

Effective Date: January 01st, 2020

Last Updated: October 8, 2023

Hardware, Software and Data Storage Agreement

Introduction

This Consent Agreement ("Agreement") is established between the entity or individual referred to as "Customer," "you," or "your," and Technoledge INC, herein referred to as "SERVICE PROVIDER", "Company," "we," "us," or "our." This Agreement outlines the terms and conditions under which the Company is authorized to perform the specified actions or services as detailed in the document to which this Agreement is appended.

Your acceptance of this document, coupled with continued payments for Product(s) or Service(s), signifies your understanding, acknowledgment, and agreement to abide by the terms delineated in this Agreement. It is expressly noted that this Agreement is binding and constitutes an integral part of the Technoledge INC Master Services Agreement ("MSA"). In case of any ambiguity or uncertainty, the provisions of our MSA, Privacy Policy, and any executed contract for the Service(s) rendered between Technoledge INC and the Customer shall prevail. Our Privacy Policy is accessible at Technoledge Privacy Policy. LINK | <https://www.technoledge.com/privacy-policy/>

An exception to the execution of this Agreement arises if the Customer has never availed themselves of the Product(s) or Service(s) from Technoledge INC as outlined in this Agreement. If the Customer has previously availed themselves of these Product(s) or Service(s) from Technoledge INC as outlined in this Agreement and is now procuring these Product(s) or Service(s) from another source, a Termination Notice must be on file with "SERVICE PROVIDER" to dissolve the binding nature of this Agreement regarding these Product(s) or Service(s).

Hardware Policy

Troubleshooting, Testing, and Diagnosing

The Customer acknowledges that the processes of troubleshooting, testing, and diagnosing carried out by our skilled technicians are aimed at ensuring the optimal performance of the hardware systems. The Customer further acknowledges that these processes may yield unwanted or undesired outcomes, and hereby absolves the "SERVICE PROVIDER" of any liability for hardware failures discovered or exacerbated during these processes prior to re-entry into the production environment. The Customer also acknowledges that the "SERVICE PROVIDER" will be billing the Customer for such services of troubleshooting, testing and diagnosing hardware issues and initial provision of hardware.

Manufacturer Support & Warranty

The Customer is strongly advised by the "SERVICE PROVIDER" to maintain ongoing maintenance and warranty support for hardware in production. The Customer agrees not to hold the "SERVICE PROVIDER" liable for any hardware failures attributable to the absence of manufacturer support, or unavailability of replacement components for hardware outside of the manufacturer's warranty period. The "SERVICE PROVIDER" recommends the upkeep of warranty and support contracts for all hardware under our maintenance.

Recommended and Preferred Hardware

The "SERVICE PROVIDER" endorses a list of reputable hardware manufacturers whose products are proven to perform optimally within our service environment. Adhering to these recommendations is at the Customer's discretion; however, the Customer acknowledges that deviation may result in extended troubleshooting and diagnosing time, and absolves the "SERVICE PROVIDER" of any financial or operational repercussions arising from the Customer's hardware choices.

Hardware Replacement Parts

The Customer acknowledges that in instances where original manufacturer parts are unobtainable, the decision to utilize third-party parts or upgrades is solely theirs. The Customer absolves both the "SERVICE PROVIDER" and the original manufacturer of any liability for undesirable outcomes stemming from such decisions, including potential voidance of manufacturer warranties. The "SERVICE PROVIDER" advises reviewing warranty terms prior to pursuing any hardware upgrades.

Liability for External Hardware Purchases

Should the Customer opt to procure hardware externally, they hereby absolve the "SERVICE PROVIDER" of any liability for unforeseen issues arising due to the lack of our standard troubleshooting, testing, and provisioning processes. The Customer agrees to notify the "SERVICE PROVIDER" of such procurements, enabling a case-by-case assessment and documentation of potential issues.

Retention of Hardware & Software

Hardware, materials, or software remaining in the possession of the "SERVICE PROVIDER" for more than 60 days post-delivery will be deemed the property of the "SERVICE PROVIDER", barring written agreements to the contrary. While attempts will be made to inform the Customer, the "SERVICE PROVIDER" is not obligated to employ extraordinary measures beyond standard communication channels (email, phone calls, text messaging) to notify the Customer of retained equipment.

Customer's Responsibility

Customers are obliged to inform us promptly of any hardware malfunctions or concerns to facilitate swift troubleshooting and resolution.

Software Policy

Troubleshooting and Diagnosing

The Customer acknowledges and agrees not to hold the "SERVICE PROVIDER" liable for any mishaps, extended time, or loss of income or revenue that may arise during the process of troubleshooting and diagnosing software issues. The Customer also acknowledges that the "SERVICE PROVIDER" will be billing the Customer for such services of troubleshooting and diagnosing software issues.

Dynamic Nature of Software

The Customer recognizes that software is a dynamic, living environment, subject to changes both from user and non-user interactions. The Customer hereby absolves the "SERVICE PROVIDER" of any liabilities that may arise due to the inherent evolving nature of software environments.

Software Support and Maintenance

The Customer is obligated to maintain warranties and ongoing support for all installed software, inclusive of operating systems and third-party applications. The Customer agrees to keep their software updated to ensure security, functionality, and to achieve a predictable and desirable outcome from the software. The Customer also agrees not to hold the "SERVICE PROVIDER" liable for any undesirable outcomes resulting from software upgrades or security patching.

Outdated Software

The Customer understands and agrees that running software no longer supported by the manufacturer may lead to undesirable outcomes, and the "SERVICE PROVIDER" shall not be held liable for such scenarios. The Customer acknowledges the "SERVICE PROVIDER"'s limitation in providing support, security patches, or updates for outdated or unsupported software.

"SERVICE PROVIDER"'s Software Management Scope

Unless explicitly stated otherwise, the "SERVICE PROVIDER"'s role is confined to systems administration, management, and security of the software, provided that training materials are available from the manufacturer. The Customer acknowledges the vast array of software configurations possible and absolves the "SERVICE PROVIDER" of liability for unforeseen outcomes arising from conflicting configurations. While the "SERVICE PROVIDER" will endeavor to ensure a predictable outcome when configuring and managing software, the Customer understands that the "SERVICE PROVIDER" is not a software developer and cannot be held responsible for errors or undesirable outcomes originating from third-party software vendor configurations or updates.

Liability Waiver

The Customer waives any claims against the "SERVICE PROVIDER" for liabilities or damages incurred as a result of the software services provided, except in cases of willful misconduct or gross negligence on part of the "SERVICE PROVIDER".

Documentation and Communication

The Customer and "SERVICE PROVIDER" agree to maintain open and prompt communication regarding software issues, updates, and configurations. Adequate documentation will be provided and maintained by both parties to ensure clarity and mutual understanding of the software environment.

Data Storage and Data Management Policy

Troubleshooting, Diagnosing, and Data Loss Liability

The Customer understands and agrees not to hold the "SERVICE PROVIDER" liable for any data loss incurred while troubleshooting and diagnosing issues related to data stored on hardware or within software. The "SERVICE PROVIDER" will endeavor to execute all necessary backups before engaging in work on data-centric environments where data handling is sensitive. However, should there be a perceived risk of data loss, it's the "SERVICE PROVIDER"'s recommendation to refer the affected hardware and software to a professional data recovery company prior to any further troubleshooting and diagnosing. The Customer acknowledges their responsibility in affirming the implementation of backup solutions within their environment if such solutions fall outside the "SERVICE PROVIDER"'s management scope. In the absence of a contractual agreement between the Customer and the "SERVICE PROVIDER" regarding backup services, the Customer absolves the "SERVICE PROVIDER" of any responsibility related to data loss. This clause does not cover replication services as they are not deemed a backup of a server production environment.

Data Storage Policy

Data Backup Services

The "SERVICE PROVIDER"'s Data Backup Services are facilitated through third-party vendors. The retention, security, and privacy of backed-up data are governed by the privacy policies and terms of service of these third-party vendors. It's the responsibility of the Customer to be aware of and agree to these third-party terms.

15-Day Data Storage

As a courtesy, the "SERVICE PROVIDER" offers a 15-day grace period for data storage, post which the data may be purged unless a contractual agreement specifying extended storage terms is in place. The Customer can request access to this data within the 15-day period. Beyond this period, the "SERVICE PROVIDER" shall not be held liable for the retention or loss of data. The Customer understands and will comply with the knowledge that the purpose of the 15-day data storage grace is solely for work that may need to be done on a server or workstation, such as migrations, upgrades, troubleshooting, diagnosing. However, this 15-day grace is not considered or classified as a certified backup and should not be expected to be as such. The Customer also acknowledges the potential for data degradation and corruption due to failing hardware or software that may be irreversible by the "SERVICE PROVIDER". Therefore, it is the "SERVICE PROVIDER"'s recommendation that the Customer has a backup of their data before any troubleshooting and diagnosing is done on any hardware or software.

GDPR Compliance Clause

For Customers residing in the European Economic Area (EEA), data protection rights under the General Data Protection Regulation (GDPR) apply. Technology Inc commits to facilitating your rights to:

- Access, rectify, or erase your personal data.
- Object to the processing of your personal data.
- Request portability of your personal data.

The processing of personal data will be carried out only under legitimate interests, contractual necessity, or upon obtaining explicit consent.

Data Protection Officer

A Data Protection Officer (DPO) is appointed to ensure compliance with this policy and GDPR. For inquiries, please contact our DPO at the provided contact information. EMAIL | Help@Technology.com

Transfers Outside the EEA

Your data may be transferred to and processed in countries outside the EEA. Adequate safeguards as required by the GDPR are implemented to protect your data during such transfers.

Customer Responsibilities

The Customer is responsible for maintaining a copy of their data. It's advisable to have a robust data backup and recovery plan in place to prevent data loss.

Liability Waiver

Hardware, Software and Data Storage Agreement

The Customer agrees not to hold the "SERVICE PROVIDER" liable for any data loss, corruption, or breach that occurs, except in cases of willful misconduct or gross negligence on part of the "SERVICE PROVIDER".

Governing Law and Jurisdiction

This Agreement shall be governed by the laws of the State in which the Company is registered, without regard to its conflict of law principles.

Agreement to MSA and Privacy Policy

In the event of any lapses in clarity or conflicts between this Agreement and the MSA or Privacy Policy, the terms of the MSA and Privacy Policy shall prevail.

Publicity Rights

You agree that "SERVICE PROVIDER" may identify You as a user of the Services in its business deals; press releases; marketing materials; electronic, printed, and broadcast advertising; newsletters; mailings; tradeshows; other promotional materials; on "SERVICE PROVIDER"'s website; or any other third-party website where "SERVICE PROVIDER" or its designated agents may promote the Services. You hereby grant "SERVICE PROVIDER" and its agents an irrevocable, perpetual, worldwide, non-exclusive, fully paid-up, royalty-free license (with right to sublicense) to use, reproduce, publish, and display Your name, trademarks, service marks, designs, logos, and symbols in connection with such purpose.

Non-disparagement

You agree not to directly or indirectly through a third party engage in any conduct or make any communication (public or private) that disparages "SERVICE PROVIDER" or the Applications or Services in any way. Such communications include, but are not limited to, publishing, posting, printing, disseminating, or otherwise making such disparaging statements on or through the Internet, in any blog, or through any other form of social media. You further agree not to solicit or encourage, directly or indirectly, any such statements, comments, or communications by any third-party. In accordance with the termination provisions below, "SERVICE PROVIDER" may terminate Your access to the Applications or Services if You breach the requirements of this section.

Copyright Infringement

Materials may be made available via the Service by third parties not within our control. We are under no obligation to, and do not, review content transmitted, sent, or received using the Applications or Services for purposes of determining copyright infringement. However, "SERVICE PROVIDER" reserves the right to terminate access to its applications or Services if a user infringes on others' copyrights, and will, in appropriate circumstances, terminate access to the Applications or Services if "SERVICE PROVIDER" determines that a user is a repeat infringer.

Pursuant to Title 17, Section 512 of the United States Code, all claims of copyright infringement for any material You believe to reside on "SERVICE PROVIDER"'s Applications or Services should be provided in writing to "SERVICE PROVIDER"'s Legal Department at "SERVICE PROVIDER"'s current address as posted on "SERVICE PROVIDER"'s Website, available Technowledge.com

The section titles in this Agreement are for convenience only and have no legal or contractual effect.

This electronic document and any other electronic documents, policies, and guidelines incorporated herein will be: (1) deemed for all purposes to be a "writing" or "in writing," and to comply with all statutory, contractual, and other legal requirements for a writing; (2) legally enforceable as a signed writing as against the parties subject to the electronic documents; and (3) deemed an "original" when printed from electronic records established and maintained in the ordinary course of business. Electronic documents introduced as evidence in any judicial, arbitration, mediation, or administrative proceeding will, if established and maintained in the ordinary course of business, be admissible to the same extent as business records in written form that are similarly established and maintained.

Under California Civil Code Section 1789.3, California users of the Service receive the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1020 N Street, #

Customer Understanding and Acknowledgement of Agreement

The Customer is bound to this Agreement by either the MSA, (Master Services Agreement), continued payment for product(s) or service(s) rendered or any agreement involving a SOW (Statement Of Work) related to this agreement of User Consent Agreement for Remote Access Services.