

# SaaS Terms of Use

These are the **Software-as-a-Service (SaaS) terms of use**, relevant for those wishing to utilise the services provided by Avertro.

## 1. Acceptance

1. These SaaS terms of use, and any other terms and policies referred to in these SaaS terms of use, form the agreement between Avertro Pty Ltd ABN 53 636 011 124 (referred to as **Avertro, we or us**) and the user of Avertro's services (referred to as **Customer or you**), collectively referred to as the **Parties** or each a **Party, (Agreement)**.
2. Avertro owns, or holds the relevant rights to, the Avertro Software. The Customer wishes to use the Software as a service provided by Avertro, at a prescribed subdomain on avertro.com (**Site**).
3. This Agreement sets out the terms upon which Avertro has agreed to grant a license to the Customer to use the SaaS Services.
4. The Customer assents to the terms and conditions of this Agreement by clicking, checking a box, placing an order with Avertro (either directly or through an Avertro Partner) or accessing or using the Services.
5. The individual accepting this Agreement on behalf of the Customer represents and warrants that they:
  1. have read and understood the terms and conditions of this Agreement; and
  2. have the full authority to bind the Customer to this Agreement.
6. This Agreement is binding on any use of the Services and applies to the Customer from the time that Avertro provides the Customer with an account (**Customer's account**) to access and use the Services (**Effective Date**).
7. The Customer must immediately cease using the Services if it does not agree to or cannot comply with this Agreement.
8. The Customer may permit its Affiliates to use the Services in accordance with this Agreement, provided that each Affiliate agrees in writing to be bound by this Agreement, and the Customer is responsible and fully liable for each Affiliate's compliance with and breach of this Agreement.
9. If the Services are provided for evaluation by the Customer (**Evaluation Services**), the terms herein applicable to Services also apply to access and use of such Evaluation Services, except for the following alternate or additional terms: (i) the duration of the evaluation is as mutually agreed upon by the Customer/Avertro Partner and Avertro; (ii) either the Customer or Avertro can terminate the

evaluation at any time upon written notice to the other Party; and (iii) the Evaluation Services are provided “as-is” without warranty of any kind, and Avertro disclaims all warranties, support obligations, and other liabilities and obligations for the Evaluation Services.

## 2. Services

1. On or from the Effective Date and during the Term, Avertro will provide the Services in accordance with the terms of this Agreement.
2. Avertro reserves the right to change or remove features of the Services from time to time. Where there is any material alteration to the Services in accordance with this clause, Avertro will provide the Customer with 20 Business Days’ prior notice and the Customer agrees that any material alteration is at Avertro’s sole discretion.
3. The Parties agree that Avertro:
  1. will supply the Services on a non-exclusive basis;
  2. does not make any warranty or representation as to the ability of the facilities or services of any third-party suppliers; and
  3. is not liable for any failure in, fault with or degradation of the Services if that failure, fault or degradation is attributable to or caused by any failure of the Customer Environment or the facilities or services of any third party.
4. Avertro reserves the right to refuse any request in relation to the Services that it deems inappropriate, unreasonable or illegal.

## 3. SaaS Services Licence

1. In consideration for payment of the Fees, Avertro grants to the Customer a non-exclusive, non-transferable (except as otherwise permitted under this Agreement), revocable, non-sublicensable license to access and use the SaaS Services solely for the Customer’s Internal Use, in accordance with the Documentation and Avertro’s intended purpose for the SaaS Services (**SaaS Licence**).
2. The Customer agrees that the SaaS Licence:
  1. commences from the Effective Date or the day the Customer is granted access to the SaaS Services by Avertro, whichever occurs first;
  2. permits the Customer to use the SaaS Services in accordance with the SaaS Services’ normal operating procedures; and
  3. permits the Customer to provide access and use of the SaaS Services to Authorised Users.

## 4. Licence Restrictions

1. The Customer must not access or use the SaaS Services except as permitted by the SaaS Licence and may not do or authorise the commission of any act that would or might invalidate or be inconsistent with Avertro's Intellectual Property Rights in the SaaS Services or Software. Without limiting the foregoing provisions, the Customer agrees and acknowledges that it must not and will not permit any person to:
  1. resell, assign, transfer, distribute or provide others with access to the SaaS Services;
  2. "frame", "mirror" or serve any of the SaaS Services on any web server or other computer server over the Internet or any other network;
  3. copy, alter, modify, create derivative works from, reproduce, resell, transfer to a third party, reverse assemble, reverse engineer, reverse compile or enhance the SaaS Services or Software (except as expressly permitted by the *Copyright Act 1968* (Cth)); or
  4. alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality legend or notice, or any numbers, or other means of identification used on or in relation to the SaaS Services or Software.
2. The Customer must not use the SaaS Services in any way which is in breach of any statute, regulation, law or legal right of any person within the United States, Australia, or the jurisdiction in which the Customer or its Personnel are located.

## 5. Customer Data

1. The Customer grants to Avertro a royalty-free, worldwide licence to copy, transmit, store and back-up or otherwise access, use or refer to any Customer Data, but only for the following limited purposes:
  1. to supply the Services, including to enable the Customer, its Personnel and any Authorised Users to access and use the Services;
  2. to do analysis for the purposes of predictive analytics, industry guideline production, benchmarking and other related uses, provided such Customer Data is de-identified;
  3. for diagnostic purposes;
  4. to test, enhance and otherwise modify the Services whether requested by the Customer or not;
  5. to develop other services; and

6. as reasonably required for the performance of Avertro's obligations under this Agreement.

2. The Customer represents and warrants that:

1. any and all Customer Data supplied by the Customer or otherwise accessed by Avertro through the provision of the Services is the sole and exclusive property of the Customer or the Customer has secured any and all authorisations and rights to use the Customer Data as applicable;
2. the Customer Data does not breach any relevant laws, regulations or codes;
3. the Customer Data does not infringe the Intellectual Property Rights of any third party;
4. it will comply with all applicable laws and regulations in the jurisdiction where the Customer accesses and publishes content using the SaaS Services; and
5. to the extent that the Customer Data contains personal data, it has obtained the necessary consents in order to transfer or permit access to that Customer Data in accordance with applicable privacy and data protection laws.

3. The Customer acknowledges and agrees that:

1. The Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all Customer Data. The Services rely on Customer Data as supplied by the Customer. Except as required under applicable law, Avertro does not assume any duty or obligation to correct or modify Customer Data;
2. any collation, conversion and analysis of Customer Data performed as part of the Services whether by the Services or otherwise is likely to be subject to human input and machine errors, omissions, delays and losses including but not limited to any loss of Customer Data. Avertro is not liable for any such errors, omissions, delays or losses. The Customer acknowledges and agrees it is responsible for adopting reasonable measures to limit the impact of such loss or error;
3. Avertro may relocate the Customer Data to another jurisdiction. In each case, Avertro will give the Customer 15 Business Days' notice and use all reasonable endeavours to minimise the effect of such change on the Customer's access and use of the Services;
4. Avertro is not responsible for any corruption or loss of any Customer Data if such corruption or loss is due to an act or omission by the Customer, its Personnel, its Related Bodies Corporate or any Authorised Users; and

5. Avertro is not responsible for the integrity or existence of any Customer Data on the Customer's Environment, network or any device controlled by the Customer or its Personnel.
4. The Customer agrees to indemnify and hold Avertro harmless for the corruption or loss of any Customer Data controlled or stored by the Customer or any Related Bodies Corporate, to extent the corruption or loss is not caused by the negligent act or omission of Avertro or its Personnel.

## 6. Support and Service Levels

1. During the Term, Avertro will provide the Support Services in accordance with the Service Levels during the Support Hours provided that:
  1. the Customer complies with any applicable support system and processes as set out on the Site at <https://www.avertro.com/operating-procedures>, as applicable; and
  2. where required, the Customer assists with investigating and ascertaining the cause of the fault and provides to Avertro all necessary information relevant to the fault (including but not limited to what the Customer or their Personnel has done in relation to the fault).

## 7. Avertro's Additional Responsibilities and Obligations

1. Avertro must maintain commercially reasonable security measures to protect all Customer Confidential Information in its possession or control, or in the possession or control of its Personnel, from unauthorised access, use, copying or disclosure.

## 8. Customer Responsibilities and Obligations

1. The Customer will provide all required information as required by Avertro from time to time for Avertro to perform the Services.
2. The Customer must, at the Customer's own expense:
  1. provide all reasonable assistance and cooperation to Avertro in order to enable Avertro to supply the Services in an efficient and timely manner including but not limited to obtaining from Authorised Users any consents necessary to allow the Customer and its Personnel to engage in the activities described in this Agreement and to allow Avertro to provide the Services;
  2. use reasonable endeavours to ensure the integrity of the Customer Data;
  3. permit Avertro and its Personnel to have reasonable access to the Customer Environment for the purposes of supplying the Services;

4. ensure that only Customer Personnel and Authorised Users will access and use the SaaS Services and such use and access will be in accordance with the terms and conditions of the SaaS Licence; and
  5. make any changes to its Customer Environment that may be required to support the delivery and operation of any Services.
3. The Customer is responsible for its use of the Services and must ensure that no person uses the Services:
  1. to break any law or infringe any person's rights including but not limited to Intellectual Property Rights;
  2. to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  3. in any way that damages, interferes with or interrupts the supply of the Services.
4. The Customer acknowledges and agrees that:
  1. it is responsible for all users using the Services including its Personnel and any Authorised Users;
  2. except as otherwise provided in this Agreement, its use of the Services will be at its own risk;
  3. it is responsible for maintaining the security of its account and password. Avertro cannot and will not be liable for any loss or damage from the Customer's failure to comply with this security obligation;
  4. Avertro may alter or update the Customer's account logins and passwords and the logins and passwords of any Authorised Users at any time throughout the Term;
  5. the Customer is responsible for all content posted and activity that occurs under their account. This includes content posted by others who have logins or accounts associated with the Customer's account;
  6. if they operate a shared Customer account, make (or allow any third party to make) material available by means of the Services (including shareable links and SCORM objects), the Customer is entirely responsible for the content of, and any harm resulting from, that content. That is the case regardless of what form the content takes, which includes, but is not limited to text, photo, video, audio, or code;
  7. if Avertro wishes to alter the delivery of the SaaS Services which requires a change to the Customer Environment (including reconfigurations or interface customisations the extent necessary to access or use the SaaS Services) the Customer will give any assistance

to Avertro or make any such changes to the Customer Environment, that Avertro reasonably requires; and

8. Avertro may pursue any available equitable or other remedy against the Customer as a result of a breach by the Customer of any provision of this Agreement.

## 9. Prohibited Use

1. The Customer acknowledges and agrees that this Agreement incorporates by reference the terms of the acceptable use policy as set out on the Site at <https://www.avertro.com/acceptable-use-policy> or as provided to the Customer from time to time. The Customer will be notified if and when the acceptable use policy changes and given the opportunity to respond.
2. The Customer acknowledges and agrees that it must not, and will ensure each Authorised User does not:
  1. use the SaaS Services to violate any legal rights of any person, the Customer or other entity in any jurisdiction;
  2. use the SaaS Services in relation to crimes such as theft and fraud;
  3. use the Services in breach of laws relating to the protection of copyright, trade secrets, patents or other intellectual property and laws relating to spam or privacy;
  4. make any unauthorised copy of any copyrighted material owned or licenced by Avertro;
  5. introduce malicious programs into the Avertro System (e.g. viruses, worms, trojan horses, e-mail bombs);
  6. reveal the Customer's account password to others or allow use of the Customer's account to those who are not the Customer's Personnel or Authorised Users;
  7. use the SaaS Services to make fraudulent offers of goods or services;
  8. use the SaaS Services to carry out security breaches or disruptions of a network. Security breaches include, but are not limited to, accessing data of which the Customer is not an intended recipient or logging into a server or account that the Customer is not expressly authorised to access or corrupting any data. For the purposes of this paragraph, "security breaches" includes, but is not limited to, network sniffing/monitoring, pinged floods, packet spoofing, denial of service, and forged routing information for malicious purposes;

9. use any program/script/command, or sending messages of any kind, with the intent to interfere with, or disable, any persons' use of the SaaS Services;
10. send any unsolicited email messages through or to users of the SaaS Services in breach of the *Spam Act 2003* (Cth) or to send any form of harassment via email, or any other form of messaging, whether through language, frequency, or size of messages; use the SaaS Services in breach of any person's privacy (such as by way of identity theft or "phishing") is strictly prohibited; and
11. use the SaaS Services to circumvent user authentication or security of any of the Customer's hosts, networks or accounts or those of the Customer's customers or suppliers.

## 10. Communication

1. Each Party will appoint and maintain during the Term a relationship manager who will be responsible for the management of this Agreement.

## 11. Payment

1. The Customer must pay Avertro:

1. the Fee; and
2. any other amount payable to Avertro under this Agreement,

without set off or delay using the Payment Method in accordance with the Payment Terms. All fees shall be in the currency specified in the invoice, and are payable in advance.

2. If the Customer requires the use of a purchase order from Avertro, the Customer is responsible for providing the applicable purchase order at the time of purchase. The Customer acknowledges and agrees to the extent of any inconsistency between this Agreement and any terms and conditions attached to the Customer's purchase order, the terms of this Agreement will prevail. The Parties acknowledge and agree that any pre-printed standard terms and conditions attached to or on the back of any purchase order will not apply to this Agreement.
3. If there is a Variation, Avertro will include the Variation Fees due and payable for the Variation performed in invoice(s) subsequent to the performance of any Variation.
4. If any payment has not been made by the Customer in accordance with the Payment Terms, Avertro may (at its absolute discretion):

1. immediately cease providing the Services, and recover as a debt due and immediately payable from the Customer its Additional Costs of doing so;
  2. charge interest at a rate equal to the higher of the United States Federal Reserve or the Reserve Bank of Australia's cash rate from time to time plus 8% per annum, calculated daily and compounding monthly, on any such amounts unpaid after the due date;
  3. engage debt collection services and/or commence legal proceedings in relation to any such amounts; and/or
  4. report the Customer to any independent credit data agencies.
5. Clauses 11.1 to 11.4 inclusive do not apply to Customer orders placed via an Avertro Partner. Terms of payment are to be agreed between the Customer and the Avertro Partner. Avertro reserves the right (at its absolute discretion) to cease or suspend provision of the Services, without liability, if the Avertro Partner fails to pay the Fees for the Services in accordance with the payment terms applicable to the Avertro Partner.

## 12. Confidentiality

1. Subject to clause 12.2, each Party must (and must ensure that its Personnel do):
  1. keep confidential; and
  2. not use or permit any unauthorised use of,all Confidential Information.
2. Clause 12.1 does not apply where:
  1. the information is in, or comes into, the public domain (other than by a breach of this clause 12 by the relevant Party);
  2. the relevant Party has the prior written consent of the Party that disclosed the Confidential Information;
  3. the disclosure is required by law;
  4. the disclosure is required in order to comply with this Agreement, provided that the Party disclosing the Confidential Information ensures the recipient complies with the terms of this clause 12; and
  5. the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with this Agreement and provided that the Party disclosing the Confidential Information ensures the adviser complies with the terms of this clause 12.

3. Each Party acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of this clause 12. A Party is entitled to seek an injunction, or any other remedy available at law or in equity, at its discretion, to protect itself from a breach (or continuing breach) of this clause 12.
4. This clause 12 will survive the termination or expiry of this Agreement.

## 13. Intellectual Property Rights

1. Avertro owns or holds all Intellectual Property Rights in the Software, Services and Documentation.
2. A Party's ownership of, or any right, title or interest in, any Intellectual Property Rights in an item which exists prior to the Effective Date (**Pre-Existing Material**) will not be altered, transferred or assigned by virtue of this Agreement.
3. The Customer grants to Avertro a non-exclusive, royalty free, non-transferable and revocable licence to use any of the Customer's Intellectual Property Rights including any Pre-Existing Material as reasonably required for Avertro to provide the Services to the Customer.
4. Avertro will not screen content uploaded onto the SaaS Service, but reserves the right (but not the obligation) in its sole discretion to refuse or remove any content that is available via the Service that it deems inappropriate, illegal, offensive, threatening, libellous, defamatory, pornographic, obscene, or otherwise objectionable or in violation of any party's Intellectual Property Rights or this Agreement.
5. Avertro has the discretion (but not obligation) to terminate a Customer's access to and use of the Services if it determines that the Customer or its Authorised Users are repeat infringers of the Intellectual Property Rights of Avertro or third parties.
6. This clause 13 will survive the termination or expiry of this Agreement.

## 14. Privacy

1. Each Party and its Personnel agrees to comply with its obligations under applicable local privacy and data protection legislation or as amended from time to time in relation to personal information collected, used or disclosed by that Party or its Personnel in connection with the Services and this Agreement.
2. Details on how Avertro complies with the *Privacy Act 1988* (Cth) other applicable legislation or privacy guidelines and how it collects, discloses, holds or uses personal information is available in Avertro's Privacy Policy as set out on the Site or as provided to the Customer from time to time. Avertro reserves the right to amend its Privacy Policy as required from time to time.
3. This Agreement supplements and incorporates the Privacy Policy and, to the extent the European Union General Data Protection Regulation (Regulation (EU)

2016/679) (GDPR) applies to this Agreement, the GDPR Data Processing Schedule where we are a processor under the GDPR.

4. Avertro will take all reasonable steps to notify the Customer in writing if it becomes aware of any actual, threatened or suspected breach of Customer Data where such breach involves personal information.
5. The Customer warrants that it has obtained each of its Personnel's informed consent for Avertro, its related bodies corporate, and their respective Personnel to use, store, manipulate or otherwise deal with the personal information contained in the Customer Data.
6. The Customer must ensure that any collection, processing, use, disclosure and transfer by the Customer and its Personnel of personal information in connection with the performance of its obligations under this Agreement complies with all applicable privacy laws and the privacy policy of the Customer.
7. The Customer must take all necessary steps to ensure that the personal information held or accessed by it in connection with this Agreement is protected against misuse, interference and loss, and from unauthorised access, modification and disclosure (**Data Breach**). The Customer will promptly give written notice to Avertro of any actual or suspected Data Breach and will provide information, assistance and other cooperation as requested by Avertro in respect of the Data Breach.
8. The Customer must co-operate with any reasonable requests or directions of Avertro relating to the security, use, disclosure, and transfer of personal information, Avertro's legal obligations relating to the personal information, complaints relating to the personal information and the rights of individuals to access and correct the personal information or opt out of receiving any communications from or on behalf of the Customer.
9. Avertro will retain the Customer Data for as long as the Customer account is active or as needed to provide Customer services. Avertro will retain and use information as necessary to comply with legal obligations, exercise its rights under this Agreement, resolve disputes and enforce agreements.
10. This clause 14 will survive the termination or expiry of this Agreement.

## 15. Representations and Warranties

### 1. General

Each Party represents and warrants to each other Party:

1. it has full legal capacity and power to enter into this Agreement, to perform its obligations under this Agreement to carry out the transactions contemplated by this Agreement, to own its property and assets and to carry on its business;

2. no Insolvency Event has occurred in respect of it;
3. this Agreement constitutes legal, valid and binding obligations, enforceable in accordance with its terms; and
4. the execution and performance by it of this Agreement and each transaction contemplated by it does not conflict with any law, order, judgment, rule or regulation applicable to it or any document binding on it.

## 2. Avertro's warranties and disclaimers

1. Avertro warrants that during the Term, the SaaS Services will perform substantially in accordance with the associated Documentation. The Customer's sole and exclusive remedy for Avertro's breach of the foregoing warranty is, at Avertro's option, the repair or replacement of the SaaS Services, or for Avertro to provide a credit for the period in which the SaaS Services did not materially comply. This warranty is conditional upon the Customer providing Avertro prompt written notice of the SaaS Services' non-conformance and using the SaaS Service in accordance with this Agreement.
2. Avertro warrants that to the best of its knowledge the Services do not infringe the Intellectual Property Rights of any third party and there are no actual or threatened proceedings for any intellectual property infringements in relation to the SaaS Services.
3. Except as provided in this clause 15, and to the extent permitted by law, Avertro disclaims all warranties, terms and conditions of any kind, whether express or implied by law or fact or on any other basis. Avertro does not warrant that the Services will be error-free, completely secure, failsafe, free from viruses, or will operate without interruption or that, except as set out in this Agreement, the Services will be performed in the manner intended by the Customer or the Services will meet the requirements of the Customer or be fit for a particular purpose.

## 3. Repetition

Each Party makes the representations and warranties in clause 15.1 on each day on which it is a Party.

## 16. Indemnity and liability

1. The Customer is liable for the acts and omissions of all its Personnel as if they were done by the Customer.
2. Despite anything to the contrary (but subject to clause 16.3), to the maximum extent permitted by the law:

1. Avertro's and Customer's maximum aggregate Liability arising from or in connection with this Agreement (including the Services or the subject matter of this Agreement) will be limited to, and must not exceed, in any Contract Year, the total amount of Fees paid to Avertro by the Customer, or by the Avertro Partner in respect of the Customer, in the prior Contract Year; and
2. Avertro will not be liable to the Customer for: (i) any loss of profit (including anticipated profit), loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings (including anticipated savings), loss of reputation, loss of use and/or loss or corruption of data ); (ii) lack of access to or use of or inability to access or use the Service; (iii) any conduct or content of any third party on the Services; (iv) any content obtained from the Services; nor (v) unauthorised access, use or alteration of your transmissions or content,

whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

3. Clause 16.2 will not apply to Avertro's Liability to the Customer under this Agreement for any liability which cannot be excluded or limited by applicable law, including:
  1. fraud or criminal conduct; or
  2. death or personal injury.
4. Despite anything to the contrary, to the maximum extent permitted by the law, Avertro will have no Liability, and the Customer releases and discharges Avertro from all Liability, arising from or in connection with any:
  1. failure or delay in providing the Services;
  2. breach of this Agreement; or
  3. misuse of the Services,to the extent caused or contributed to by any:
  4. Force Majeure Event;
  5. a fault or defect in any item of the Customer Environment; or
  6. act or omission of the Customer or its Personnel.
5. Avertro uses third-party service providers to host the Services. Avertro will not be liable for any interruption to the Services, unavailability or outage, or any interruption, unavailability or outage of the Customer's Systems, caused by any such third-party service provider.

6. Not Used.
7. Subject to clause 16.2, the Customer agrees to indemnify, and hold harmless, Avertro against all Liabilities and Claims arising out of or in connection with:
  1. any and all unauthorised use of the SaaS Services;
  2. Authorised Users access or use of the Services;
  3. injury to or death of any person caused by any act or omission by or on behalf of the Customer or its Personnel; and
  4. damage to any real or tangible property caused by any act or omission by or on behalf of the Customer or its Personnel.
8. This Clause 16 will survive the termination or expiry of this Agreement.

## 17. Term

1. Commencement
  1. The Term of this Agreement takes effect on and from the Effective Date and continues for the Initial Term, if specified, and any Renewal Term, or otherwise indefinitely, unless this Agreement is terminated earlier in accordance with the terms of this Agreement.
  2. **Applicable to Initial Terms and any Renewal Term:** At least 30 Business Days prior to the expiry of the current Contract Year, either Party may notify the other that it does not wish for the Term to be renewed and in such event, this Agreement will expire at the end of the then current Contract Year. If a Party has not given notice pursuant to this clause, this Agreement is automatically renewed for another 12-month period (**Renewal Term**). The Customer's notice under this clause 17.1.2 may be provided via an Avertro Partner.
  3. **Applicable to Initial Terms and any Renewal Term:** If a Party wishes to vary any of the Terms of this Agreement, it must give at least 30 Business Days' notice prior to the expiry of the current Contract Year to enable the Parties to meet to discuss any proposed variation.

## 18. Termination

1. Where there is no Initial Term or Renewal Term, Customer may terminate this Agreement by giving Avertro at least 30 days' prior written notice, such termination will take effect with at the expiry of the then current billing cycle.
2. Where there is an Initial Term or Renewal Term, Customer may only terminate this Agreement for convenience in accordance with clause 17.1.2.

3. The Customer may terminate this Agreement by giving at least 30 Days' notice to Avertro, or if Avertro is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, Avertro has failed to remedy the breach within 30 Business Days' of receipt of written notice from the Customer describing the breach and calling for it to be remedied.
4. Avertro may terminate this Agreement by giving at least 30 Days' notice to the Customer if the Customer is in breach (other than a trivial breach causing no material harm) of any provision of this Agreement and, where the breach is capable of remedy, the Customer has failed to remedy the breach within 30 Business Days of receipt of written notice from Avertro describing the breach and calling for it to be remedied.
5. Avertro may immediately suspend the Services or terminate this Agreement by giving written notice to the Customer where:
  1. the Customer undergoes a Change of Control to an Avertro Competitor, as determined by Avertro;
  2. an Insolvency Event occurs in relation to the Customer;
  3. the Customer commits a breach of this Agreement not capable of remedy; or
  4. the Customer breaches clause 4 (Licence Restrictions) or clause 9 (Prohibited Use).
6. The Customer may provide notice under this clause 18 via an Avertro Partner.
7. Avertro may suspend overdue accounts without notice to the Customer. A \$1,000 reinstatement charge applies to reactivate any suspended account once full payment has been received.

## 19. Events Following Termination

1. Upon termination of this Agreement, Avertro will:
  1. immediately stop performing the Services;
  2. immediately stop placing orders for supplies or services required in connection with the performance of the Services; and
  3. promptly return to the Customer or destroy (at Customer's election) all property, including Confidential Information, Intellectual Property and Customer Data in its possession that belongs to the Customer.
2. Upon termination of this Agreement, the Customer will immediately:
  1. cease and desist from any use of the Services;

2. return to Avertro all property, including Confidential Information and Intellectual Property, in its possession that belongs to Avertro;
  3. pay the Fees for all Services completed.
3. After termination of this Agreement, Avertro may permanently delete Data for the Services no sooner than 30 days after termination, as part of Avertro's record and information management and in accordance with applicable laws. If any Customer Data is stored by the SaaS Services, the Customer is responsible for requesting and retrieving that Customer Data. Avertro agrees to provide reasonable assistance to the Customer for the transfer of Customer Data during the 30-day period following termination.
4. The expiry or termination of this Agreement for any reason will be without prejudice to any rights or liabilities which have accrued prior to the date of expiry or termination of this Agreement.
5. This clause 19 will survive the termination or expiry of this Agreement.

## 20. Dispute Resolution

### 1. Disputes

1. A Party must not commence court proceedings relating to any dispute arising from, or in connection with, this Agreement (**Dispute**) without first complying with this clause 20 unless:
  1. that Party is seeking urgent interlocutory relief; or
  2. the Dispute relates to compliance with this clause.
2. Notwithstanding the existence of a Dispute, the Parties must continue to perform their obligations under this Agreement.

### 2. Negotiation

1. In the event of a Dispute, the Party claiming there is a Dispute must give written notice to the other Party or Parties to the Dispute setting out the details of the Dispute and proposing a resolution (**Dispute Notice**).
2. Within 10 Business Days after receipt of the Dispute Notice, each relevant Party must (if applicable by its senior executives or senior managers who have authority to reach a resolution on its behalf) meet at least once to attempt to resolve the Dispute in good faith. All aspects of every such conference, except for the occurrence of the conference, will be privileged.

### 3. Mediation

1. If the relevant Parties are unable to resolve the Dispute with 15 Business Days after receipt of the Dispute Notice, any Party involved in the Dispute may (by written notice to the other Parties) submit the Dispute to mediation, with such mediation to be conducted in good faith.
  2. The costs of mediation are to be split between the relevant Parties, provided that each Party will bear its own costs in relation to the mediation.
  3. If the Dispute has not been settled within 20 Business Days after the appointment of a mediator, or such other period as agreed in writing between the Parties, the Dispute may be referred by any Party involved in the Dispute (by written notice to the other Parties) to litigation.
4. This clause 20 will survive the termination or expiry of this Agreement.

## 21. Subcontracting

1. The Parties agree Avertro may engage subcontractors to perform the Services on its behalf.

## 22. Non-Solicitation

1. The Customer will not solicit or entice away, any person or organization that was an actual or prospective, client, employee, contractor, representative, agent of, or developer to, Avertro, during the Term of this Agreement and for 12 months after its termination or expiry.
2. This clause 22 will survive the termination or expiry of this Agreement.

## 23. GST

1. **Taxable supply**

If GST is payable on any supply made under this Agreement, the recipient of the supply must pay an amount equal to the GST payable on the supply. That amount must be paid at the same time that the consideration is to be provided under this Agreement, and must be paid in addition to the consideration expressed elsewhere in this Agreement, unless it is expressed to be inclusive of GST. The recipient is not required to pay any GST until the supplier issues a tax invoice for the supply.
2. **Adjustment events**

If an adjustment event arises in respect of any supply made under this Agreement, a corresponding adjustment must be made between the supplier and the recipient in respect of any amount paid by the recipient under this clause, an adjustment note issued (if required), and any payments to give effect to the adjustment must be made.

### 3. Payments

If the recipient is required under this Agreement to pay for or reimburse an expense or outgoing of the supplier, or is required to make a payment under an indemnity in respect of an expense or outgoing of the supplier, the amount to be paid by the recipient is to be reduced by the amount of any input tax credit in respect of that expense or outgoing that the supplier is entitled to.

### 4. GST terminology

The terms "adjustment event", "consideration", "GST", "input tax credit", "recipient", "supplier", "supply", "taxable supply" and "tax invoice" each has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

5. This clause 23 will survive the termination or expiry of this Agreement.

## 24. General

### 1. Notices

1. A notice or other communication given under this Agreement must be:
  1. in writing, in English and signed by the sender; and
  2. addressed and delivered to the intended recipient by hand, prepaid post or email in accordance with the notice details last notified by the recipient to the Parties.
2. The Customer's notice details are set out in the Customer's account. Avertro's notice details are set out below. A Party may change its notice details by written notice to the other Parties, which, for the Customer, is by updating their Account, and for Avertro, is by updating its details on the Site.
3. A notice or communication is taken as having been given:
  1. when left at a Party's current address for notices;
  2. if mailed, on the third Business Day after posting (if delivered to an address within the same country) or on the tenth Business Day after posting (if delivered to an address within another country); or
  3. if sent by email, if sent before 5pm on a Business Day in the place of receipt then on the Business Day when it is sent, otherwise on the following Business Day.
4. This subclause will survive the termination or expiry of this Agreement.

### 2. Force Majeure

If performance of this Agreement or any obligation under this Agreement is prevented, restricted or interfered with by reasons of Force Majeure and the

affected party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the affected party invoking this provision shall be suspended to the extent necessary by such event. The affected party shall use reasonable efforts under the circumstances to remove such prevention, restriction or interference or to limit the impact of the event on its performance and must continue to perform with reasonable dispatch when the Force Majeure is removed.

**3. Waiver**

Any failure or delay by a Party in exercising a power or right (either wholly or partially) in relation to this Agreement does not operate as a waiver or prevent that Party from exercising that power or right or any other power or right. A waiver must be in writing.

**4. Powers, rights, and remedies**

Except as provided in this Agreement or permitted by law, the powers, rights, and remedies of a Party under this Agreement are cumulative and in addition to any other powers, rights and remedies the Party may have.

**5. Consents or approvals**

Except as provided in this Agreement, a Party may give, attach conditions to or withhold any consent or approval under this Agreement at its sole and absolute discretion. A Party is not obliged to give reasons for giving or withholding its consent or approval or for giving its consent or approval subject to conditions.

**6. Assignment**

No Party may assign, transfer or otherwise deal with all or any of its rights or obligations under this Agreement without the prior written consent of the other Parties. Any purported dealing in breach of this clause 24.6 is of no force or effect.

**7. Further assurance**

Each Party must promptly do all things and execute all further documents necessary to give full force and effect to this Agreement and their obligations under it. This subclause will survive the termination or expiry of this Agreement.

**8. Costs and expenses**

Each Party must pay its own costs and expenses (including legal costs) in connection with the negotiation, preparation, and execution of this Agreement and any document relating to it.

**9. Relationship of Parties**

1. This Agreement is not intended to create a partnership, joint venture or agency relationship between the Parties.
2. Nothing in this Agreement gives a Party authority to bind any other Party in any way.

#### **10. Links to third parties**

The Services may contain links to third-party web sites or services that are not owned or controlled by Avertro. Avertro has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third party web sites or services. The Customer further acknowledges and agree that Avertro shall not be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such content, goods or services available on or through any such web sites or services.

#### **11. Independent legal advice**

Each Party acknowledges and agrees that it has had an opportunity to read this Agreement, it agrees to its terms and, prior to executing it, it has been provided with the opportunity to seek independent legal advice about its terms.

#### **12. Severance**

1. If a provision of this Agreement is held to be void, invalid, illegal or unenforceable, that provision must be read down as narrowly as necessary to allow it to be valid or enforceable.
2. If it is not possible to read down a provision (in whole or in part), that provision (or that part of that provision) is severed from this Agreement without affecting the validity or enforceability of the remainder of that provision or the other provisions in this Agreement.

#### **13. Entire agreement**

The Agreement contains the entire understanding between the Parties, and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.

#### **14. Amendment**

This Agreement may only be amended by written document executed by all Parties.

#### **15. Cumulative rights**

1. The rights arising out of this Agreement do not exclude any other rights of either Party.
2. Each indemnity in this Agreement is a continuing obligation that is separate and independent from the other obligations of the Parties under this Agreement.
3. A Party is not obliged to take any action, or incur any expense, before enforcing any indemnity under this Agreement.

#### **16. Governing law and jurisdiction**

This Agreement is governed by the laws of Delaware (United States). Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts

operating in Delaware (United States) and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

## 25. Definitions and Interpretation

### 1. Definitions

In this Agreement, unless the context otherwise requires:

**Additional Costs** means any additional costs, expenses, damages or losses suffered or incurred by Avertro.

**Affiliate** means a Related Body Corporate of a Party.

**Authorised User** means the user(s) permitted to use the SaaS Services and the content, including Customer Data, generated by, or the output of, the SaaS Services. Authorised Users includes Customer Contractors (provided they are subject to the terms and conditions of the Agreement while they are using the Services on behalf of Customer and Customer remains responsible for their acts and omissions during such time. Any breach by a Customer Contractor of this Agreement is a breach by Customer.)

**Avertro Competitor** means a person or entity in the business of developing, distributing, or commercializing products or services substantially similar to or competitive with Avertro's products or services.

**Avertro Partner** means an authorised partner of Avertro who resells the Services to the Customer.

**Business Day** means a day on which banks are open for general banking business in New South Wales, excluding Saturdays, Sundays and public holidays.

**Business Hours** means 9am to 5pm on a Business Day.

**Change in Control** occurs in respect of a Party if, after the Effective Date, a person acquires (directly or indirectly):

1. shares in that Party conferring alone or in aggregate 50% or more of the voting or economic interests in that Party on a fully diluted basis;
2. the power to control the appointment or dismissal of a majority of the directors of that Party; or
3. the capacity to control the financial and operating policies or management of that Party.

**Claim** means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and

however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise.

**Confidential Information** includes information or documentation which:

1. is disclosed to the recipient in connection with this Agreement (whether before or after the Effective Date);
2. is prepared or produced under or in connection with this Agreement (whether before or after the Effective Date); or
3. relates to:
  1. the business, assets or affairs of a Party or any of its Affiliates;
  2. the business, assets or affairs of a company in a group of companies to which the Customer belongs, or any client of that company in the group; or
  3. the subject matter of, the terms of and/or any transactions contemplated by this Agreement,

whether or not such information or documentation is reduced to a tangible form or marked in writing as “confidential”, and whether it is disclosed to the recipient or received, acquired, overheard or learnt by the recipient in any way whatsoever.

**Contract Year** means a 12 month period commencing on: (i) the Effective Date; and (ii) each subsequent anniversary of the Effective Date, of this Agreement during the Term.

**Customer Contractor** means any individual or entity (other than an Avertro Competitor) that: (i) has access or use of a Service under this Agreement solely on behalf of and for the Internal Use of the Customer, (ii) has an agreement to provide the Customer (or its Affiliates) services, and (iii) is subject to confidentiality obligations covering Avertro’s Confidential Information.

**Customer Data** means all of the information, documents and other data provided by the Customer or their Personnel to Avertro, any content uploaded by the Customer or Personnel to Avertro’s System, or otherwise accessed by Avertro in providing the Services.

**Customer Environment** means the computing environment of the Customer including all hardware, software, information technology and telecommunications services and Systems.

**Dispute** has the meaning given in clause 20.1.

**Dispute Notice** has the meaning given in clause 20.2.

**Documentation** means the documentation provided with the Services by Avertro to the Customer including any Customer configuration documentation and other

end-user technical documentation or instructions, whether in hard copy or electronic form.

**Fee** means the fee set out on the Site for the Customer account, or the fee agreed between Avertro and the Avertro Partner for the Services, as applicable.

**Force Majeure** means any event or circumstances beyond the reasonable control of a Party including any fire, lightning strike, flood, earthquake, natural disaster, sabotage, nuclear contamination, terrorism, war or civil riot that occurs to the extent that it:

1. would be unreasonable to expect the affected Party to have planned for, avoided or minimised the impact of such circumstance by appropriate risk management, disaster recovery or business resumption plan; and
2. results in a Party being unable to perform an obligation under this Agreement on time.

**Initial Term** means the initial term set out in the Customer account.

**Insolvency Event** means the occurrence of any one or more of the following events in relation to a Party:

1. the Party is or states that it is insolvent or is deemed or presumed to be insolvent under any applicable laws;
2. an application or order is made for the winding up, bankruptcy or dissolution of the Party or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
3. an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of the Party or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 10 Business Days;
4. a controller is appointed in respect of any of the Party's property;
5. the Party is deregistered under the *Corporations Act 2001* (Cth) or other legislation or notice of its proposed deregistration is given to it;
6. a distress, attachment or execution is levied or becomes enforceable against the Party or any of its property;
7. the Party enters into or takes action to enter into an arrangement, composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

8. a receiver or manager (or both) or trustee in bankruptcy is appointed in respect of the Party or its property;
9. a petition for the making of a sequestration order against the estate of the Party is presented and the petition is not stayed, withdrawn or dismissed within 10 Business Days or the Party presents a petition against itself; or
10. anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Party.

**Intellectual Property Rights** means all present and future rights to:

1. copyright;
2. registered or unregistered designs, patents, trade marks;
3. trade, business, company or domain names;
4. know-how, inventions, processes, trade secrets;
5. circuit layouts, databases or source codes; and
6. any similar rights in any part of the world,

including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

**Liability** means any expense, charge, cost, liability, loss, damage, claim, demand or proceeding (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent.

**Internal Use** means access or use solely for Customer's and where applicable, Customer's Affiliates', own internal information security purposes. By way of example, Internal Use does not include access or use: (i) for the benefit of any person or entity other than Customer or its Affiliates, or (ii) for the development of any product or service. Internal Use is limited to access and use by the Customer's and Customer's Affiliates' Personnel and Customer Contractors solely on behalf of and for the benefit of the Customer and/or Customer Affiliates as applicable.

**Output Information** means all data generated by the Services, but does not include the Customer Data.

**Payment Method** is by credit card, wire transfers, or bank deposit.

**Payment Terms** means 30 days from the date of the invoice.

**Personnel** means in relation to a Party, any employee, contractor, officer and agent of that Party.

**Products** means hardware or software.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**SaaS Licence** is defined in clause 3.1.

**SaaS Services** means the Avertro Software as a service described on the Site.

**Service Level** means any service levels set out on the Site.

**Services** means the SaaS Services and Support Services, to be provided or licensed by Avertro to the Customer on the terms and conditions set out in this Agreement as well as the Output Information.

**Software** or **Avertro Software** means the software used to provide the Services, and includes any Documentation and any update, modification or release of any part of the Software after this Agreement is entered into by the Parties.

**Support Hours** means:

1. the hours Avertro will provide the Support Services as set out on the Site; or
2. if such hours are not specified, AEST Business Hours.

**Support Services** are set out on the Site.

**System** means a combination of Products or a combination of Products and services which are integrated and operate together, including a network.

**Term** means the term of this Agreement as set out in clause 17.

**Variation** means a change to the SaaS Licence after the date of this Agreement.

**Variation Fee** means any variation to the Fee because of the Variation.

## 2. Interpretation

In this Agreement, unless the context otherwise requires:

1. the singular includes the plural and vice versa;
2. headings are for convenience only and do not affect interpretation;
3. a reference to a clause, paragraph, schedule or annexure is a reference to a clause, paragraph, schedule or annexure, as the case may be, of this Agreement;
4. if any act which must be done under this Agreement is to be done on a day that is not a Business Day then the act must be done on or by the next Business Day;

5. a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
6. where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
7. a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
8. includes and similar words mean includes without limitation;
9. no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
10. a reference to a party to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
11. a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
12. a reference to a covenant, obligation or agreement of two or more persons binds or benefits them jointly and severally;
13. if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
14. a reference to time is to local time in New South Wales, Australia; and
15. a reference to \$ or dollars refers to the currency specified in the corresponding quotation or invoice from time to time.

**For any questions, please contact us at:**

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