

## Terms and Conditions for the Sale of Product and Services

### 1. Applicability.

A. These Terms and Conditions (these “**Terms**”) are the only terms that govern the sale of products (“**Products**”) and services (“**Services**”) by the Thomas Gallaway Corporation dba Technologent (“**Technologent**”) to the buyer (the “**Customer**”) named in the accompanying quotation, confirmation of sale, or invoice (collectively, the “**Sales Confirmation**”). Notwithstanding anything herein to the contrary, if a written contract signed by Technologent and Customer is in existence covering the sale of the Products and Services specified in the Sales Confirmation, the terms and conditions of the signed contract shall prevail to the extent they are inconsistent with these Terms.

B. The Sales Confirmation together with these Terms (collectively, this “**Agreement**”) comprises the entire agreement between the parties with respect to the Customer’s purchase of the Products and Services, and supersedes and replaces all prior and contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, between the parties, both written and oral. This Agreement prevails over any of Customer’s terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions and does not serve to modify or amend the Agreement. Customer agrees and acknowledges that the Agreement will supercede and replace any contrary terms included in any document presented by Customer in connection with the purchase of the Products and Services, including without limitation any purchase order. Customer agrees that it will not challenge or contest the Agreement in favor of any document issued by Customer and that, if Customer does challenge or contest the Agreement, Technologent may immediately terminate the Agreement without any liability to Technologent. Technologent does not agree to sell the Products or Services on any terms other than the terms of the Agreement. If Customer does not agree to the Agreement, it may not purchase Products or Services from Technologent.

C. Notwithstanding anything to the contrary contained in this Agreement, Technologent may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in the Sales Confirmation.

D. No order may be canceled, rescheduled or reconfigured without Technologent’s prior written authorization. If Technologent provides such authorization, Customer will be liable to Technologent for any additional costs and expenses incurred by Technologent in connection with such order.

### 2. Price and Payment.

A. Customer shall purchase the Products and Services from Technologent at the price(s) set forth in the Sales Confirmation or, if none, at the prices specified in Technologent’s published price list in effect as of the date of the Sales Confirmation. Prices are conditioned upon timely payment.

B. Except as otherwise set forth on the Sales Confirmation, terms of payment are calculated from the invoice date. Customer shall make all payments hereunder by wire transfer and in US dollars.

C. Technologent reserves the right to modify payment terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of Customer’s creditworthiness or should Customer fail to fulfill any obligation when due. In addition, prices are subject to change by Technologent upon Customer’s rescheduling or reconfiguration of an order. Prices are subject to change in response to supplier price increases; in the event of such an increase, Customer may cancel the undelivered portion of any affected order of Products by delivering written notice to Technologent prior to the shipment thereof and within 10 days of Customer’s receipt of notice of the price increase.

D. Customer shall prepay all freight for shipping Products. Freight charges may be constructed on the basis of standard carrier tariffs and may not reflect actual transportation costs.

E. Customer agrees to reimburse Technologent for all reasonable travel and out-of-pocket expenses incurred by Technologent in connection with the performance of the Services.

F. All prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Customer (collectively, “**Taxes**”). Customer shall be responsible for all such Taxes; provided, that, Customer shall not be responsible for any Taxes imposed on, or with respect to, Technologent’s income, revenue, gross receipts, personal or real property, or other assets.

G. Customer shall pay interest on all late payments at the lesser of the rate of 1.5% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall reimburse Technologent for all costs incurred in collecting any late payments, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under the Agreement or at law (which Technologent does not waive by the exercise of any rights hereunder), Technologent shall be entitled to suspend the delivery of any Products or performance of any Services and stop Products in transit if Customer fails to pay any amounts when due hereunder.

H. Technologent may assign accounts receivable to any entity without Customer's consent. In order to defray the cost of customer account administration, any credit balance or other sum owed to Customer which remains unclaimed by Customer for a period of twelve months will become the property of Technologent. No refunds will be paid to any Customer that has a balance greater than the credit.

I. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Technologent, whether relating to Technologent's breach, bankruptcy, or otherwise.

### **3. Delivery of Products and Performance of Services.**

A. Products will be delivered within a reasonable time after receipt of Customer's purchase order, subject to the availability of finished Products. Technologent shall not be liable for any delays, loss, or damage in transit.

B. Technologent may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order.

C. With respect to the Services, Customer shall (i) cooperate with Technologent in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Technologent, for the purposes of performing the Services; (ii) respond promptly to any Technologent request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Technologent to perform Services in accordance with the requirements of this Agreement; (iii) provide such Customer materials or information as Technologent may reasonably request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

D. The quantity of any installment of Products as recorded by Technologent on dispatch from Technologent's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary.

E. Technologent shall not be liable for any non-delivery of Products (even if caused by Technologent's negligence) unless Customer gives written notice to Technologent of the non-delivery within three (3) days of the date when the Products would have been received in the ordinary course of events.

F. Any liability of Technologent for non-delivery of the Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice respecting such Products to reflect the actual quantity delivered.

G. Customer acknowledges and agrees that the remedies set forth in this Section 3 are Customer's exclusive remedies for any non-delivery of Products.

H. Customer acknowledges and agrees that some third party providers (each, a "**Provider**") of Products sold by Technologent require that Technologent pass through the Provider's end user license agreement and other terms pertaining to the Provider's Products (collectively, the "**EULA Terms**") and the complete EULA Terms are incorporated by reference into the Agreement. Customer agrees to comply with the EULA terms set forth in Section 17 below with respect to the Providers' Products, in addition to any additional terms contained in the applicable EULA. Customer can request a copy of a Provider's specific EULA Terms in writing from Technologent.

### **4. Title and Risk of Loss.**

A. Title and risk of loss shall pass to Customer upon delivery of the Products to the carrier. As collateral security for the payment of the purchase price of the Products, Customer hereby grants to Technologent a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the California Uniform Commercial Code.

B. In the absence of prior agreement as to shipping, Technologent may select a carrier. Technologent's responsibility for any loss or damage ends when Products are delivered to the Customer, or to Customer's agent (including, without limitation, any test house or value-added service provider), whichever occurs first. Customer will pay for storage charges if Products are held by Technologent at Customer's request pending instructions or rescheduled delivery.

C. During the term of this Agreement and for a period of one (1) year thereafter, Customer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$3,000,000 with a financially sound and reputable insurer. Upon Technologent's request, Customer shall provide Technologent with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this section. Customer shall provide Technologent with thirty (30) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy.

## 5. Limited Warranty.

A. Technologent warrants that Products assembled or customized by it will be free of defects caused solely by Technologent's faulty assembly or customization for 90 days after delivery. EXCEPT FOR THE FOREGOING WARRANTY, TECHNOLOGENT MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY, (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) WARRANTY OF TITLE, OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

B. Technologent warrants to Customer that it shall perform Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under the Agreement. EXCEPT FOR THE FOREGOING, TECHNOLOGENT MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO THE SERVICES AND ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

C. Products, components, and materials manufactured by a third party ("**Third Party Product**") may constitute or contain, be contained in, incorporated into, attached to, or packaged together with the Products. Third Party Products are covered by and subject to, the terms, conditions and limitations of the manufacturer's standard warranty, which warranty is in lieu of any other warranty, express or implied, of Technologent. Third Party Products are not covered by the warranty set forth in Section 4.A above. FOR THE AVOIDANCE OF DOUBT, TECHNOLOGENT MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THIRD PARTY PRODUCT, EXPRESS OR IMPLIED, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY, (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, (iii) WARRANTY OF TITLE, OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADER, OR OTHERWISE.

D. Unless otherwise expressly agreed by the parties in writing, Customer agrees that it shall obtain all product, maintenance, technical, and warranty support for the Products directly from the manufacturer.

E. Customer's sole and exclusive remedy, if any, under the warranty set forth in Section 4.A is limited, at Technologent's election, to one of the following: (a) refund of Customer's purchase price, (b) repair of the assembled or customized Product by Technologent, or (c) replacement of the assembled or customized Product by Technologent. Customer's sole and exclusive remedy, if any, under the warranty set forth in Section 4.B is limited to Technologent's reperformance of the defective Services.

F. CUSTOMER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, THERE ARE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, IN MARKETING AND ADVERTISING MATERIALS, BROCHURES, OR OTHER DESCRIPTIVE LITERATURE) BY TECHNOLOGENT OR ANY OTHER PARTY, EXPRESS OR IMPLIED, AS TO THE CONDITION OR PERFORMANCE OF ANY PRODUCTS, THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE. TECHNOLOGENT ASSUMES NO RESPONSIBILITY OR LIABILITY WHATSOEVER FOR MANUFACTURER'S PRODUCT

SPECIFICATIONS OR THE PERFORMANCE OR ADEQUACY OF ANY DESIGN OR SPECIFICATION PROVIDED TO TECHNOLOGENT BY OR ON BEHALF OF CUSTOMER.

G. Use of the Customer's part number in any Sales Confirmation or on any Products is for Customer's convenience only and does not constitute any representation or warranty by Technologent with respect to the performance, specifications, or fitness of any Product for any purpose.

H. The performance of any value-added service may void the manufacturer's warranty and render Products non-returnable. Orders incorporating such Services are, accordingly, non-cancelable and the Products are non-returnable. Any third party value-added service provider is deemed to be an agent of Customer.

**6. Breach of Agreement.** Upon any breach by customer of these terms and conditions, Technologent will have all rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies will be cumulative and not exclusive, including but not limited to suspending or terminating Customer's access to any Products and Services that Customer has not paid for. Technologent shall have the right to offset any sum owed by Technologent or any Technologent affiliate to Customer against any sum owed by Customer to Technologent or any Technologent affiliate.

## **7. Product Acceptance.**

A. Products are deemed accepted by Customer unless Customer notifies Technologent in writing within five (5) days of delivery of Product shortages or damage (each, a "visual defect").

B. No Product returns may be made for any reason without a Return Material Authorization issued by Technologent (an "RMA"). In the event a return is authorized, Product returns may be subject to Customer's payment of a vendor/manufacturer restocking fee.

C. If Customer refuses to accept tender or delivery of any Product, or returns any Product without an RMA, such Product will be held by Technologent awaiting Customer's instruction for twenty (20) days, after which Technologent may deem the Products abandoned and dispose of them as it sees fit, without crediting Customer's account or providing Customer a refund.

## **8. US Government Customers.**

A. If Customer's order is placed under a contract with the United States Government, Technologent agrees to comply with those contractual provisions and regulations that Technologent is required by law to comply with, provided that Customer provides written notice to Technologent of such provisions and regulations. In no event will United States Government Cost Account Standards apply to Customer's purchase of Products or Services under the Agreement.

B. All rights in technical data and software owned or licensed by Technologent or the manufacturer are hereby reserved and deemed restricted or limited. No provision of Customer's contract with the United States government will be binding on Technologent or the manufacturer except as expressly provided in this Section 7.

**9. Export.** Any or all Products may be subject to export or resale restriction or regulation, and Customer acknowledges and agrees that it must comply with such restrictions and regulations. Any or all Products may have been imported. Country or origin information is as provided to Technologent by its suppliers and is, where applicable, located on the Products themselves or in the supplier's packaging thereof.

## **10. Use of Cloud Services.**

A. Cloud Services rendered by Technologent are, in addition to these Terms, subject to Technologent's Cloud Terms of Service which are available at <https://www.technologent.com/legal/Cloudtermsofservice>.

B. In the event that Customer utilizes a third party cloud service provider (e.g. Amazon Web Services, Microsoft Azure, Google Cloud, IBM Cloud, or other cloud service provider of a similar nature) in connection with the Products or Services, Client shall be solely responsible for (i) complying with the terms of use applicable to such services, and (ii) payment for all fees due to such cloud service provider, howsoever arising, regardless of whether such fees are impacted by Technologent's provision of the Products or Services hereunder.

## **11. Software.**

Any software included in or relating to products is supplied by the manufacturer and not Technologent. Technologent makes no representation or warranty with respect to such software and will have no liability in connection therewith. Customer agrees to comply with the manufacturer's or other requirements with regard to proprietary and similar rights in and to such software (including any requirement to enter into a separate license agreement and prohibitions against duplicating or disclosing the same), even if the seal on any "shrink wrapped" software has been broken by Technologent, and will indemnify Technologent against and hold it harmless from any and all liability, cost or expense arising from a breach or purported breach of such requirements or any claims of IP infringement.

## **12. Limitation of Liability.**

A. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 4 (LIMITED WARRANTY) ABOVE, NEITHER TECHNOLOGENT NOR ITS SUPPLIERS WILL HAVE ANY LIABILITY OR OBLIGATION TO CUSTOMER OR ANY OTHER PERSON FOR ANY CLAIM, LOSS, DAMAGE, OR EXPENSE CAUSED IN WHOLE OR IN PART, DIRECTLY OR INDIRECTLY, BY THE INADEQUACY OF ANY PRODUCTS FOR ANY PURPOSE, BY ANY DEFICIENCY OR DEFECT IN ANY PRODUCT (WHETHER OR NOT COVERED BY ANY WARRANTY), BY THE USE OR PERFORMANCE OF ANY PRODUCTS OR BY ANY FAILURE OR DELAY IN TECHNOLOGENT'S PERFORMANCE HEREUNDER, VIOLATION OF ANY INTELLECTUAL PROPERTY RIGHTS, OR FOR ANY SPECIAL, DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES, HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, PERSONAL INJURY OR LOSS OF BUSINESS OR PROFIT, WHETHER OR NOT CUSTOMER HAS INFORMED TECHNOLOGENT OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES AND EVEN IF SUCH DAMAGES ARE FORESEEABLE.

B. IN NO EVENT SHALL TECHNOLOGENT'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO TECHNOLOGENT IN THE PRIOR 12 MONTHS.

C. The limitation of liability set forth in Section 11.B shall not apply to (i) liability resulting from Technologent's gross negligence or willful misconduct, or (ii) death or bodily injury resulting from Technologent's acts or omissions.

## **13. Termination.**

A. In addition to any remedies that may be provided under the Agreement, Technologent may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under the Agreement and such failure continues for five (5) business days after Customer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of the terms of the Agreement, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

B. With respect to Products sold on a subscription basis, Customer may not terminate the Product subscription until the end of the subscription term specified in the Sales Confirmation, and Technologent will not provide any refunds in connection with such an early termination.

## **14. Confidential Information.**

All non-public, confidential or proprietary information of Technologent, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Technologent to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with the Agreement is confidential, solely for the use in the performance of this Agreement, and may not be disclosed or copied unless authorized in advance by Technologent in writing. Upon Technologent's request, Customer shall promptly return all documents and other materials received from Technologent. Technologent shall be entitled to injunctive relief for any violation of this Section without the necessity of posting a bond. This section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

## **15. General Provisions.**

A. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California in each case located in Orange County, and each party irrevocably submits

to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. The parties hereby irrevocably waive any right to trial by jury.

B. Technologent will not be liable for any failure or delay in its performance or in the delivery or shipment of products, or for any damages suffered by Customer by reason of such failure or delay, when such failure or delay is caused by, or arises in connection with any fire, flood, accident, riot, earthquake, pandemic, severe weather, war, governmental interference or embargo, strike, shortage of labor, fuel, power, materials or supplies, delay in delivery by Technologent's suppliers or any other cause or causes beyond Technologent's reasonable control. Technologent reserves the right to cancel without liability any order, the shipment of which is or may be delayed for more than 30 days by reason of any such cause. Technologent reserves the right to allocate Products in its sole discretion among customers or potential customers, or defer or delay the shipment of, any Product which is in short supply.

C. Unless specifically otherwise agreed in writing by Technologent, customer acknowledges that products sold by Technologent are not intended for and will not be used in life support systems, human implantation, nuclear facilities, warfare or systems or any other application where product failure could lead to loss of life or catastrophic property damage. Customer will indemnify and hold Technologent harmless from any loss, cost or damage resulting from customer's breach of the provisions of this paragraph.

D. If Technologent's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants, or employees, Technologent shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

E. Customer shall comply with all applicable laws, regulations, and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

F. No waiver by Technologent of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by an authorized representative of Technologent. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement operates or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

G. Technologent shall not be liable or responsible to Customer, 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, when and to the extent such failure or delay is caused by or results from acts beyond Technologent's reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)": (a) acts of God; (b) flood, fire, earthquake, 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; and (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 Technologent's reasonable control. Technologent shall use commercially reasonable efforts to give Customer notice within thirty (30) days of the Force Majeure Event, stating the period of time the occurrence is expected to continue. Technologent shall use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. Technologent shall resume the performance of its obligations as soon as reasonably practicable after the removal of the Force Majeure Event.

H. Customer shall not assign any of its rights or delegate any of its obligations under the Agreement without the prior written consent of Technologent. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Customer of any of its obligations under the Agreement.

I. The relationship between the parties is that of independent contractors. Nothing contained in the Agreement shall be construed as creating any agency, partnership, 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.

J. The Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of the Agreement.

K. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Sales Confirmation or to such other address that may be

designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), email (with confirmation of receipt), or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this section.

L. 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.

M. Those provisions of the Agreement that should, by their nature, continue to apply after termination or expiration of the Agreement will remain in full force and effect after any termination or expiration of this Agreement.

N. The Agreement may only be amended or modified in a writing stating specifically that it amends the Agreement and is signed by an authorized representative of each party.

## **16. Data Privacy.**

Any personal data collected by Technologent will be used in accordance with its privacy policy at <https://www.technologent.com/privacy-policy>.

## **17. End User License Agreement Terms**

A. Each End User License Agreement (“EULA”) is an agreement directly between Customer and the Provider for use of the Provider’s Product. Technologent is not a party to any Provider’s EULA. Customer agrees to comply with the terms in this Section 16, and each applicable EULA, with respect to the Providers’ Products. In the event of a conflict between the terms in this section and a Provider’s EULA, the Provider’s EULA will govern. Customer acknowledges that each Provider is entitled to enforce the terms of its EULA directly against Customer.

B. If Customer does not agree to the EULA applicable to a Provider’s Product, Customer may not use the Provider’s Product unless Customer has a separate written agreement with the Provider for use of such Product. Customer agrees to each applicable EULA by installing or using the Provider’s Product.

C. Each Provider grants to Customer a personal, non-transferable, non-sublicensable, non-exclusive license to use the Provider’s Product for its internal business operations only.

D. Providers’ Products that are software are licensed and not sold. Except for any the license expressly granted in the applicable EULA, the Provider retains all rights in and to the Provider’s Product and all related documentation and materials. Any use of a Provider’s Products other than as expressly permitted by the applicable EULA is strictly prohibited. Each Provider retains ownership of its Product, including all intellectual property rights therein.

E. Provider’s Products are the confidential and proprietary information of the Provider.

F. When using Provider’s Products, Customer must comply with all applicable laws, including all export control and economic sanctions laws of the United States and other applicable jurisdictions. Under these laws, the Provider’s Product must not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws. Customer represents and warrants that it is not the subject or target of, and that it is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria, and Crimea) that is the subject or target of economic sanctions of the United States or other applicable jurisdictions.

G. Except as otherwise permitted by the applicable Provider’s EULA or by applicable law, Customer may not do any of the following:

- Modify or remove any proprietary notices or markings on or in a Provider’s Product.
- Provide access to the Provider’s Product or allow use by any third party, without the Provider’s prior written consent.
- Download updates or upgrades to the Provider’s Product unless Customer a valid support agreement for such product.
- Install and operate counterfeit versions of the Provider’s Product.
- Violate or circumvent any technological use restrictions in the Provider’s Product.
- Sell, loan, rent, lease, sublicense, distribute or encumber (e.g., by lien, security interest, etc.) the Provider’s Product.
- Use any trademarks or service marks of the Provider, its affiliates or suppliers.

- Copy, republish, upload, post or transmit the Provider's Product in any way.
- Modify or create derivative works based upon a Provider's Product.
- Decompile, disassemble, reverse engineer, or otherwise attempt to derive source code from the Provider's Product, in whole or in part.
- Attack or attempt to undermine the security, integrity, authentication or intended operation of the Provider's Product.
- Use the Provider's Product on a service bureau, rental or managed services basis.
- Create or permit others to create Internet "links" to the Provider's Product or "frame" or "mirror" the Provider's Product on any server, wireless or Internet-based device.
- Use a Provider's Product to create a competitive offering.
- Use a Provider's Product to create other software, products or technologies unless the Provider's Product contains development tools for that purpose.
- Share or publish the results of any testing or benchmarking of the Provider's Product without the Provider's prior written consent.
- Use a Provider's Product for high risk activities, including without limitation online control systems, or use in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, life support, weapons systems or in any other device or system in which function or malfunction of the Provider Product could result in death, personal injury or physical or environmental damage.
- Use a Provider's Product for activities related to weapons of mass destruction, including but not limited to, activities related to the design, development, production or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or support of missile projects, or chemical or biological weapons; and
- Assign any Provider's EULA, or any right or obligation under such EULA, or delegate any performance, without the Provider's prior written consent, unless expressly permitted by the Provider's EULA.
- Transfer the Provider's Product to any third party without the express written permission of the Provider.

H. Customer must must: (i) maintain and use any available systems and procedures that allow Customer to accurately track its use of a Provider's Product; (ii) confirm to the Provider in writing, at the Provider's request, that Customer's use of the Provider's Product fully complies with the applicable EULA; and (iii) cooperate fully and timely with the Provider and its auditors if Provider notifies Customer that it will conduct an audit to confirm Customer's compliance with the applicable EULA. Any such audit will be conducted during normal business hours. If the Provider determines that Customer has exceeded the license granted, Customer will agree to immediately purchase additional licenses to bring its use into compliance.

I. The Provider's Product may include "**Third Party Software**," which is software, including open source software, that is contained in or provided with the Provider's Product and is licensed by a third party under its own terms of use ("**Third Party Terms**"). Third Party Software is governed solely by the applicable Third Party Terms and not by the Provider's EULA. Third Party Terms may be provided with the Third Party Software or may be obtained from the Provider. For certain open source software, the applicable Third Party Terms may entitle Customer to obtain the corresponding source files, which Customer may obtain from the Provider.

J. The Provider will not provide maintenance and support services for the Provider's Product unless Customer purchases such services.

K. The Provider may terminate the applicable EULA if Customer commits a material breach of the EULA, including non-payment, and fails to cure such breach within the specified period of time. When a Provider's EULA terminates, all licenses granted thereunder automatically terminate and Customer must immediately cease use of the Provider's Product and return or destroy all copies of the Provider's Product, as applicable.

L. The Provider does not provide any warranties for the Provider's Product. Each Provider's Product is provided on an "as is" basis and without any warranties whatsoever. To the maximum extent permitted by applicable law, Provider, on behalf of itself and its affiliates and suppliers: (a) makes no express warranties or conditions related to the Provider's Product; (b) disclaims all implied warranties and conditions related to the Provider's Product, including merchantability, fitness for a particular purpose, title, and non-infringement; and (c) disclaims any warranty or condition arising by statute, operation of law, course of dealing or performance, or usage of trade. Providers do not warrant uninterrupted or error-free operation of the Providers' Products.

M. The terms of each Provider's EULA sets forth the agreed allocations of risk constituting part of the consideration for Provider's provision of the Provider's Product to Customer, and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether Provider has been advised of the possibility of the liabilities. With some exceptions specified in the applicable EULA, the Provider's total liability for any claim related to the Provider's Product is limited to the amount Customer paid for the Provider's Product that is the subject to such claim. No Provider shall have any liability under the EULA for special, consequential, exemplary, punitive, incidental or indirect damages, or for lost profits, loss of revenue, loss or corruption of data,



loss of use or procurement of substitute products or services.

N. Customer is solely responsible for its data, and is responsible for backing up its own data. Providers will not back up Customer's data unless otherwise expressly agreed by the parties.

O. A Provider's failure to enforce any provision of an applicable EULA will not constitute a waiver of that or any other provision of the EULA. A waiver must be signed by the Provider to be enforceable.

P. A Provider may update its EULA for the Provider's Products from time to time.

Q. Some Providers may require specific dispute resolution procedures, including mandatory binding arbitration to resolve disputes. These specific dispute resolution requirements are set forth in the Providers' EULAs.