

# Tellabs Standard Terms and Conditions for Tellabs Deliverables

## 1. Applicability

Unless otherwise agreed in writing, the following terms and conditions (“Agreement”) shall apply to the purchase, sale and licensing of all Tellabs Deliverables.

## 2. Definitions

“Business Hours” means Monday through Friday (excluding public and bank holidays) during the normal business hours of the Tellabs facility providing Support.

“Deliverables” means, collectively, Products and Services.

“Documentation” means the user instructions related to a Product.

“Force Majeure” means causes outside the reasonable control of a Party that cannot be avoided by the exercise of due care, including but not limited to: (a) governmental actions, orders, legislation, regulations, restrictions or rationing; (b) riots, civil disturbances or disobedience, epidemic, quarantine, acts of terrorism or war; (c) strikes, lockouts or shutdowns; (d) shortages of labor or supplies, interruption or lack of transportation, embargo or prohibition of imports or exports; or (e) fire, flood, hurricane, earthquake, storm, lightning, explosion, acts of God or of a public enemy.

“Hardware” means that portion of a Product that is not Licensed Materials.

“Licensed Materials” means Software and Documentation.

“Management Licensed Materials” means Licensed Materials and software key, if any, licensed for monitoring, surveying, configuring, provisioning and otherwise managing Products in Buyer’s Network.

“Network” means: (a) the operation support system under the exclusive control of Buyer; and/or (b) the equipment infrastructure that Buyer uses to deliver its end-user services.

“Order” means Buyer’s written or electronic offer to purchase Deliverables.

“Party(Parties)” means, individually or collectively, Tellabs and Buyer.

“Product(s)” means those systems, associated system plug-ins, and other goods, including the Licensed Materials, Tellabs sells and/or licenses to Buyer.

“Service(s)” means any work that Tellabs performs for Buyer, as stated in the Tellabs proposal or agreement to which the Order refers.

“Shipment” means delivery of the Product by Tellabs to the carrier.

“Software” means the Tellabs executable computer programs, system operating software, firmware and other digital instructions and control data associated with a Product, including any enhancements, modifications or parts thereof.

“Subcontractors” means third parties Tellabs may use to perform all or part of its obligations under this Agreement.

“Support” means those Services pertaining to maintaining the Product.

“Support Fee” means the annual fee that Buyer is obliged to pay in order to receive Support during each Support Term.

“Support Term” means the period, as stated in the Tellabs proposal or agreement to which the Order refers, during which Buyer is entitled to receive Support.

“Supported Product” means a Product (or Product system, if applicable) for which Buyer purchases Support.

“Tellabs” means the Tellabs entity that fulfills the Order, on behalf of itself and its affiliates.

## 3. License Grant

**3.1** Subject to the terms of this Agreement, Tellabs grants Buyer anon-exclusive, non-transferable license to use the Licensed Materials Tellabs delivers to Buyer: (a) with the single Product for which it was delivered; (b) for Buyer’s internal purposes; (c) in accordance with the Documentation; and (d) for Management Licensed Materials, for the permitted number of computing devices, simultaneous users and network elements in Buyer’s Network, as specified in the Documentation or otherwise.

**3.2** Buyer receives no other express or implied license or right under any patent, copyright, trademark, trade secret or other proprietary right. The Licensed Materials are protected by copyright laws and international treaties.

**3.3** Buyer may make one (1) copy of the Software (excluding firmware), solely for backup purposes (unless additional copies are necessary for the Software’s intended use). Such copy shall be treated as an original for purposes of any restrictions herein. Buyer shall not remove, obscure or otherwise disturb any copyright or proprietary notices on the Licensed Materials, and Buyer shall reproduce the same on any copy.

**3.4** Buyer shall not directly or indirectly: (a) decompile, disassemble, decode, reverse engineer (unless required for interoperability, but only where and to the extent the foregoing prohibitions are invalid under applicable law), modify, append, translate, copy (except as provided above), distribute, publicly display, disclose, sell, lease, loan, rent, transfer, assign, sublicense or otherwise provide to third parties the Licensed Materials, including their authorization control utilities; (b) release benchmarks or comparisons of the Licensed Materials; or (c) use the Licensed Materials for time-sharing, service bureau or subscription services.

**3.5** Third-party software Tellabs provides to Buyer solely under the third-party’s name shall be subject to the terms and conditions, including the licenses, warranties and indemnities, specified by the licensor of the third-party software. To the extent that the Licensed Materials originate from a third-party licensor, such licensor may be a third-party beneficiary to the license granted herein, may enforce the license directly against Buyer, and shall have no warranty or other obligation or liability to Buyer under this Agreement regarding such Licensed Materials.



**3.6** This paragraph applies to all acquisitions of the Licensed Materials by or for the U.S. government. The Licensed Materials have been developed entirely at private expense. The software and documentation are “commercial items,” as that term is 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 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the commercial computer software and commercial computer software documentation are being licensed to U.S. government end users (a) only as commercial items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions set forth in the Tellabs Standard Terms and Conditions for Tellabs Deliverables.

## 4. Information

Any drawings, specifications, technical and other information supplied by Tellabs shall: (a) be used solely for installing and maintaining Products; (b) not be used in a manner detrimental to Tellabs’ interests; (c) not be reproduced, used or disclosed to third parties without Tellabs’ prior written consent; and (d) remain Tellabs’ property.

## 5. Confidentiality

Licensed Materials contain confidential and proprietary information of Tellabs or its licensors. Buyer shall receive and maintain the Licensed Materials and other Tellabs confidential information (including this Agreement) in confidence and agrees to use at least the degree of care that it uses to protect its own proprietary information, but no less than reasonable care, to prevent the unauthorized use outside the scope of this Agreement, disclosure or publication of Tellabs confidential information. Buyer’s use of and access to the Licensed Materials will be strictly limited to its employees with a need to know who shall have contractually agreed to comply with confidentiality obligations no less stringent than those stated herein. Buyer’s obligations under this Section 5 shall continue indefinitely for so long as such Licensed Materials continue to be a trade secret.

## 6. Limited Warranties; Disclaimer

Tellabs’ Products are subject to Tellabs’ Global Warranty, available at <http://www.tellabs.com/legal/supportterms.shtml> or upon request. The Documentation is licensed “AS IS.” TELLABS EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

## 7. Limitation of Liability

TELLABS SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT OR SPECIAL DAMAGES OR LIABILITIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO BUSINESS INTERRUPTION, LOST PROFITS, LOSS OF USE OR LOSS OF DATA, UNDER ANY THEORY OF LIABILITY EVEN IF TELLABS WAS ADVISED OF THE LIKELIHOOD OF SUCH DAMAGES

OR LIABILITIES. TELLABS’ LIABILITY SHALL NOT EXCEED THE NET PURCHASE PRICE OR LICENSE FEE PAID FOR THE DELIVERABLE CAUSING THE DAMAGE, LOSS OR LIABILITY. THIS SECTION 7 SHALL ONLY BE LIMITED IF, AND TO THE EXTENT, REQUIRED BY THE APPLICABLE GOVERNING LAW.

## 8. Intellectual Property

**8.1** Tellabs shall defend Buyer from a third-party claim against Buyer asserting that a Product infringes a United States patent, copyright or trade secret (“Claim”), and Tellabs shall pay any settlement made by Tellabs, Buyer’s reasonable and verifiable costs and expenses, and third-party damages finally awarded against Buyer, provided that: (a) Buyer promptly notifies Tellabs in writing of the Claim; (b) Tellabs has sole control of the defense and settlement; (c) Buyer reasonably cooperates in providing information and assistance; and (d) Buyer reasonably cooperates with any efforts that Tellabs may undertake to replace or modify the Product to avoid infringement.

**8.2** In addition, if Buyer is enjoined from using the Product by reason of such Claim or Tellabs determines in its sole judgment that an injunction is likely, then provided Buyer meets Buyer’s obligations (a)–(d) in Subsection 8.1 and absent any replacement or modification provided by Tellabs to avoid infringement, Tellabs may at its sole election: (a) obtain the rights necessary to permit continued use of such Product; or (b) terminate this Agreement, allow Buyer to return such Product for a refund of the amount paid for such Product less depreciation, and if Buyer fails to do so, Buyer will give Tellabs access to Buyer’s facilities during normal business hours to retake the Product.

**8.3** Notwithstanding the above, Tellabs is not obligated to the extent the Claim is based upon: (a) a modification made other than by Tellabs; (b) Tellabs’ compliance with Buyer’s designs, instructions or specifications; (c) combination of a Product with other equipment, materials or processes; (d) use of a Product not in accordance with the applicable Documentation; or (e) use of a Product in violation of or otherwise outside the scope of this Agreement ((a)–(e) collectively “Claim Exceptions”). Buyer shall, in a commensurate manner, defend Tellabs for any third-party claim based upon any Claim Exceptions, and shall pay any settlement made by Buyer, Tellabs’ reasonable and verifiable costs and expenses, and any third-party damages finally awarded against Tellabs.

**8.4** This Section 8 states Tellabs’ sole obligations and Buyer’s exclusive remedies with respect to any third-party claim based upon intellectual property rights.

## 9. Termination

The license granted in Section 3 (“License Grant”) is effective for the life of the Hardware portion of the Product for which the Licensed Materials are delivered unless earlier terminated as provided in this Agreement or by Buyer in writing. This Agreement (including such license) will terminate immediately: (a) upon any breach of Section 3 (“License Grant”) or Subsection 15.5 (export compliance) or any



incurable Buyer breach of this Agreement; (b) if Buyer fails to cure any curable breach within thirty (30) days after notice of such breach; or (c) as this Agreement otherwise provides. Immediately upon termination or Buyer's receipt of replacement Licensed Materials and other Tellabs confidential information, Buyer shall immediately cease all use of, and return or certify destruction of, the Licensed Materials and other Tellabs confidential information and all copies. Services may not be terminated in whole or in part without the prior written consent of Tellabs. Termination is not an exclusive remedy.

## 10. Pricing

Prices for Deliverables shall be as stated in the then-current Tellabs price list. Buyer is responsible for all duties, taxes, levies and fees arising from the purchase, sale, licensing, use and/or delivery of the Deliverables. Buyer shall pay the agreed Deliverables prices with no setoffs or deductions.

## 11. Payment

Buyer shall pay Tellabs for Products via: (a) confirmed irrevocable letter of credit ("L/C"); or (b) check or wire transfer received at least five (5) business days before the Order's confirmed Shipment date, or, if approved by Tellabs' credit department, within thirty (30) calendar days after the date of the Order invoice. Each L/C shall: (c) allow partial shipments or transshipments; (d) be issued by a Tellabs-designated bank; (e) be opened in favor of Tellabs at least six (6) weeks prior to the confirmed Shipment date; (f) be payable at the counter of the Tellabs-designated confirming bank at sight immediately upon presentation of the Order's commercial invoice, airway bill or packing list and without confirmation by Buyer or any other third party; (g) not require any other documents in order to be opened; and (h) be subject to the rules of the Uniform Customs and Practice for Documentary Credits (2007 Revision)/ICC Publication No. 600, except to the extent that the rules are inconsistent with the Agreement. Buyer shall pay all L/C costs and expenses (including but not limited to all confirmation charges and those costs and expenses pertaining to the issuing bank, the advising bank and/or extensions of the letter of credit). Buyer shall pay Tellabs for Services via check or wire transfer received at least five (5) business days before the Order's confirmed Service start date. Interest on past-due amounts shall accrue at the lesser of one-and-one-half percent (1.5%) per month or the highest rate permitted by law. All shipments are FCA, Tellabs named premises (Incoterms® 2000). Buyer acknowledges and agrees that Tellabs may, at any time in its sole discretion and without prior notice, sell or transfer to third parties any receivables from Buyer, whether in whole or in part.

## 12. Title and Security Interest

Title to a Product (excluding the Licensed Materials) shall pass to Buyer upon Shipment. Nonetheless, if the law of the place where such Product is destined requires that Tellabs hold title in order to retain a security interest in such Product, then title shall immediately revert back to Tellabs if Buyer defaults on its payment obligations.

## 13. Cancellations

Buyer shall pay the following charges for cancellation of Product Orders:

<b>EFFECTIVE DATE OF CANCELLATION</b> (Stated as number of days before the scheduled Shipment date)	<b>CANCELLATION CHARGE FOR NONOPTICAL PRODUCTS</b> (As percentage of total net purchase price of cancelled Order)	<b>CANCELLATION CHARGE FOR OPTICAL PRODUCTS</b> (As percentage of total net purchase price of cancelled optical products)
Fifteen (15) or less	Twenty percent (20%)	Fifty percent (50%)
Sixteen (16) to thirty (30)	Fifteen percent (15%)	Twenty-five percent (25%)
Thirty-one (31) to forty-five (45)	Ten percent (10%)	Ten percent (10%)
More than forty-five (45)	No charge	No charge

Cancellations by Buyer are effective upon receipt of written notification by Tellabs. Buyer may not cancel an accepted Order for Services.

## 14. Reservation of Rights

Notwithstanding Subsection 15.6, Tellabs may make changes to this Agreement at any time. All such changes shall become effective immediately and apply to all Orders received by Tellabs after the effective date of such changes.

## 15. General

**15.1** This Agreement states all of the promises, agreements and conditions regarding its subject matter, supersedes all prior understandings (whether written, oral or otherwise) and constitutes the entire agreement between the Parties. If any provision of this Agreement shall for any reason be held to be unenforceable (in whole or in part) in any respect, then such unenforceable provision (or part thereof) shall be construed as if it had never been contained herein. Unless the Parties have mutually executed an agreement governing the purchase of Deliverables subject to the Order, all Orders shall be fulfilled strictly in accordance with the terms and conditions of this Agreement, and no other terms and conditions shall apply.

**15.2** Buyer shall not assign or transfer the Licensed Materials or this Agreement or any interest in the foregoing except with Tellabs' prior written consent.

**15.3** Tellabs and Buyer are each engaged in an independent business. Each Party shall perform its obligations as an independent contractor and not as the agent, employee or servant of the other Party. Each Party shall be solely responsible for: (a) the employment, direction, supervision, compensation and discharge of its own employees, agents and subcontractors, including compliance with social security, withholding and all other applicable regulations; and (b) its own acts and those acts of its employees, agents and subcontractors.



**15.4** Any failure by either Party (or by Tellabs' Subcontractors) to fulfill any of its obligations shall not be deemed a breach of this Agreement if that failure is due to Force Majeure. Notice of Force Majeure shall be made promptly in writing to the other Party. The performance of a Party's obligations under this Agreement shall be suspended for as long as Force Majeure exists. Each Party shall take reasonable steps to limit the effect of Force Majeure. If Force Majeure continues for more than six (6) months, then either Party shall have the right to terminate this Agreement upon written notice.

**15.5** The Parties are aware of, and shall strictly comply with, all applicable trade sanctions, executive orders, export control laws, regulations, restrictions and the like (including but not limited to those imposed by the governments of the United States of America and the European Community) pertaining to any Products or Services (and the technology therein) supplied by Tellabs or its affiliates or Subcontractors. Without limiting the generality of the foregoing, Buyer shall not export, re-export, transship, divert or transfer (whether directly or indirectly) any such Products or Services (or technology therein) contrary to such trade sanctions, executive orders, export control laws, regulations, restrictions or the like.

**15.6** No changes or additions to this Agreement shall be effective unless in writing and signed by Tellabs' authorized representative. Tellabs' failure to insist upon strict adherence to any term or condition of this Agreement shall not be a waiver by Tellabs of its right to thereafter insist upon strict adherence to that, or any other, term or condition.

**15.7** Sections 5 ("Confidentiality"), 7 ("Limitation of Liability") and 12 ("Title and Security Interest") hereof and any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Agreement shall so survive.

**15.8** If a dispute arises that is not resolved within thirty (30) days from the date that either Party provides the other Party with written notice of the existence thereof, then each Party shall designate an executive who is authorized to investigate, negotiate and settle the dispute. The executives shall exercise good faith efforts to settle the dispute. If the executives do not resolve the dispute within thirty (30) days (or an extended period if they so agree), then the dispute resolution procedure shall be as follows:

(a) If the Tellabs entity is a U.S. corporation, then the Parties shall submit the dispute to non-binding mediation. The venue of such mediation shall be either DuPage or Cook County, Illinois, USA. The Parties shall share equally the costs and expenses of the mediation, except that each Party shall bear its own attorneys' fees. If the dispute is not resolved through mediation within thirty (30) days of the mediator's appointment, then the Parties may submit the dispute to litigation subject to the governing law specified herein. No litigation or any other action pertaining to a dispute shall be pursued unless this dispute resolution procedure has been exhausted. All questions regarding the validity, intention, interpretation, meaning or enforcement of this Agreement shall be resolved under the laws of Illinois (excluding its conflict of laws provisions).

Nonetheless, either Party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or confidential information.

(b) If the Tellabs entity is a non-U.S. company, then the Parties shall submit the dispute to arbitration. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed within the said Rules. The place of arbitration shall be Stockholm, Sweden. The language of the arbitration proceedings shall be English. All questions regarding the validity, intention, interpretation, meaning or enforcement of this Agreement shall be resolved under the laws of Sweden (excluding its conflict of laws provisions). Nonetheless, either Party at any time may pursue equitable relief before any court of competent jurisdiction in order to protect its intellectual property rights or confidential information.

The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act shall not apply to any transaction entered into between the Parties.

**15.9** Subject to full compliance with any written guidelines or requirements that are provided by Buyer to Tellabs in advance and further subject to the usage limitations set forth in the following sentence, Buyer hereby agrees that Tellabs may reference Buyer's name and trademark (a) on Tellabs' internet or intranet corporate websites, (b) in customer presentations, corporate presentations or verbal communications, (c) in Tellabs-produced magazines, videos, case studies, press releases and white papers, and (d) in Tellabs' annual reports. Such usage shall be strictly limited to the following purposes: (e) to identify the Products, Product series or Services that Buyer has purchased or licensed from Tellabs, (f) the generic purpose or application of such Products, Product series or Services, or (g) to reiterate any other information contained in any press release(s) issued by either Party with the other Party's approval. Subject to full compliance with any written guidelines or requirements that are provided by Tellabs to Buyer in advance and further subject to the usage limitations set forth in the following sentence, Tellabs hereby agrees that Buyer may reference Tellabs' name and trademark (h) on Buyer's internet or intranet corporate websites, (i) in customer presentations, corporate presentations or verbal communications, (j) in Buyer-produced magazines, videos, case studies, press releases and white papers, and (k) in Buyer's annual reports. Such usage shall be strictly limited to the following purposes: (l) to identify the Products, Product series or Services that Buyer has purchased or licensed from Tellabs, (m) the generic purpose or application of such Products, Product series or Services or (n) to reiterate any other information contained in any press release(s) issued by either Party with the other Party's approval. In addition to the foregoing, the Parties shall provide each other with reasonable cooperation, assistance and approval (not to be unreasonably withheld) in the creation, completion and publication of any press releases, magazine articles, videos, case studies, white papers or other sales promotions as requested by a Party and pertaining to the transactions contemplated by this Agreement.

**15.10** Tellabs shall perform Product repairs and returns pursuant to Tellabs' Global Repair and Return Policy, available at <http://www.tellabs.com/legal/supportterms.shtml> or upon request.

## 16. Product-Specific Terms and Conditions

In addition to the terms and conditions of this Agreement, use of certain Tellabs Products is subject to Tellabs Product-Specific Terms and Conditions, available at [http://www.tellabs.com/legal/tlab\\_terms-product\\_specific.pdf](http://www.tellabs.com/legal/tlab_terms-product_specific.pdf) or upon request.

## 17. Additional Support-Specific Terms and Conditions

The additional terms and conditions in this Section 17 pertain to Support.

**17.1** Buyer shall be responsible for performing all day-to-day maintenance of the Supported Product per the Documentation, including but not limited to the following: (a) performing all necessary Hardware replacements, removals, installs, decommissioning and commissioning; (b) ensuring that all Supported Product databases, database configurations and data stores are backed up; (c) cooperating with, assisting and providing information to Tellabs as needed to perform the Support (including but not limited to providing an on-site technician); (d) providing Tellabs with access to the Supported Product (including but not limited to VPN access), and all sites, workstations and personnel as necessary to provide the Support, subject to Buyer's reasonable security and operational regulations; (e) fully preparing relevant sites and Supported Products for Tellabs' performance of Support (including but not limited to providing all necessary and requested electricity, heat, light, plumbing, ventilation and supplies and assuring that such sites are free from actual and/or potential hazards); and (f) ensuring applicable Software upgrades and updates are installed in a timely manner.

**17.2** Tellabs may, but is not obligated to, provide Support for problems related to: (a) modification or repair of the Supported Product other than by Tellabs; (b) used equipment that has not been recertified by Tellabs; or (c) Buyer's failure to fulfill the requirements listed in the Documentation or in the Section immediately above. If Tellabs provides any Services (including problem diagnosis) related to such excluded instances, then Tellabs may (in its sole discretion) charge Buyer for such Services at Tellabs' then-current time and materials rates and for all related expenses (including travel, lodging and telephone).

**17.3** If Buyer wishes to purchase Support for a Product (including used Tellabs products acquired other than from Tellabs) and such Product is not a Supported Product under an existing Tellabs support agreement, then Tellabs shall be entitled to inspect the Product in order to determine whether any repairs, adjustments, Software revisions, and/or relicensing charges or the like are necessary as a precondition for such Support. All required repairs, adjustments, revisions and the like shall be purchased from and performed by Tellabs at Tellabs' then-current pricing before Support will be provided.

## 18. Additional Professional Services-Specific Terms and Conditions

The additional terms and conditions in this Section 18 pertain to Professional Services.

**18.1** "Extended Business Hours" means, in the time zone where the Works are performed, (a) Monday through Friday from 1700 to 0800, and (b) Saturdays, Sundays and Tellabs observed holidays. "Normal Business Hours" means Monday through Friday from 0800 to 1700 in the time zone where the Works are performed; excluding Tellabs observed holidays. "Pre-existing Technology" means Technology that was in existence on or before the date of the Proposal. "Price" means the price set forth in the Proposal that Tellabs charges for the Works. "Professional Services" means a solution comprised of one or more Services (excluding Support) provided by Tellabs on a project basis with a fixed term and scope. "Proposal" means the proposal issued by Tellabs and accepted by Buyer that describes the Works and Price. "Technology" means inventions, original works of authorship, engineering documents, technical specifications, Software, document templates and other proprietary technical information, methodologies, and know-how, together with all rights to patents and applications for patents, all copyrights, all mask works, all trade secrets, and all other forms of intellectual property throughout the world relating thereto. "Variation(s)" means modification(s) of the Works. "Works" means the Professional Services to be performed and/or materials or Software (including but not limited to third party Hardware and Software) to be delivered or supplied to Buyer by Tellabs under this Agreement, as further described in the pertinent Proposal.

**18.2** Tellabs shall immediately notify Buyer of any significant factors that will likely prevent Tellabs from meeting a Works due date ("Factors"). Following such notice, Tellabs shall submit a plan of action to Buyer detailing how it will minimize the impact of Factors. Buyer and Tellabs shall review the plan and agree on any modifications thereto, including any Variations or reasonable changes to the Price and due dates.

**18.3** Any Buyer request for changes to the scope of Works shall be subject to Tellabs' prior written acceptance. Such changes may require adjustments to the due dates and/or Price. If Tellabs agrees to any such change, then the Parties shall execute a change order in accordance with Tellabs' change management process in order to document the change, any adjustments to the due dates and/or Price, and Tellabs' authorization to issue an invoice for such Price adjustment (if applicable).



**18.4** During the term of the Works and for a period of one (1) year thereafter, Buyer shall neither directly nor indirectly employ, offer employment to or solicit the employment of (or advise, suggest or recommend that any other person or entity employ, offer employment to or solicit the employment of) any Tellabs personnel (including but not limited to employees, agents or consultants of Tellabs with whom Buyer comes in contact in performing its obligations under this Agreement). If Buyer breaches this non-solicitation obligation, then Buyer shall immediately pay Tellabs liquidated damages (and not a penalty) in the amount of fifty percent (50%) of the annualized gross salary payable to such Tellabs personnel during his/her first twelve (12) months of employment with Buyer or the recipient of Buyer's advice, suggestion or recommendation.

**18.5** The Parties agree that ownership in and to the Works shall be as follows:

(a) Pre-Existing Technology shall remain the exclusive property of the Party supplying such Pre-Existing Technology.

(b) Subject to the provisions of Subsections 18.5 (a) and (c) and Section 5 as to Tellabs Confidential Information, Buyer shall own the physical or electronic copy of Works delivered by Tellabs to Buyer, subject to Buyer's compliance with this Agreement and payment of the Price.

(c) Notwithstanding Section 18.5 (b) above, all discoveries, designs, information, ideas, artwork, Software, methodologies and other Technology developed by Tellabs through or as a result of the Works, whether or not contained in the Works themselves, shall remain the exclusive property of Tellabs.

Nothing in this Section 18.5 shall prevent or limit Tellabs' performance of services, or delivery of materials, Software, or any other item, to any other Tellabs customer which are the same as, or similar to, the Works provided to Buyer under this Agreement

Subject to Buyer's compliance with this Agreement and payment of the Price, Tellabs grants Buyer, under Tellabs' Technology and Pre-existing Technology, a non-exclusive, non-transferable right and license to use and make copies of the Software that is mentioned in Section 18.5(c) above and provided to Buyer by Tellabs within the scope of the Works ("Works Licensed Materials"); provided that such use and copies are strictly for Buyer's internal purposes. The Parties further agree that Works Licensed Materials shall be subject to all other Licensed Materials terms, conditions and restrictions that are set forth elsewhere in this Agreement. Buyer receives no other express or implied license or right under any patent, copyright, trademark, trade secret or other proprietary rights. Title and ownership in the Works Licensed Materials and all copies remains with Tellabs or its licensors. The Works Licensed Materials contain confidential and proprietary information of Tellabs or its licensors.

Buyer shall receive and maintain the Works Licensed Materials in confidence. Buyer's use of and access to the Works Licensed Materials will be strictly limited to its employees with a need to know who shall have undertaken to comply with the obligations set forth herein. Tellabs reserves all rights not expressly granted in this Agreement. Nothing herein shall be construed to preclude Tellabs from developing, marketing, using, licensing, modifying or otherwise freely exploiting services or materials that are similar to or related to the Works, Work Product or Works Licensed Materials.

**18.6** Buyer shall pay the following charges for cancellation of Professional Services Orders:

EFFECTIVE DATE OF CANCELLATION (Stated as number of days before the scheduled Professional Services commencement date)	CANCELLATION CHARGE (As percentage of total price of cancelled Professional Services)
Fifteen (15) or less	Twenty-percent (20%)
Sixteen (16) to thirty (30)	Fifteen percent (15%)
Thirty-one (31) to forty-five (45)	Ten percent (10%)
More than forty-five (45)	No charge

Cancellations by Buyer are effective upon receipt of written notification by Tellabs.

**18.7** Either Party shall have the right to immediately terminate the Works for Cause by providing written notice. "Cause" shall include, but is not limited to: (a) failure to cure a breach of any material term, condition or obligation in this Agreement within thirty (30) days after receipt of written notice of such breach; (b) insolvency, bankruptcy, assignment for the benefit of creditors or any other winding up, termination of affairs or judicially imposed sale of assets; and (c) breach of the confidentiality or license grant or export compliance or non-solicitation obligations set forth in this Agreement, the cure period set forth in subsection (a) being non-applicable. Either Party may further terminate Works at any time without Cause by giving the other Party at least ninety (90) days prior written notice.

If Tellabs terminates this Agreement for Cause, then Tellabs shall promptly invoice Buyer for (a) that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination plus, (b) twenty-five percent (25%) of the Price pertaining to the unperformed or undelivered portion of the Works set forth in this Agreement. If Buyer terminates this Agreement for Cause, then Tellabs shall promptly invoice Buyer for that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination.

If Tellabs terminates this Agreement without Cause, then Tellabs shall promptly invoice Buyer for that portion of the Price pertaining



to any Works performed or delivered up to the effective date of termination. If Buyer terminates this Agreement without Cause, then Tellabs shall promptly invoice Buyer for (a) that portion of the Price pertaining to any Works performed or delivered up to the effective date of termination plus, (b) twenty-five percent (25%) of the Price pertaining to the unperformed portion of the Works set forth in this Agreement.

**18.8** Buyer shall be liable to Tellabs for the full repair or replacement cost of any and all computers, tools, equipment or other property that: (a) Tellabs provides to Buyer or brings to Buyer's premises for purposes of performing or delivering Works; and (b) is (i) lost, (ii) stolen, (iii) damaged, (iv) returned to Tellabs in a condition other than that in which it was provided (reasonable wear and tear excepted) or (v) not returned to Tellabs within three (3) days after Tellabs's written request. Buyer shall reimburse Tellabs in full for such repair or replacement cost promptly upon Tellabs's request or, if Tellabs (in its sole discretion) so chooses, Tellabs may invoice Buyer for the same.

**18.9** IN NO EVENT SHALL TELLABS BE LIABLE FOR ANY LIABILITIES OR DAMAGES (INCLUDING BUT NOT LIMITED TO LIQUIDATED DAMAGES, PENALTIES, BOND FORFEITURES OR CREDITS) ARISING FROM SERVICE OUTAGES OR DISRUPTIONS IN BUYER'S (OR ANY OTHER PARTY'S) NETWORK(S) CAUSED BY OR ARISING FROM THE WORKS.

**North America**

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