaching Party shall correct such breach within ten (10) days after written notice from the non-breaching Party. If any such breach is not remedied within such ten (10)-day period, then the non-breaching Party, at its option, may terminate this Agreement by giving written notice to the breaching Party and such termination shall be effective on the notice date provided in such written notice.

- c) TESSALink shall have the right, with at least ten (10) days prior written notice to Customer, to terminate this Agreement: (i) if Customer fails to pay in-full to TESSALink any moneys owed under this Agreement following the opportunity to cure; (ii) if Customer breaches any TESSALink Property interests or rights; (iii) if Customer breaches any of its obligations under Sections 4, 5, 6, and 10; (iv) upon the institution by or against Customer of insolvency, receivership or bankruptcy proceedings, appointment of an administrator or any other proceedings for the settlement of Customer's debts; (v) if Customer, its Affiliates or any of its directors, officers or significant consultants shall be indicted for a criminal offense; (vi) a civil lawsuit shall be commenced against Customer, its Affiliates or any of its directors, officers or significant consultants alleging fraud or any crime involving corruption, bribing, criminal activity or terrorism activity; or (vii) Customer, its Affiliates or any of its directors, officers or significant consultants or End-Users violates any applicable law or other U.S. Government requirement as applicable to the Software Product. Furthermore, this Agreement shall automatically terminate, without further action by TESSALink, (1) upon Customer's making an assignment for the benefit of creditors; (2) upon Customer's dissolution or ceasing to do business; and (3) if Customer becomes legally disqualified for any reason from accessing or using the Software Product, including all necessary registrations, licenses and permits. Customer shall immediately notify TESSALink of the occurrence of any of the events described in this clause (c).
- d) Upon any termination of this Agreement, the following shall occur: (i) all amounts due, owing and payable to TESSALink by Customer shall immediately be paid (or paid in accordance with submitted invoices if an invoice has not yet been submitted by TESSALink to Customer); (ii) all rights granted to Customer under this Agreement in connection with the Purchased Items shall immediately terminate; (iii) Customer shall immediately cease all use of the Purchased Items and shall certify to TESSALink in writing that it has done so, and (iv) Customer shall immediately remove from its website all content, including TESSALink trademarks and copyrighted material and documentation, including derivative works, and any other material or documentation that refers to TESSALink or the Software Product; and (v) Customer shall immediately return all Information. Further, any order placed by Customer and accepted by TESSALink that has not been fulfilled at the date of termination shall, at TESSALink's option, be completed on the same terms and conditions as if this Agreement were still in force, subject to payment being received by TESSALink of all outstanding monies due to TESSALink and in respect of all unfulfilled orders before delivery is made.

11) General Provisions.

- a) This Agreement (including the Quote, the EULA, and the Policies, and any fully executed agreement between the parties at any time during the Term that applies to the subject matter of this Agreement and references this Agreement, all of which are incorporated into this Agreement by this reference) constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior or contemporaneous oral or written understandings between the Parties concerning the subject matter of this Agreement. No representations, inducements, promises or agreements, whether oral or otherwise, between the Parties not contained in this Agreement or incorporated into this Agreement by reference shall be of any force or effect. Except as set forth in this Agreement, no modification of or amendment to this Agreement or any waiver of any rights under this Agreement, nor any agreement or understanding extending this Agreement or varying its terms (including any inconsistent terms in any purchase order, acknowledgement or similar form) shall be effective unless in writing signed by both Parties to this Agreement. The provisions of this Agreement are severable; and if any provision shall be deemed by a court of competent jurisdiction to be invalid or unenforceable in any respect, the applicability or validity of any other provision of this Agreement shall not be affected, and this Agreement shall be construed as if such invalid or unenforceable provisions are not contained in this Agreement. All notices shall be in writing and addressed to the Party to be served at the address recited above. Notices may be delivered via PDF or fax followed up by certified mail, postage pre-paid or via a nationally recognized carrier. In each case the effective date of notice shall be five (5) days after mailing or two (2) days after carrier deposit.
- b) All amendments or modifications of this Agreement shall be binding upon the Parties so long as the same shall be in writing and executed by each of the Parties hereto, which amendments or modifications shall be executable and binding via the use of PDF signatures or Fax signatures. The Policies shall be modifiable, changed, withdrawn or deleted, at any time and without notice, and at the discretion of TESSALink, and shall remain in effect when changed, modified, withdrawn or deleted, and in addition, new Policies may be added, at any time and without notice, and at the discretion of TESSALink, and such new Policies shall be incorporated into this Agreement and made a part hereof by this reference.
- c) Customer shall comply with all applicable U.S. Export Control laws and regulations. Export laws and regulations of the United States, and any other relevant local export laws and regulations, apply to and govern the handling and use of the Purchased Items. The Parties agree that the Parties shall comply with all such applicable export laws and regulations (including "deemed export" and "deemed re-export" regulations). No Purchased Items shall be exported, directly or indirectly, in violation of these laws and regulations, or be used for any purpose prohibited by these laws.
- d) Customer shall not, without TESSALink's prior written consent, transfer, assign or delegate this Agreement, or any of its rights or duties under this Agreement, directly, indirectly, by operation of law, or otherwise. Customer agrees that its rights and obligations under this Agreement may not be transferred, delegated or assigned, directly or indirectly, without the prior written consent of TESSALink. TESSALink may transfer, assign or delegate any of its rights and obligations under this Agreement, with notice to Customer. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their successors and assigns.
- e) The following sections shall survive the expiration or earlier termination of this Agreement: Sections 2, 4 (clauses b, c, d and e), 5 through 7, and 9 through 11.
- f) Each of the Parties represents that it is authorized to sign this Agreement and agrees that fax signatures or signatures in PDF form are acceptable and binding legal method of executing this Agreement

- g) Nonperformance by either Party shall be excused to the extent that performance is rendered impossible due to mobilization, requisition, embargo, currency restriction, insurrection, general shortage of transport, material or power supply, fire, explosion, terrorism, stroke of lightning, force majeure and similar casualties or other events beyond a Party's control, as well as default in deliveries from subcontractors due to such circumstances as defined in this clause, but the non-defaulting Party shall have the right to terminate this Agreement, by written notice to the defaulting Party, if such nonperformance continues for a period of ninety (90) days with no possibility of abating or to resume performance. This Section 12(g) shall not apply to payment defaults.
- h) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one instrument.
- i) No failure or delay by either Party in exercising any right or remedy under this Agreement shall be construed as a waiver of such right or remedy, nor shall any single or partial exercise of any right or remedy preclude any further or other exercise of such right or remedy. All rights and remedies under this Agreement are cumulative and shall not be deemed to be exclusive of any other rights or remedies provided by law. Except as otherwise expressly set forth herein, no provision of or right under this Agreement shall be deemed to have been waived by any act or acquiescence on the part of either Party, its agents or employees, except by an instrument in writing signed by an authorized officer of each Party. No waiver by either Party of any breach of this Agreement by the other Party shall be effective as to any other breach, whether of the same term or condition or any other term or condition and whether occurring before or after the date of such waiver.
- j) Each Party is considered an independent contractor and shall not be deemed to be an employee, agent, contractor, partner or legal representative of the other for any purpose and shall not have any right, power or authority to create any obligation or responsibility on behalf of the other.
- k) Customer shall promptly notify TESSALINK of any and all actions at law or equity or claims or governmental administrative proceeding arising out of the operation or performance of this Agreement or the subject matter of this Agreement.
- l) The prevailing party in any legal action brought by one party against the other and arising out of this Agreement shall be entitled, in addition to any other rights and remedies it may have and subject to the limitation of liabilities herein, to reimbursement for its expenses, including court costs and reasonable attorneys' fees.
- m) Customer acknowledge that certain U.S. and International Internet Laws may apply to the download, access and use of the Purchased Items, and Customer shall assume full responsibility for compliance with all such applicable laws in connection with access and use by Customer and End-Users of the foregoing. Customer acknowledges that if any personal information is collected by Customer or any End-User while accessing and using the Purchased Items, Customer and such End-User shall comply with all applicable Data Privacy Laws (e.g., Data Privacy and Security Acts and Computer Fraud and Abuse Act) and take responsibility and liability for all appropriate levels of precaution in the collection of personal information and data online and shall inform any provider of such personal information of Customer's Privacy Protection Policies.
- n) In connection with a U.S. Government Customer, the Purchased Items 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 which have been developed at private expense; 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 Purchased Items with only those rights set forth in this Agreement. Further, any U.S. Government download, access and use of the Purchased Items constitute the U.S. Government's acknowledgement that the Purchased Items are "commercial computer software" and "commercial computer software documentation" and developed solely at private expense. As applicable and so marked with respect to the Purchased Items, the U.S. Government shall acquire the Purchased Items with at least applicable Limited Rights and Restricted Rights as defined under the relevant and applicable FARs and DFARs.
- o) This Agreement shall be governed by the laws of the State of Texas, as applicable, without regard to the applicability of the principles of conflicts of law, and any dispute between the Parties shall be adjudicated in the competent courts in Harris County in the State of Texas. TESSALINK shall be entitled to seek all available legal and equitable remedies. Neither the 1980 United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transaction Act ("UCITA") shall apply to this Agreement or to any sale or other transaction under this Agreement.
- p) At all times during the Term of this Agreement and until expiration of TESSALink warranties and indemnities hereunder, TESSALink shall procure and maintain, at its sole cost and expense, the insurance coverage in the following types and with minimum amounts stated as: (i) Commercial General Liability insurance, with minimum liability limits of \$1Million per occurrence, \$2 Million aggregate, including bodily injury and property damage, products and completed operations, and which policy will include contractual liability coverage insuring the activities of TESSALink under this Agreement; (ii) Workers' Compensation insurance as required by the state or local law in which the work is performed including Employers Liability with minimum limits of \$1MM per injury, illness or disease. (iii) Auto Liability including for Hired and Non-Owned vehicles with minimum amounts of \$1Million per occurrence. (iv) Excess/Umbrella General Liability on a follow form basis in excess of the aforementioned insurance with minimum amounts of \$10 Million per occurrence In addition, the following insurance shall apply: (v) Network Technology / Cyber Liability insurance, including first party and third-party coverage, with minimum limits of \$2 Million per occurrence; and (vi) Errors & Omissions Liability covering the acts of TESSALink and its contractors with minimum limits of \$2 Million per occurrence (vii) TESSALink will make Customer aware of any changes to the insurance coverage at the time of the change. (viii) Upon request by Customer, TESSALink shall provide Customer a certificate of insurance evidencing such coverages.