

## CLOUD FASTPATH LICENSE AGREEMENT

BEFORE USING THE TERVELA, INC.'S ("TERVELA") CLOUD FASTPATH SOFTWARE AND RELATED SERVICES (THE "SERVICES"), YOU SHOULD CAREFULLY READ THE FOLLOWING LICENSE AGREEMENT ("AGREEMENT") THAT APPLIES TO THE SERVICES. CLICK THE CHECKBOX THAT SAYS "I HAVE READ AND AGREE TO THE TERMS AND CONDITIONS SHOWN ABOVE" IF YOU FULLY ACCEPT AND AGREE TO ALL OF THE PROVISIONS OF THIS AGREEMENT. CLICKING THE CHECKBOX, EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR OTHERWISE USING THE SERVICES (WHICH MAY INCLUDE DOWNLOADING OR INSTALLING CLIENT SOFTWARE) ESTABLISHES A BINDING AGREEMENT BETWEEN YOU AS THE PERSON USING THE SERVICES, EITHER ON BEHALF OF YOURSELF OR ANY THIRD PARTY ENTITY ("YOU" OR "CUSTOMER") AND TERVELA. IF YOU DO NOT ACCEPT ALL OF THE TERMS OF THIS AGREEMENT, YOU SHALL HAVE NO RIGHT TO DOWNLOAD, INSTALL AND/OR USE THE SERVICES. THE RIGHT TO USE THE SERVICES IS GRANTED ON THE CONDITION THAT YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS.

BY INSTALLING AND/OR BY USING THE SERVICES, AS APPLICABLE, YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL CAPACITY AND AUTHORITY TO ENTER INTO A BINDING AGREEMENT TO ADHERE TO THE TERMS AND CONDITIONS SET FORTH HEREIN, AND THAT THE SERVICES WILL BE USED ONLY IN ACCORDANCE WITH THESE TERMS AND CONDITIONS AND WITH ALL APPLICABLE LAWS. IF AN INDIVIDUAL IS REGISTERING OR USING THE SERVICES ON BEHALF OF AN ENTITY OR ORGANIZATION, THAT INDIVIDUAL WARRANTS, REPRESENTS, AND COVENANTS TO TERVELA THAT SUCH INDIVIDUAL IS DULY AUTHORIZED TO AGREE TO THESE TERMS AND CONDITIONS ON BEHALF OF THE ORGANIZATION (AND ITS AFFILIATES, AS APPLICABLE) AND TO BIND THE ORGANIZATION TO THEM, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ORGANIZATION (AND ITS AFFILIATES). IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES. WHERE APPLICABLE, THIS AGREEMENT APPLIES TO ALL SERVICES PROVIDED BY TERVELA, INCLUDING ANY TRIAL THEREOF. HOWEVER, NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, YOU MAY NOT ACCESS THE SERVICES IF YOU ARE A DIRECT COMPETITOR OF TERVELA, EXCEPT WITH TERVELA'S PRIOR WRITTEN CONSENT. IN ADDITION, YOU MAY NOT ACCESS THE SERVICES FOR PURPOSES OF MONITORING THE AVAILABILITY, PERFORMANCE OR FUNCTIONALITY OF THE SERVICES, OR FOR ANY OTHER BENCHMARKING OR COMPETITIVE PURPOSES.

### **1. Use of Services.**

- a. **Provision of Services.** Customer, and authorized users ("End Users") may access and use the Services in accordance with this Agreement.
- b. **Support.** If you are under a current subscription agreement or support contract with Tervela with respect to the Services and you are current in paying all amounts due thereunder, Tervela shall make available to you support consistent with the level of service purchased. Support policies are subject to change.
- c. **Data Transfer.** Tervela provides Services that act as a conduit for the transfer of files, content, data or similar information (collectively "Customer Data") by you through the Services according to choices and credentials provided and activated by Customer. All data transmitted is in encrypted form. Customer, or its storage provider(s), is solely responsible for the integrity, data security and handling of the Customer Data at both the source and target where any such Customer Data will be transferred, copied or stored. Customer's use of the Services is solely at Customer's own risk. Tervela maintains no responsibility or liability for the integrity and/or security of the Customer Data.
- d. **European Users.** By using the Services, users in the European Union understand and consent to the processing of Customer Data, which may include personal information, in the United States. Tervela complies with the EU-U.S. Privacy Shield Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of personal information transferred from the European Union to the United States.
- e. **Customer Data.** Tervela does not store Customer Data. File name, files size, creation, and modification date and similar file "Metadata", as well as log data associated with customer usage are stored as part of the Services for the duration of the contract between Tervela and Customer. The Services also produce diagnostic logs when installed on customer equipment. Customer hereby grants Tervela: (i) access to extract and transmit Customer Data from Customer identified sources to Customer identified targets in the course of effecting Customer-initiated data transmissions using the Cloud FastPath; (ii)

the right to store Metadata solely in the context of monitoring, reporting, and billing of the Services; and (iii) permission to retrieve Cloud FastPath diagnostic logs from customer equipment solely in the context of providing support to Customer. Customer may request deletion of the data stored by Tervela at any time upon written notice to Tervela (in accordance with Section 12 below). Tervela will permanently delete all Customer data ninety days after the expiration of Customer subscription unless we are requested or receive written permission to delete Customer data sooner.

- f. **Modifications to the Services.** Tervela may update the Services from time to time. If Tervela changes the Services in a manner that materially reduces the functionality, Tervela will inform Customer via the email address associated with Customer's account.
- g. **Software.** Some Services allow Customer to download Tervela software (the "Software"), which may update automatically. Customer may use the Software only to access the Services. If any component of the Software is offered under an open source license, Tervela will make the license available to Customer, and the provisions of that license shall govern the use of such open source software, and may, accordingly, expressly override some of the terms of this Agreement.
- h. **Privacy Policy.** Tervela recognizes and respects the importance of protecting the privacy of all information provided by users. Tervela collects and stores information about its users. Please read Tervela's [Privacy Policy](#).
- 2. **Customer Obligations.**
- a. **Compliance.** Customer is responsible for any use of the Services by its End Users. Customer and its End Users must use the Services in compliance with the [Acceptable Use Policy](#). Customer will comply with all laws, rules and regulations applicable to the use of the Services.
- b. **Customer Representations.** Customer represents that: (i) it owns all rights and licenses for all required uses of the Customer Content, uploaded or transferred by Customer in connection with the Services; (ii) it has the right to provide applicable rights in Customer Content, including the right to transfer and copy Customer Content uploaded or transferred by Customer via application settings, which Customer controls and for which Customer is solely responsible for; (iii) there are no restrictions, limitations, contractual or statutory obligations or restrictions or any other factor whatsoever which prevents or restricts from granting the rights in connection with Customer Content; and (iv) Customer Content will not: (a) facilitate or promote illegal activity, or contain content that is illegal; (b) contain content, material or information that is defamatory, obscene, distasteful, racially or ethnically offensive, harassing, or that is discriminatory based upon race, gender, color, creed, age, sexual orientation, or disability; (c) contain sexually suggestive or explicit content; (d) infringe upon or violate any right of any third party; (e) disparage, defame, or discredit Tervela or any third person; or (g) otherwise violates any laws, rules, regulations or policies of any competent jurisdiction; and (v) it is solely responsible for all aspects related to Customer Content.
- c. **Unauthorized Use & Access.** Customer will prevent unauthorized use of the Services by its End Users, employees, and affiliates and terminate any unauthorized use of or access to the Services. Customer will promptly notify Tervela of any unauthorized use of or access to the Services.
- d. **Restricted Uses.** Customer will not, except as may be otherwise agreed by Tervela in writing: (i) sell, sublicense, lease, transfer or distribute the Services or any derivative thereof; (ii) use the Services for activities where use or failure of the Services could lead to physical damage, death, or personal injury; (iii) modify, adapt, translate, or prepare derivative works of the Services, or decrypt data or extract portions of the Services files for use in other application; (iv) decompile, disassemble, or reverse engineer the Services, nor attempt nor assist anyone else to do so, unless this restriction is prohibited by law; or (v) remove, obscure, or alter Tervela's or any third party's trademarks or copyright or other proprietary rights notices affixed to or contained within or accessed in conjunction with or through the Services.
- e. **No Approval of Customer Content.** Tervela does not review, endorse or approve Customer Content or any other content being processed via the Services. Tervela acts as a conduit only.
- f. **No Endorsement.** All transactions using the Services are between the transacting parties only. The Services may contain features and functionalities linking Customer or providing Customer with certain functionality and access to third party content, including Web sites, directories, servers, networks, systems, information and databases, applications, software, programs, products or services, and the Internet as a whole. Tervela may also provide some content to Customer as part of the Services. However, Tervela is not an agent of any transacting party, nor is Tervela a direct party in any such transaction. Any such activities, and any terms associated with such activities, are solely between Customer and the applicable third-party. Similarly, Tervela is not responsible for any third party content Customer accesses by or through the Services, and Customer irrevocably waive any claim against Tervela with respect to such sites and third-party content. Tervela shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between Customer and any such third-party.
- g. **Third Party Requests.** "Third Party Request" means a request received by Tervela from a third party for records relating to an End User's use of the Services. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request issued by a regulatory or administrative agency or government body. Customer will cooperate with Tervela regarding any information Tervela is required to provide in connection with a Third Party Request. Tervela will make commercially reasonable efforts, to the extent allowed by law and by the terms of the Third Party

- Request, to: (a) promptly notify Customer of Tervela's receipt of a Third Party Request; (b) comply with Customer's commercially reasonable requests, at Customer's cost and expense, regarding its efforts to oppose a Third Party Request.
3. **Third-Party Services.** If Customer uses any third-party service (e.g., a service that uses a Tervela API) with the Services, (a) Tervela will not be responsible for any act or omission of the third party, including the third party's access to or use of Customer Data and (b) Tervela does not warrant or support any service provided by the third party.
  4. **Suspension of End User Accounts by Tervela.** If Customer or any of its End Users (i) violates this Agreement or (ii) uses the Services in a manner that Tervela reasonably believes is in violation of law or would otherwise detrimentally affect Tervela or other customers of Tervela, then Tervela may request that Customer suspend or terminate the applicable End User account. If Customer fails to immediately suspend or terminate the End User account, then Tervela may do so without further notice.
    - a. **Security Emergencies.** Notwithstanding anything in this Agreement, if there is a Security Emergency (as defined below) then Tervela may automatically suspend Customer's, or any End User's, use of the Services. Tervela will make commercially reasonable efforts to narrowly tailor the suspension as needed to prevent or limit the Security Emergency. "Security Emergency" means: (i) use of the Services that do or could disrupt the Services, other customers' use of the Services, or the infrastructure used to provide the Services and (ii) unauthorized third-party access to the Services.
  5. **Intellectual Property Rights; Confidentiality.**
    - a. **Reservation of Rights.** Except as expressly set forth herein, this Agreement does not grant (i) Tervela any Intellectual Property Rights in Customer Content or (ii) Customer any Intellectual Property Rights in the Services, Software, or Tervela trademarks, brand features, and/or goodwill. Tervela retains all title, ownership and Intellectual Property Rights to the Services, including, but not limited to, any copies (including partial copies), translations, compilations, derivative works, updates and upgrades thereto. The Services are Tervela's confidential proprietary information and contains valuable trade secrets of Tervela and its licensors. "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.
    - b. **Suggestions.** Customer agrees that all Intellectual Property Rights in any ideas, feedback, modifications, or suggestions it proposes, creates, or authors relating to the Services or Software ("Suggestions") are hereby assigned to Tervela and shall be the sole and exclusive property of Tervela. Tervela may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, license and sublicense, any Suggestions that Customer or End Users send Tervela or post in Tervela's forums without any obligation to Customer.
    - c. **Confidentiality.** Either party may, from time to time, deliver to the other certain non-public information, which may include including business information, financial information, customer information, marketing plans, hardware, software and any other non-public information (collectively, "Confidential Information"). Notwithstanding anything to the contrary herein, the Services and related documentation shall be deemed Tervela's Confidential Information. A party shall not use or disclose Confidential Information of the other, except as expressly authorized by this Agreement or in writing by the disclosing party, using the same degree of care which receiving party uses with respect to its own proprietary information, but in no event with less than with reasonable care. The foregoing obligations of confidentiality shall not apply to any information that the receiving party can show is or was (i) already known to the receiving party at the time of disclosure without obligation of confidentiality; (ii) independently developed by the receiving party without use of or access to the other party's Confidential Information; (iii) approved for disclosure by the disclosing party beforehand and in writing; (iv) publicly known without breach of this Agreement; (v) lawfully received by receiving party from a third party without obligation of confidentiality; or (vi) required to be disclosed by applicable law or order of a court, tribunal or other governmental agency; provided, however, that the receiving party shall promptly notify the disclosing party in writing of such requirement, and shall cooperate with the disclosing party to minimize the scope of any such disclosure, and in the obtaining of a confidentiality, protective or similar order.
    - d. **Customer List.** Tervela may include Customer's name in a list of Tervela customers on the Tervela website or in promotional materials.
  6. **Fees & Payment.**
    - a. **Fees.** Fees are due on receipt of invoice. Customer will pay, and authorizes Tervela to charge using Customer's selected payment method, for all applicable fees for Customer's use of the Services and Software. All fees are non-cancelable and non-refundable. Customer is responsible for providing complete and accurate billing and contact information to Tervela. Tervela may suspend or terminate the Services if fees are past due.
    - b. **Auto Renewals and Trials.** IF CUSTOMER'S ACCOUNT IS SET TO AUTO RENEW OR IS IN A TRIAL PERIOD, TERVELA MAY AUTOMATICALLY CHARGE AT THE END OF THE TRIAL OR FOR THE RENEWAL, UNLESS CUSTOMER NOTIFIES TERVELA THAT CUSTOMER WANTS TO CANCEL OR DISABLE AUTO RENEWAL AT THIRTY (30) DAYS PRIOR TO THE END OF THE TRIAL OR THE THEN-CURRENT SERVICES TERM. Tervela may revise Service rates by providing Customer at least 30 days notice prior to the next charge.
    - c. **Taxes.** Customer is responsible for all taxes. Tervela will charge tax when required to do so. If Customer is required by law to withhold any taxes, Customer must provide Tervela with an official tax receipt or other appropriate documentation.

- d. **Purchase Orders.** If Customer requires the use of a purchase order or purchase order number, Customer (i) must provide the purchase order number at the time of purchase and (ii) agrees that any terms and conditions on a Customer purchase order will not apply to this Agreement and are null and void, even if such purchase order is accepted by Tervela.
7. **Term & Termination.**
- a. **Term.** This Agreement will remain in effect until Customer's subscription to the Services expires or terminates, as set forth in the Order Form for the Services, or until the Agreement is terminated.
- b. **Termination for Breach.** Either Tervela or Customer may terminate this Agreement if: (i) the other party is in material breach of the Agreement and fails to cure that breach within 30 days after receipt of written notice or (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within 90 days.
- c. **Effects of Termination.** If this Agreement terminates: (i) the rights granted by Tervela to Customer to use the Services and any related Software will cease immediately; and (ii) after 30 days, Tervela may delete any information relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2(g) (Third Party Requests), 5 (Intellectual Property Rights), 6 (Fees & Payment), 7(c) (Effects of Termination), 8 (Indemnification), 9 (Disclaimers), 10 (Limitation of Liability), 11 (Disputes), and 12 (Miscellaneous).
8. **Indemnification.**
- a. **By Customer.** Customer 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) Customer Content; or (ii) Customer's or and End User's use of the Services in violation of this Agreement or any applicable laws, rules or regulations.
- b. **By Tervela.** Tervela will indemnify, defend, and hold harmless Customer 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 Customer to the extent based on an allegation that Tervela's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, U.S. patent, or trademark right of the third party. In no event will Tervela have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Tervela and (ii) any content, information, or data provided by Customer, End Users, or other third parties.
- c. **Possible Infringement.** If Tervela believes the Services infringe or may be alleged to infringe a third party's Intellectual Property Rights, then Tervela may: (i) obtain the right for Customer, at Tervela's expense, to continue using the Services; (ii) provide a non-infringing functionally equivalent replacement; or (iii) modify the Services so that they no longer infringe. If Tervela does not believe the options described in this section are commercially reasonable then Tervela may suspend or terminate Customer's use of the affected Services (with a pro-rata refund of prepaid fees for the Services).
- d. **General.** The party seeking indemnification will promptly notify the other party of the claim and cooperate with the other party in defending the claim. The indemnifying party will have full control and authority over the defense, except that: (i) any settlement requiring the party seeking indemnification to admit liability requires prior written consent, not to be unreasonably withheld or delayed and (ii) the other party may join in the defense with its own counsel at its own expense. THE INDEMNITIES ABOVE ARE TERVELA AND CUSTOMER'S ONLY REMEDY UNDER THIS AGREEMENT FOR CLAIMS FOR WHICH AN INDEMNITY IS PROVIDED HEREUNDER.
9. **Disclaimers.** THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER TERVELA NOR ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS MAKE ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NON-INFRINGEMENT.
10. **Limitation of Liability.**
- a. **Limitation on Indirect Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, EXCEPT FOR TERVELA'S OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS, OR CUSTOMER'S BREACH OF TERVELA'S INTELLECTUAL PROPERTY RIGHTS, NEITHER CUSTOMER NOR TERVELA AND ITS AFFILIATES, SUPPLIERS, AND DISTRIBUTORS WILL BE LIABLE UNDER THIS AGREEMENT FOR (I) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, OR (II) LOSS OF USE, DATA, BUSINESS, REVENUES, OR PROFITS (IN EACH CASE WHETHER DIRECT OR INDIRECT), EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF A REMEDY FAILS OF ITS ESSENTIAL PURPOSE.
- b. **Limitation on Amount of Liability.** TO THE FULLEST EXTENT PERMITTED BY LAW, TERVELA'S AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER TO TERVELA HEREUNDER DURING THE TWELVE MONTHS PRIOR TO THE EVENT GIVING RISE TO LIABILITY.

11. **Disputes.**

- a. **Informal Resolution.** Tervela wants to address issues between the parties without resorting to a formal legal case. Before filing a claim, each party agrees to try to resolve the dispute by contacting the other party through the notice procedures in Section 12(e). If a dispute is not resolved within 30 days of notice, Customer or Tervela may bring a formal proceeding.
- b. **Agreement to Arbitrate.** Customer and Tervela agree to resolve any claims relating to this Agreement or the Services through final and binding arbitration, except as set forth below. The [American Arbitration Association](#) (AAA) will administer the arbitration under its Commercial Arbitration Rules. The arbitration will be held in Boston (MA), or any other location both parties agree to in writing.
- c. **Exception to Agreement to Arbitrate.** Either party may bring a lawsuit in the courts of Massachusetts solely for injunctive relief to stop unauthorized use or abuse of the Services, infringement of Intellectual Property Rights, or breach of confidentiality, without first engaging in the informal dispute notice process described above. Both Customer and Tervela consent to venue and personal jurisdiction in the courts of the Commonwealth of Massachusetts.

12. **Miscellaneous.**

- a. **Modification of Agreement.** Tervela may revise this Agreement from time to time and the most current version will always be posted on the Tervela website. If a revision, in Tervela's sole discretion, is material, Tervela will notify Customer (by, for example, sending an email to the email address associated with the applicable account). Other revisions may be posted to Tervela's blog or terms page, and Customer is responsible for checking such postings regularly. By continuing to access or use the Services after revisions become effective, Customer agrees to be bound by the revised Agreement. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.
- b. **Entire Agreement.** This Agreement, including Customer's invoice and order form, constitutes the entire agreement between Customer and Tervela with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make up this Agreement, the documents will control in the following order: the invoice, the order form, the Agreement.
- c. **Governing Law.** THE AGREEMENT WILL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS LAW EXCLUSIVE OF ITS CONFLICTS OF LAWS PRINCIPLES.
- d. **Severability.** Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.
- e. **Notice.** Notices must be sent via first class, airmail, or overnight courier and are deemed given when received. Notices to Customer may also be sent to the applicable account email address and are deemed given when sent. Notices to Tervela must be sent to Tervela, Inc., 50 Milk Street, Boston, MA 02109, to the attention of the Legal Department.
- f. **Waiver.** A waiver of any default is not a waiver of any subsequent default.
- g. **Assignment.** Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of Tervela. Any attempt to transfer or assign by Customer is void. Tervela may freely assign this Agreement.
- h. **No Agency.** Tervela and Customer are not legal partners or agents, but are independent contractors.
- i. **Force Majeure.** Except for payment obligations, neither Tervela nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance).
- j. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement. Without limiting this section, a Customer's End Users are not third-party beneficiaries to Customer's rights under this Agreement.
- k. **Export Restrictions.** The export and re-export of Customer Data via the Services may be controlled by the United States Export Administration Regulations or other applicable export restrictions or embargo. The Services may not be used in Cuba; Iran; North Korea; Sudan; or Syria or any country that is subject to an embargo by the United States and Customer must not use the Services in violation of any export restriction or embargo by the United States or any other applicable jurisdiction. In addition, Customer must ensure that the Services are not provided to persons on the United States Table of Denial Orders, the Entity List, or the List of Specially Designated Nationals.