

**END USER LICENSE AGREEMENT**  
**WITH TESS SOFTWARE, LLC**

PLEASE READ THIS END USER LICENSE AGREEMENT (“EULA”) CAREFULLY BEFORE LOGGING INTO OR USING THE EVENTESS SOFTWARE APPLICATION ACCOMPANYING THIS EULA (“APPLICATION”). BY LOGGING INTO OR USING THE APPLICATION, YOU ARE ENTERING INTO AND AGREEING TO BE BOUND BY THE TERMS OF THIS EULA, INCLUDING WITHOUT LIMITATION ITS BINDING ARBITRATION CLAUSE.

IF YOU DO NOT AGREE TO THE TERMS OF THIS EULA, DO NOT LOGIN OR USE THE APPLICATION.

**Acceptance of Agreement**

The Application is licensed, not sold, to you by EVENTESS Software, LLC (the “Company”) for use strictly in accordance with the terms and conditions of this EULA, and any third-party usage rules or terms of use, such as those of Apple Inc. and other vendors, applicable to access or use of the Application (“Usage Rules”), which are incorporated herein by reference. The term “Application” shall refer to and consist of the following: (i) the EVENTESS software application accompanying this EULA operated by the Company (“TESS” or “we” or “our” or “us”), directly and by and through our third-party affiliates and partners, including, without limitation, any software code, scripts, interfaces, graphics, displays, text, documentation and other components; (ii) any updates, modifications or enhancements to the items listed in subsection (i); and (iii) our website at [www.tess-online.com](http://www.tess-online.com) (the “Website”) and any other website operated by us that the Application directs you to via an Internet-enabled device used by you to access the Application (each a “Device”).

By using the Application, in addition to and without limitation of any other electronic signatures you may provide, you agree to become a party to and legally bound by this EULA, our Privacy Policy, Usage Rules, and any invoices and supplemental notices or communications that we may send you (collectively referred to herein as the “Agreement”). THE AGREEMENT CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MUST IMMEDIATELY STOP USING THE APPLICATION. This Agreement constitutes a binding agreement between you and EVENTESS.

**Your TESS Account**

In order to access some or all of the Application, we may require that you create an account (the “Account”) by registering directly with us. You agree to provide accurate and complete information when creating your Account, to update your information if and when changes occur, and that all communications, content and information provided by you through the Account shall be accurate and complete. If you create an Account, you shall have sole responsibility for the Account and anyone using your login information to access your Account. You are responsible for preventing unauthorized use. Your Account may not be sold or transferred to another person. If anything fraudulent or otherwise illegal is done with your Account, we reserve the right to hold

you liable for any and all damages we may suffer, either directly or as a result of action against us by a third party. We may terminate your Account at any time in the event of your breach of the Agreement, to be determined at TESS's sole discretion. We also reserve the right to terminate our offering of part or all of the Application for any reason (or no reason) at any time.

## **Fees**

The fees we charge for access and use of the Application on each Device are set forth on or within the Application (the "Fees"). We reserve the right to change any promotional offerings, including free trial periods, or our Fees from time to time by posting the changes on the Application. The Fees as posted at the time you access and use the Application shall apply to your use and you agree to pay all Fees and applicable taxes associated with use of the Application. You must have a valid payment method on file in connection with your Account. If your payment method fails or your Account is past due, we may collect Fees owed by charging other payment methods on file with us, and if necessary, retain collection agencies and legal counsel.

## **Permitted Uses**

As an express condition of using the Application, you represent and agree that you:

- have read and understand the Agreement;
- are 18 years of age or older;
- are a resident of the United States of America (USA) and are accessing the Application from the USA or, if you are not a resident of the USA and/or are accessing the Application from outside of the USA, you agree to waive any rights you may have under laws outside of the USA, including data privacy rights;
- are legally capable of entering into binding contracts;
- are not prohibited by law from using the Application and have not previously been banned, terminated or otherwise denied access to the Application by us;
- are not acting on behalf of a person whose access to the Application has been previously terminated or otherwise denied by us; and
- agree to be bound by and will comply with the Agreement.

## **Impermissible Conduct**

As set forth in more detail below, TESS is granting you a limited license to install, access and use the Application subject to the terms and conditions herein. We may limit or deny your access and use of the Application, and may seek other remedies, at any time in our sole discretion, including without limitation if you engage in any illegal or improper conduct or conduct that is in breach of this Agreement as judged by us in our sole discretion. The following actions (including all attempted actions) are prohibited and constitute a violation of this Agreement:

- Submitting false or inaccurate information;
- Failing to meet a legal obligation incurred in connection with use of the Application;
- Committing illegal acts, including, without limitation, fraud with your Account;

- Falsely disparaging or speaking badly about TESS, the Application, or any businesses, entities or individuals related to the Application;
- Using the Application to harass or threaten another user using the Application or to send automated queries to any website or to send any unsolicited commercial email;
- Using the Application to interfere with its functionality or commercialize the Application or any information, technology or software associated with the Application for any revenue generating venture or in any way that might be competitive with or harm or interfere with the business interests of TESS;
- Distributing the Application to unauthorized Devices or making the Application available over a network or other environment permitting access or use by unauthorized Devices or multiple users at the same time;
- Breaching security protocols and measures related to the Application or using the Application to copy, store, host, transmit, send, use, publish or distribute any material that consists of or is linked to any spyware, computer virus, or other malicious computer software or to collect any information of the users of the Application, like names and email addresses, without such user's written consent; and
- Attempting to use, copy, duplicate, aggregate, decompile, reverse engineer, attempt to derive the source code of, steal, decrypt, or otherwise appropriate in an unauthorized way any part of the Application or TESS's or its licensors' intellectual property and/or their logos, taglines, trademarks, service marks, copyrights and patents or the intellectual property, information, or data of any third party.

You may not use or otherwise export or re-export the Application except as authorized by United States law and the laws of the jurisdiction(s) in which the Application was obtained. You represent and warrant that you are not (i) located in any country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country, or (ii) listed on any U.S. Government list of prohibited or restricted parties including the Treasury Department's list of Specially Designated Nationals or the U.S. Department of Commerce Denied Person's List or Entity List. You also agree that you will not use the Application for any purposes prohibited by United States or any other applicable laws, including, but not limited to, for any use in relation to any terrorist activity or any use or processing of illegal pornographic materials.

### **The TESS Privacy Policy**

Your privacy is an important concern of ours and we have created a Privacy Policy to explain how we protect your privacy. Please review the Privacy Policy that is conspicuously posted on the Application at: [www.tess-online.com/privacy](http://www.tess-online.com/privacy). The Privacy Policy is incorporated herein by reference.

### **Intellectual Property**

TESS retains all right, title and interest in and to the Application (including past, present and future versions) and all technology employed to manage and deliver the Application, and all software code, databases, website content, algorithms, queries, interfaces, structure and organization of, and any other intellectual property, data or information related to the Application,

including enhancements, upgrades, and modifications, and all inventions, discoveries or improvements, including patents, patent applications, and certificates of invention; trade secrets, know-how, or similar rights; the protection of works of authorship or expression, including copyright; trademarks, service marks, logos, trade dress and content that is included in, on or that is otherwise a part of the Application, but excluding User Data belonging to you or other users (collectively, the “TESS IP”). You acknowledge and agree that you neither own nor acquire any rights in and to the TESS IP not expressly granted by this Agreement and that your use of the Application is pursuant to this scope of licensed use. You shall not make any modification, adaptation, improvement, enhancement, translation, or derivative work from the Application. Any of the foregoing or other invention created by exploitation of the TESS IP shall automatically transfer to TESS and you shall execute any and all legal documents necessary to perfect such transfer.

TESS hereby grants to you a revocable, limited, non-exclusive, non-transferable, non-sublicensable license to access and use the TESS IP solely in connection with delivery of the Application to you for use on a single Device owned and controlled by you in accordance with this Agreement (including payment of all relevant Fees) and the policies and requirements specified by TESS from time to time. TESS shall have the right to maintain, improve, or otherwise modify the Application at its sole discretion and TESS is not responsible for any content, including User Data (as defined below), posted, uploaded, submitted, or otherwise supplied by you or any other user through the Application. Your use of the Application and TESS IP is subject to any and all conditions imposed by TESS and the foregoing license may be terminated at any time at TESS’s sole discretion.

The trademarks and service marks, including without limitation “EVENTESS,” that are located on or within the Application, are trademarks of EVENTESS or its affiliates, partners, suppliers, or licensors and shall not be deemed to be in the public domain but rather the exclusive property of the foregoing entities. You are not permitted to use, copy, sell, display or distribute the Application, any portion thereof, or any of trademarks, service marks, copyrights or other intellectual property contained therein, without our express permission. You agree that the terms of this Agreement apply to any and all third-party intellectual property on or within the Application as well. By using the Application you agree that you will not challenge ownership or intellectual property rights with respect to the marks or any copyright or other intellectual property of EVENTESS. You agree to not remove, alter or obscure any proprietary notice (including any notice of copyright or trademark) of EVENTESS or its affiliates, partners, suppliers or licensors of the Application.

TESS’s performance under this EULA may be dependent upon the performance of third party technology or derivatives of third party technology used in connection with the Application but not owned or provided by TESS, including but not limited to any software platform and related technology offered by third parties that is used to access, host, distribute and/or make the TESS Service available to you (“Third Party Technology”). TESS shall not be responsible for any resulting impact on the delivery or performance of the TESS Services in the event of failure of performance of such Third Party Technology. TESS shall not have any liability for any unauthorized access to or use, damage, destruction, alteration or loss of any files and data provided by you, including the User Data (as defined below), resulting from any acts or omissions by a third-party vendor, including but not limited to data storage services or provision of Third Party

Technology. Use of data provided by you, including the User Data, shall at all times be subject to the current service terms of the provider of Third Party Technology providing hosting services for the Application, which are incorporated herein by reference and we will direct you to upon request. In the event of conflict between this EULA and such terms with regards to hosting services, the terms of the applicable Third Party Technology provider shall control.

Any violation of these requirements may result in a trademark, copyright or other intellectual property right infringement that may subject you to civil and/or criminal penalties. You will be solely liable for any damage resulting from any infringement of intellectual property rights or any other harm resulting from your actions.

### **Your Representations and Warranties**

You represent and warrant that you have the authority to access and use the Application and you will pay all Fees required in connection with access and use of the Application, which are incorporated herein by reference.

The Application may offer you the opportunity to make or transmit data or communications or upload, submit or otherwise supply data and other content, which may include (i) data related to events and services offered through the Application and messages, comments, texts, pictures, and photographs exchanged between you and another user and (ii) ratings, reviews, ideas, suggestions, questions and improvements provided to us ((i) and (ii) collectively “User Data”). You agree not to supply any User Data to TESS or through the Application that is illegal, intentionally false or misleading, or injurious to us or anyone else, or which infringes on the intellectual property rights of any third party or otherwise violates the Agreement. You may not imply that any User Data is in any way sponsored or endorsed by TESS or that TESS guarantees the accuracy or security of any User Data. We do not warrant that all User Data you come in contact with, on, or through the Application complies with this Agreement.

You represent and warrant that you own or otherwise control and/or have authorization to transmit, upload, submit, or otherwise supply your User Data, that your User Data is accurate, and that use of your User Data does not violate this Agreement. Whenever transmitting, uploading, submitting or otherwise supplying User Data directly to us, including in the form of ratings, reviews, ideas, suggestions, questions and improvements, you agree that you are granting us a royalty-free, non-exclusive, universal, perpetual, irrevocable, sublicensable, commercial and non-commercial right to use, distribute, sell, publish, and otherwise make use of such User Data. You warrant to us that you have the right to grant us these rights to such User Data. TESS takes no responsibility and assumes no liability for any User Data transmitted, uploaded, submitted, or otherwise supplied by you or any third party.

You acknowledge that you (not TESS) are responsible for addressing any third-party claims relating to your use or possession of the Application, and agree to notify TESS of any third-party claims relating to the Application of which you become aware. Furthermore, you hereby release TESS from any liability resulting from your use or possession of the Application, including, without limitation, the following: (i) any product liability claims; (ii) any claim that the Application fails to conform to any applicable legal or regulatory requirement; and (iii) any claim arising under consumer protection or similar legislation.

## **Digital Millennium Copyright Act**

TESS complies with the requirements of the Digital Millennium Copyright Act (“DMCA”). TESS may terminate your Account and this Agreement with you or any other user of the Application who infringes on the copyrights of another. If you have any concerns or believe that any content on or through the Application in any way constitutes copyright infringement, please contact the agent designated below, who has been designated to respond to reports alleging copyright infringement. Provide the DMCA Agent with the following information in writing (either via paper mail or electronic mail):

- A physical or electronic signature of the copyright holder or a person authorized to act on his or her behalf;
- A description of the copyrighted work claimed to have been infringed;
- A description of the material that is claimed to be infringing or to be the subject of infringing activity, and its location on the Application;
- Your address, telephone number, and, if available, an email address;
- A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- A statement that the information in your notice is accurate, and under penalty of perjury, and that you are authorized to act on behalf of the owner of the allegedly infringed copyright.

Contact Information of TESS’s DMCA Agent: [info@tess-online.com](mailto:info@tess-online.com).

## **Termination**

This Agreement shall continue until terminated. TESS may at any time terminate this Agreement with you, including without limitation, as a result of your breach of this Agreement or TESS being required by law to terminate this Agreement. We may also immediately terminate or suspend any user accounts or passwords in the event of any conduct that we deem, in our sole discretion, to be illegal, improper, unacceptable or in any way a breach of this Agreement. In the event of termination or suspension, you agree immediately to cease access to and use of the Application and to uninstall the Application. You agree TESS has no obligation to return or destroy any User Data upon termination.

If you want to terminate this Agreement with TESS, you may do so by: (A) notifying us at: [info@tess-online.com](mailto:info@tess-online.com), or (B) calling to terminate the agreement. The Disclaimer of Warranty, Limitation of Liability, Indemnification and Release, Agreement to Arbitrate, and Miscellaneous sections of the Agreement shall survive termination.

## **Modification of This Agreement**

We reserve the right at all times in our sole discretion to discontinue or modify any part of this Agreement, and to improve, modify, discontinue or remove any functionality, information or content appearing on or through the Application, as we deem necessary or desirable. If we make changes that materially affect your use of the Application we will notify you by sending you an email to the email address that is registered with your Account and/or by posting notice of the

change on the Application. Any changes to this Agreement will be effective upon the earlier of our sending an email notice to you or our posting of notice of the changes to the Application. These changes will be effective immediately for new users of the Application. Your use of the Application after we update this EULA will constitute acceptance of the modified EULA. We suggest that you revisit the EULA on occasion to ensure that you stay informed of any notifications of changes to the Application.

### **Disclaimer of Warranty**

TESS EXPRESSLY DISCLAIMS AND MAKES NO WARRANTIES ABOUT THE APPLICATION OR ANY USER DATA. YOU EXPRESSLY AGREE THAT USE OF THE APPLICATION IS AT YOUR SOLE RISK. WE MAKE NO EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES OR GUARANTEES OF ANY KIND ABOUT THE APPLICATION, USER DATA, OR ANY OTHER THIRD-PARTY PRODUCTS OR SERVICES MADE AVAILABLE TO YOU BY US OR THROUGH THE APPLICATION, UNLESS SPECIFIED IN WRITING.

TESS HEREBY EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, THAT THE APPLICATION:

- IS MERCHANTABLE;
- IS FIT FOR A PARTICULAR PURPOSE OR NEED;
- IS NON-INFRINGEMENT;
- CONTAINS ACCURATE, GENUINE, COMPLETE, UP TO DATE, OR RELIABLE INFORMATION, INCLUDING, WITHOUT LIMITATION, REGARDING ADVERTISEMENTS, CONTENT ACCURACY OR STATUS, OR OTHER DATA PROVIDED THROUGH THE APPLICATION;
- PROVIDES TIMELY, SECURE AND UNINTERRUPTED RESULTS AND SERVICES;
- IS COMPATIBLE OR INOPERABLE WITH YOUR DEVICE OR ANY OTHER PIECE OF HARDWARE, SOFTWARE, EQUIPMENT, OR DEVICE;
- PROVIDES QUALITY, ERROR FREE SERVICES OR ANYTHING OTHER THAN AN "AS IS" APPLICATION; OR
- WILL HAVE COMMUNICATIONS SENT TO YOU THAT ARE FREE FROM VIRUSES OR OTHER HARMFUL ELEMENTS.

OTHER THAN AS EXPRESSLY STATED IN THE PRIVACY POLICY, TESS MAKES NO WARRANTIES AS TO PRIVACY OR SECURITY.

NO INFORMATION OR ADVICE, WHETHER ORAL OR WRITTEN, GIVEN BY AN TESS AGENT OR REPRESENTATIVE SHALL CREATE A WARRANTY.

### **Limitation of Liability**

IN NO EVENT SHALL TESS OR ANY OF ITS PARENTS, SUBSIDIARIES, AFFILIATES, PARTNERS, VENDORS, LICENSORS, CONTRACTORS OR AGENTS, OR ANY OF OUR OR THEIR OWNERS, MANAGERS, OFFICERS, EMPLOYEES,

SUCCESSORS, ASSIGNS, REPRESENTATIVES, ATTORNEYS OR AGENTS BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO ANY FAILURE OF PERFORMANCE, ERROR, OMISSION, INTERRUPTION, DEFECT, DELAY IN OPERATION OR TRANSMISSION, LACK OF COMPATIBILITY OR OPERABILITY, COMPUTER VIRUS OR LINE OR SYSTEM FAILURE RELATED TO YOUR USE OF THE APPLICATION OR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES RELATED TO YOUR USE OF THE APPLICATION OR THE INFORMATION CONTAINED THEREIN OR THIS AGREEMENT. THESE EXCLUSIONS APPLY TO, BUT ARE NOT LIMITED TO, ANY CLAIMS, EVEN IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF POTENTIAL DAMAGES TO YOU.

YOUR SOLE AND EXCLUSIVE REMEDY AGAINST TESS FOR ANY DISPUTE YOU HAVE WITH US SHALL BE TO DISCONTINUE YOUR USE OF THE APPLICATION. In no event shall TESS's total liability to you for all damages (other than as may be required by applicable law in cases involving personal injury) exceed the amount of fifty dollars (\$50.00). The foregoing limitations will apply even if the above stated remedy fails of its essential purpose.

### **Indemnification and Releases**

You agree to defend, indemnify, and hold harmless TESS and any of our parents, subsidiaries, affiliates, partners, vendors, licensors, contractors and agents, and any of our or their owners, managers, officers, employees, successors, assigns, representatives, attorneys and agents from and against all claims, damages, losses and expenses, including attorneys' fees, arising out of or related to your use of the Application, your User Data, your violation of this Agreement, your violation of any third-party right, or your willful misconduct or negligence. This indemnification obligation shall survive the termination of this Agreement and your use of the Application.

You are solely responsible for your interactions with other users on or through the Application. If you have a dispute with one or more users of the Application, you release TESS (and any of our parents, subsidiaries, affiliates, partners, vendors, licensors, contractors and agents, and any of our or their owners, managers, officers, employees, successors, assigns, representatives, attorneys and agents) from claims, liabilities, demands and damages (actual and consequential) of every kind and nature, known and unknown, arising out of or in any way connected with or related to (i) such disputes, including, without limitation, any communication with or action or inaction by a user, including a user's failure to comply with applicable law, this Agreement, and/or any other legal obligation; or (ii) any product, service, advertisement, message, or other content referenced on or through the Application or transmitted or received by you as a result of your use of the Application. In entering into this release you expressly waive any protections (whether statutory or otherwise) that would otherwise limit the coverage of this release to include only those claims which you may know or suspect to exist in your favor at the time of agreeing to this release.

### **Agreement to Arbitrate**

Any disputes arising out of or related to this Agreement and/or any use by you of the Application shall be submitted to arbitration before a single arbiter in Denver, Colorado, according to the rules and practices of the Judicial Arbitrator Group, Inc. (JAG) or any other private arbitration company or firm acceptable to all parties. This submission and agreement to arbitrate shall be

specifically enforceable. Arbitration may proceed in the absence of any party if notice of the proceedings has been given to such party. All awards rendered in such proceedings shall be final and binding on all parties and may be filed with the clerk of one or more courts, state or federal, having jurisdiction over the party against whom such award is rendered or his property as a basis of judgment and of the issuance of execution for its collection. No party shall be considered in default hereunder during the pendency of arbitration proceedings relating to such default. This Agreement shall be governed by and interpreted according to the laws of the State of Colorado, without regard to conflicts of laws principles. This EULA shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

WE AND YOU AGREE THAT EACH OF US MAY BRING CLAIMS AGAINST THE OTHER ONLY ON AN INDIVIDUAL BASIS AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, OR REPRESENTATIVE OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. UNLESS BOTH WE AND YOU AGREE OTHERWISE, THE ARBITRATOR MAY NOT CONSOLIDATE OR JOIN MORE THAN ONE PERSON'S OR PARTY'S CLAIMS, AND MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A CONSOLIDATED, REPRESENTATIVE, CLASS, OR PRIVATE ATTORNEY GENERAL ACTION OR PROCEEDING. ALSO, THE ARBITRATOR MAY AWARD RELIEF (INCLUDING MONETARY, INJUNCTIVE AND DECLARATORY RELIEF) ONLY IN FAVOR OF THE INDIVIDUAL PARTY SEEKING RELIEF AND ONLY TO THE EXTENT NECESSARY TO PROVIDE RELIEF NECESSITATED BY THAT PARTY'S INDIVIDUAL CLAIM(S). ANY RELIEF AWARDED CANNOT AFFECT OTHER USERS.

IF YOU ARE A NEW USER OF THE APPLICATION, YOU CAN CHOOSE TO REJECT THIS AGREEMENT TO ARBITRATE BY EMAILING US A WRITTEN NOTICE TO OPT-OUT ("OPT-OUT NOTICE") AT [INFO@TESS-ONLINE.COM](mailto:INFO@TESS-ONLINE.COM). THE OPT-OUT NOTICE MUST BE SENT NO LATER THAN 30 DAYS AFTER THE DATE YOU ACCEPT THE AGREEMENT FOR THE FIRST TIME.

Unless you and we agree otherwise, in the event that the agreement to arbitrate above is found not to apply to you or to a particular claim or dispute, either as a result of your decision to opt out of or as a result of a decision by the arbitrator or a court order, you hereby irrevocably consent and submit to the exclusive jurisdiction and venue of the state and federal courts for the City of Denver, State of Colorado for the purpose of adjudicating any dispute or claim arising out of or related to this Agreement and/or any use by you of the Application and to the personal jurisdiction of such courts over you.

### **Miscellaneous**

This Agreement embodies the entire agreement between you and TESS relating to your access and use of the Application. We may occasionally change the terms of this Agreement, and any such modifications will become effective once they are posted to the Application. It is your sole responsibility to check the Application from time to time to view any such changes. Your use of the Application after any modifications will indicate that you accept and agree to the modified Agreement. No amendment or modification of this Agreement (except as set forth in this

paragraph) shall be valid or binding unless expressly approved by TESS in writing and signed by an authorized officer of TESS. You may not assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion. The section headings used herein are for convenience only and shall be of no legal force or effect.

Failure of any party to this Agreement to require performance by another of any provision expressed herein shall in no way affect that party's right to thereafter enforce such provision; nor shall the waiver by any party of any breach of any provision expressed herein be taken or held to be a waiver of any succeeding or other breach of such provision or as a waiver of the provision itself or of any other provision. If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, such provision shall be deemed severed from the remaining portion of this Agreement, which shall otherwise remain in full force and effect. Correspondence should be directed to: [info@tess-online.com](mailto:info@tess-online.com).

Last updated: August 22, 2018

## **PRIVACY POLICY OF TESS SOFTWARE, LLC**

This Privacy Policy (“Privacy Policy”) explains how we collect, use, disclose and protect your personal information in connection with your use of the Application as defined in the End User License Agreement (EULA) available at: [www.tess-online.com/privacy](http://www.tess-online.com/privacy). This Privacy Policy applies to everyone who uses the Application and any other applications or websites operated by us that link to or reference this Privacy Policy. “Application,” “TESS,” “us,” “our,” and “we” as used herein shall have the meaning set forth in the EULA. Any third-party vendors or agents we hire to assist in the administration of the Application, including the collection of data and/or the processing or handling of any user information, are prohibited from using your personal information for any purpose other than as described in this Privacy Policy.

**By agreeing to the Agreement as defined in the EULA and accessing or using the Application, you agree to the terms of this Privacy Policy. You must not provide us with your personal information or interact with the Application if you do not agree with the practices described in this Privacy Policy.**

TESS is based in the United States, so any personal information we collect through the Application will be received and maintained in the United States. By using the Application, and/or providing us with your personal information, you understand and agree that your personal information will be transmitted to the United States and subject to disclosures and uses in accordance with U.S. law as described in this Privacy Policy. You agree not to provide us with any data for which you intend to claim protection under any data privacy laws, regulations, or directives of the European Union or any other foreign country.

### **TESS Registration**

In order to use the Application, you may need to register an Account with us, which will entail your disclosure and transmission of certain information about you. We will retain any information you have submitted to us. In connection with your registration, or at any time after registering, you may “opt-out” or unsubscribe from receiving communications from us that are not necessary to provide you with the services you have requested or otherwise permitted or required by following the opt-out instructions in this Privacy Policy or in any email you receive from us.

### **Collection of Your Information**

In general, we collect the personal information that you submit to us voluntarily when you create or personalize an Account or visit our Website (as defined in the EULA), such as username and email address. We use your email address, as well as any information included with your email(s) to us, to contact you. We may also use your email address to notify you of offers from us or our partners related to the Application.

We also may collect personal information from you through the User Data (as defined in the EULA) you provide. This information is collected for purposes of providing you with services or support through the Application for reporting and analytics, for invoicing and billing services, and to analyze and improve the Application and our products. You agree to our collection of User Data for the above uses.

Certain services, such as alerts that are sent to you when you are not logged into the Application, may also require additional information collection, and the terms of such collection will be identified when you subscribe to or sign up for such services.

As is true of many digital products, we or our third party service provider may also collect information about your use of the Application from your device while you use the Application using automated means such as cookies and beacons. We or our third party service provider may also collect information using automated means that we do not attempt to associate with any particular user. This information may include, for example, your IP address (a number automatically assigned to your computer when you visited the Website, and which is logged by our servers), your Internet Service Provider (“ISP”), your web browser, the type of operating system, the pages you visited, your geolocation, and the average time spent visiting the Website. Additional information about our use cookies is provided in the section below.

We may use your location information to provide requested location-specific services, including [ADD]. You may at any time opt-out from further allowing us to have access to your location data by turning off the location services in your computer browser and, for mobile applications, in your mobile phone settings. Please be aware that certain features of the Application will not perform as expected if location services are turned off for the Application.

We may use analytics tools such as Google Analytics to analyze trends, administer and improve our services, and track users’ movements around the Application and on the Internet, and to gather demographic information about our user base as a whole. These third party analytics companies do not seek to identify individual users or to receive personally identifiable information. This information helps us to improve our Application and deliver a better and more personalized service. Many of these companies, including Google Analytics, collect and use information under their own privacy policies, which we encourage you to review. For more information about Google Analytics and their privacy policies, please visit the [Google Analytics privacy page](#) and/or the [Google Partners' Page](#). You may opt-out of Google Analytics web monitoring by following the instructions on the [Google Analytics Web Monitoring Opt-Out page](#).

## **Cookies and Do Not Track Signals**

Cookies are used from time to time in the Application. Cookies are small text files that your web browser leaves on your hard drive. Cookies recognize you as a repeat user of the Application and may allow TESS or our third party partners to track your online activities over time. This allows for personalization of certain aspects of your use of the Application.

Unless a user specifically provides their identity to us, e.g., by registering for our services, providing information through an online form or sending us correspondence through the Application, we will not know the identification of individual users. We may use cookies to store preferences, record session information, develop information about a user’s preferences and interests, record past activity at a website in order to provide better service when you return to the Application, or customize content based on information you voluntarily provide. Cookies also may be used to deliver advertisements that are more relevant to you and your interests. They may also be used to limit the number of times you see an advertisement, as well as to help measure the effectiveness of the advertising campaign. With the exception of our third-party partners acting

on our behalf, third-party applications do not collect personally identifiable information from the Application over time and across different websites unless you provide it to them directly.

You can use the browser with which you are viewing the Application to enable, disable or delete certain cookies. To do this, follow the instructions provided by your browser (usually located within the “Help”, “Tools” or “Edit” settings). Please note, if you set your browser to disable cookies, you may not be able to access certain areas of the Application. Also, if you disable cookies other parts of the Application may not work properly. You can find more information about how to change your browser cookie settings at <http://www.allaboutcookies.org>. For more general information about internet-based advertising or about opt out options related to the use of cookies for ad targeting, please go to [www.aboutads.info](http://www.aboutads.info). TESS does not respond to Do Not Track (“DNT”) signals. For more information on “do not track” options, please see: <http://donottrack.us/>.

### **Use and Disclosure of Your Personal Information**

TESS may use personal information collected from you, including User Data, for purposes of providing services or support through the Application to you, for invoicing and billing services, and to analyze and improve our products. Specifically, your personal information may be used, either alone or in aggregate, for the following purposes:

- establishing and maintaining your relationship with us;
- responding to your requests and inquiries;
- customizing or facilitating the services you receive from us and our partners;
- offering you additional information, opportunities and functionality from us or from our partners at your request;
- meeting legal, regulatory, insurance, security and processing requirements; and
- in other ways with your consent.

You agree to provide us with the personal information collected, including User Data, for the above uses. TESS will not disclose collected information in a form that identifies you unless such disclosure is made to a third party assisting us with engaging in the purposes described in this policy. Unless otherwise agreed to in writing, you grant us a royalty-free, worldwide, transferable, irrevocable and perpetual license to: (i) use the foregoing information, including User Data, for the purposes set forth in this section and (ii) use or incorporate into the Application any recommendations, enhancements, requests or suggestions provided by you.

Your personal information may be shared with third parties as necessary for the third party to provide or facilitate the requested services. For example, we partner with third parties to process credit card payments and provide specific services within the Application. By agreeing to the Agreement, you authorize us to share your personal information for these purposes. We do not allow these parties to use personally identifiable information except for the purpose of providing these services.

We also may share aggregated demographic information with our third-party vendors and partners. This aggregated information is not linked to any personal information that can identify any individual person.

## **Other Uses**

In addition, we may share your personally identifiable information with any third party, without your consent or approval and without notice to you: (i) as permitted or required by any and all applicable laws and regulations; (ii) as incident to a corporate sale, merger, reorganization, dissolution, bankruptcy or similar event; (iii) under circumstances we believe reasonably necessary to protect the personal safety of or prevent physical harm to persons or property, comply with subpoenas, court orders, or similar legal processes and/or respond to requests from law enforcement agencies, regulators, and courts; (iv) to disclose information that is necessary to identify, contact or bring legal action against someone who may be violating our EULA or other published policies; or (v) as is otherwise described in this Privacy Policy.

## **Chat Messages Terms and Privacy**

By using the Application, you agree that TESS may send and receive from you electronic chat messages in connection with the Application and you expressly authorize such chat messaging, including automated and pre-recorded messages, and messages delivered via automatic systems, and you agree to TESS's retention and storage of both sent and received messages.

By using the Application, you further acknowledge that data rates may apply and you are solely responsible for any fees incurred from your carrier from receiving and sending chat messages and using the Application.

## **Collection of Personally Identifiable Information From or About Children**

TESS does not knowingly collect or solicit personal information from anyone under the age of 13 or knowingly allow such persons to register an Account. If you are under 13, you are prohibited from registering or sending any information about yourself to us, including your name, address, telephone number, or email address. No one under age 13 may provide any personal information to TESS. In the event that we learn that we have collected personal information from a child under age 13, we will delete that information as quickly as possible. If you believe that we might have any information from or about a child under 13, please contact us at: \_\_\_\_\_@\_\_\_\_\_.com.

## **Links and Third-Party Services**

The Application may contain links to other websites not operated by us or may make third-party services or applications available to users. Please be aware that we are not responsible for the privacy practices or the content of such other websites, services or applications. We encourage our users to read the privacy statements of each and every website they visit or service or application they use. This Privacy Policy applies solely to information collected by us related to the Application and does not apply to these third-party websites or applications. The ability to access information of third parties from TESS, or links to other websites or locations, is for your convenience and does not signify our endorsement of such third parties, their products, their services, other websites, locations, or their content.

## **Security**

TESS endeavors to ensure the integrity and security of the Application; however, we cannot guarantee that its security measures will prevent third parties from intercepting information. TESS shall not be liable or responsible if any User Data is intercepted and/or used by an unintended recipient or otherwise disclosed in a manner that you did not intend.

### **Contacting Us / Opt-Out Options**

If you have questions about anything contained in this Privacy Policy, including how your information is used, your opt-out options, or if you wish to opt-out of receiving certain communications from us, you may contact us at: [info@tess-online.com](mailto:info@tess-online.com).

### **Changes to Privacy Policy**

We may update our Privacy Policy from time to time, to clarify our practices and to reflect new or different privacy practices. If we make any material changes to our Privacy Policy, we will notify you in the Application that an update exists and such changes shall apply to any information collected after the date of notice. We may post changes or modifications to referenced policies and guidelines without your approval, and may determine whether and when any such changes apply to you. Your use of the Application following our posting of any changes will constitute your acceptance of such changes. Should you not wish to be bound by the modified Privacy Policy, do not use the Application. The date this Privacy Policy was last revised is identified below.

Effective: August 22, 2018