

# Cloud Terms of Service

This document (the “Terms of Service”) describes the terms and conditions under which Thomas Gallaway Corporation DBA Technogent. (referred to as “Technogent”, “we”, “us” or “our”) enables our customer(s) (either you as an individual, or the legal entity that you represent, or for the benefit of which you are agreeing to these Terms of Service and have the full power and authority to bind contractually, as applicable; referred to as the “Subscriber”, “you”, “your” or “yours”) to access and use our software-as-a-service and other cloud technology solutions and the associated services made available by Technogent (each a “Cloud Service”). The Cloud Services may be accessed by the Subscriber directly, or by its employees or other authorized users acting on its behalf (each a “User”).

PLEASE READ THIS DOCUMENT CAREFULLY. THESE TERMS OF SERVICE CONSTITUTE A BINDING LEGAL AGREEMENT BETWEEN THE CUSTOMER AND TECHNOAGENT, AND CONTAIN IMPORTANT INFORMATION REGARDING THE DURATION OF THE SERVICES, OUR RIGHTS TO CHANGE THESE TERMS OF SERVICE, LIMITATIONS OF OUR LIABILITY, WARRANTY DISCLAIMERS, TERMS REGARDING THE CUSTOMER AND ITS USERS’ PRIVACY RIGHTS, AS WELL AS TIME LIMITATIONS FOR SUBMITTING LEGAL CLAIMS. THE CUSTOMER’S (INCLUDING ITS USERS’) USE OF OUR SERVICES WILL MEAN THAT THE CUSTOMER HAS ACCEPTED THE TERMS AND CONDITIONS DESCRIBED BELOW.

## 1. Scope

These Terms of Service apply to the provision of all Technogent Cloud Services to the Subscriber and its Users. Please note that additional terms may apply with respect to some Cloud Services. Where applicable, such additional terms will be provided to the Subscriber at the time of its subscription to the relevant Cloud Service in the form of a Cloud Service Appendix to these Terms of Service.

## 2. Subscription

- a) **Subscription Models.** The Subscriber may procure a Cloud Service by purchasing a subscription through an authorized sales channel. Subscription to certain Cloud Services may require a minimum subscription commitment period. Where applicable, this requirement will be shared with you at the time of your subscription. Certain sales channels may have additional terms and conditions applicable to the purchase of our Cloud Services, which will apply in addition to, and not in replacement of, these Terms and Conditions. You are responsible for ensuring that you understand such additional terms and conditions before subscribing to any Cloud Service.
- b) **Trial Subscriptions.** We may, from time to time, offer trial subscriptions to some of our Cloud Services. Please note that certain features may be limited or not be available as part of trial subscriptions. The duration of such trial may vary from one Cloud Service to another. If the Subscriber subscribes for a trial, we will make available the relevant Cloud Service to the Subscriber on a trial basis, free of charge. The trial subscription will end upon the expiration of the trial period, unless the Subscriber will have purchased a paid subscription to such Cloud Service before then. The trial subscription may terminate sooner, in accordance with these Terms of Service. Additional terms and conditions may apply with respect to specific Cloud Services. If applicable, these additional terms will be disclosed to the Subscriber prior to the trial subscription, and will apply in addition to, and not in replacement of, these Terms and Conditions. Unless the Subscriber purchases a paid subscription, any and all Subscriber Data (as defined below) collected and stored as part of the trial will be deleted following the expiration of the trial period.

## 3. Conditions of Use

- a) **Subscriber Account.** Upon subscription to certain Cloud Services, the Subscriber may be invited to create an account for the Subscriber and/or its Users (the “Subscriber Account”). The Subscriber must protect the Subscriber Account with a complex, secure password, and keep its login information

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confidential. The Subscriber is fully responsible for its and its Users' access and use of the Subscriber Account, and any Subscriber Data accessible through it. Unless expressly permitted otherwise by Technologent in writing, the Subscriber may not create shared Subscriber Accounts so that multiple Users or other individuals would have access to one single Subscriber Account. If available, the Subscriber Account will be deemed part of the Cloud Services it is associated with.

- b) **Permitted Use.** The Subscriber may only access and use each Cloud Service (including any software provided as part of it) for its internal purposes, and not for distribution or resale. The Subscriber may solely access and use such Cloud Service in the territory where such Cloud Service was made available to it, as described in the relevant purchase order. The Subscriber may not access or use the Cloud Service to create products that could be considered competitive with Technologent Cloud Services. The Subscriber may not (and shall not encourage, assist or permit any other person to) modify, decompile, reverse engineer or otherwise tamper with any Cloud Service, in whole or in part (including without limitation any software provided as part of it, as well as any underlying technologies, systems, networks and services provided in relation to our Cloud Services), or create any derivative works therefrom or thereof. Except as expressly allowed herein, the Subscriber may not copy, sell, distribute, license or sublicense any Cloud Service in whole or in part (including without limitation any software provided in association therewith) except to the extent required to permit the Users of your Affiliates to access and use the Cloud Services. For the purpose of this document, the term "Affiliate" shall mean any entity that owns or controls, is owned or controlled by, or is under common ownership or control with the Subscriber. We reserve the right to limit or suspend Subscriber's (and/or any User's) access or use of the Cloud Services, in whole or in part, if we have reasonable grounds to believe that Subscriber (or any of its Users) violates these Terms of Services or accesses or uses our Cloud Services in a manner that is unlawful, fraudulent, abusive, or that otherwise violates the applicable laws. The Subscriber understands that by doing so, we will not be liable to the Subscriber or any other person for any inconvenience, losses or damages whatsoever.
- c) **Subscriber Promises.** By accessing and using the Cloud Services, the Subscriber guarantees to Technologent that: (i) it possesses all necessary permissions and authorizations to access and use the Cloud Services in a manner described in these Terms of Service; (ii) it has taken and will take such steps as may be necessary to ensure that its access and use of the Cloud Services complies with the applicable laws and regulations; and (iii) it does not and will not use the Cloud Services for any purpose that is illegal, unlawful, fraudulent or contrary to these Terms of Service, and it will fully cooperate with us to investigate any suspected or actual illegal, unlawful, fraudulent or improper activity related to the Cloud Services.
- d) **Support.** Support services in relation to each Cloud Service will be provided to the Subscriber directly by the authorized sales channel through which the Subscriber procured such Cloud Service, and may be subject to additional terms and conditions imposed by such sales channel.
- e) **Third Party Services.** Our Cloud Services may enable the Subscriber to access and use third party software and/or services through integration of such third party offerings with our Cloud Services ("Third Party Services"). The Subscriber acknowledges that integrations and accesses to such Third Party Services in association with our Cloud Services are made available to the Subscriber for convenience only. Technologent does not endorse any such Third Party Services, nor does Technologent make any representations or provide any warranties whatsoever with respect to any such Third Party Services. Third Party Services are provided to the Subscriber in accordance with their respective terms and conditions, and the Subscriber alone is responsible for ensuring that it procures appropriate rights to access and use any such Third Party Services in association with the Cloud Services and complies with the terms and conditions applicable to their use.
- f) **Scope Changes.** As the technology world continues to evolve, we may need to adapt the scope of our Cloud Services to provide our customers with our newest features and security protections, as well as to comply with the applicable legal framework. This may include, from time to time, discontinuing features that are of little or no relevance to most of our customers. While we may make these changes without

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advance notice to our customers, we promise not to materially decrease any key features of the Cloud Services without first advising you in writing.

## 4. Licenses, Intellectual Property Rights and Third Party Tools

- a) **Grant of Licenses.** To the extent Technogent provides Subscriber with any software as part of a Cloud Service, Technogent hereby grants Subscriber a limited, non-exclusive, non-transferrable, non-assignable royalty-free license to download, install, access and use such software, only in the form made available by Technogent, up to the maximum number of instances or installations specified in the purchase order, in the territory specified in the purchase order, for the subscription term specified in the purchase order, for use in accordance with the applicable documentation.
- b) **Subscriber Property Rights.** The Subscriber is and will remain the sole owner of all rights (including without limitation all intellectual property rights), titles and interest in and to all information, materials and other data uploaded by the Subscriber or any of its Users to the Cloud Services, or generated for the Subscriber by our Cloud Services during the term of these Terms of Service (“Subscriber Data”). Subscriber Data includes, but is not limited to, any personal information, as well as any materials and content uploaded to and stored by the Subscriber or its Users in the Subscriber Account associated with the Cloud Services.
- c) **Technogent Property Rights.** Our Cloud Services and all software are protected by law, including all associated intellectual property rights (such as patents, copyrights, service marks, trademarks, trade secrets, moral rights and other intellectual property rights) in Canada, the United States, and other countries. Technogent, together with its licensors and partners (as applicable), is and will remain the sole owner of all rights, titles and interest in and to all trademarks, service marks and software provided by Technogent in relation to the Cloud Services, including all modifications and derivative works, as well as the associated goodwill, regardless of any use of the words ‘purchase’, ‘sale’ or the like in these Terms of Service, our websites or any documentation. Technogent will also exclusively own all rights, titles and interest in and to any information and usage data (other than the Subscriber Data) collected or generated from the Subscriber’s access and use of our Cloud Services or any software provided by us. For clarity, such usage does not include any personally identifiable information. The Subscriber acknowledges that we may collect and use such usage data to provide support services to the Subscriber, as well as to access and improve the performance and the quality of our Cloud Services.
- d) **Trademarks.** The trademarks used in these Terms of Services and their respective logos are trademarks or registered trademarks of Technogent.

## 5. Term and Termination

- a) **Term.** The Subscriber will be bound by these Terms of Service immediately upon its subscription to any Cloud Service (whether through purchase of a subscription or on a trial basis), and, subject to section 5.b below, will remain in full force and effect until the expiration of the term of all subscriptions to Cloud Services held by the Subscriber, regardless of the sales channel through which the Subscriber procured such Cloud Service.
- b) **Termination.** These Terms of Service will be terminated upon the occurrence of any of the following events: (i) if the Subscriber terminates these Terms of Service by providing Technogent with a written notice to that regard; (ii) Technogent terminates these Terms of Service by providing the Subscriber with a written notice to that regard if: (a) the Subscriber (or any of its Users) is in breach of any of the terms of these Terms of Service or any license for third party software, (b) the Subscriber’s use of the Cloud Services is prohibited by law or is disruptive to, adversely impacts or causes a malfunction to the Cloud Services, the Technogent network or systems, (c) Technogent receives an order from a court or a regulatory authority to cease the provision of the Cloud Services to the Subscriber or the relevant Cloud Services in the territory where such Cloud Service was made available to the Subscriber or in

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general, or (d) Technogent discontinues the relevant Cloud Services in the territory where such Cloud Service was made available to the Subscriber, or in general (provided that in such case we will not terminate your access to such Cloud Service until the later of the expiration of your then-current subscription term or (6) months following issuance of our notice advising you of such discontinuation); or (iv) as otherwise provided in these Terms of Service. In the event that Subscriber terminates the Cloud Services for convenience before the end of the term, Subscriber will remain liable to pay Technogent for the remaining fees due for the unexpired portion of the remaining term.

- c) **Effect of Termination.** Upon termination of these Terms of Service: (i) Technogent will immediately stop providing all Cloud Services to the Subscriber (including its Users), and (ii) all software licenses provided by Technogent to the Subscriber as part of the Cloud Services, if any, will immediately terminate, and the Subscriber must uninstall such software from all of its devices, and destroy all copies thereof. However, the Subscriber may make a reasonable number of copies of the software for general archiving and compliance purposes. We may request a certificate signed by an authorized representative of the Subscriber confirming the Subscriber's compliance with the provisions of this section 5.c.
- d) **Survival.** Notwithstanding anything to the contrary in these Terms of Service, the sections intended to survive the termination of these Terms of Service (including without limitation the following: 3.b, 3.c, 4.b, 4.c, 5.c, 5.d, 6.a, 7 and 8) will survive its termination.

## 6. Confidentiality, Privacy and Data Security

- a) **Confidential Information.** As part of the Cloud Services, both the Subscriber and Technogent may obtain certain non-public information relating to other party's business and products, such as, but not limited to, codes, technology, know-how, algorithms, testing procedures, structure, interfaces, specifications documentation, pricing information, bugs, problem reports, analysis and performance information, and other technical, business, operational and product-related data ("Confidential Information"). Each party agrees to hold such Confidential Information in confidence, and not disclose it to anyone or use it for any purpose other than the use (in the case of the Subscriber) or the provision (in the case of Technogent) of the Cloud Services under these Terms of Service. It is understood that Technogent may disclose the Subscriber's Confidential Information to its affiliated companies, contractors, partners and licensors (including their respective directors, officers, contractors, employees, agents and representatives) on a need-to-know basis, in order to be able to provide the Cloud Services to the Subscriber.
- b) **Privacy.** We respect our customers' privacy. In order to be able to provide the Cloud Services, we may need to access, collect and store certain proprietary, confidential or personal information. We may also need to share such information with our licensors and partners who assist us in providing the Cloud Services. Our collection, use and disclosure of personal information in connection with the Cloud Services is governed by the terms of our privacy policy, available at <https://www.technogent.com/privacy-policy>. The privacy policy is an integral part of these Terms of Service, and is incorporated herein by reference. The Subscriber's acceptance of these Terms of Service will also signify the Subscriber's acceptance of the terms and conditions of the privacy policy.
- c) **Data Security.** We have put in place and will maintain throughout your subscription to the Cloud Services administrative, physical, and technical measures for the protection of the security, confidentiality and integrity of the Subscriber Data. Those measures include, safeguards for preventing access, use, modification or disclosure of the Subscriber Data by our personnel except if necessary to provide you're the Cloud Services and any related services (such as support), to prevent or resolve service or technical problems, if required by law, or if otherwise agreed to in writing by the Subscriber.
- d) **Data Processing Addendum.** Our Data Processing Addendum ("DPA") defines additional terms and conditions pertaining to the protection of customer data bound by such DPA, including without limitation such additional terms under which Technogent will collect, use or otherwise process personal data of residents of member states of the European Economic Area ("EU Resident Data"). The latest version of the DPA is available upon request from Technogent. Subscriber hereby acknowledges and agrees that



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the terms of the DPA will be automatically deemed incorporated into and form integral part of these Terms of Service (and will, therefore, be legally binding upon both Technogent and Subscriber in addition to these Terms of Service), in the following cases: (i) if Subscriber will use the Cloud Service in the territory of any member state of the European Economic Area, except if such Cloud Service is provided on a trial basis; or (ii) if, in relation to Subscriber's use of the Cloud Service, Subscriber and/or Technogent will collect, use or otherwise process EU Resident Data, except if such Cloud Service is provided on a trial basis. Additionally, where the DPA is not deemed incorporated into these Terms of Service in accordance with the above terms, but Subscriber nonetheless determines the DPA to be relevant in the context of its use of any Cloud Service, Subscriber may direct us to enter into the DPA by countersigning the latest version of such document (available through the link provided above), and sharing the fully-signed version with Technogent by sending it to [legal@Technogent.com](mailto:legal@Technogent.com). Upon its receipt by Technogent, the terms of the DPA will be deemed incorporated to these Terms of Service, and be binding upon the parties.

## 7. Warranties, Indemnities and Limitation of Liability

- a) **Warranties.** We warrant that during the term of your subscription to a Cloud Service, the Cloud Services will perform materially in accordance with the applicable documentation throughout the duration of the Subscriber's subscription term, provided that the Cloud Service is used in accordance with such documentation. For clarity, the foregoing warranty does not extend to ensuring continuous availability of any Third Party Services, as they may not be under our control. If we are in breach of any warranty above, the Subscriber's only remedy will be to terminate these Terms of Service in accordance with section 5.b above.
- b) **Disclaimer of Other Warranties.** Except for the warranties described in section 7.a above, to the maximum extent permitted by law, Technogent makes no representations and gives no warranties with regards to the Cloud Services, including without limitation with regards to their performance, availability, coverage, uninterrupted availability, security, pricing or operation, or that of any software, services, connections, networks or Third Party Services used or provided in association with our Cloud Services. All Cloud Services (including any software associated with them) are provided "as is" and "as available", without any representations or warranties whatsoever, including, without limitation, warranties of title, security, non-infringement, merchantability, quality, availability or fitness for a particular purpose.
- c) **Indemnification by the Subscriber.** The Subscriber agrees to defend Technogent against or settle any Claims against Technogent brought by third party alleging that Subscriber Data infringes or misappropriates such third party's privacy or property rights (including without limitation intellectual property rights), or otherwise violates any applicable laws or regulations, and Subscriber agrees to indemnify and hold harmless Technogent from any damages, attorney fees and legal costs awarded against Technogent, or the amounts payable by Technogent under a settlement approved by the Subscriber in writing, as a result of such Claim against Technogent, provided that Technogent promptly gives the Subscriber a written notice of such Claim, gives the Subscriber sole control of the defense or settlement of the Claim (provided that Technogent shall first approve any settlement in writing, which approval must not be unreasonably withheld), and provides the Subscriber with all reasonable assistance at the Subscriber's expense.
- d) **Limitation of Liability.** Except for the parties' respective confidentiality and indemnity obligations under these Terms of Services, to the maximum extent permitted under the applicable laws, neither party shall be liable to the other party for any special, exemplary, indirect, incidental, consequential or punitive damages, regardless of the theory of action. Technogent will not be liable for any loss or corruption of the Subscriber Data, or for any costs or expenses associated with backing up or restoring any of such Subscriber Data. To the maximum extent permitted under the applicable laws, Technogent's total aggregate liability for all past, current and future Claims by the Subscriber (including any of its Users) under these terms of service or in association with the Cloud Services provided hereunder shall be limited

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to the amounts paid by the Subscriber to Technogent for the Cloud Services during the twelve (12) months immediately preceding the occurrence of the event giving rise to such Claim.

## 8. General

- a) **Compliance with Laws.** The Subscriber understands and agrees that its access and use of our Cloud Services (including, where applicable, download, installation and use of any software) must be in compliance with all applicable laws, rules and regulations. This includes privacy, intellectual property, exports and imports laws and regulations in the United States and in other countries. The Subscriber may access and use our Cloud Services, and download and use any software provided in association with them, only in the country in which we make available the Cloud Services for purchase through the authorized sales channel. The Subscriber is prohibited from downloading, accessing and/or using any Cloud Service, in whole or in part, in any territory that is under an embargo by the United States. In all cases, the Subscriber is responsible for determining if and how the Subscriber needs to comply with the applicable laws, rules or regulations, and if the Subscriber needs to obtain any permits for that before the Subscriber (including any of its Users) access or use any Cloud Service (or download, install or use any accompanying software, if applicable).
- b) **Contact Information.** If you wish to contact us for matters related to these Terms of Service, please write us at: [legal@Technogent.com](mailto:legal@Technogent.com). If we need to contact the Subscriber for matters related to these Terms of Service, we will use the contact information that you will have provided to us as part of your subscription to the Cloud Services. Please ensure to promptly advise us of any changes to your contact information. All notices will be deemed delivered on the date shown on the postal receipt, or on the courier, facsimile or electronic mail confirmation of delivery.
- c) **Force Majeure.** The Subscriber hereby acknowledges that circumstances outside of our reasonable control (such as, without limitation, internet or power outages, fires, floods, vandalism, sabotage, large scale outbreaks of computer virus, malware or other malicious code, strikes, riots, wars or other military action, civil disorder, acts of terrorism, acts of third parties, or the like) may cause delays in our ability to perform Cloud Services. As such, the Subscriber hereby acknowledges and agrees that Technogent shall have no liability whatsoever to the Subscriber (including its Users) or any third party for any direct or indirect damages whatsoever, resulting from such delays or any incapacity to perform the Cloud Services in a timely manner.
- d) **Waiver.** The failure by Technogent to fully enforce any of its rights under these Terms of Service shall not affect the right to require such performance at any time thereafter; nor shall any failure or delay to enforce any right or privilege by Technogent under these Terms of Service be interpreted as a waiver of such right or privilege by Technogent.
- e) **Severability.** If any provision of these Terms of Service is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent permitted by law. Nonetheless, such provision shall continue to apply in full force and effect in all other jurisdictions, as the case may be. Moreover, the remaining provisions of these Terms of Service shall remain in full force and effect.
- f) **Modifications to these Terms of Service.** We reserve the right to make changes to these Terms of Service (including the DPA and other addenda hereto) at any time by (a) posting a revised version of the Terms of Service on our website, or by (b) sending information regarding any amendment to the Terms of Service to the email address provided to us by the Subscriber in connection with the Cloud Services (as the case may be). The revised Terms of Service will become effective and apply to the Subscriber within thirty (30) days from the Subscriber's receipt of the updated Terms of Service or from the date of their publication on the website, whichever occurs first.
- g) **Transfer of these Terms of Service.** Neither party may assign or otherwise transfer these Terms of Service or any of its rights or obligations hereunder to any person or entity, in whole or in part, without the other party's prior written consent. Any attempted assignment or transfer by the Subscriber in violation

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of this requirement will automatically terminate these Terms of Services and any of the rights or privileges granted to the Subscriber hereunder.

- h) **Applicable Law and Forum.** For the purpose of this section, the term “Governing Laws” used below in this section shall mean “the laws of the state of California, USA”, and the term “Forum” shall mean “Orange County, CA.” The parties hereby agree that the Governing Laws, with the exception of any conflict of laws principles, will apply to interpret these Terms of Service, as well as to resolve any disputes related to them or any Cloud Services provided hereunder. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms of Service. Each party hereby irrevocably and unconditionally waives the right to a trial by jury in any Claim. All such disputes must be brought exclusively before the courts based in the Forum. However, the foregoing does not prohibit either party from seeking injunctive or other equitable relief in any other jurisdiction in case of any violation, breach or infringement of its rights related to intellectual property or confidentiality in such jurisdiction.
- i) **U.S. Government Users.** If the Subscriber is an entity of the U.S. Government, or if these Terms of Service otherwise become subject to the Federal Acquisition Regulations (FAR), the Defense Federal Acquisition Regulations (DFARS) or similar regulatory regimes, the Subscriber acknowledges that our Cloud Services and any software and documentation provided in association with them are “commercial items” in accordance with the applicable regulations.
- j) **Entire Agreement.** These Terms of Service constitute the entire agreement between the Subscriber and Technologent with regard to the subject matter hereof and supersede any other prior and contemporaneous communications and agreements.

These Terms of Service have been last updated on November 1, 2020.