



## BINDING TERMS OF SERVICE

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THESE TERMS OF SERVICE (THESE “TERMS”) FORM A BINDING CONTRACT BETWEEN TAN-LINK, LLC, A TEXAS LIMITED LIABILITY COMPANY (“TAN-LINK,” “US,” OR “WE”), AND YOU, OUR CUSTOMER (“YOU” OR “CUSTOMER”).

THESE TERMS CONTAIN IMPORTANT INFORMATION ABOUT YOUR LEGAL RIGHTS AND OBLIGATIONS WHEN USING SERVICES PROVIDED BY TAN-LINK, WHETHER THOSE SERVICES DELIVERED THROUGH OUR SOFTWARE AS A SERVICE PLATFORM, WEBSITES, MOBILE APPLICATIONS, THE TAN-LINK APPLICATION PROGRAMMING INTERFACE (THE “TAN-LINK API”), OR THROUGH ANY OTHER MEDIUM OR METHOD (COLLECTIVELY, THE “SERVICES”).

SECTION 14 OF THESE TERMS CONTAINS AN ARBITRATION AGREEMENT AND CLASS ACTION WAIVER THAT APPLY TO ALL CLAIMS BROUGHT AGAINST TAN-LINK IN THE UNITED STATES. PLEASE READ THEM CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT.

These Term should be read in conjunction with Tan-Link’s Privacy Policy, which is available at <https://tan-link.com/privacy-policy/>.

Certain capitalized terms that are used herein are defined in Section 15.

**If you have any questions about these Terms, please contact us at [info@tan-link.com](mailto:info@tan-link.com).**

### **1. Limited Access and Use of the Services.**

*Subscription to Access and Use the Services.* When you sign up and pay for the Services, you are signing up for a monthly subscription that will renew every month until you or Tan-Link cancel that subscription. Tan-Link will grant to you a limited, nonexclusive, nontransferable, non-sublicensable, limited right to access and use the Services while your subscription is in effect, conditioned on your (and your Authorized Users’) strict compliance with these Terms at all times.

*Restrictions on Use.* Customer shall not, and shall not permit any other Person to, access or use the Services in any manner that violates any law, statute, ordinance, regulation, or treaty, to violate the rights of third parties, or for use outside of the customary and intended purposes permitted by these

Terms. If you or an Authorized User use the Services other than as specifically authorized herein, Tan-Link may suspend your right to use the Services or cancel your subscription entirely. Without limiting the generality of the foregoing, Customer shall not:

- copy, modify, or create derivative works or improvements of Tan-Link's software or systems;
- rent, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any of the Services or Tan-Link Materials to any Person other than an Authorized User, including over the internet or in connection with any time-sharing, service bureau, software as a service, cloud, or other technology or service;
- reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of Tan-Link's software;
- circumvent, bypass or breach any security device or protection used in connection with the Services and Tan-Link's software or systems;
- input, upload, transmit, or otherwise provide to or through the Services, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Harmful Code;
- damage, destroy, disable, impair, or otherwise impede or harm in any manner the Services or Tan-Link's software or systems;
- remove, alter, or obscure any trademarks, instructions, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notice from any of Tan-Link's software or systems or the Tan-Link Materials;
- access or use the Services or Tan-Link Materials in any manner or for any purpose that infringes, misappropriates, or otherwise violates any Intellectual Property Right or other rights of Tan-Link or any third party or that violates any applicable law; or
- access or use the Services or Tan-Link Materials for planning or developing a competing service or product or any other purpose that is detrimental to Tan-Link.

*Changes to the Services.* Tan-Link reserves the right, in its sole discretion, to make any changes to the Services and Tan-Link Materials that it deems necessary or advisable to maintain or enhance the quality, delivery, competitive strength, cost efficiency, performance, regulatory or legal compliance, or other aspect of the Services.

*Non-Exclusivity.* Customer acknowledges that Tan-Link is providing the Services to Customer on a non-exclusive basis. Nothing herein prohibits or restricts Tan-Link from providing access and use of the Services to other tanning salons, including ones that may be competitive with Customer's business and located in the same vicinity as locations of Customer.

## **2. Customer's Obligations.**

*Account Creation and Security.* When you purchase a subscription to the Services, you will create an account that requires accurate information from you, including your business name, first and last name, your email address, and time zone. You must promptly update this information if any of it later changes. You also must maintain the security of your account and promptly notify Tan-Link if you discover or suspect that someone has accessed your account (including through the credentials of an Authorized User) without your permission. Tan-Link reserves the right to require you to change your account username for any reason.

*Customer Systems and Cooperation.* At all times while you have an active subscription, you shall (a) set up, maintain, and operate in good repair all systems on or through which you or your Authorized Users access or use the Services, (b) provide Tan-Link personnel with access to your premises and systems to the extent necessary for Tan-Link to provide the Services, and (c) provide all other cooperation

and assistance that Tan-Link reasonably requests to enable Tan-Link to exercise its rights and perform its obligations under these Terms.

### **3. Prices and Payments.**

*Prices.* All prices for the Services are established and must be paid in U.S. dollars. We may change our prices by providing 30 days' prior written notice to you. If you do not agree to the new prices, you may terminate your subscription before the end of the current billing cycle. We will make every effort to provide notice of any price changes well in advance, and we understand that unexpected price increases may cause inconvenience to you. However, we reserve the right to adjust prices in response to market conditions or changes in our own costs, and we appreciate your understanding in such situations. Published prices may not include taxes or administrative fees for which Tan-Link later charges you.

*Payment Methods.* Only valid credit cards and other payment methods acceptable to Tan-Link may be used to purchase a subscription for the Services. By purchasing a subscription or otherwise ordering any products or services from Tan-Link, you represent and warrant that you are authorized to use the credit card or other payment method that you designate. If the credit card or other payment method you designate cannot be verified, is invalid, or fails for any reason, Tan-Link may suspend your account or cancel your subscription without giving you prior notice. You are responsible for resolving any problem that Tan-Link encounters when processing your payments.

*Recurring Payments.* When you purchase a subscription for the Services and provide your payment information (for example, your credit card number, CCV, expiration date, billing address, and telephone number) to us, you authorize us to charge your credit card or other payment method for your subscription amount on a monthly basis and store your payment and related information. **YOU ACKNOWLEDGE THAT YOUR SUBSCRIPTION IS CONTINUOUS UNTIL YOU OR TAN-LINK CANCEL IT.**

*No Refunds.* Other than per *Service Credits for Not Meeting the Availability Requirement* under Section 6 of these Terms, Tan-Link will not issue any refunds to you.

*Fees After Notice of Cancellation.* If you cancel your subscription per *Cancellation by Customer* under Section 5 of these Terms, we will continue to bill you for your subscription through the end of your last billing cycle.

*Past Due Amounts and Collection Fees.* Subscription fees and other amounts not paid when due will bear interest at 1.5% per month or the maximum rate permitted by applicable usury law, whichever is less, calculated and compounded daily from the date due until the date paid. Further, you shall pay or reimburse Tan-Link's costs of collection (including any attorneys' fees and court costs). Tan-Link may accept a check or payment in any amount without prejudice to Tan-Link's right to recover the balance of the amount due or to pursue any other right or remedy available to us under these Terms, at law, or in equity. No endorsement or statement on any check or payment you make to us or in any letter accompanying a check or payment from you or elsewhere will serve as an accord or satisfaction.

**4. Account Suspension.** Tan-Link may, by any lawful means, suspend or otherwise deny to Customer or any Authorized User access to or use of all or any part of the Services or Tan-Link Materials, without incurring any liability therefor if (a) Tan-Link receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Tan-Link to do so, or (b) Tan-Link determines, in its sole discretion, that Customer or an Authorized User breached any part of these Terms, accessed or used the Services beyond the scope of the rights granted herein or for a purpose not authorized hereunder, or may be involved in any fraudulent, misleading, or

unlawful activities.

## 5. **Subscription Cancellation.**

*Cancellation by Tan-Link.* Tan-Link may cancel Customer's subscription for the Services, effective immediately upon written notice to Customer, if Customer (a) fails to pay any amount when due, (b) breaches any of its obligations under these Terms if such failure continues more than seven days after Tan-Link provides written notice thereof to Customer, or (c) (i) becomes insolvent, (ii) files, or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of appropriate jurisdiction to take charge of or sell any material portion of its property or business.

*Cancellation by Customer.* If you wish to cancel your subscription, email us at [info@Tan-Link.com](mailto:info@Tan-Link.com) and we will process a cancellation of your subscription. Unless you instruct us to cancel at the end of a different billing cycle, we will cancel your subscription at the end of the current billing cycle if we receive your cancellation email at least 10 days before the end of that billing cycle or at the end of the following billing cycle if we receive your cancellation email with less than 10 days before the end of that billing cycle.

*Effect of Termination.* Upon cancellation of your subscription after the end of your last billing cycle, Tan-Link will terminate your account. Thereafter, neither you nor any Authorized User may access or use the Services or Tan-Link Materials in any manner for any reason.

*Transfer of Data and Customer Billing Information.* Prior to the end of the last day of your last billing cycle (i.e., termination of your subscription), you may instruct Tan-Link in writing to deliver to you a copy of the most recent version of Customer Data to which Tan-Link has access hereunder. Conditioned on you paying all amounts you owe to Tan-Link hereunder, within 15 days of such written request, Tan-Link will deliver a copy thereof to you. Tan-Link will charge you \$200 each time Tan-Link exports (in machine readable format) or otherwise delivers Customer Data to you. Special export processes (other than standard ones) may be subject to additional charges. If Tan-Link consults with another software provider to assist in migrating Customer Data to you, Tan-Link will bill you an additional \$125 per hour. For compliance and security reasons, Tan-Link is not able to export credit card information out of its system. The credit card information is stored in token format with one or more gateway accounts, and those tokens will be provided in the export when the services are cancelled. It is your responsibility to verify that this information can be used by any new software provider, and any cost associated with that transfer is your sole responsibility.

*Retention and Deletion of Customer Data.* Tan-Link may retain Customer Data to the extent and for so long as permitted under applicable law, including in Tan-Link's backups, archives, and disaster recovery systems until such Customer Data is deleted in the ordinary course of business. However, Tan-Link reserves the right to permanently delete all Customer Data immediately after your subscription is terminated at the end of your last billing cycle.

## 6. **Service Levels and Credits.**

*Availability Requirement.* Subject to these Terms, Tan-Link will ensure that the Services are Available to Customer at least 99.0% of the time (the "[Availability Requirement](#)"), as measured over the course of each calendar month while Customer's subscription is in effect. Services will be considered Available even if access or use is prohibited or impaired if such prohibition or impairment is due, in

whole or in part, by (a) an act or omission of Customer, an Authorized User, or any other Person using Customer's or an Authorized User's account credentials, (b) a force majeure event (i.e., an act of God), which may be other than due to natural causes, (c) failure, interruption, outage, or another problem with any software, hardware, system, network, facility, or other matter not supplied by Tan-Link under these Terms, including the Internet connectivity of Customer or its Authorized Users, (d) downtime for system or software maintenance, whether or not Tan-Link provides prior notice to Customer, (e) any other event or circumstance that is outside Tan-Link's reasonable control, and (f) suspension of the Services as permitted under Section 4.

*Service Credits for Not Meeting the Availability Requirement.* For every 1% that the availability of the Services falls below the Availability Requirement in a particular calendar month, Customer will be entitled to a service credit equal to 2% of the subscription fee paid by Customer during that calendar month, conditioned upon (a) Customer reporting the service failure to Tan-Link immediately upon becoming aware of it. Service credits will be applied to Customer's subscription fee for the calendar month following the month to which the service credit applies. This Section 6 is Customer's sole remedy if the Services do not meet the Availability Requirement.

*Downtime.* To the extent reasonably possible, Tan-Link shall minimize schedule downtime for routine maintenance of its software and systems and conduct that maintenance outside of expected regular business hours of Customer.

## **7. Intellectual Property Rights and Confidentiality.**

*Tan-Link Materials.* All rights whatsoever to the Tan-Link Materials, including all Intellectual Property Rights therein, such as Tan-Link's name and logos, product or service names, slogans, and the look and feel of the Services, are and always will remain with Tan-Link. Each applicable third-party provider owns all rights to their respective Third-Party Materials. While Customer's subscription to the Services is in effect hereunder, Customer may use the Tan-Link Materials solely in connection with the Services and subject to these Terms. All other rights to Tan-Link Materials are expressly reserved by Tan-Link. Tan-Link has and always will retain sole control over the operation, provision, maintenance, and management of the Tan-Link Materials.

*Reservation of Rights.* Nothing in these Terms grants any right to (including any license under) any Intellectual Property Rights in or relating to, the Services, Tan-Link Materials, or Third-Party Materials, whether expressly, by implication, estoppel, or otherwise. All rights to the Services, Tan-Link Materials, and the Third-Party Materials are and will remain with Tan-Link and the respective Persons who hold right in the Third-Party Materials.

*Customer Representations, Warranties, and Covenants.* Customer represents, warrants, and covenants to Tan-Link that Customer owns or otherwise has and will have the necessary rights and consents in and relating to the Customer Data and is not and will not infringe, misappropriate, or otherwise violate any Intellectual Property Rights, or any privacy or other rights of any third party or violate any applicable intellectual property law.

*Confidential Information.* Each Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care consistent with industry standards) and will not disclose or use any Confidential Information (as defined below) of the other Party for any purpose outside of the scope of this Agreement, and each Party shall limit access to Confidential information to those of its employees, contractors, and agents who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with the receiving Party containing protections no less stringent than those herein. Confidential Information

excludes any information that (a) was lawfully in the receiving party's possession before receiving it from the disclosing party; (b) is provided in good faith to the receiving party by a third party without restriction on use or disclosure and without breaching any rights of the disclosing party; (c) is or becomes generally known or available to, or accessible by, the public through no act or omission of the receiving party; or (d) was or is independently developed by the receiving party without reference to the disclosing party's Confidential Information.

*Compelled Disclosure.* In the event that the receiving Party or any representative of the receiving Party becomes legally compelled (by law, rule, regulation, subpoena, or similar court process) to disclose any of the Confidential Information, the receiving Party will (if permitted to do so) provide the discloser with notice of such circumstances and will limit such disclosure to the required disclosure.

## **8. Resultant Data and Customer Data.**

*RESULTANT DATA.* CUSTOMER HEREBY UNCONDITIONALLY AND IRREVOCABLY GRANTS TO TAN-LINK AN ASSIGNMENT OF ALL RIGHTS TO ALL DATA AND INFORMATION RELATED TO USE OF THE SERVICES BY CUSTOMER AND ITS AUTHORIZED USERS, AS WELL AS ANY CUSTOMER DATA THAT IS COLLECTED AND USED IN AN AGGREGATE AND ANONYMIZED MANNER, INCLUDING TO COMPILE STATISTICAL AND PERFORMANCE INFORMATION RELATED TO THE SERVICES AND THE TANNING SALON INDUSTRY GENERALLY. THIS ASSIGNMENT INCLUDES ALL INTELLECTUAL PROPERTY RIGHTS (IF ANY) RELATED TO THE FOREGOING WITHOUT ANY OBLIGATION OF TAN-LINK TO PAY ANY ROYALTIES OR OTHER FEES TO CUSTOMER.

*Tan Link's Use of Personal Data.* Tan-Link's performance of these Terms requires Tan-Link to process, transmit, and store Personal Data. By submitting Personal Data to Tan-Link, Customer agrees that Tan-Link and third-party providers engaged by Tan-Link may process, transmit and/or store Personal Data in connection with providing the Services, subject to the terms herein and Tan-Link's Privacy Policy, which is available at <https://tan-link.com/privacy-policy/>. Tan-Link reserves the right to provide the Services from other locations, and/or through use of subcontractors worldwide; however, Tan-Link will not transfer Personal Data provided by or through Tan-Link to a country or territory other than (a) a member state of the European Economic Area, (b) a country or territory that has at the relevant time been determined by the European Commission to be in compliance with Regulation (EU) 2016/679 (General Data Protection Regulation) to ensure an adequate level of protection for Personal Data, or (c) if the data processor to whom Personal Data is transferred has adopted the standard contractual clauses for the transfer of Personal Data from the European Union to controllers in countries other than those described in items (a) and (b) in this paragraph.

*Customer's Obligations Concerning Personal Data.* Customer is the sole controller of all Personal Data provided by or through Customer to Tan-Link. Accordingly, Customer is solely responsible for complying with all applicable data protection or similar laws such as Regulation (EU) 2016/679 (General Data Protection Regulation) and laws implementing that directive that regulate the processing of Personal Data and special categories of data as such terms are defined in that directive. Customer shall obtain all necessary consents from and make all necessary disclosures to the owners thereof, which are required for Tan-Link to collect, process, transfer, store, and disclose Personal Data before providing any Personal Data to Tan-Link. Customer is solely responsible for any Personal Data contained in Tan-Link Materials. Prior to giving Tan-Link information to process, Customer shall inform Tan-Link about any special categories of data contained within Personal Data and any restrictions or special requirements in the processing of such special categories of data, including any cross-border transfer restrictions. Customer is responsible for ensuring that the Services and Tan-Link Materials meet all applicable instructions and special requirements.

*Customer Data.* Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Customer Data. As between Customer and Tan-Link, Customer is and will remain the exclusive owner of all rights to Customer Data, including all Intellectual Property Rights therein, subject to Tan-Link's rights to use the Customer Data per these Terms.

*Tan-Link Privacy Policy.* In performing the Services, Tan-Link will comply with the Tan-Link Privacy Policy (available at <https://tan-link.com/privacy-policy/>), which is incorporated herein by reference. The Tan-Link Privacy Policy is subject to change in Tan-Link's sole discretion.

9. **Third-Party Offerings.** Tan-Link may provide information about third-party products, services, activities or events, or we may allow third parties to make their content and services available on or through the Services. We provide third-party offerings as a service to our customers who are interested in such offerings. We reserve the right to suspend, stop providing, or start charging for all or any portions of these third-party offerings at any time. Payments may be required to use certain third-party offerings. Tan-Link does not control or endorse, and makes no representations or warranties regarding, any third-party offerings. Your access to and use of such third-party offerings is at your own risk. Tan-Link is not responsible or liable for any claim, malfunction, loss, or harm arising from or related to your use of third-party offerings.

10. **DISCLAIMER OF WARRANTIES.** EXCEPT FOR TAN-LINK'S COMMITMENT TO MEET THE AVAILABILITY REQUIREMENT IN SECTION 6 OR AS OTHERWISE EXPRESSLY STATED HEREIN, THE SERVICES AND TAN-LINK MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE," WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED. ACCORDINGLY, TAN-LINK DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, TAN-LINK MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR TAN-LINK MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET THE REQUIREMENTS OF CUSTOMER OR ANY OTHER PERSON, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE (FROM DATA BREACHES OR OTHERWISE), ACCURATE, COMPLETE, FREE OF HARMFUL CODE, VIRUSES, ERROR FREE, OR OTHER HARMFUL COMPONENTS. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD-PARTY MATERIALS (IF ANY) IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS. TAN-LINK EXPRESSLY DENIES ANY RESPONSIBILITY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR THE INFORMATION CONTAINED THEREIN AS WELL AS YOUR CUSTOMER ACCOUNT AND CUSTOMER INFORMATION.

IT IS YOUR RESPONSIBILITY TO ALWAYS VERIFY THAT THE SERVICES RETRIEVE AND GENERATE ACCURATE INFORMATION (INCLUDING THROUGH THE TAN-LINK API) AND FULLY AND ACCURATELY PROCESS ALL RELEVANT TRANSACTIONS, INCLUDING PROPERLY BILLING YOUR CUSTOMERS.

11. **Limitations of Liability.**

*EXCLUSION OF DAMAGES.* NEITHER TAN-LINK NOR ANY OF TAN LINK'S LICENSORS, SERVICE PROVIDERS, SUPPLIERS, OR PARTNERS, AND EACH OF OUR AND

THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, AND OTHER REPRESENTATIVES (EACH, A “TAN-LINK PARTY,” AND COLLECTIVELY, THE “TAN-LINK PARTIES”) WILL EVER BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS OR THE SERVICES GENERALLY PURSUANT TO ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY (A) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE, (B) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION, OR DELAY OF THE SERVICES OTHER THAN FOR THE ISSUANCE OF ANY APPLICABLE SERVICE CREDITS PER SECTION 6, (C) LOSS, DAMAGE, CORRUPTION, OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY, (D) LOSS, DAMAGE, OR INJURY RESULTING FROM HACKING, TAMPERING, OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICES OR CUSTOMER’S ACCOUNT OR THE INFORMATION CONTAINED THEREIN, (E) COST OF REPLACEMENT SERVICES, (F) LOSS OF GOODWILL OR REPUTATION, OR (G) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER TAN-LINK OR ANY TAN-LINK PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR IF SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING IF ANY OTHER REMEDY FAILS FOR ITS ESSENTIAL PURPOSE.

*ABSOLUTE CAP ON MONETARY LIABILITY.* IN NO EVENT WILL THE AGGREGATE LIABILITY OF TAN-LINK AND THE TAN-LINK PARTIES ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO THESE TERMS OR THE SERVICES GENERALLY, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNT OF THE SUBSCRIPTION FEE ACTUALLY PAID BY CUSTOMER TO TAN-LINK FOR THE BILLING CYCLE IN WHICH THE EVENT GIVING RISE TO THE CLAIM OCCURS.

*CALIFORNIA EXCEPTION.* IF YOU RESIDE (OR ARE DOMICILED) IN CALIFORNIA, YOU WAIVE YOUR RIGHTS UNDER CALIFORNIA CIVIL CODE § 1542, WHICH PROVIDES: “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

*Other Exceptions.* The limitations in this Section 11 do not limit or exclude liability for the gross negligence, fraud or intentional misconduct of Tan-Link or for any other matters in which liability cannot be excluded or limited under applicable law. Additionally, some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.

**12. INDEMNIFICATION BY CUSTOMER.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS TAN-LINK AND ALL TAN-LINK PARTIES FROM ALL LOSSES, LIABILITIES, CLAIMS (INCLUDING THIRD-PARTY CLAIMS), DEMANDS, DAMAGES, EXPENSES OR COSTS (“CLAIMS”) ARISING OUT OF OR RELATED IN ANY WAY WHATSOEVER TO (A) YOUR (OR YOUR AUTHORIZED USERS’) ACCESS TO OR USE OF THE SERVICES, (B) YOUR VIOLATION OF THESE TERMS, OR (C) YOUR VIOLATION, MISAPPROPRIATION OR INFRINGEMENT OF ANY RIGHTS OF ANY PERSON, INCLUDING THEIR INTELLECTUAL PROPERTY RIGHTS OR PRIVACY RIGHTS. THIS SECTION 12 APPLIES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING IF A TAN-LINK PARTY IS NEGLIGENT OR ALLEGED TO BE



NEGLIGENT, BUT NOT IF A COURT OR ARBITRATOR WITH APPROPRIATE JURISDICTION RULES THAT SUCH TAN-LINK PARTY WAS GROSSLY NEGLIGENT OR COMMITTED INTENTIONAL MISCONDUCT. YOU SHALL PROMPTLY NOTIFY TAN-LINK OF ANY THIRD-PARTY CLAIM, COOPERATE WITH THE APPROPRIATE TAN-LINK PARTIES TO DEFEND SUCH CLAIM AND PAY ALL FEES, COSTS AND EXPENSES ASSOCIATED WITH DEFENDING SUCH CLAIM (INCLUDING ATTORNEYS FEES). YOU ALSO AGREE THAT THE TAN-LINK PARTIES WILL HAVE CONTROL OF THE DEFENSE OR SETTLEMENT, AT TAN-LINK'S SOLE OPTION, OF ANY THIRD-PARTY CLAIMS.

**13. Governing Law.** Any dispute arising out of or related in any way whatsoever to these Terms or the Services generally (a "Dispute") will be governed by and interpreted according to the laws of Texas except to the extent preempted by U.S. federal law, without regard to any conflict of law rules or principles (whether of Texas or any other jurisdiction) that would cause the application of the laws of any other jurisdiction.

**14. Dispute Resolution.**

**PLEASE READ THE FOLLOWING SECTION CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE CERTAIN DISPUTES AND CLAIMS WITH TAN-LINK AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM US. BINDING ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR HAVING A JURY TRIAL.**

*No Class or Representative Actions.* You and Tan-Link agree that any Dispute is personal to you and Tan-Link and that it will be resolved solely through individual action and not as a class arbitration, class action, or any other type of representative proceeding.

*Notice of Dispute.* You agree to first contact Tan-Link and attempt to resolve a Dispute informally by sending a written notice of such Dispute to Tan-Link by certified mail addressed to Legal Department, Tan-Link, LLC, 110 N Interstate 35, Suite 315 PMB 1019, Round Rock, TX 78681. The notice must (a) include your name, business name, residence address, email address, and telephone number, (b) describe the nature and basis of the claim, and (c) describe in detail the specific relief you are seeking. If we do not respond to such notice or resolve the Dispute in a way you believe to be satisfactory within 90 days after we receive such required notice, you may submit the Dispute to binding arbitration administered by JAMS. If we have a reason to initiate arbitration, we may do so freely at any time.

*Binding Arbitration.* All Disputes submitted to JAMS will be resolved through confidential, binding arbitration before one arbitrator. Arbitration proceedings will be held in Williamson County, Texas or may be conducted telephonically or via video conference in accordance with JAMS Streamlined Arbitration Rules and Procedures ("JAMS Rules"). The most recent version of the JAMS Rules is available on the JAMS website and incorporated herein by reference. You either have read and understand the JAMS Rules or you waive your opportunity to read the JAMS Rules and make a claim that the JAMS Rules are unfair or should not apply (for any reason) to any Dispute. Since these Terms affect interstate commerce, the enforceability of this Section 14 will be substantively and procedurally governed by the Federal Arbitration Act, 9 U.S.C. § 1, et seq., to the maximum extent permitted by applicable law. As limited by the Federal Arbitration Act, these Terms and the JAMS Rules, the arbitrator will have exclusive authority to make all procedural and substantive decisions regarding any Dispute and to grant any remedy that would otherwise be available in court, including the power to determine the question of arbitrability. The arbitrator may conduct only an individual arbitration and may not consolidate more than one individual's claims, preside over any type of class or representative proceeding or preside over any proceeding involving more than one individual.

*Confidentiality.* The arbitrator, Tan-Link, and Customer will each maintain the confidentiality of any arbitration proceedings, judgments and awards, including the information gathered, prepared, and presented for purposes of the arbitration or related to the relevant Dispute. The arbitrator will have the authority to make appropriate rulings to safeguard confidentiality, unless the law provides to the contrary. The duty of confidentiality does not apply if disclosure is necessary to prepare for or conduct the arbitration hearing on the merits, in connection with a court application for a preliminary remedy, in connection with a judicial challenge to an arbitration award or its enforcement, or to the extent that disclosure is otherwise required by law or judicial decision.

*Arbitration Fees.* The party who initiates arbitration will be responsible for the initial filing fees. Thereafter, each Party will pay 50% of the fees of the arbitrator and JAMS. Each party is responsible for its own other costs, including for travel and attorneys' fees, although the arbitrator may require a party to reimburse the reasonable attorneys' fees and arbitration costs of the party who prevails in the arbitration proceeding.

*Claim Deadline.* Any claim related to a Dispute must be filed within one year after such Dispute arose, which means that neither you nor Tan-Link will thereafter have the right to assert any claims in respect of that Dispute.

*Exclusive Dispute Resolution Provisions.* All Disputes must be exclusively resolved under this Section 14, although a party may seek and obtain temporary, preliminary, or permanent injunctive or other equitable relief from a court with appropriate jurisdiction to prevent immediate harm without first complying with the rest of this Section 14.

## **15. Defined Terms.**

"Authorized User" means individuals who are authorized by Customer to access and use the Services under Customer's account. Authorized Users may include the employees, consultants, contractors, agents, or other designees of Customer, but shall not include any employee or agent of any Tan-Link competitor.

"Available" means the Services are available for access and use by Customer and Authorized Users over the Internet per these Terms.

"Confidential Information" means all information, data, and financial information relating to the business, commercial strategies, pricing, personnel, customers, products, or services of each Party. Confidential Information includes (i) each party's proprietary system offerings, including the Services, along with documentation and plans related thereto; (ii) passwords, authorization keys, or codes used to access or operate such system offerings; (iii) any results, data, or statistics collected through use of the system offerings; or (iv) any business information that is either marked physically or identified orally as "confidential" or "proprietary."

"Customer Data" means Personal Data and any other data or information that Customer provides or makes accessible in or through the Services.

"Harmful Code" means any software, hardware, or other device or means, including any virus, worm, malware, or other malicious computer code, which destroys or otherwise harms any software, firmware, hardware, system, or network.

"Intellectual Property Rights" means all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret,

database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.

“Person” means an individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association, or other entity.

“Personal Data” means information that Customer provides or makes accessible in or through the Services, or information that Tan-Link creates or obtains on behalf of Customer, including information that (a) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers), or (b) can be used to authenticate an individual (including employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers).

“Registered User” means any individual who has an account for access to and use of the Services, including Authorized Users.

“Tan-Link Materials” means the specifications, instructions, any other written materials, and Tan-Link software and systems, and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by Tan-Link or any third-party in connection with the Services or otherwise comprise or relate to the Services or Tan-Link’s software or systems.

“Third-Party Materials” means materials and information, in any form or medium, including any open-source or other software, documents, data, content, specifications, products, equipment, or components of or relating to the Services that are not proprietary to Tan-Link.

## **16. Miscellaneous.**

*Relationship of the Parties.* The relationship between the parties is that of independent contractors. Nothing in these Terms creates any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party has the authority to contract for nor bind the other party in any manner whatsoever.

*Public Announcements.* Neither party shall issue or release any announcement, statement, press release, or other publicity or marketing materials relating to these Terms or the relationship of the parties formed hereby generally or otherwise use the other party's trademarks, service marks, trade names, logos, domain names, or other indicia of source, association, or sponsorship, in each case, without the prior written consent of the other party. However, Tan-Link may, without Customer's consent, include Customer's name and other indicia in its lists of current or former customers in promotional and marketing materials.

*Cumulative Remedies.* At all times, Tan-Link may exercise any or all of the rights and remedies available to Tan-Link, whether at law, in equity, or under these Terms.

*Entire Agreement.* These Terms contain the entire agreement between Tan-Link and Customer concerning Customer’s access and use of the Services.

*Amendments.* Tan-Link may unilaterally amend these Terms without prior written notice to

Customer. Any updates will be effective upon posting on the Tan-Link website or as otherwise specified in the updated Terms. It is Customer's responsibility to review the updated Terms and Privacy Policy periodically. By continuing to use the Services after any update to these Terms, Customer agrees to be bound by the updated Terms. If Customer does not agree with the updated Terms, they must terminate their account before the end of their subscription period. Failure to terminate the account after the updated Terms shall be deemed acceptance of the updated Terms.

*Construction.* In these Terms, (a) unless the language states to the contrary or the context requires otherwise, (i) each gender includes the masculine, feminine, and/or neuter, as applicable (ii) the singular number includes the plural and conversely, (iii) the terms "hereof," "herein," or "hereunder" refer to these Terms as a whole and not to any particular term hereof, and (iv) references to Sections refer to sections of these Terms, and (b) whenever the words "include," "includes" or "including" are used, they are deemed to be followed by the words "without limitation."

*Assignment.* Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under these Terms, in each case whether voluntarily, involuntarily, by operation of law, or otherwise. No assignment, delegation, or transfer will relieve Customer of any of its obligations or performance under these Terms. Any purported assignment, delegation, or transfer in violation of this paragraph is void. These Terms are binding upon and will inure to the benefit of the parties hereto and their respective successors and permitted assigns.

*Notices.* Any notice required by these Terms must be delivered to Legal Department, Tan-Link, LLC, 110 N Interstate 35, Suite 315 PMB 1019, Round Rock, TX 78681. Notice properly addressed will be deemed duly given and received (a) when delivered personally, (b) when transmitted by email with successful transmission confirmed, or (c) one business day after being deposited for next-day delivery with a nationally recognized overnight delivery service.

*Waiver.* A waiver of a term within these Terms must be in writing and signed by the party providing it. A waiver of a breach of these Terms is not a waiver of any subsequent breach. The failure of a party at any time to require performance of the other party's obligations hereunder will not affect their right to enforce these Terms later.

*Severability.* If a court or arbitrator with appropriate jurisdiction determines that any term within these Terms is unenforceable, the remainder of these Terms will remain in effect to the greatest extent possible.

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