Tervela Inc. License Agreement

Cloud FastPath

TERVELA, INC. (“TERVELA”) IS WILLING TO LICENSE PRODUCT OR ACCESS TO PRODUCT TO THE COMPANY OR ENTITY THAT WILL BE USING OR ACCESSING THE PRODUCT AND THAT YOU REPRESENT AS AN EMPLOYEE OR AUTHORIZED AGENT (“YOU” OR “YOUR”) ONLY ON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS OF THIS LICENSE AGREEMENT (the “AGREEMENT”). PLEASE READ THE TERMS AND CONDITIONS OF THIS AGREEMENT CAREFULLY BEFORE ACCEPTING THIS AGREEMENT ON BEHALF OF YOUR COMPANY OR ENTITY. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE, EXECUTING AN ORDER OR PROPOSAL, OR BY USING OR ACCESSING THE PRODUCT, YOU AGREE TO THE TERMS OF THIS AGREEMENT.

1. License to Use

Tervela grants You a non-exclusive, non-transferable license to access and use Tervela’s software in machine-readable form on Tervela servers (collectively the “Product”) for Your internal business purposes. All purchased licenses are for annual periods beginning upon purchase unless otherwise stated in the Order form provided by Tervela. The Order form may also other terms or restrictions and is hereby incorporated into this Agreement. Any release, revision, or enhancement to the Product that Tervela may furnish to You becomes a part of Product and is governed by this Agreement. This Agreement also governs any services provided by Tervela. The Agreement also governs any renewal or additional purchases. These may be done via a purchase or other method acceptable to the parties.
2. Your Data

Product acts as a conduit for the transfer of files, content, data or similar information (collectively “Data”) by You according to choices and credentials provided and activated by You. All Data transmitted is in encrypted form. You, or Your storage provider(s), is solely responsible for the integrity, data security and handling of Data at both the source and target where any such Data will be transferred, copied or stored. Your use of the Product is solely at Your own risk. You hereby grant Tervela: (i) access to extract and transmit Data from Your identified sources to Your identified targets in the course of effecting Your-initiated data transmissions using Product; (ii) the right to store metadata solely in the context of monitoring, reporting, and billing of Product; and (iii) permission to retrieve Product diagnostic logs from Your equipment solely in the context of providing support to You. You may request deletion of the data stored by Tervela at any time upon written notice to Tervela. Tervela will permanently delete all Your data ninety (90) days after the expiration of Your subscription unless we are requested or receive written permission to delete Your data sooner. By using the Product, You understand and consent to the processing of Data by Tervela in the United States.

3. Fees, Payment, and Renewal

Payment obligations are non-cancelable and fees paid are non-refundable. Fees are to be paid prior to activation of Your account. Tervela will give You at least 7 days prior notice that Your account is overdue before suspending access to Product or terminating Your license. You shall pay any taxes, including sales, use, personal property, value-added, excise, customs fees, import duties or stamp duties or other taxes and duties imposed by governmental agencies of whatever kind and imposed with respect to all transactions and order under this Agreement including penalties and interest but specifically excluding any income taxes payable by Tervela. Such taxes added to the invoice, as prescribed by applicable law, shall be due and payable by You at the time such invoice is payable. The annual term (or applicable term if not annual) shall automatically renew for additional annual terms until terminated by either party at least 30 day prior to expiration of the annual term.
4. Proprietary Rights and Restrictions

Tervela and/or its licensors retains all right, title, and interest in the Product, and no title to the Product or any intellectual property or other rights therein, are transferred to You by virtue of this Agreement other than as specified herein. No right, title or interest to any trademarks, service marks or trade names of Tervela or its licensors is granted by this Agreement. Product is copyrighted and contains proprietary information and trade secrets belonging to Tervela and/or its licensors. You will not use the Product for any purpose other than for Your own internal business purposes, make copies of the software, or exceed the scope of Your license grant. You agree not to cause or permit the reverse engineering, reverse assembly, or reverse compilation of the Product or otherwise attempt to derive source code from the Product. You may not create derivative works based upon all or part of Product nor a) copy, frame or mirror any part or content of the Product, b) use Product as a service to Your customers, or (c) copy any features, functions or graphics of the Product. You may not transfer, lend, lease, assign, sublicense, and/or make available through time sharing, the Product, in whole or in part. You grant Tervela all right, title and interest in any suggestions You make to Tervela related to the Product. You may not access Product if You are a competitor of Tervela, except with Tervela’s prior written consent. In addition, You may not access Product for purposes of monitoring the availability, performance or functionality of Product, or for any other benchmarking or competitive purposes.

5. Confidentiality

The parties agree that when disclosing information under this Agreement, the disclosing Party will be the “Disclosing Party” and the receiving Party will be the “Receiving Party.” The term “Confidential Information” includes: (a) technical, financial, commercial or other proprietary information including without limitation Product roadmaps, pricing, Your data, software code and documentation, techniques or systems of the Disclosing Party and (b) information or data that is confidential and proprietary to a third party and which is in the possession, custody or control of the Disclosing Party. The Receiving Party will not disclose any of the Disclosing Party’s Confidential Information to any third party except to the extent it can be documented that any such Confidential Information is in the public domain and generally available for use by and disclosure to the general public without any charge, restriction or license, or is required...
to be disclosed by any authority having jurisdiction so long as the Disclosing Party is provided reasonable notice of such disclosure prior to its release by the Receiving Party. Each Party’s respective Confidential Information shall remain their own property.

6. Limitations

TERVELA AND ITS THIRD-PARTY LICENSORS MAKE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EXCEPT IN THE CASE OF SECTION 7 BELOW, TERVELA’S AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF PRODUCT, SHALL NOT EXCEED THE AMOUNTS PAID BY YOU TO TERVELA HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY, WITHOUT REGARD TO WHETHER A CLAIM IS BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE. IN NO EVENT SHALL TERVELA OR ITS LICENSORS BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM LOSS OF PROFITS, DATA, OR BUSINESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF TERVELA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TERVELA DOES NOT WARRANT THAT THE PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE, NOR DOES TERVELA MAKE ANY WARRANTY WITH RESPECT TO THE TRANSMISSION OF INFORMATION OVER THE INTERNET, OR ANY RESULTING IMPAIRMENT OR DISRUPTION OF YOUR ACCESS TO THE PRODUCT.

7. Indemnification

a. Tervela agrees to defend You from and against any third party claim or action based on any alleged infringement of any patent, copyright, trade secret, or other proprietary right of a third party as a result of the use of the Product according to the terms and conditions of this Agreement, and Tervela agrees to indemnify You from any costs and/or damages awarded against You in any such infringement claim or action or settlement thereof, provided that (i)
Tervela is promptly notified in writing of such claim, (ii) You grant Tervela sole control of the defense and any related settlement negotiations, and (iii) You cooperate with Tervela in defense of such claim. Notwithstanding the foregoing, Tervela shall have no liability to You if the infringement results from use of the Product in combination with software not provided by Tervela that causes the infringement or modifications to the Product not made by Tervela. The foregoing states the entire liability of Tervela with respect to infringement of any patents, copyrights, trade secrets, or other proprietary rights by the Product or any part thereof.

b. You will indemnify, defend, and hold harmless Tervela from and against all liabilities, damages, and costs (including settlement costs and reasonable attorneys’ fees) arising out of any claim by a third party against Tervela and its affiliates regarding: (i) Your Data; or (ii) violation of this Agreement or any applicable laws, rules or regulations.

8. Services

Any services provided to You by Tervela will be performed in a workmanlike manner. Tervela shall be the exclusive owner of any results of services and such results shall become part of Product and licensed to You hereunder according to the terms of this Agreement.

9. Export Regulation

You agree to comply strictly with all U.S. export control laws, including the U.S. Export Administration Act and its associated regulations. Product is prohibited for export or re-export to the list of terrorist supporting countries or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury’s lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists. If Product is being shipped by Tervela, then it is exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.
10. General

This Agreement is made under the laws of the Commonwealth of Massachusetts, USA, excluding the choice of law and conflict of law provisions, and You expressly consent to sole jurisdiction and venue for any litigation arising from or relating to this Agreement shall be an appropriate federal or state court located in Massachusetts. This Agreement is the entire agreement between You and Tervela relating to Product and supersedes all prior and contemporaneous or other oral or written communications, proposals, and representations with respect to its subject matter, as well as without limitation terms and conditions attached to any purchase order or invoice. No modification to this Agreement is binding unless in writing and signed by a duly authorized representative of each party. The waiver or failure of either party to exercise any right provided for herein shall not be deemed a waiver of any further right hereunder. If any provision of this Agreement is held invalid, all other provisions shall remain valid unless such validity would frustrate the purpose of this Agreement, and this Agreement shall be enforced to the full extent allowable under applicable law. All licenses granted hereunder shall terminate upon expiration of the term or Your breach of this Agreement. Upon termination of Your license, you agree to cease using and destroy and expunge Product in your control directly or indirectly and certify as to such in writing to Tervela. The parties will have 30 days from notice of breach to cure a breach hereunder. Neither party shall be liable for the failure to perform its obligations under this Agreement due to events beyond such party’s reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God or acts in compliance with any applicable law, regulation or order (whether valid or invalid) of any court or governmental body. Tervela may include Your name in a list of Tervela customers on the Tervela website or in promotional materials. Neither party may assign its rights, duties or obligations under this Agreement without the prior written consent of the other party and any attempt to do so shall be void and of no effect; except to a successor by merger, acquisition or restructuring that assumes the right and duties of this Agreement. The following sections survive termination or expiration of this Agreement: Fees and Payment, Proprietary Rights and Restrictions, Confidentiality, Limitations, and General.