



## MASTER SERVICES AGREEMENT (MSA)

This MASTER SUBSCRIPTION AND SERVICES AGREEMENT and any exhibits, attachments, Orders, SOWs and other documents expressly entered into between the Parties referencing this Master Subscription and Services Agreement (collectively, this "Agreement"), is made effective as **March 4, 2020** ("Effective Date") and Valid Until March 3rd, 2023, and between TallyCo Solar, Inc. ("TallyCo Solar, Inc."), A California corporation with offices at 111 Main St, Detroit, MI, and **Spaneller Inc.** ("Customer"), a Company with offices in **111 Nside L, Oakland, CA 121342**. TallyCo Solar, Inc. and Customer may be referred to herein individually as a "Party" and collectively as the "Parties." TallyCo Solar, Inc. and Customer hereby agree to the foregoing and as follows:

### 1. OVERVIEW.

1.1 **Scope.** This Agreement sets forth the terms pursuant to which Customer may purchase and TallyCo Solar, Inc. may provide subscription licenses ("Subscriptions") to TallyCo Solar, Inc.'s non-proprietary online, web-based software applications and platform solutions ("Solutions") and various implementation, configuration, and other professional services related to the Solutions ("Professional Services" or "PS").

The Scope of this agreement is limited to a Contract Amount of 250,000 USD Per Annum

1.2 **Orders.** Customer and TallyCo Solar, Inc. may from time to time execute: (a) a TallyCo Solar, Inc. Customer Order Form ("Order") for any of the Solutions; and/or (b) a Statement of Work ("SOW") for PS related to the Solutions. Each Order shall describe the applicable Solution, Order Term (as defined in Section 7.1), related fees, user details and any Subscription limitations. Each SOW shall describe the PS to be provided by TallyCo Solar, Inc., any Customer's obligations and the related fees. Each Order and SOW agreed to by the Parties shall reference and be subject to the terms of this Agreement and may contain additional terms applicable to a specific Solution. The initial Order shall be attached to this Agreement as Exhibit A and a SOW, if applicable, shall be attached to this Agreement as Exhibit B.

### 1.3 Indemnifications.

1.3.1 The Borrower agrees to indemnify each Lender for, and to hold each Lender harmless from, any loss or expense that such Lender may sustain or incur as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment of or conversion from Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement or (c) the making of a prepayment of Eurodollar Loans on a day that is not the last day of an Interest Period with respect thereto. Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest that would have accrued on the amount so prepaid, or not so borrowed, converted or continued, for the period from the date of such prepayment or of such failure to borrow, convert or continue to the last day of such Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) that would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank eurodollar market. A certificate as to any amounts payable pursuant to this Section submitted to the Borrower by any Lender shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Loans and all other amounts payable hereunder.

### 2. SOLUTIONS.

2.1 **Access.** Subject to the terms of this Agreement and the applicable Orders, TallyCo Solar, Inc. hereby grants Customer a limited, non-exclusive, non-transferable (subject to Section 12.7), non-sublicensable right and license to access and use each Solution for which Customer has purchased a Subscription hereunder, solely for Customer's internal business purposes, during the applicable Subscription Order Term. All rights not expressly granted to Customer herein are reserved by TallyCo Solar, Inc. and its licensors. As soon as commercially reasonable after execution of any given Order, TallyCo Solar, Inc. shall make the applicable Solution available for use by Customer in accordance with such Order. Customer may, pursuant to the rights granted above in this Section, but subject to Sections 2.2 and 2.3, permit third parties to access and use the Solutions to which Customer then has Subscriptions, solely as necessary for such third parties to conduct business with Customer. Such use shall be considered part of Customer's internal business purposes. Some Solutions may include the delivery of object code for certain back-



office software components of the Solution to Customer for installation and use at Customer's premises ("Components"). The rights granted to Customer in this Section 2.1 shall be deemed to include the right for Customer to install and operate, during the applicable Order Term, any Components specified in an Order. Use of any Component shall be subject to the restrictions in this Section 2 applicable to the Solutions.

**2.2 Permitted Use.** Customer may permit no more than the types and numbers of users, user logins, or IDs, or other applicable usage parameters, specified in each Order to access and use the corresponding Solutions. User logins and other IDs may not be shared or used by more than one individual during any given period of time. However, Customer may reallocate or reassign user logins or IDs from time to time, as reasonably necessary to accommodate changes in personnel and duties. Customer is responsible and liable for all access to and use of the Solutions through any user login or other ID assigned to Customer or otherwise occurring under Customer's account. Customer shall notify TallyCo Solar, Inc. immediately of any unauthorized use of any user login or other ID assigned to Customer, or any other actual or suspected breach of security of which Customer becomes aware.

**2.3 Prohibited Conduct.** Except as expressly permitted by this Agreement, Customer shall not, directly or indirectly, without the express, prior written consent of TallyCo Solar, Inc.: (a) use or permit the use of, reproduce, distribute, modify, encumber, time-share, license, sublicense, rent, lease, sell or transfer any of the Solutions; (b) reverse engineer, decompile, disassemble, extract, or otherwise derive or attempt to derive the source code of any Solution or other compiled software provided or made available by TallyCo Solar, Inc. hereunder; (c) defeat or attempt to defeat any security mechanism of any Solution or of the web site(s) from which they are made available, remove or obscure any copyright, trademark, or other proprietary or confidentiality notice or legend appearing on or in any Solution or other materials provided or made available by TallyCo Solar, Inc.; or (d) knowingly permit any third party to do any of the foregoing. Customer shall not use any Solution: (i) to send unsolicited messages via fax or email in violation of applicable law; (ii) to store, send, or provide access to obscene or otherwise illegal materials; (iii) to store, send, or provide access to materials that would infringe any intellectual property right or violate any privacy right of any third party; or (iv) in any other manner that does not comply with all applicable laws and regulations.

**2.4 Suspension of Use.** TallyCo Solar, Inc. may immediately suspend or disable Customer's access to and use of the Solutions if, as a result of Customer's use of a Solution or breach of this Agreement, TallyCo Solar, Inc. reasonably believes: (a) it is likely to be subject or exposed to criminal or civil sanctions, prosecution or suit; (b) such use or breach is likely to cause harm to TallyCo Solar, Inc. or TallyCo Solar, Inc.'s customers or their respective employees or interfere with the integrity, operations or security of the Solutions or TallyCo Solar, Inc.'s network or systems or those with which TallyCo Solar, Inc. is interconnected, or interfere with another customer's use of any of the foregoing. TallyCo Solar, Inc. may also suspend or disable Customer's access to and use of the Solutions if required in order to comply with a court order or government notice. In the exercise by TallyCo Solar, Inc. of its right to act immediately under this paragraph, TallyCo Solar, Inc. shall provide as much advance notice as is reasonably practicable under the circumstances. If advance notice is not reasonably practicable, TallyCo Solar, Inc. shall provide subsequent notice promptly thereafter. Customer shall promptly cooperate with TallyCo Solar, Inc. in attempting to resolve the issue giving rise to any suspension or disablement of Customer's access to and use of the Solutions. The foregoing shall be in addition to the termination rights of either Party hereunder.

**2.5 TallyCo Solar, Inc. Responsibilities.** TallyCo Solar, Inc. shall: (a) make the Solutions (excluding any Components) available 99.5% of the time, 24 hours a day, 7 days a week, except for planned downtime, which will generally be scheduled on weekends, between 8:00 p.m. Central time on Friday and 12:00 a.m. Central time on Monday, and subject to events outside the reasonable control of TallyCo Solar, Inc.; (b) maintain the security and integrity of the Solutions and Customer Content (as defined in Section 5.2) stored by TallyCo Solar, Inc. thereon in accordance with prevailing industry practices and standards and TallyCo Solar, Inc.'s established security programs; and (c) provide basic telephone administrative and technical support for the Solutions to Customer during TallyCo Solar, Inc.'s normal business hours of 7:00 a.m. Central time through 7:00 p.m. Central time Monday through Friday, excluding U.S. nationally recognized holidays.

### 3. PROFESSIONAL SERVICES.

**3.1 General.** Subject to the terms of this Agreement and any applicable SOW, TallyCo Solar, Inc. shall perform the PS described in each SOW. TallyCo Solar, Inc. shall assign to the performance of any given PS employees and subcontractors with qualifications suitable for such PS. TallyCo Solar, Inc. may, in its sole discretion from time to time, replace any employees and subcontractors then assigned to performance of the PS with other suitably qualified employees or subcontractors.



**3.2 Customer Responsibilities.** Customer shall make available to TallyCo Solar, Inc. in a timely manner, at no charge, all technical data, computer facilities, program files, documentation, test data, sample output, and other information, resources, timely approvals and decisions and personnel of Customer that are reasonably required for the performance of the PS. In addition, to the extent any PS are to be performed on-site at Customer's location, Customer shall provide to TallyCo Solar, Inc., at no charge, such office space, services, and equipment as TallyCo Solar, Inc. reasonably requires in order to perform such PS.

#### **4. FEES AND PAYMENT.**

**4.1 Fees.** Customer shall pay TallyCo Solar, Inc. the fees specified in each Order and SOW for the corresponding Solutions and PS. Unless expressly otherwise provided in the applicable Order, TallyCo Solar, Inc. may increase the fees applicable to any renewal of the Order Term of any Order to the rates then made generally available by TallyCo Solar, Inc., by providing Customer with written notice prior to the scheduled end of the then-current Order Term. Unless expressly otherwise provided in the applicable Order, the fees applicable to any additional Order increasing the number of Subscriptions (or the permitted types and numbers of users, user logins, or IDs, storage, or other applicable usage parameters) that Customer has to a given Solution pursuant to a then-existing Order, shall be charged at the same rates as those then currently applicable to Customer's use of the Solution under such Order. The Order Term of the additional Order shall be coterminous with that of the initial Order, and the applicable fees appropriately prorated for the remaining duration of the Order Term. Customer may reduce the number of Subscriptions (or the permitted types or numbers of users, user logins, or IDs, storage, or other applicable usage parameters) applicable under any Order (and the associated fees) only upon the renewal of the Order Term of such Order, by providing TallyCo Solar, Inc. with written notice thereof at least thirty (30) days prior to the scheduled end of the then-current Order Term.

**4.2 Invoicing and Payment.** TallyCo Solar, Inc. shall invoice Customer, or automatically charge the credit card specified by Customer on the date of the applicable invoice, for the fees payable hereunder in accordance with the payment schedule indicated in the applicable Order or SOW. Unless stated to the contrary in the applicable Order or SOW, fees are due and payable within thirty (30) days after the date of the applicable invoice or the due date otherwise indicated in the applicable Order, except that credit card payments may be charged on the date of the applicable invoice. Unless legitimately disputed by Customer in good faith, any amount due hereunder and not received by TallyCo Solar, Inc. by the applicable due date shall bear an additional charge of one and one-half percent (1.5%) per month (or the maximum rate permissible under applicable law, whichever is less) from the date due until paid. TallyCo Solar, Inc. reserves the right to suspend use of the Solutions by Customer at any time until all past due fees are paid in full. TallyCo Solar, Inc. shall also be entitled to reimbursement for its reasonable collection costs and attorney fees in the event it must retain a collection firm or legal counsel due to Customer's late payment or nonpayment. Except as expressly provided herein, all fees are nonrefundable, and payment obligations cannot be canceled, regardless of actual usage of the Solutions.

**4.3 Taxes.** Fees do not include, and Customer shall pay, all sales, use, and other taxes imposed by law on Customer in connection with this Agreement and the provision of the Solutions and PS to Customer, excluding taxes on TallyCo Solar, Inc.'s income.

#### **5. PROPRIETARY RIGHTS.**

**5.1 TallyCo Solar, Inc..** The Solutions (including any Components and all other elements thereof), including all computer software in source code, object code or other form, databases, indexing, search, and retrieval methods and routines, hypertext markup language code, active server pages, intranet pages, and similar materials, and all intellectual property and other rights, title, and interest therein, including copyrights, trade secrets, rights in patents, compilations, inventions, modifications, extensions, enhancements, configurations, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to any of the foregoing (all of which shall be deemed part of the Solutions), whether conceived by TallyCo Solar, Inc. alone or in conjunction with others, constitute TallyCo Solar, Inc. trade secrets and Confidential Information and the valuable intellectual property and proprietary material of TallyCo Solar, Inc. and/or its licensors and are protected by applicable intellectual property laws of the United States and other countries. Except for the rights expressly granted to Customer in this Agreement, all rights in the Solution, Components and all of the foregoing elements thereof, including any work product resulting from PS to the extent consisting of a modification, extension, enhancement, configuration or derivative work of the Solutions or Components, and all intellectual property and proprietary rights thereto, are and shall remain solely owned by TallyCo Solar, Inc. and its respective licensors and are hereby assigned to TallyCo Solar, Inc.. TallyCo Solar, Inc. retains the right to use and provide Solutions and PS which may be similar to



those provided to Customer hereunder, and to use for itself or others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the provision thereof, provided that, in all cases, no Confidential Information attributable to Customer is disclosed thereby. This is a phrase as a service to search for.

**5.2 Customer.** As between the Parties, Customer owns and shall retain all right, title, and interest in and to any data, media, and content, in the form of documents or otherwise, provided or uploaded by Customer or its end-users to the Solutions ("Customer Content"). Customer grants to TallyCo Solar, Inc. a non-exclusive, non-transferable (subject to Section 12.7) right and license to copy, store, transmit and otherwise use the Customer Content during the Term solely as necessary and appropriate for TallyCo Solar, Inc. to fulfill its obligations under this Agreement. Except as permitted under Section 6, TallyCo Solar, Inc. may not disclose any Customer Content to anyone other than Customer and its end-users, personnel, and subcontractors.

## **6. CONFIDENTIALITY AND PRIVACY.**

**6.1 Definition.** In performance under this Agreement, each Party will have access to certain Confidential Information of the other Party or that the other Party is required to maintain as confidential pursuant to agreements with third parties. As used herein, "Confidential Information" means, with respect to either Party, all written or oral information disclosed by such Party to the other, or related to the operations of such Party, that is identified as confidential at the time of disclosure or that ought reasonably to be understood and treated as confidential, including, but not limited to, technical and non-technical data, marketing and promotional information, software programs and code (regardless of form or language), methods, techniques, strategies, processes, customer and supplier lists, trade secrets, distribution methods, and pricing and financial data. Without limiting the foregoing, the Confidential Information of Customer includes the Customer Content and other non-public materials that are provided or disclosed by Customer, and the Confidential Information of TallyCo Solar, Inc. includes the Solutions, Components and other non-public materials that are provided or disclosed by TallyCo Solar, Inc.. Notwithstanding the foregoing, Confidential Information shall not include information that: (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient Party; (c) is rightfully communicated to the recipient Party by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient Party's possession free of any confidentiality obligations at the time of disclosure; or (e) is independently developed by the recipient Party without use of the other Party's Confidential Information.

**6.2 Restrictions.** Each Party shall: (a) hold the Confidential Information of the other Party in confidence and protect such Confidential Information from disclosure to third parties using the same efforts such Party uses to protect its own confidential information of a similar nature (but not less than reasonable care); (b) use and reproduce the Confidential Information of the other Party only for the purposes described herein; (c) restrict access to the Confidential Information of the other Party to such of its personnel, agents, and consultants as have a need for access and who are subject to legally binding obligations of confidentiality substantially similar to those set forth herein; and (d) upon termination or expiration of this Agreement or the request of the other Party, return or destroy all Confidential Information of the other Party then in its possession or control; provided, however, that: (i) if a legal proceeding has been instituted to seek disclosure of the Confidential Information or with respect to which the Confidential Information is material, such Confidential Information shall not be destroyed until the proceeding is settled or a final judgment with respect thereto has been rendered; (ii) the Receiving Party shall not, in connection with the foregoing obligations, be required to identify or delete Confidential Information held in archive or back-up systems in accordance with general systems archiving or backup policies; and (iii) TallyCo Solar, Inc. may use aggregated statistical data regarding Customer's use of the Solutions without limitation, provided that neither Customer nor any end-user is identifiable by name in such aggregated information. As between the Parties, each Party's Confidential Information shall be and remain solely the property of such Party. Each Party may disclose and retain Confidential Information of the other Party to the extent required: (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party required to make such disclosure first provides, unless prohibited by applicable law, written notice to the other Party, affording it an opportunity to obtain a protective order; or (y) to establish or enforce such Party's rights under this Agreement.

**6.3 Duration.** Each Party's obligations with respect to Confidential Information set forth in this Section 6 shall continue in force and effect throughout the Term and: (a) with respect to Confidential Information that constitute a trade secret under applicable law, for so long as, without breach hereof, such trade secret status is maintained; and (b) with respect to any other Confidential Information, for a period of five (5) years after termination or expiration of this Agreement.



**6.4 Privacy.** TallyCo Solar, Inc. shall take commercially reasonable steps to safeguard the privacy and security of personally identifying information and data ("Personal Information") stored on the Solutions. TallyCo Solar, Inc.'s current practices in this regard are set forth in the TallyCo Solar, Inc. Privacy Policy posted on TallyCo Solar, Inc.'s web site, which may be modified from time to time in accordance with its terms. TallyCo Solar, Inc. hereby advises Customer that it is compliant with the "Safe Harbor" framework agreed to by the European Commission and the United States Department of Commerce for the purpose of certifying the compliance of U.S.-based companies with the European Commission's Directive on Data Protection.

## **7. TERM AND TERMINATION.**

**7.1 Term.** The term of this Agreement (the "Term") shall commence on the Effective Date and shall continue in force and effect until terminated in accordance with Section 7.3. Except as otherwise provided in Section 4.1, the term of any given Order (the "Order Term") shall commence on the start date indicated in the Order and, unless earlier terminated in accordance with Section 7.3, shall continue for the period specified therein. Each SOW shall take effect on the date executed by both Parties and shall, unless earlier terminated in accordance with Section 7.3, continue until all PS to be provided thereunder have been completed.

**7.2 Automatic Renewal.** UNLESS AND UNTIL TERMINATED BY EITHER PARTY PURSUANT TO SECTION 7.3 OR EITHER PARTY PROVIDES WRITTEN NOTICE OF NON-RENEWAL TO THE OTHER PARTY AT LEAST THIRTY (30) DAYS PRIOR TO THE SCHEDULED END OF THE THEN-CURRENT ORDER TERM, THE ORDER TERM OF EACH ORDER SHALL AUTOMATICALLY RENEW AND BE EXTENDED UPON ITS EXPIRATION (REGARDLESS OF WHETHER PREVIOUSLY RENEWED OR EXTENDED) FOR A PERIOD OF THE SAME DURATION AS THE ORDER TERM SPECIFIED ON SUCH ORDER.

**7.3 Termination.** Customer may terminate this Agreement, or any given Order or SOW, immediately and without penalty upon providing thirty (30) days written notice thereof to the other Party.

**7.4 Effects of Termination.** Upon any termination of this Agreement (or any termination or expiration of any Order), all rights and licenses granted to Customer herein to the affected Solutions shall automatically terminate and be revoked, and each Party shall, subject to Section 6.2 and 7.5: (a) immediately discontinue all use of the other Party's Confidential Information; (b) delete all of the other Party's Confidential Information in its possession; and (c) return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in such Party's possession or control. In addition, upon any termination or expiration of this Agreement or any given Order, Customer shall promptly pay TallyCo Solar, Inc. all amounts remaining payable under, as applicable, this Agreement and any Order and SOW. Any termination of this Agreement shall simultaneously terminate any Orders and SOWs then in effect.

**7.5 Return of Customer Content.** In addition to the functionality of any applicable Solution that allows for the downloading of Customer Content by Customer, TallyCo Solar, Inc. will, upon receiving a request from Customer within thirty (30) days after the effective date of termination of this Agreement or an applicable Order (provided that Customer has paid TallyCo Solar, Inc. any outstanding amounts then payable under this Agreement), make available to Customer, for downloading or physical delivery, a file of Customer Content in comma separated value (.csv) format, or other industry-standard format requested by Customer, with the fees therefor charged at TallyCo Solar, Inc.'s then-prevailing rates. After such thirty (30) day period, TallyCo Solar, Inc. shall have no obligation to maintain or provide any Customer Content and may, unless prohibited by applicable law, delete all Customer Content in its systems or otherwise in its possession or control.

## **8. WARRANTIES.**

**8.1 Solutions and Professional Services.** TallyCo Solar, Inc. warrants, for Customer's benefit alone, as follows: (a) for a period of thirty (30) days from "Go Live," which is defined as the date on which TallyCo Solar, Inc. informs Customer that an applicable Solution is ready for live, production use, that the applicable Solution will perform without material defect or error in its principal features and functions, and (b) for a period of thirty (30) days from the performance of PS, that the PS will have been performed in a competent, professional and workmanlike manner in material accordance with standards common and prevalent in the industry and with the requirements contained in an applicable SOW.

**8.2 Exclusive Remedies.** As Customer's sole and exclusive remedies for a failure of the Solutions or PS, as applicable, to conform to their respective warranties set forth in Section 8.1, and as TallyCo Solar's entire liability for breach of those warranties, if Customer notifies TallyCo Solar, Inc. in writing and in reasonable detail of the nature





and extent of such failure within the applicable warranty period, TallyCo Solar, Inc. shall (a) in the case of a breach of the warranty in Section 8.1(a), use commercially reasonable efforts to correct such breach, and (b) in the case of a breach of the warranty in Section 8.1(b), re-perform the affected PS. As an alternative to the foregoing remedies, TallyCo Solar, Inc. may terminate this Agreement (and/or the applicable Order, Subscription or SOW) and in such event TallyCo Solar, Inc. will refund to Customer, (i) in the case of a breach of the warranty in Section 8.1(a), the Subscription fees paid during the current Order Term for the affected non-conforming Solution, including Subscription fees paid in advance for the then-remaining or unexpired portion of the Order Term for the affected non-conforming Solution, and (ii) in the case of a breach of the warranty in Section 8.1(b), the fees paid for the portion of such PS giving rise to the breach including prorated PS fees paid in advance for PS which shall not be provided.

**8.3 Exclusions.** The warranties set forth in Section 8.1 shall not apply with respect to any problem to the extent due to causes outside TallyCo Solar, Inc.'s reasonable control, including Customer's misuse, modification or configuration of a Solution or use in a manner contrary to that described or recommended in the applicable online "Help" feature, or with computer software or equipment other than those recommended in TallyCo Solar, Inc.'s published specifications, or to the extent due to problems within or impacting Customer's computing environment, including third party software applications, hardware, network or Internet connectivity.

**9. DISCLAIMERS.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 8: (A) TallyCo Solar, INC. MAKES NO WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THIS AGREEMENT. TallyCo Solar, INC. DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND OTHERWISE, INCLUDING THOSE THAT ARISE THROUGH USAGE OF TRADE OR CUSTOM, COURSE OF DEALING AND COURSE OF PERFORMANCE; (B) THE SOLUTIONS, INCLUDING ANY COMPONENTS, AND THE PS ARE PROVIDED "AS-IS", WITHOUT ANY WARRANTIES OF ANY KIND; AND (C) TallyCo Solar, INC. DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SOLUTIONS, COMPONENTS OR THE PS ARE OR WILL NECESSARILY BE CONTINUOUSLY AVAILABLE OR APPROPRIATE FOR CUSTOMER'S PARTICULAR USE OR THAT THEY WILL BE ERROR-FREE.

**10. LIMITATIONS OF LIABILITY.**

**10.1 EXCLUSIONS.**

**10.2 BASIS OF THE BARGAIN.** THE PROVISIONS OF SECTIONS 9, 10 AND 11 OF THIS AGREEMENT ARE ALL FUNDAMENTAL AND SPECIFIC REQUIREMENTS OF THE BASIS OF THE BARGAIN BETWEEN CUSTOMER AND TallyCo Solar, INC., AND TallyCo Solar, INC. WOULD NOT BE ABLE TO PROVIDE THE SERVICES ON THE OTHER TERMS SET FORTH HEREIN WITHOUT EACH SUCH PROVISIONS.

**11. INDEMNIFICATION.**

**11.1 Infringement.** TallyCo Solar, Inc. shall defend, indemnify, and hold Customer harmless from and against any claims, actions, and other proceedings ("Claims"), and shall pay all losses, damages, liabilities, settlements, judgments, awards, interest, civil penalties, and reasonable expenses (collectively, "Losses," and including reasonable attorneys' fees and court costs), to the extent arising out of any claims by any third party that the Solutions or the PS (excluding Customer Content and other material provided by, or included at the direction of, Customer) infringe upon any United States' copyright or any United States' patent issued as of the date of the applicable Order. In the event of such a claim, TallyCo Solar, Inc. may, in its discretion, either procure the right to enable Customer to continue to use the allegedly infringing item or develop or obtain a non-infringing substitute of substantially equivalent functionality and performance. If TallyCo Solar, Inc. determines that neither of the foregoing options is commercially reasonable or practicable, then, notwithstanding anything to the contrary in this Agreement, TallyCo Solar, Inc. may immediately terminate this Agreement or the applicable Order or SOW and refund to Customer any prepaid fees for the then-remaining or unexpired portion of the Order Term or for PS not yet provided under the applicable SOW Term. Notwithstanding the foregoing, TallyCo Solar, Inc. shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim to the extent that it is based upon: (a) a modification by Customer (or by anyone under Customer's direction or control or using logins, IDs or passwords assigned to Customer) to the Solutions or results of the PS; (b) a modification made by TallyCo Solar, Inc. pursuant to Customer's order or specification or in reliance on materials or information provided by Customer; or (c) the use by Customer (or by anyone under Customer's direction or control or using logins, IDs or passwords assigned to Customer) of any Solutions or results of the PS other than in accordance with this Agreement. This Section 11.1 sets forth Customer's sole and exclusive remedy, and TallyCo Solar, Inc.'s entire liability, for any claim that the PS, Solution or other materials provided by TallyCo Solar, Inc. violate or infringe upon the rights of any third party.



**11.2 Third Party Claims.** Customer shall defend, indemnify, and hold TallyCo Solar, Inc. harmless from and against any Claims, and shall pay all Losses, to the extent arising out of or related to Customer's (or that of anyone authorized by Customer or using logins, IDs or passwords assigned to Customer) use or modification of any Solution; Customer Content; and/or Customer's violation of applicable law.

**11.3 Defense.** With regard to any Claim subject to indemnification pursuant to this Section 11, the indemnified Party shall grant the indemnifying Party the right to assume full defense and control of such Claim and shall reasonably cooperate with the indemnifying Party regarding such Claim. Nevertheless, the indemnified Party may reasonably participate in such defense, at its sole expense, but shall not settle any such Claim without the indemnifying Party's prior written consent. The indemnifying Party shall not settle or compromise any Claim in a manner other than the payment of monies by the indemnified Party without the prior written consent of the indemnified Party, such consent not to be unreasonably withheld or delayed.

## **12. GENERAL.**

**12.1 Changes to the TallyCo Solar, Inc. Solutions.** TallyCo Solar, Inc. expressly reserves the exclusive right to, without prior notice, at any time and from time to time: (a) offer new, additional, or substitute Solutions; and (b) modify, amend, or discontinue offering all or any particular Solutions. Nevertheless, during any given Order Term, TallyCo Solar, Inc. shall not, except as expressly provided elsewhere in this Agreement: (i) materially and significantly reduce or decrease the functionality and features of the Solutions provided under the applicable Order; or (ii) cease offering any of such Solutions without offering a substitute of comparable functionality and features. TallyCo Solar, Inc. may modify, improve or increase the features of any Solution from time to time at no additional cost to Customer.

**12.2 Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the Parties regarding the subject matter hereof and supersedes any prior representations, advertisements, statements, proposals, negotiations, discussions, understandings, or agreements regarding such subject matter. This Agreement may not be modified or amended except by a writing signed by an authorized representative of each of the Parties. In the event of any conflict between the terms contained in the body of this Agreement, any exhibit, Order or SOW, the terms contained in the applicable exhibit, Order or SOW shall prevail and govern. No additional terms, policies or requirements proposed by either Party, whether in electronic form or otherwise or associated with any purchase order, payment system or otherwise, shall be applicable to this Agreement or any Solutions or PS at present or in the future, absent the express manual written consent thereto by the other Party.

**12.3 Severability.** Every provision of this Agreement shall be construed, to the extent possible, so as to be valid and enforceable. If any provision of this Agreement (or portion thereof) is held by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, such provision (or portion thereof) shall be deemed severed from this Agreement and all other provisions shall remain in full force and effect.

**12.4 Survival.** The provisions of this Agreement, and the rights, duties, and obligations of the Parties hereunder, which by their nature may be reasonably inferred to have been intended to survive termination, cancellation, completion, or expiration of this Agreement (including the rights, duties, and obligations set forth in Sections 4, 5, 6, 7.4, 7.5, 9, 10, and 12 hereof) shall survive and continue as valid and enforceable rights, duties, and obligations.

**12.5 Waiver.** The failure by either Party at any time to enforce any of the provisions of this Agreement or any right or remedy available hereunder or at law or in equity, or to exercise any option herein provided, shall not constitute a waiver of such provision, right, remedy, or option or in any way affect the validity of this Agreement. The waiver of any default by either Party shall not be deemed a continuing waiver, but shall apply solely to the instance to which such waiver is directed.

**12.6 Assignment.** Customer shall notify Company in writing in advance of any proposed change in its ownership, control or management and shall not without the written consent of Company delegate the performance of its obligations under this Agreement to any firm or person (other than a principal, officer or regular employee of Customer)..). For avoidance of doubt, in the event of a permitted assignment by Customer of this Agreement, the Subscriptions purchased by Customer hereunder would continue to be subject to the restrictions and limitations specified herein and in the applicable Order, including any limits focused on a specific business line, group, division, department or other organizational unit of Customer. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

**12.7 No Third Party Benefit.** The provisions of this Agreement are for the sole benefit of the Parties hereto. Except as expressly provided herein, this Agreement neither confers any rights, benefits, or claims upon any person or entity

# Tally

not a Party hereto nor precludes any actions against, or rights of recovery from, any persons or entities not Parties hereto.

**12.8 Notice.** Other than routine administrative communications which may be exchanged by the Parties via e-mail, all notices required hereunder shall be in writing and shall be given personally or sent by traceable postal service mail, e.g., certified or registered mail, or private overnight courier (e.g., FedEx, UPS or DHL) and shall be deemed given upon delivery, if given personally, or when deposited with the overnight courier or national postal service with the proper postage affixed, if sent by mail, in accordance with this provision. Facsimile (faxed) notices are not effective unless the originals are sent (in the manner stated above) within one (1) business day after the facsimile transmission or they are acknowledged in writing by an authorized representative of the receiving Party. Notices shall be addressed to each Party at their address set forth in the Order, which the Parties may change by compliance with this Section.

**12.9 Independent Contractors.** The relationship arising from this Agreement does not constitute or create any joint venture, partnership, employment relationship or franchise between them, and the Parties are acting as independent contractors in making and performing this Agreement.

**12.10 U.S. Government End-Users.** The Solutions, Components and related documentation are "commercial items" as defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, U.S. Government end users acquire licenses to the Solutions (including any Component) and related documentation with only those rights set forth therein.

**12.11 Execution.** This Agreement and the Order, SOW or other exhibit referencing and governed by this Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute the same instrument. Each Party agrees to be bound by its own signature transmitted by fax machine, in the form of an electronically scanned image (e.g., in .pdf form) of its own signature transmitted by e-mail, or by means of e-signature technology, and agrees that it shall accept the signature of the other party hereto transmitted in the same manner.

**12.12 Miscellaneous.** The defined terms in this Agreement shall apply equally to both the singular and the plural forms of the terms defined. The term "person" includes individuals, corporations, partnerships, trusts, other legal entities, organizations and associations, and any government or governmental agency or authority. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The words "approval," "consent" and "notice" shall be deemed to be preceded by the word "written." References to this Agreement in the context of any requirement of either Party to perform in accordance with this Agreement shall be interpreted to refer to the terms of this document, and such other terms as are contained in any exhibit. All currency amounts agreed to by the Parties shall be in U.S. Dollars. A reference to the "terms" of this Agreement or other applicable document means all provisions of this Agreement or such other document referred to. The captions in this Agreement are for convenience of reference only and shall not be used to interpret this Agreement.

3.12 at the end of the initial term or at the end of any renewal term , this agreement shall automatically renew for an additional one ( 1 ) year period ( each such additional term a " renewal term" ) , unless either party notifies the other party in writing to the contrary at least sixty (60 ) days prior to the expiration of the then-current term .

28.5 ( b ) either party may terminate this agreement upon not less than one hundred and eighty ( 180 ) days prior written notice to the other party , which notice may be given at any time , provided that the effective date of such termination may not be prior to the expiration of the initial license period .



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3.8 the term of this agreement shall be automatically extended upon the expiration of the initial license period ( and thereafter , of the then-current term ) for successive one-year terms .

the construction and effect of any participating addendum or order against the contract( s ) shall be governed by and construed in accordance with the laws of the participating state .

27.4 ( d ) if BuyCo commits a material breach of this agreement that is not cured within thirty ( 30 ) days from the date of written notification of such breach by licensee to BuyCo , licensee may terminate this agreement by sending written notice of such termination to BuyCo. however , the obligations contained herein shall remain in effect for a period of two ( 2 ) years from the date the confidential information was disclosed under this agreement .

The customer also shall pay to company all expenses incurred by company in exercising any of its rights under this agreement or applicable law with respect to the collection of a payment default , including attorneys ' fees , court costs , and collection agency fees .

15.23 Tally shall not be liable for any incidental , consequential , indirect , or punitive damages arising out of or connected with the subject matter of this agreement.

14.45 ( a ) indemnification in third party proceedings .

10.17 to the extent that under mandatory law , our proprietary rights cannot be assigned , we irrevocably agree to grant , and hereby grant , to you an exclusive ( excluding also us ) , perpetual , irrevocable , unlimited , worldwide , fully paid and unconditional license to use and commercialize our proprietary rights to the work product in any manner now known or in the future discovered with effect from the termination date .

16.1 ( d ) if , at any time during the term of an individual site license , it becomes commercially inadvisable in licensee 's business judgment for licensee to utilize that particular site , or if any required certificate , permit , license or approval is denied , cancelled or otherwise terminated so that licensee is unable to use the site for its intended purpose , licensee may terminate the individual site license .

22.12 payment .

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered as of the Effective Date by their respective authorized representatives whose signatures appear below.

***TallyCo Solar, Inc. Inc.***

By:

By:

Signature: \_\_\_\_\_

Signature:

Name: \_\_\_\_\_

Name:

Title: \_\_\_\_\_

Title:

Date: \_\_\_\_\_

Date:

Updated March 1, 2020