

**Tristar AI, Inc.**  
**Terms and Conditions for Commercial Deployment**

Tristar AI, Inc. (“**Tristar**”) provides proprietary AI Computer Vision System (the “**System**”) comprising the Hardware (defined below) and certain machine learning and user interface software (the “**Software**”) for insight and monitoring of production lines at manufacturing facilities. These terms and conditions (the “**Terms**”) are the only terms and conditions that govern the sale of the System and the Services (defined in Section 1.07 below) by Tristar to an individual or entity (the “**Customer**”). Notwithstanding anything herein to the contrary, if a written contract signed by both Customer and Tristar is in existence covering the sale of the System and the Services covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

The accompanying confirmation of sale or invoice (the “**Order Form**”) and these Terms (collectively, this “**Agreement**”) constitute a binding contract between Tristar and Customer. In the event there is any conflict between the Order Form and this Agreement, the terms of the Order Form will take precedence. Any specific term included in the Order Form takes precedence over these Terms. By ordering the System and the Services, Customer agrees to these Terms. If the individual ordering the System and the Services is acting as an agent of or on behalf of another entity, such individual represents that they are authorized to accept these Terms on behalf of such entity and hereby binds such entity to these Terms. Tristar reserves the right to accept, reject, or terminate any order at an time prior to production and shipment of such order to Customer.

**System Overview.** The System will be configured to detect and record important product characteristics and provide real-time alerts and dashboards through which Customer may view data generated from its Production Lines (defined below). Tristar will provide the System and related services in two phases: an Initial Training Phase (culminating in an Evaluation); and a Production Phase (provided the Performance Criteria are met during the Evaluation).

**Initial Training Phase.** The purpose of the Initial Training Phase, which is anticipated to last four months, is to install and train the System for Customer’s Production Lines at the Customer’s facility (the “**Customer Site**”). The specific Production Lines, start dates, anticipated finish dates, and fees will be specified in the Order Form.

**Performance Criteria for Evaluation.** At the end of the Initial Training Phase, the Parties will cooperate to conduct an evaluation of the System on the Production Lines (the “**Evaluation**”). If the System meets or exceeds the Performance Criteria specified in the Order Form during the Evaluation, the Production Phase will automatically begin immediately upon conclusion of the Evaluation. If the Performance Criteria are not met during the Evaluation, the Parties may, by mutual consent, extend the Evaluation or return to the Initial Training Phase for a later Evaluation.

**Production Phase Details.** Upon transition to the Production Phase, Tristar will fully hand off operation of the System to Customer and Customer will operate the System for the Production Term. The length of the Production Term, fees, and any additional Production Lines will be specified in the Order Form. If the Order Form includes Support and Maintenance Services,

Tristar will provide such services subject to the terms in Attachment A. Tristar reserves the right to make changes and adjustments to its support offerings from year to year, provided that any such changes are communicated to Customer ninety (90) days in advance of the anniversary of the beginning of the Production Term.

## **TERMS AND CONDITIONS**

### **ARTICLE I INITIAL TRAINING PHASE**

- I.01**    Selection of Production Lines and Site Implementation Design. Customer will identify the Production Lines that the System will monitor and cooperate with Tristar to develop a written plan to prepare those Production Lines and the Customer Site for installation and operation of the System (such plan, a “**Site Implementation Design**”), which shall set forth all Required Infrastructure (defined below).
- I.02**    Required Infrastructure. The Customer acknowledges that to enable proper operation, the System requires certain infrastructure at the Customer Site as may be specified in the Site Implementation Design (the “**Required Infrastructure**”). Prior to Tristar’s installation of the System, Customer will prepare, at Customer’s sole cost, the Required Infrastructure.
- I.03**    Hardware Installation. Following deployment of the Required Infrastructure, Tristar shall deliver the Hardware to the Customer Site at a mutually agreed time on or around the beginning of the installation time period set forth in the Initial Training Timeline in the Order Form, and Tristar deployment specialists (the “**Tristar Deployment Team**”) will use best efforts to install the Hardware at the Customer Site within the installation time period specified in the Initial Training Timeline in the Order Form.
- I.04**    System Operation and System Training. The Tristar Deployment Team will operate the System to monitor the Production Lines for the duration of the Initial Training Phase. Tristar will ensure that the Tristar Deployment Team follows Customer’s reasonable health, safety, and security policies while on-site at the Customer Site.
- I.05**    Customer Obligations During Initial Training Phase. Customer will: (a) operate the Production Lines normally and ensure that the products processed by the Production Lines are representative of the products that will be processed during the Production Phase; (b) cooperate with Tristar as necessary to train the System, including for example, by running certain products as requested by Tristar for additional training; (c) provide and maintain remote access capabilities, and if necessary physical access, to operate the System; (d) provide all documentation of Customer facilities, systems, and products as reasonably requested by Tristar; and (e) cooperate in any other ancillary tasks that are required to be performed physically onsite as reasonably requested by Tristar.
- I.06**    Training of Customer Personnel. During the Initial Training Phase, Customer shall assign members of its staff for training by the Tristar Deployment Team on the System and dashboards in anticipation of Customer’s execution of the Evaluation and operation of the System during the Production Phase.

- I.07** Operating Procedures and Training Materials. In connection with the Parties' operating and evaluation activities, Tristar will customize its operating procedures and training materials (the "**Tristar Materials**") in consultation with Customer to facilitate Customer's anticipated operation of the System during the Production Phase (such customization, together with Site Implementation Design activities, System installation, System operation by Tristar, R&D activities (if any), support services and technical support services in connection with the Initial Training Phase or Production Phase, if applicable, collectively, the "**Services**").

## **ARTICLE II EVALUATION**

- II.01** Evaluation Period. In or about the time period specified for the Evaluation Period in the Initial Training Timeline in the Order Form, the Parties will cooperate to conduct an acceptance test which shall consist of the System monitoring the Production Lines during normal operation. The products run through Production Lines during the Evaluation must be representative of the products that will be processed during the Production Phase (and therefore correspond to products run during the Initial Training Phase).
- II.02** Performance Criteria. If the System meets the Performance Criteria set forth in the Order Form, the Production Phase shall begin on the first day following the conclusion of the Evaluation. If the System does not meet all Performance Criteria during the Evaluation: (i) the Parties may either extend the Evaluation Period by mutual agreement; (ii) the Parties may agree to return to the Initial Training Phase; or (iii) either party may elect to terminate this Agreement by written notice effective as of the scheduled conclusion of the Evaluation.

## **ARTICLE III PRODUCTION PHASE**

- III.01** Customer Operation. Customer shall operate the System during the Production Phase at all times in accordance with ARTICLE V and shall pay the Production Fee as specified above in the Production Phase Details.
- III.02** Additional Product Lines. The Parties anticipate that Customer will utilize Additional Production Lines, as specified in the Production Phase Details in the Order Form, to be added during the Production Phase. Unless Customer opts out of the Additional Production Lines by written notice within seven (7) days of beginning of the Production Phase, Tristar will install and commission the Additional Production Lines up to the number and on the Ramp-Up Schedule specified in the Production Phase Details in the Order Form. Customer will accept the Additional Production Lines and cooperate in their installation and commissioning. Hardware and Installation Fees for all Additional Production Lines will be due seven (7) days after the beginning of the Production Phase. Monthly Production Fees will be charged on each Additional Production Line during the Production Period pro-rated from the date such Additional Production Line is put into service. Any production line that would require material changes to Site Implementation Design or the Tristar Materials or additional training to reach the Performance Criteria is

not eligible for deployment as an Additional Production Line and must be the subject of a written agreement between Customer and Tristar.

- III.03 Software License. Subject to and conditioned on Customer's payment of all applicable fees and compliance with all other terms and conditions of this Agreement, Tristar hereby grants to Customer a non-exclusive, non-transferable (except in accordance with Section 12.05), non-sublicensable license to use the Software solely for operation of the System beginning upon transition to the Production Phase and for the remainder of the Term.
- III.04 Support and Maintenance. Tristar shall provide Software Support and Upgrades and Hardware Maintenance for the time periods and fees specified in the Production Phase Details in the Order Form and the terms specified in Attachment A of these Terms.

#### **ARTICLE IV FEE PAYMENT TERMS**

- IV.01 Fees. Fees shall be due and payable in the amounts and at the times specified in the Order Form.
- IV.02 Taxes. Customer shall be responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental entity on any amounts payable by Customer under this Agreement except for any taxes imposed on, or with respect to, Tristar's income, revenues, gross receipts, personnel, or real or personal property or other assets.
- IV.03 Invoices and Payment. Tristar shall promptly invoice Customer for applicable fees and any applicable tax(es) associated therewith. Customer shall pay all amounts due to Tristar within fifteen (15) days after Customer's receipt of such invoice, with no right of setoff. If Customer fails to timely pay an invoice, Tristar may (a) charge interest on unpaid amounts at a rate of 1% per month or the maximum amount permitted by law, whichever is lower, from the date such payment was due until the date paid. All payments hereunder shall be in US dollars and made by electronic transfer of immediately available funds to an account specified by Tristar from time to time or in the Order Form.

#### **ARTICLE V CUSTOMER COVENANTS AND OBLIGATIONS**

- V.01 Obligations during System Operation. Customer acknowledges that effective installation and operation of the System depends on the Parties' cooperation and adherence to certain rules and procedures; accordingly, for so long as the System is operating at the Customer Site:
- (a) Customer shall follow Tristar's reasonable instructions regarding the operation and maintenance of the System, including as set forth in the Tristar Materials and any customized version thereof;

- (b) Customer shall reasonably cooperate with Tristar, including by timely responding to Tristar's information requests and other communications, making available Customer personnel to assist with System installation and operation, providing Feedback (defined below) in review meetings, and coordinating mutually convenient dates for visits to the Customer Site;
- (c) If Customer desires to relocate the Hardware in whole or in part such that the System monitors one or more production lines other than the Production Lines identified pursuant during Section 1.01, Customer shall effect such relocation only under Tristar's supervision at Customer's sole expense; provided, however, that Tristar shall negotiate in good faith to provide such supervision, and charge reasonable rates for such relocation supervision services;
- (d) Subject to Customer's reasonable safety and security policies, Customer shall provide Tristar access to the System and the Customer Site upon prior, reasonable notice and during normal business hours for the purpose of inspection and observation;
- (e) Customer shall at all times provide adequately skilled and trained Customer personnel to operate the System;
- (f) Customer shall be responsible for and use all reasonable efforts to avoid damaging and/or adversely affecting the operation of the System; and
- (g) Customer shall promptly notify Tristar of any bug, failure, or malfunction of the Software and any damage to the Hardware.

V.02 No Reverse Engineering. Customer will not, at any time during or after the Term, directly or indirectly, or allow any third party to: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code or underlying structure, composition, formulation, ideas, know-how or algorithms relevant to, the System, including the Software; modify, translate, or create derivative works based on the System or the Software; or remove any proprietary notices or labels from the System, including the Software.

V.03 Software Use Limitations. Customer shall not, and shall not permit any other person or entity to: (a) copy the Software, in whole or in part; (b) modify, correct, adapt, translate, enhance, or otherwise prepare derivative works or improvements of the Software, in whole or in part; (c) rent, lease, lend, sell, sublicense, assign, distribute, publish, or otherwise make available the Software to any third party; (d) reverse engineer, disassemble, decompile, decode, or adapt the Software, or otherwise attempt to derive or gain access to the source code of the Software, in whole or in part; (e) bypass or breach any security device or protection used for or contained in the Software or related documentation; (f) use the Software for purposes of: (1) benchmarking or competitive analysis of the Software; (2) developing, using, or providing a competing software product or service; or (3) any other purpose that is to Tristar's detriment or commercial disadvantage; (g) remove any proprietary notices from the Software; or (h) use the

Software for any purpose or application other than operation of the Software. Any violation of the foregoing restriction shall constitute a material breach of this Agreement and automatically terminate the license granted in Section 3.03.

- V.04 Customer Responsibilities. Customer is responsible and liable for all uses of the System whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all acts and omissions of authorized users, and any act or omission by an authorized user that would constitute a breach of this Agreement if taken by Customer will be deemed a breach of this Agreement by Customer. Customer shall take reasonable efforts to make all authorized users aware of this Agreement's provisions as applicable to such authorized user's use of the System, and shall cause authorized users to comply with such provisions.

## ARTICLE VI TERM AND TERMINATION

- VI.01 Term. Customer agrees to adhere to these Terms from the date Customer order the System and the Services through the Initial Training Phase and, unless terminated pursuant to Section 2.02, for the duration of the Production Term specified above in the Production Phase Details in the Order Form (the "**Term**"). Sections 2.02, 6.02 and 6.03 are the exclusive means by which this Agreement may be terminated prior to expiration of the Term.
- VI.02 Termination for Cause. Either party may terminate this Agreement, effective upon written notice to the other party (the "**Defaulting Party**"), if the Defaulting Party:
- (a) materially breaches this Agreement, and such breach is incapable of cure or, with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach; or
  - (b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within thirty (30) business days or is not dismissed or vacated within sixty (60) days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- VI.03 Fee for Termination for Convenience. Customer may terminate this Agreement at any time during the Production Phase, upon notice and payment of an amount equal to seventy-five percent (75%) of the total Production Fees for the remainder of the Term (the "**Early Termination Fee**"). Termination under this Section shall not become

effective, and Production Fees will continue to accrue, until the Early Termination Fee is paid.

**VI.04 Accrued Fees and Expenses.** Customer will be responsible for all Fees and reimbursable expenses, plus applicable taxes, accrued or incurred through the date of any expiration or termination of this Agreement.

**VI.05 Survival.** Except where a term of survival is expressly specified, Section 5.02 (No Reverse Engineering), ARTICLE VI (Term and Termination), ARTICLE VII (Confidentiality; Intellectual Property; Use of Data), ARTICLE X (Indemnification), ARTICLE XI (Limitation of Liability), and ARTICLE XII (Miscellaneous) shall indefinitely survive any expiration or termination of this Agreement.

## **ARTICLE VII CONFIDENTIALITY; INTELLECTUAL PROPERTY; USE OF DATA**

**VII.01 Confidentiality.** Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party’s technology or business (hereinafter referred to as “**Confidential Information**” of the Disclosing Party). Confidential Information of Tristar includes non-public information regarding the System including its features and functionality. Confidential Information of Customer includes non-public information provided by Customer to Tristar to enable the provision of the Services and the effective function of the System as well as non-public information relating to Customer’s warehouse operations (“**Customer Data**”). The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information, and (ii) not to use such Confidential Information (except in performance of this Agreement or as otherwise permitted herein) or divulge to any third person (except legal counsel or consultants, in either case with a need to know in connection with this Agreement and under obligations of confidentiality and non-use at least as restrictive as those set forth in this Agreement), any such Confidential Information. The Receiving Party shall be and remain liable to Disclosing Party for any unauthorized disclosure or use or other breach of this Section 7.01 by any third party to whom Confidential Information has been disclosed. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of or reference to any Confidential Information of the Disclosing Party. It shall not be a breach hereof to disclose Confidential Information if required by court order or applicable law, provided that prior to any such disclosure, the Receiving Party gives written notice to the Disclosing Party so as to give the Disclosing Party an opportunity to contest the requirement or seek a protective order therefor, and uses reasonable efforts to protect the confidentiality of such information and limit the scope of any required disclosure. The obligations of the parties under this Section 7.01 shall survive for a period of five (5) years following an expiration of earlier termination of this Agreement; provided, however, with respect to Confidential

Information constituting trade secrets and marked accordingly, such obligations shall survive for so long as such information qualifies for trade secret protection.

VII.02 Customer Data. Customer shall own all right, title, and interest in and to the Customer Data.

VII.03 Ownership of Intellectual Property. Notwithstanding any provision hereof to the contrary, Tristar shall own and retain all of its right, title, and interest in and to the intellectual property rights embodied in and relating to (a) the System and Software, including those that result from observations, ideas, or feedback regarding the System provided by Customer (“**Feedback**”); (b) the Tristar Materials; and (c) any works, software, applications, inventions, or other technology authored, conceived, or developed in connection with the System, Software or Services.

VII.04 Reservation of Rights. Tristar reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the System or the Software.

VII.05 Machine Learning; Tristar Data. Customer acknowledges that a fundamental component of the System is the use of machine learning and other artificial intelligence techniques for the purpose of enabling and improving proper operation of the System; accordingly, notwithstanding any provision hereof to the contrary, Tristar shall have the right to collect and analyze data and other information relating to the provision, use, and performance of various aspects of the System and Software and related systems and technologies, including, without limitation, information concerning Customer Data and data derived therefrom (collectively, the “**Tristar Data**”), and Tristar will be free (during and after the term hereof) to (a) use the Tristar Data to improve and enhance the System and Software and for other development, diagnostic, and corrective purposes in connection with the System and other Tristar offerings, and (b) otherwise use or disclose the Tristar Data in connection with its business, provided, however, that Tristar may only use and/or disclose information concerning Customer Data and data derived therefrom under this Section 7.05 solely in aggregate or other de-identified form.

## ARTICLE VIII PUBLICITY

VIII.01 Use of Name. The parties consider the fact that Tristar is providing Software to Customer public, and each party agrees to support the other party’s reasonable marketing efforts relating thereto. During the Term, Tristar may display Customer’s name and logo on Tristar’s website and marketing materials. Without disclosing any Confidential Information of Customer, Tristar may disclose the fact that Tristar is providing the Software to Customer.

VIII.02 Press Release Statement. Upon transition to the Production Phase, Customer shall furnish to Tristar a statement from a Customer executive favorably describing Customer’s use



and/or intended use of the Software, which Tristar may include in a press release to be mutually agreed by the parties (such agreement not to be unreasonably withheld, conditioned, or delayed).

## **ARTICLE IX WARRANTY AND DISCLAIMER**

- IX.01 Limited Warranty. Tristar shall use its best efforts to provide the System, Software and Services in a professional and workmanlike manner with the goals of minimizing errors and interruptions in the operation and function of the System.
- IX.02 Availability. The Services and the Software may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Tristar or by third-party providers, or because of other causes beyond Tristar's reasonable control, but Tristar shall use reasonable efforts to provide advance notice in writing of any scheduled service disruption.
- IX.03 **DISCLAIMER**. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SYSTEM, THE SOFTWARE, AND THE SERVICES ARE PROVIDED "AS IS." TRISTAR DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY WARRANTY RELATING TO PERFORMANCE OF THE SYSTEM.

## **ARTICLE X INDEMNIFICATION**

- X.01 Indemnification by Tristar. Tristar shall indemnify, defend, and hold harmless Customer and its stockholders, directors, officers, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Customer Indemnified Parties**") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys' fees, other fees, and the costs of enforcing any right to indemnification under this Agreement and pursuing any insurance providers ("**Losses**"), incurred by a Customer Indemnified Party, relating to any claim of a third party arising out of or relating to: (a) bodily injury, death of any person, or damage to real or tangible, personal property resulting from the willful, fraudulent, or grossly negligent acts or omissions of Tristar; (b) an allegation that the System infringes or misappropriates a third-party intellectual property right, except to the extent that such claim is based on Customer's modification of the System or combination of the System with other systems; or (c) Tristar's violation of applicable law.
- X.02 Indemnification by Customer. Customer shall indemnify, defend, and hold harmless Tristar and its stockholders, directors, officers, employees, agents, affiliates, successors, and permitted assigns (collectively, "**Tristar Indemnified Parties**") against any and all Losses incurred by a Tristar Indemnified Party, relating to any claim of a third party arising out of or relating to: (a) bodily injury, death of any person, or damage to real or

tangible, personal property resulting from the willful, fraudulent, or grossly negligent acts or omissions of Customer; (b) Customer's breach of ARTICLE V; (c) any modification or maintenance of the System performed by Customer or any person or entity other than Tristar or Tristar's explicit designee; or (d) Customer's violation of applicable law.

- X.03** Procedure for Defense. The party seeking indemnification hereunder shall promptly notify the indemnifying party in writing of any action for which it seeks indemnification (an "**Action**") and cooperate with the indemnifying party at the indemnifying party's sole cost and expense. The indemnifying party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying party shall not settle any Action in a manner that adversely affects the rights of the indemnified party without the indemnified party's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed. The indemnified party's failure to perform any obligations under this Section 10.03 shall not relieve the indemnifying party of its obligations under this Section 10.03 except to the extent that the indemnifying party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified party may participate in and observe the proceedings at its own cost and expense.

## **ARTICLE XI LIMITATION OF LIABILITY**

**Except in connection with a party's breach of  
ARTICLE V or ARTICLE VII or a party's indemnity  
obligations under ARTICLE X**

- XI.01** in no event shall either party be liable to the other for any consequential, indirect, incidental, special, exemplary, punitive, or enhanced damages, lost profits or revenues or diminution in value, arising out of or relating to this Agreement, regardless of (a) whether such damages were foreseeable, (b) whether or not the liable party was advised of the possibility of such damages, (c) the legal or equitable theory (contract, tort, or otherwise) upon which the claim is based, and (d) the failure of any agreed or other remedy of its essential purpose; and
- XI.02** in no event shall a party's aggregate liability arising out of or related to this Agreement, whether arising out of or related to breach of contract, tort (including negligence), or otherwise, exceed the amounts paid or payable by Customer to Tristar in the six months preceding the occurrence giving rise to the claim.

## **ARTICLE XII MISCELLANEOUS**

- XII.01** Entire Agreement. These Terms, including and together with any related Order Form, attachments, and appendices, constitutes the sole and entire agreement of the parties with respect to the subject matter contained herein, and supersedes all prior and

contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

- XII.02 Notices. All notices, requests, consents, claims, demands, waivers, and other communications under this Agreement must be in writing and addressed to the parties at their respective address set forth on the Order Form (or to such other address as the parties may designate from time to time in accordance with this Section 12.02). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, certified or registered mail (in each case, return receipt requested, postage prepaid), or email with acknowledgment of receipt.
- XII.03 Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction, is invalid, illegal, or unenforceable, the remainder of this Agreement shall be unenforceable.
- XII.04 Amendments; Waivers. Tristar may change, amend, modify, and revise these Terms from time to time. In the event that Tristar changes, amends, modifies, or revises these Terms, such changes, amendments, modifications, or revisions shall apply prospectively to the System and the Services ordered after the effective date of such changes, amendments, modifications, or revisions. The version of these Terms that is in effect at the time that the System and the Services are ordered will continue to govern the provision of such System and the performance of such Services. Once an order is placed pursuant to a Order Form, the applicable Terms may be changed, amended, modified, or revised only by an agreement in writing and signed by an authorized representative of each party. No waiver by Tristar of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by an authorized representative of Tristar. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- XII.05 Assignment; Successors and Assigns. Neither party shall assign this Agreement, in whole or in part, to any third party without the other party's prior written consent, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that Tristar may assign this Agreement without such consent in connection with a sale of its business or all or substantially all of its assets. Any assignment attempted in breach of this section shall be null and void. This Agreement is binding on and inures to the benefit of the parties to this Agreement and their respective successors and permitted assigns.
- XII.06 Third-Party Beneficiaries. This Agreement benefits solely the parties and their respective successors and permitted assigns and nothing in this Agreement, except for the indemnification provisions of ARTICLE X, confers on any other individual or entity any legal or equitable right, benefit, or remedy of any nature whatsoever, whether express or implied, under or by reason of this Agreement.

XII.07 Choice of Law and Forum Selection. This Agreement shall be governed by and construed in accordance with the internal laws of the Commonwealth of Massachusetts without giving effect to any choice or conflict of law provision or rule that would cause the application of laws of any other jurisdiction. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services shall be instituted exclusively in the state or federal courts in Suffolk County, Massachusetts, and each party irrevocably: (a) submits to the exclusive jurisdiction of such courts; and (b) waives any objection to such courts based on venue or inconvenience.

XII.08 Force Majeure.

- (a) No party shall be liable or responsible to the other party, or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("**Impacted Party**") reasonable control, including the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, fire, earthquake, epidemic or pandemic, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or actions; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (h) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials; and (i) other similar events beyond the reasonable control of the Impacted Party.
- (b) The Impacted Party shall give notice promptly of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

XII.09 Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, franchise, business opportunity, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

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## **Attachment A**

### **Support and Maintenance Services**

#### **Support and Maintenance Services include:**

- maintenance of the Software, including generally applicable version updates and updating the AI with new data continuously;
- minor modifications of the Software or dashboards at the customer's reasonable request;
- support for any bugs or issues as set out more specifically below and general repairs to the Software regardless of whether bugs or issues are reported by the customer.

Tristar will provide forty (40) hours per month of remote Support and Maintenance Services as requested by customer. Work on generally applicable version updated or general repairs will not count against this limit. Excess time beyond forty (40) hours in one month and any onsite support will be billed on a time-and-materials basis at Tristar's then-applicable hourly rate(s).

#### **How to Contact Tristar HelpDesk and HelpDesk Hours**

Email: [to be provided]

Phone: [to be provided]

Support hours are Monday to Friday (excluding U.S. federal holidays) 8:00 am – 6:00 pm, Eastern Time.

24/7 support is available for System Down Situations. A System Down Situation is defined as a Severity Level 1 Error where the Software is nonfunctional for more than twenty (20) Authorized Production Lines.

#### **Customer Responsibilities**

To facilitate responsive and cost-effective support, Tristar requires the following of its customers:

##### ***Compliance with Documentation***

Customer and all of customer's personnel must comply with the Tristar Materials, any and all documentation, and Tristar's reasonable instructions on how to properly interact with the System and the Software. Appropriate training will be provided during the Initial Training Phase. Customer must control access to the System and Software to ensure that non-certified personnel do not use or attempt to alter the System or the configuration of the Software.

### ***Submitting Issues***

Customer shall submit the following information when opening a ticket with the helpdesk:

- Name and contact information (email, phone, and name of company)
- Relevant system configuration information
- A description of the issue, including any error messages.
- The steps to reproduce the issue, if known
- Activity being performed at the time the issue arose.
- A description of the business impact caused by the issue.

### ***Customer Failure to Fulfill Responsibilities***

Resolution of issues caused by failure to comply with customer responsibilities as outlined in this section will incur additional costs to the customer and will likely result in increased response and issue resolution times. Tristar reserves the right to terminate the support services for customers who refuse or are unable to meet their responsibilities under the agreement.

### **Issues and Issue Corrections**

Tristar will respond to and resolve requests for assistance related to issues in accordance with the severity levels set forth below.

Where consistent with the applicable severity level, an issue may be implemented via an update or via third-party software where applicable (*e.g.*, installing a patch to an operating system). If a workaround reduces the severity of the issue but does not eliminate it, the timeframes for the reduced severity level shall apply. If Tristar determines in-person support is required, we shall endeavour to schedule a site visit.

The Tristar is responsible for determining the severity level in consultation with the Customer.

### **Severity Levels**

Tristar will make best effort to respond to issues based on their Severity Level within the applicable timeframes set forth below.

<b>Severity Level</b>	<b>Description</b>	<b>Remote Support Response Goal</b>
<i>Severity 1 (Critical)</i>	The issue renders the System inoperative; severely impacts, degrades, or restricts the performance, functionality, reliability, or use of the System; or materially impacts, degrades, or restricts the performance, functionality, reliability, or use of one or	Triage within 30 minutes

	more of the major functions or features the System. Either no workaround exists, or the available workaround is unacceptable due to its operational impact.	
<i>Severity 2 (High)</i>	<p>The issue materially impacts, degrades, or restricts the performance, functionality, reliability, or use of one or more of the major functions or features of the System; or results in the intermittent failure of one or more major functions of a Production Line.</p> <p>This level includes situations in which a workaround is immediately available for use that, when implemented, enables ongoing use of the impacted functionality or feature with an acceptable operational impact.</p>	Triage within 60 minutes during business hours
<i>Severity 3 (Medium)</i>	The issue impacts or degrades the performance, functionality, reliability, or use of a Production Line in a non-material manner, and there is a minimal impact to operations such that service delivery is not materially or immediately impacted.	Triage next business day
<i>Severity 4 (Low)</i>	Either the issue is cosmetic or trivial in nature and there is no impact to operations or service delivery, or the support request consists of an enhancement request, a question regarding a feature or functionality, or similar request for information or assistance. There is no impact to operations or service delivery.	Triage next business day

### **Tristar Responsibilities**

***Initial Response:*** Upon receipt, the issue will be logged, and a response will be given to the customer according to the above schedule.

***Notification:*** For high severity issues (Severity Level 1 or 2), status updates will be provided to the customer contacts by phone. Lower-level severity issues will receive email and/or phone updates at the discretion of Tristar. Tristar will generally respond to customer in the same way the issue was received, whether that was email or phone.

***Resolution:*** Tristar will continue to work on the issue until the issue is resolved to customer satisfaction. If the issue is determined not to be resolvable to customer satisfaction with reasonable effort from Tristar, a written explanation of the situation and our planned path forward will be presented to the customer.

***Enhancement Requests:*** Tristar values user input and welcomes enhancement requests and other Feedback. An enhancement request is a kind of Feedback regarding a new feature or process you would like to see implemented in the Software that will make product use more efficient. We consider our customers' enhancement requests to be a valuable part of Tristar's business; however, not all requests will be included. Tristar has no responsibility to make enhancements to products that you have purchased. We use a variety of criteria for reviewing requests which include, but are not limited to, overall benefit to our customers, time to complete, best business practice, industry need and current development schedule. Tristar reserves the right to determine if and when an enhancement request will be added to Tristar products.

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