

## SERVICE & LICENSE AGREEMENT

Welcome to TellSpec! We are pleased to welcome you as a customer and to provide you with information about the allergens, chemicals, nutrients, calories, and ingredients in your food. You are part of a revolution for building a healthier world by empowering people to make informed choices. Because the TellSpec scanner, server, and app incorporate, store, and communicate valuable intellectual property and customer information, TellSpec carefully protects its customers' privacy and the intellectual property of TellSpec and its licensors. This agreement covers the terms and conditions that apply to your use of the TellSpec scanner, the TellSpec food analysis service ("the Service"), the TellSpec app, and the software and firmware in the scanner and app, and constitutes a legally binding agreement between you and TellSpec Inc. ("TellSpec"). By receiving your TellSpec scanner, downloading your TellSpec app, or using the Service, you agree to all the terms and conditions in this agreement ("Agreement") and acknowledge and agree that you are bound by this Agreement.

### 1. Service

The Service provides you with data and information related to the food that you have scanned, and the allergens, chemicals, nutrients, calories, and ingredients that may be in that food. TellSpec, at its discretion and from time to time, may change, add, discontinue, or remove features and functions of the Service, without notice.

You may access and use the Service only (i) through an application via the Internet, (ii) in conjunction with a TellSpec scanner, and (iii) with an active subscription to the Service. The Service and its information may not be resold, in whole or in part, or otherwise commercially exploited. Except as expressly provided in this Agreement, you may not transfer the Service.

The scans that you obtain with your TellSpec scanner, and all information that you enter into a TellSpec app or TellSpec website ("User Metadata") is uploaded to TellSpec. You hereby agree to assign to TellSpec all right, title and interest to all User Metadata without the payment of any additional consideration, and you will fully cooperate with TellSpec in this regard. You hereby agree that TellSpec can use User Metadata to provide you with the Service, and can use anonymized User Metadata for the benefit of all TellSpec users, and for the benefit of the research, development, manufacturing, marketing, and/or distribution of the products, services and/or operations of TellSpec.

### 2. TellSpec's Privacy Policy

TellSpec respects the privacy of your personal information and will not disclose any of your personal information except as permitted in the TellSpec Privacy Policy. A copy of the latest version of the TellSpec Privacy Policy can be found on our web site at <http://tellspec.com/privacy-policy>. Please read it carefully before using the Service. By using your TellSpec scanner or app, you affirm that you understand and agree to the terms and conditions of our Privacy Policy. We will notify you of any substantial and material changes to our Privacy Policy.

### 3. Ownership and Software License

**a.** "TellSpec Software" means any firmware preloaded onto your TellSpec scanner, and any software, such as apps, provided directly or indirectly by TellSpec to be installed on a smart phone, tablet, PC or Mac (including all modifications, updates, enhancements, upgrades, or documentation that are provided to you). "Other Software" means any such firmware or software owned by third parties. You must use TellSpec Software and Other Software (collectively "Software") when you use your TellSpec scanner and/or app or access the Service. "TellSpec System" or "System" means a combination of TellSpec hardware ("Hardware"), TellSpec Software, other Software), and the Service.

**b.** TellSpec and its third-party licensors shall at all times retain all right, title and interest in and to all intellectual property rights contained in the TellSpec System, including without limitation, the Software. TellSpec shall at all times retain all right, title to, interest in and ownership of all the TellSpec Software. Certain third parties retain all title to and ownership of the Other Software. You understand and acknowledge that third-party licensors' warranties, guarantees, liabilities and indemnities relating to such Other Software, if any, do not extend to you, unless such third party licensor expressly states otherwise. TellSpec also retains ownership of all TellSpec copyrights and trademarks. You shall have no right to receive any source code for any TellSpec Software.

**c.** TellSpec grants you a nonexclusive license to use the TellSpec Software solely as incorporated into your TellSpec System and solely in accordance with the applicable TellSpec documentation and the terms of this Agreement.

**d.** You shall not, and shall not allow third parties to, directly or indirectly: (i) modify, translate, or create derivative works in any way based on any TellSpec System (including without limitation any part of the Hardware, Software or Service), except as expressly authorized by TellSpec, or, in the case of Other Software, by licensors of that Other Software; (ii) reverse assemble, decompile, reverse engineer or otherwise attempt to derive source code or object code or the underlying ideas, algorithms, structure or organization of the TellSpec System, the TellSpec Software, or components thereof, except to the extent that this provision is expressly prohibited by applicable statutory law; (iii) disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the TellSpec System; or (iv) tamper with or otherwise modify a TellSpec scanner.

**e.** If any provision of this Agreement which limits your rights, or defines the rights of TellSpec, in relation to the TellSpec Software would (but for this clause) be rendered void by the Directive of the Council for the European Communities of 14 May 1991 on the legal protection of computer programs, then the provision shall be deemed to include exceptions to the limitations and extensions of the rights granted, to the extent necessary (but no further) to avoid the provisions being null and void.

#### **4. No Medical Use**

You shall not use the TellSpec System for any medical purpose. TellSpec is NOT a medical device. Someone with a severe allergy should NOT rely on the TellSpec System to identify the presence of allergens. THE TELLSPEC SYSTEM IS NOT INTENDED FOR USE IN WHICH ERRORS OR FAILURE COULD LEAD TO DEATH OR PERSONAL INJURY.

#### **5. Indemnity**

YOU AGREE TO DEFEND, INDEMNIFY AND HOLD HARMLESS TELLSPEC AND ITS AGENTS, SERVANTS, AND EMPLOYEES FROM AND AGAINST ANY AND ALL CLAIMS, PROCEEDINGS, INJURIES, LIABILITIES, LOSSES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) RELATING TO OR ARISING OUT OF YOUR BREACH OF ANY TERM OF THIS AGREEMENT, YOUR MISUSE OF THE TELLSPEC SYSTEM, OR YOUR UNAUTHORIZED MODIFICATION OR ALTERATION OF ANY PART OF THE TELLSPEC SYSTEM.

#### **6. Limited Warranty**

**a.** TellSpec warrants to the first purchaser of Hardware and accompanying TellSpec Software licenses, and subsequent transferees, that such Hardware and TellSpec Software will be free of defects in workmanship and material and conform substantially to the published specifications under normal use and service. This entitles you to obtain service for a Warranty Period of twelve (12) months, beginning on the date of purchase of the TellSpec scanner. If Hardware is repaired or replaced under warranty, then EULA Page 3 of 5 2013.11.30 the Warranty Period for such repaired or replacement Hardware shall be the remaining Warranty Period on the repaired or replaced Hardware, or ninety (90) days, whichever is greater.

To obtain service under this limited warranty, contact TellSpec by email at info@tellspec.com, by telephone at +1 (416) 964 0830, or by mail at: TellSpec, Inc., Attn.: Support Dept., TellSpec Inc., 7B Pleasant Blvd, suite 919, Toronto ON M4T 1K2 to make arrangements. No products may be returned to TellSpec without its consent. Purchaser must provide proof of purchase and return defective products to TellSpec, transportation charges prepaid. TellSpec's only liability for defects will be to repair or, at TellSpec's option, replace, defective Hardware or TellSpec Software, or portions thereof, with new, repaired, renewed, or comparable Hardware or TellSpec Software, or portions thereof (whichever TellSpec deems necessary).

This warranty does not apply to Hardware damage resulting from accident, misuse, neglect, alteration, tampering, improper installation, unusual environmental, physical or electrical stress (such as voltage surges), or unauthorized repair.

This warranty shall be void if you have tampered with or otherwise modified the TellSpec scanner, if you have not followed TellSpec guidelines regarding care of the TellSpec scanner, and/or if Hardware is not shipped to TellSpec in the original shipping carton or in such other packaging as may be permitted by TellSpec in writing. This warranty gives you specific legal rights, and you may also have other rights, which vary depending on your jurisdiction. In the European Union, you may also have other legal rights under applicable national legislation governing the sale of consumer goods.

NEITHER TELLSPEC NOR ITS LICENSORS OR SUPPLIERS WARRANT THAT USE OF THE TELLSPEC SYSTEM WILL BE UNINTERRUPTED, ERROR FREE OR SECURE, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT. THE TELLSPEC SYSTEM AND ANY SERVICES PROVIDED HEREUNDER BY TELLSPEC ARE PROVIDED "AS IS" AND "AS AVAILABLE" EXCEPT AS OTHERWISE REQUIRED BY LAW OR AS EXPRESSLY STATED IN THIS AGREEMENT. TELLSPEC AND ITS LICENSORS AND SUPPLIERS EACH DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TRADE USAGE, COURSE OF DEALING, AND NONINFRINGEMENT EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN OR EXCEPT AS OTHERWISE REQUIRED BY LAW. ALL IMPLIED WARRANTIES REQUIRED BY LAW SHALL EXPIRE AT THE END OF THE WARRANTY PERIOD. Some jurisdictions do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

**b. NOTWITHSTANDING ANYTHING TO THE CONTRARY, NEITHER TELLSPEC NOR ITS SUPPLIERS, DIRECTORS, AFFILIATES, REPRESENTATIVES, DISTRIBUTORS, AGENTS, OR CONTRACTORS SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, TORT, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE, LOSS OR CORRUPTION OF DATA, USE OF SUBSCRIBER INFORMATION, COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS; (C) FOR ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED AMOUNTS YOU PAID DIRECTLY OR INDIRECTLY TO TELLSPEC DURING THE PRECEDING TWO YEARS (UNLESS SUCH AMOUNTS TOTAL ZERO, IN WHICH CASE, THAT EXCEED THE AMOUNT OF \$500); IN EACH CASE EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. This provision is not intended to limit TellSpec's liability in the event of TellSpec's willful or intentional misconduct. Moreover, if TellSpec mistakenly or wrongfully overcharges your account, this section does not limit TellSpec's obligation to refund such mistakenly or wrongfully overcharged amounts. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations or exclusions may not apply to you.**

## 7. Term and Termination

You may terminate this Agreement, and your right to use the Service, at any time and for any reason or no reason, by contacting TellSpec Customer Service at the then current address given at <http://www.tellspec.com>.

If you transfer ownership of a TellSpec scanner to another person, then, to use the Service, the new owner must enter into the Service & License Agreement and subscribe to the Service.

Notwithstanding anything to the contrary in this Agreement, TellSpec retains the absolute right to immediately suspend or terminate your use of the Service, and/or terminate this Agreement, without notice, if you breach any provision in this Agreement. In addition, TellSpec reserves the right to terminate your Service and this Agreement for any other reason upon 30 days advance notice.

Upon the termination of this Agreement, all rights granted under this Agreement shall forthwith terminate.

## 8. Miscellaneous Provisions

(a) **Changes.** TellSpec may at its discretion change the terms of this Agreement. Such changes shall be effective upon notification by TellSpec. We encourage you to check <http://www.tellspec.com/sla.pdf>, or call us for a copy of the current Agreement. If you are dissatisfied with any changes to this Agreement, you may terminate this Agreement as provided in Section 10.

(b) **Notices.** Any communication required or permitted hereunder, shall be sent to TellSpec at the then current address given at <http://www.tellspec.com>, which is currently:

TellSpec Inc.  
7b Pleasant Blvd, suite 919  
ON M4T 1K2 Canada  
Phone: +1 (416) 964-0830

(c) **No Other Agreements.** This Agreement contains all agreements between the parties with respect to the subject matter hereof and no terms, conditions, course of performance, trade usage, agreements, understandings or any other memoranda, written or oral shall supersede, modify, amend, or otherwise alter the terms of this Agreement, unless it is in writing and is executed by the parties hereto after the date hereof., except as provided in subsection (a) above.

(d) **Export Restrictions.** Certain technology incorporated into the TellSpec System may be subject to regulation by certain jurisdictions, which may prohibit export or diversion of such technical products and information to certain countries and individuals. You agree to comply with all export and re-export restrictions applicable to the TellSpec System.

(e) **Governing Law and Legal Actions.** This Agreement shall be governed by and construed under the laws of the Province of Ontario, and the laws of Canada, without regard to conflicts of laws provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. If any provision of this Agreement is invalid or unenforceable under applicable law, such provision will be deemed modified to the extent necessary to render such provision valid and enforceable and all other provisions of this Agreement will remain in full force and effect. This Agreement shall be interpreted and construed in the English language, which is the language of the official text of this Agreement.

(f) **Survival.** The provisions of Sections 1, 2, 3 (except c), 4, 5, 6(b), 8 and hereof will survive any termination of this Agreement.

I represent that I have read and understood this entire Agreement and I agree to all the terms of this Agreement as stated above.