Avertro CyberHQ.ai Terms of Use (Click & Accept)

Effective 21 September 2026 v1

General

1. Permission to use the software and services provided by Avertro Pty Ltd is conditional upon the **terms** set out below. Our software and services are only offered to you on condition that you read and accept all the terms. By clicking "I Agree" (or an equivalent acceptance button), creating an account, or accessing or using the software or services, you will be deemed to have read, understood and irrevocably accepted these terms in full, effective immediately. If you do not wish to accept the terms, you must not create an account or otherwise use the software or services.

2. In these terms, when we refer to **us** or **we**, we mean Avertro Pty Ltd (ACN 636 011 124). When we refer to **you** or **customer**, we refer to the business or company that will be using our software or services. The individual accepting these terms on behalf of the customer represents and warrants that they have full authority to bind the customer to these terms. We and you are collectively referred to in these terms as **parties** and each as a **party**. Any words in bold text will have the same meaning every time they are used in these terms.

3. Our **software** is owned or licensed by us in object code format. **CyberHQ.ai** (**software** or **services**) is our data loss prevention, insider risk and security monitoring product, comprising the software, **technical support**, browser extensions, monitoring sensors, dashboards, reports and ancillary tools, all as described on our **website** www.avertro.com. The software includes any technical specifications or configuration **documentation**, updates, modifications and releases and the output data generated by the software or services. CyberHQ.ai is offered using the deployment models and billing concepts defined below:

    a. **Cloud model** means the hosted SaaS version of the services, including any deployment via AWS Marketplace or similar marketplaces;

    b. **Self-hosted model** means the version of the services delivered via a deployment package that you deploy, configure and run in your own infrastructure or cloud environment;

    c. **Deployment package** means the software package provided by us containing the services (or components of them), including updates, for the self-hosted model;

    d. **Monitored data** means any data collected by the service's sensors, extensions, agents, or other components, including (without limitation) web browsing activity, URLs, file upload/download metadata (names, types, sizes, content indicators where configured), destinations, behavioural patterns, device information, timestamps and related personal data;

    e. **Subscription** means your right to access and use the services for the Billing Cycle(s) you have paid for, as selected at sign-up;

    f. **Subscription Plan** means the specific plan, tier, licensing units and usage metrics you select (and we confirm) at sign-up, as shown in your account; and

g. **Billing Cycle** means the Monthly or Annual billing period you select for your Subscription Plan, as further described in the Billing and Payment section..

4. The **start date** of these terms is the date we provide you with the software or an account to access the services (for CyberHQ.ai, typically the date your first Subscription payment is processed).

5. We may update these terms from time to time to reflect changes in our business or legal obligations. We will provide at least 30 days' notice of any material changes via email or an in-platform notification. Your continued use of the software or services after the notice period constitutes acceptance of the revised terms, which will supersede all prior versions. If you do not agree to a material change, you may terminate your license to the software or services within the notice period.

6. If the software or services are provided to you for **evaluation** (including as proof of concept or beta testing), the evaluation will be subject to these terms, except that all warranties, technical support obligations, and other liabilities and obligations in relation to the evaluation are disclaimed by us and excluded to the extent permitted by law. We can terminate the evaluation at any time by giving you written notice. If we offer a free trial period for CyberHQ.ai, no fees are charged during the trial period and no payment method is required to start it. Unless you activate a paid Subscription Plan before the trial ends, your trial will automatically be cancelled at the end of the trial period, your access to the software and services will cease, and you will not be charged. Your account configuration and customer data will be retained for 45 days after the trial ends, in accordance with clause 74(a) (Following termination). If you activate a Subscription Plan within that 45-day period, we will reactivate your existing account configuration. If you do not activate a Subscription Plan within that 45-day period, your account configuration and customer data may be permanently deleted in accordance with clause 75, and you may need to set up a new account to use the software or services again.

Licence

7. Subject to your compliance with these terms and in consideration for payment of the fees for the software and services, we grant you a non-exclusive, non-transferable (except as otherwise permitted under these terms), revocable, non-sublicensable **license** during the license term to access and use the software and services (as applicable) for your internal business purposes, in accordance with the documentation, these terms and our intended purpose for the software and services.

8. The license granted to you permits you to access and use the software and services as specified in your Subscription Plan, as selected by you and confirmed by us at sign-up and is limited to:

   a. the number of applicable **licensing units** (for example: workspaces, monitored endpoints, authorized users, agents or sensors);

   b. any **usage metrics** (for example: API calls, storage, records processed or data volume); and

   c. the **Billing Cycle** and, where applicable, the **Subscription term** (each as defined in the Billing and Payment section),

   specified in the quotation, order or applicable documentation.

9. From the start date and during the license term, we will provide the software and/or services to you in accordance with these terms.

10. The applicable deployment model(s) for your Subscription are specified in your Subscription Plan:

a. **Cloud model:** we host and operate the services as a SaaS solution, available from us directly or via a marketplace listing (e.g., AWS Marketplace). You access the services via sensors, extensions or other mechanisms we provide. Monitored data collected by the services is transmitted to, and processed in, our (or the relevant marketplace provider's) infrastructure in accordance with applicable data protection and AI regulations. You consent to such processing and transmission and are responsible for any required cross-border data transfer mechanisms.

b. **Self-hosted model:** we make the deployment package available for download (via a secure registry, portal or marketplace). You are solely responsible for downloading, deploying, configuring, managing, securing and maintaining the services and all your underlying infrastructure (compute, storage, orchestration, networking and so on) in your own environment. All monitored data remains under your exclusive control and is processed locally, except during optional support sessions.

11. In addition to clause 7, for the self-hosted model we grant you the right to download, install, deploy and run the deployment package (and any updates we provide) in your own environment, solely for your internal business purposes. You must not (and must not permit any person to) modify, adapt, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive the source code of, any component of the deployment package, nor copy, distribute, sublicense, sell or redistribute it or any part of it. The deployment package may contain third-party software, open-source components or other materials (third-party components) subject to their own license terms, as listed in the THIRD-PARTY-NOTICES.txt file (or equivalent) included with the deployment package or documentation. You are solely responsible for complying with all such third-party license terms, and any failure to do so is a breach of these terms.

12. We will make updated deployment packages (self-hosted model) or updates to the hosted service (cloud model) available periodically. For the self-hosted model, you are responsible for promptly deploying updates, particularly critical security updates (recommended within 30 days of release). Failure to apply updates may result in degraded performance, security risks, or loss of support eligibility.

License restrictions and prohibited use

13. You must not, and must not permit any person to, directly or indirectly:

a. exceed your entitlement to licensing units or usage metrics;

b. reverse engineer, decompile, disassemble, or otherwise attempt to discover or derive the source code, underlying ideas, algorithms, or structure of the software or services;

c. modify, adapt, translate, create derivative works from, or make any changes to the software or services.

d. commercialise the software or services, including by selling, lending or renting them;

e. create any product or service based on the software or services;

f. use the software or services or any data/output from them to build, train, or improve a competing product or service, or for benchmarking/competitive analysis;

g. transfer the software or services to anyone else, including by sub-licensing or assigning them;

h. share your account credentials/passwords or allow unauthorized access to your account;

i. try to get around any technical protection measures in the software or services;

j. continue to use or access the software or services after your rights to use them have expired or been terminated;

k. use any automated means (e.g., bots, scrapers, crawlers, or scripts) to access, monitor or extract data from the software or services, except as expressly permitted (e.g., via approved APIs).

l. make any unauthorized copies of any copyrighted material owned or licensed by us;

m. do any other thing that would be inconsistent with or breach our intellectual property rights in the software and services;

n. use the software or services to do anything illegal;

o. use the software or services to transmit, publish or communicate material that is defamatory, offensive, abusive, indecent, menacing or unwanted;

p. interfere with anyone else's use of the software or services;

q. introduce malicious programs into our system; or

r. use the software or services to carry out security breaches or disruptions of a network (including accessing data of which you are not the intended recipient).

14. You acknowledge and agree that these terms incorporate by reference the terms of any **acceptable use policy** as set out on the website or provided to you from time to time.

Affiliate use of software and services

15. **Affiliate** means any entity that directly or indirectly controls, is controlled by, or is under common control with a party, where **control** means ownership of more than 50% of the voting interests of the entity.

16. You may permit your affiliates to use the software and services licensed to you, provided that:

    a. such use is solely for internal business purposes of you and your affiliates;

    b. you remain fully liable for all acts and omissions of your affiliates as if they were the your own acts; and

    c. any such use does not exceed your licensing unit entitlement and usage metrics.

17. Unless otherwise agreed in a separate order form, customer affiliates have no direct contract with us. All invoicing and legal communication will be conducted solely with you, and only you may bring a claim against us on behalf of an affiliate.

Support

18. During the license term, we will provide technical support for the software and services in accordance with our **support policy**, available as an exhibit to these terms.

Professional services

19. We may provide **professional services** to you, which include both:

    a. initial onboarding, implementation, configuration and training; and

    b. additional or customised professional services agreed under a **Statement of Work (SOW)**, quotation or order.

    Each SOW (where applicable) will be governed by these terms, unless otherwise specified in the SOW.

20. We retain all right, title and interest in and to any materials, deliverables, code, or modifications developed while performing the professional services. We grant you a non-exclusive, non-transferable license to use such deliverables solely in connection with your authorized use of the software and services.

21. Our ability to deliver the professional services depends on your timely provision of required information, access, data, resources and approvals. We will not be liable for any delays or failures to the extent they are caused by your failure to meet these obligations.

Intellectual property rights

22. **Intellectual property rights** means all intellectual property rights of any kind, in any jurisdiction, subsisting now or in the future (including business, company or trade names, domain names, patentable or patented material, computer software, circuit layouts, databases, source codes, goods, images, inventions, processes, copyright, design rights, know-how, trade marks and trade secrets), whether registered or unregistered, and whether created before, during the operation of this agreement, or after its expiry or termination.

23. You acknowledge and agree we own or hold all intellectual property rights in the software, services and documentation. These terms do not transfer any title, intellectual property rights or ownership rights in the software, services or documentation to you, except for the limited access and usage rights granted to you in these terms. You must not take any action inconsistent with our intellectual property rights.

24. A party's ownership of, or any right, title or interest in, any intellectual property rights in an item which exists prior to the start date (**pre-existing material**) will not be altered, transferred or assigned by virtue of these terms.

25. You grant us a non-exclusive, royalty free, non-transferable and revocable license to use your intellectual property rights including any pre-existing material solely to the extent reasonably required for us to provide you the software and services.

26. We have the discretion (but not obligation) to terminate your access to and use of the software and services if we determine that you have infringed our intellectual property rights or those of third parties.

Customer data

27. You grant us a royalty-free, worldwide license to copy, transmit, store, access, process, use and refer to the information, data or content you provide to us or allow us to access (**customer data**), but only for the following limited purposes:

a. to supply the software and services, including to enable you to access and use them;

b. for diagnostic purposes;

c. as reasonably required for the performance of our obligations under these terms; and

d. where permitted by law, and provided such data is de-identified, anonymized and/or aggregated:

i. to do analysis for the purposes of benchmarking and other related uses;

ii. to test, enhance and otherwise modify the software or services (including where requested by you);

iii. to develop other software or services.

For the avoidance of doubt, customer data includes any monitored data (as defined above) collected via the services' sensors, extensions, agents or other components.

28. You represent and warrant that:

a. the customer data is your sole and exclusive property, or you have secured all authorizations and rights to use the customer data as applicable;

b. the customer data does not breach any relevant laws, regulations or codes;

c. the customer data does not infringe the intellectual property rights of any third party; and

d. to the extent the customer data contains personal data, you have obtained the necessary notices, consents or other lawful basis to transfer or permit access to it in accordance with applicable privacy and data protection laws. You are solely responsible for compliance with workplace monitoring and employment laws.

29. You acknowledge and agree that:

a. you have sole responsibility for the accuracy, quality, integrity, legality, reliability and appropriateness of all customer data. The services rely on customer data as supplied by you. Except as required under applicable law, we do not assume any duty or obligation to correct or modify customer data;

b. any collation, conversion and analysis of customer data performed by the software or services may be subject to human input and machine errors, omissions, delays and losses including but not limited to any loss of customer data. We are not liable for any such errors, omissions, delays or losses, unless caused by our gross negligence. You acknowledge and agree you are responsible for adopting reasonable measures to limit the impact of such loss or error; and

c. we are not responsible for any corruption or loss of any customer data if such corruption or loss is due to an act or omission by you or your **personnel** (employees, contractors, officers and agents).

30. You agree to indemnify us and hold us harmless for the corruption or loss of any customer data controlled or stored by you, to extent the corruption or loss is not caused by our negligent act or omission.

Privacy and data processing

31. You and we both agree to comply with our respective obligations under applicable **privacy laws** in relation to personal information collected, used or disclosed in connection with the software, services and these terms.

32. Details on how we comply with privacy laws are available in our **Privacy Notice** and the **CyberHQ.ai Browser Extension — Privacy & Data Disclosure** on the website. We reserve the right to amend our Privacy Notice and Browser Extension — Privacy & Data Disclosure as required from time to time. Where applicable AI regulations (such as the EU AI Act or relevant US state AI laws) apply to the services, further information is available in our Privacy Notice or on request.

33. These terms supplement and incorporate the Privacy Notice and, to the extent the European Union General Data Protection Regulation (**GDPR**), UK GDPR, CCPA/CPRA or other data protection laws apply, the **Data Processing Agreement** (DPA) forms part of these terms and applies when we act as a processor. The DPA is available as an exhibit to these terms.

34. To the extent the services involve the processing of personal data, you are the data controller (or business) and we are the data processor (or service provider). We will process personal data only in accordance with your documented instructions, these terms and the DPA.

35. In the cloud model, we process monitored data in our (or our infrastructure provider's) environment as described in clause 10. In the self-hosted model, we do not process monitored data on an ongoing basis; our role is limited to supplying the deployment package and providing support.

36. We will take all reasonable steps to notify you in writing if we become aware of any actual, threatened or suspected breach of customer data where such breach involves personal information.

37. You agree to ensure that any collection, processing, use, disclosure and transfer by you of personal information in connection with the performance of your obligations under these terms complies with all applicable privacy laws.

38. You must take all necessary steps to ensure that the personal information held or accessed by you in connection with these terms is protected against misuse, interference and loss, and from unauthorized access, modification and disclosure (**data breach**). You must promptly give us written notice of any actual or suspected data breach and provide information, assistance and other cooperation as we reasonably request in respect of the data breach.

39. You must co-operate with any reasonable requests or directions we make relating to the security, use, disclosure, and transfer of personal information, our 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 your behalf.

40. The services involve monitoring of employee and user activity, including potential interactions with third-party generative AI tools, for data loss prevention, risk detection and security purposes. The services may be classified as a high-risk AI system under applicable laws. You acknowledge and agree that you are solely responsible for:

    a. ensuring your deployment and use of the services complies with all applicable laws, including employment laws, data protection laws (e.g., GDPR, CCPA/CPRA), workplace monitoring and surveillance requirements, and AI-specific regulations (such as the EU AI Act and applicable US state AI laws);

b. providing all necessary notices to, and obtaining all required consents (or establishing another valid lawful basis) from, your employees, contractors and other data subjects before deployment and ongoing use;

c. conducting any required data protection impact assessments, AI impact assessments, risk evaluations or equivalent assessments for your specific use case;

d. ensuring the monitoring is proportionate, necessary and limited to legitimate business purposes; and

e. complying with any human oversight, transparency, explainability or appeal requirements under applicable AI or privacy laws.

41. For the self-hosted model, you are solely responsible for the security and proper configuration of the deployed instance and underlying infrastructure, and for all data storage, backups, disaster recovery and infrastructure costs in your environment, and for any resulting data breaches. You represent and warrant that you have (or will obtain) all necessary rights and permissions for the collection and processing of monitored data. We have no responsibility for your compliance with the obligations in this clause or clause 40.
42. We do not provide legal, employment, regulatory or compliance advice. The services are a tool to assist with your risk detection and security monitoring, and you remain solely responsible for all decisions, actions, investigations or employment consequences arising from your use of the services or monitored data. To the fullest extent permitted by law, we disclaim all liability for claims by your employees, contractors or other third parties relating to monitoring activities or your compliance failures, and (for the self-hosted model) for issues arising from your infrastructure, configuration, or failure to apply updates, as we have no control over your deployment environment.

Confidentiality

43. **Confidential information** means in relation to a party, information that is by its nature confidential, is designated as confidential, or that the other party know or ought reasonably to know is confidential, including any information relating to the financial affairs, assets or liability of a party, their personnel, plans, strategies, customers, suppliers, products, services and intellectual property rights.

44. Subject to clause 45, each party must (and must ensure that its personnel) keep confidential and not use or permit any unauthorised use of all confidential information.

45. Clause 44 does not apply where:

a. the information is in, or comes into, the public domain (other than by a breach of clause 44 by the relevant party);

b. the relevant party has the prior written consent of the party that disclosed the confidential information;

c. the disclosure is required by law;

d. the disclosure is required in order to comply with these terms, provided that the party disclosing the confidential information ensures the recipient complies with the terms of clause 44; and

e. the disclosure is to a professional adviser in order to obtain advice in relation to matters arising in connection with these terms and provided that the party disclosing the confidential information ensures the adviser complies with the terms of clause 44.

46. Each party acknowledges and agrees that monetary damages may not be an adequate remedy for a breach of clause 44. 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 clause 44.

Customer responsibilities

47. You must, at your own expense:

    a. provide all reasonable assistance and cooperation to enable us to supply the software and services in an efficient and timely manner;

    b. use reasonable endeavours to ensure the integrity of the customer data;

    c. allow us reasonable access to your computing environment for the purposes of supplying the software and services; and

    d. make any changes to your computing environment that may be required to support the delivery and operation of the software and services.

48. You acknowledge and agree that:

    a. you are responsible for all users using the software and services including your personnel and any authorized users;

    b. your use of the software and services will be at your own risk, except as otherwise expressly provided by these terms;

    c. you are responsible for maintaining the security of your account and passwords and we will not be liable for any loss or damage from your failure to comply with this security obligation.

Billing and payment

49. You may select a **Monthly** Billing Cycle or an **Annual** Billing Cycle for your Subscription Plan at sign-up, as shown in your account and order confirmation.

50. Fees for your Subscription Plan are charged to the credit card or other payment method you provide at sign-up (**payment method**) at the start of your Subscription, and automatically at the start of each subsequent Billing Cycle in accordance with clause 52 (Auto-renewal), unless your Subscription is cancelled in accordance with clause 55.

51. You authorise us (or our third-party payment processor) to charge your payment method for all fees payable under these terms, including recurring Billing Cycle charges, additional licensing units, upgrades, and any other amounts due under these terms.

52. **Auto-renewal:** your Subscription will automatically renew for a further Billing Cycle of the same length (Monthly or Annual, as applicable) at our then-current fees, unless you cancel your Subscription in

accordance with clause 55 before the renewal date. We will give you reasonable advance notice of any increase to our fees before it takes effect on renewal.

53. **Additional licensing units and upgrades:** if you add licensing units (for example, additional users, workspaces, endpoints or sensors) or upgrade your Subscription Plan to a higher tier during a Billing Cycle, we will issue a pro-rata invoice for the additional fees, calculated by reference to the number of days remaining in your current Billing Cycle, and charge that amount to your payment method on the date the additional licensing units or upgrade take effect.

54. **Downgrades:** if you reduce your licensing units or downgrade your Subscription Plan to a lower tier, the change will only take effect from the start of your next Billing Cycle. No credit, refund or pro-rata adjustment will be given for the then-current Billing Cycle.

55. **Cancellation:** you may cancel your Subscription at any time via your account settings or by written notice to us. Cancellation takes effect at the end of your then-current Billing Cycle, and your access to the software and services will continue until that date. Fees already paid are non-refundable, including for any unused portion of a Billing Cycle, except as required by clause 70 (Australian Consumer Law) or other rights that cannot be excluded by law.

56. **Failed payments:** if a payment fails or your payment method is declined, we will notify you and may retry the payment method on file over a period of up to 7 days. If payment is not successfully processed within that period, we may suspend your access to the software and services until payment is received. If payment remains outstanding for more than 30 days after the due date, we may terminate these terms in accordance with the Term and termination section.

Indirect taxes

57. All fees are exclusive of applicable taxes, duties, levies, or charges (collectively, **taxes**), including GST, VAT, sales tax or withholding taxes. You are solely responsible for paying all such taxes (excluding taxes based solely on our net income). If you are required by law to withhold any taxes from payments to us, you will gross up your payments so that we receive the full amount due.

Warranties and disclaimers

58. We warrant that during the license term the software and services will perform substantially in accordance with the documentation. Your sole and exclusive remedy for breach of the foregoing warranty is, at our option, the replacement or reperformance of the software and services, or a credit for the period in which the software and services did not materially comply. This warranty is conditional upon you providing us prompt written notice of the software or services' non-conformance and using the software and services in accordance with these terms and the documentation.

59. Except as provided in clause 58, and to the extent permitted by law, we disclaim all warranties, terms and conditions of any kind, whether expressed or implied by law or fact or on any other basis. We do not warrant that the software and services will be error-free, completely secure, failsafe, free from viruses, or will operate without interruption or that, except as set out in these terms, the software and services will be performed in the manner intended by you or the software and services will meet your requirements or be fit for a particular purpose.

60. The services are hosted by third-party cloud **infrastructure providers** (e.g., Amazon Web Services) (for the cloud model). You acknowledge and agree that the availability of the services is dependent on the

availability and performance of these infrastructure providers. We are not liable for any service interruptions, data loss, or delays caused by infrastructure providers.

Mutual indemnities

61. Subject to clause 63 and 64, we will indemnify and defend you against any third party claim alleging that the software and services, when used in accordance with these terms, infringes a third party's intellectual property rights. We will pay any court-awarded damages or settlement amounts, provided that this indemnity does not apply to the extent that the claim arises from:

    a. customer data;

    b. use of the software or services in combination with any software or service not provided by us; or

    c. any modification of the software or services by anyone other than us.

62. You will indemnify and defend us against any loss, damage, cost (including reasonable legal fees) or third party claim to the extent caused by:

    a. any claim that customer data infringes the intellectual property rights of a third party, or violates privacy laws;

    b. any use of the software or services by you or your personnel in a manner not expressly permitted by these terms or in breach of the acceptable use policy; or

    c. any failure by you to comply with applicable laws or regulations.

63. The party seeking indemnity must notify the other party in writing within 14 days of becoming aware of the events giving rise to the claim.

64. The indemnifying party has sole control over the defence and settlement of the claim, provided they do not settle in a way that admits fault on behalf of the other party without consent.

65. Clause 61 sets out our entire liability and your sole remedy for any intellectual property rights infringement claims.

66. Both parties must take reasonable steps to mitigate any loss that may give rise to an indemnity claim under this section.

Liability

67. Despite anything to the contrary (but subject to clause 68), to the maximum extent permitted by the law:

    a. each party's maximum aggregate liability arising from or in connection with these terms and the software and services will be limited to, and must not exceed the total amount of fees you have paid to us in the 12-month period immediately preceding the first event giving rise to such liability;

    b. neither party will be liable to the other party for any indirect or consequential damages, including 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, loss or corruption of data or the costs of acquiring replacement software and services,

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

68. The limitations in clause 67 will not apply to any liability that cannot be limited by applicable law, or liability arising from:

    a. your failure to pay all amounts due;

    b. fraud, criminal conduct or the willful misconduct of a party;

    c. your breach of our intellectual property rights; or

    d. breach of a party's confidentiality obligations under clause 44.

69. Despite anything to the contrary, to the maximum extent permitted by law, we will have no liability, and you release and discharge us from all liability, arising from or in connection with any failure or delay in providing the services where caused or contributed to by any:

    a. event or circumstance outside our reasonable control;

    b. a fault or defect in any item of your computing environment; or

    c. act or omission of you or your personnel.

70. **For Australian consumers only**: For customers that are consumers under the Australian Consumer Law (**ACL**), the following provisions apply:

    a. The benefits of the warranties and remedies in these terms are in addition to any other rights and remedies in relation to the services that you may be entitled to under the ACL.

    b. Our goods and services come with guarantees that cannot be excluded under the ACL. For major failures with the services, you are entitled: (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or services.

Term and termination

71. These terms take effect from the start date and continue for as long as your Subscription remains active (including through automatic renewals of your Billing Cycle under clause 52), unless terminated earlier in accordance with clauses 72 or 73.

72. We may immediately suspend your access to the software and the services or terminate these terms by giving written notice to you if:

    a. you undergo a change of control to one of our competitors, as determined by us;

b. you commit a breach of these terms not capable of remedy;

c. you breach or threaten to breach clause 13 (License restrictions and prohibited use);

d. any type of insolvency administrator is appointed in respect of your property or affairs;

e. you enter or propose to enter into any scheme, composition or arrangement with any of your creditors; or

f. you are in breach of these terms (other than a trivial breach) and have not remedied the breach within 30 business days of receipt of written notice from us describing the breach and calling for it to be remedied.

73. You may terminate these terms by giving us at least 30 business days' notice if we are in breach (other than a trivial breach causing no material harm) of any provision of these terms and, where the breach is capable of remedy, we have failed to remedy the breach within 30 business days of receipt of written notice describing the breach and calling for it to be remedied

74. Following termination of these terms:

    a. we will immediately stop providing the software and performing the services and promptly return to you, delete or destroy all your confidential information and customer data within 45 days of the termination date (other than information we are required by law to retain); and

    b. you will immediately cease using the services, uninstall and permanently delete any software, return to us, delete or destroy all our confidential information and pay the fees for all software and services received for which you have not paid.

    c. for the cloud model, your access to the services ends immediately; and

    d. for the self-hosted model, you must immediately cease use of all components of the deployment package and delete all copies (except as required by law for archival purposes). We may require written certification of deletion.

75. After termination of these terms, we have no obligation to retain data for the software and services or any customer data, which may be permanently deleted as part of our record and information management and in accordance with applicable laws. If any customer data is stored by the software or services, you are solely responsible for retrieving that customer data.

Dispute resolution

76. If there is any dispute, controversy or claim (**dispute)** arising from or in connection with these terms, the software or the services, the party raising the dispute must give a written **dispute notice** to the other party setting out the details of the dispute and proposing a resolution.

77. Within 14 business days after receipt of the dispute notice, the parties must (through their senior executives or senior managers with authority to settle the dispute) meet at least once (in person, by video conference or telephone) and negotiate in good faith to resolve the dispute. All aspects of such discussions, except their occurrence, are privileged and confidential and will not be admissible in any subsequent proceedings.

78. If the parties are unable to resolve the dispute with 30 business days after receipt of the dispute notice, any party may refer the dispute to mediation administered in accordance with the following (as applicable based on the governing law determined under clause 95):

    a. If governed by the laws of New South Wales, Australia: mediation administered by the Australian Disputes Centre (ADC) in accordance with the ADC Guidelines for Commercial Mediation current at the time of referral. The mediation will be conducted in Sydney, New South Wales;

    b. If governed by the laws of the State of Delaware, United States: mediation administered by JAMS in accordance with its then-current Commercial Mediation Rules. The mediation will be conducted in Wilmington, Delaware;

    c. If governed by the laws of England and Wales: mediation administered by CEDR in accordance with the CEDR Model Mediation Procedure. The mediation will be conducted in London, England; and

    d. For all other jurisdictions (governed by the laws of Singapore): mediation administered by the Singapore International Mediation Centre (SIMC) in accordance with its then-current Mediation Rules. The mediation will be conducted in Singapore.

79. The costs of mediator and the ADC will be borne equally by the parties. Each party will otherwise bear its own costs of the mediation.

80. If the dispute has not been settled within 60 business days after the appointment of a mediator (or such other period as the parties may agree in writing) either party may commence court proceedings.

81. A party may not commence court proceedings relating to any dispute without first complying with clause 76 to clause 80, except where they are seeking urgent interlocutory relief.

82. Notwithstanding the existence of a dispute, the parties must continue to perform their respective obligations under these terms to the extent they are not affected by the dispute.

Incorporated policies

83. **Data Processing Addendum, Acceptable Use Policy, Support Policy and Technical SLA:** the DPA, Acceptable Use Policy, Support Policy and Technical SLA are each incorporated into these terms by reference and are available as exhibits to these terms or on our website. In the event of any inconsistency between these terms and the DPA in relation to the processing of personal data or notification of a personal data breach, the DPA prevails. In the event of any other inconsistency between these terms and the Acceptable Use Policy, Support Policy or Technical SLA, these terms prevail.

Miscellaneous

84. **Entire agreement:** These terms contain the entire understanding between us and you and supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of their subject matter.

85. **Relationship**: Nothing in these terms is intended to create a partnership, joint venture or agency relationship between us and you. Nothing in these terms allows either party to bind the other in any way.

86. **Export controls and sanctions**: You represent and warrant that neither you nor any of your users is (i) located in, or a national or resident of, any country or territory subject to comprehensive trade sanctions or embargoes (including, without limitation, Cuba, Iran, North Korea, Syria, or the Crimea, Donetsk, or Luhansk regions of Ukraine, or any other country or territory to which Australia, the United States, or the European Union prohibits trade), or (ii) identified on any applicable sanctions or restricted party lists (e.g., Australian Consolidated List, OFAC SDN List). You must not use or access the software or services in any manner that would cause us to breach applicable sanctions or export control laws.

87. **Non-solicitation**: In this clause, a **restricted person** is any employee or independent contractor of the other party with whom the soliciting party had material dealings in connection with these terms in the 12 months immediately preceding the termination or expiry of these terms. During the license term and for 12 months after the termination or expiry of these terms (**restricted period**), neither party will directly or indirectly, without the prior written consent of the other party:

    a. solicit, canvass, approach, recruit, hire, engage or attempt to solicit, recruit, hire, or engage any restricted person of the other party; or

    b. Induce or encourage any restricted person to terminate or materially alter their employment or engagement with the other party.

    This clause does not prohibit the publication of general job advertisements or the use of recruitment agencies, provided they are not specifically targeted at any restricted person, or the engagement of any restricted person who responds unsolicited to such general advertisements.

88. **Notices**:

    a. A notice or other communication given under these terms must be in writing, in English and signed by the sender and 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.

    b. The customer's notice details are set out in the customer's account. Our notice details are set out on the website. A party may change its notice details by written notice to the other party, which, for the customer, is by updating your account, and for us, is by updating our details on the website.

    c. A notice or communication is taken as having been given:

        i. when left at a party's current address for notices;

        ii. 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

        iii. if sent by email, if sent before 5 pm on a business day in the place of receipt, then on the business day when it is sent, otherwise on the following business day.

89. **Force majeure:** If performance of these terms or any obligation under them is prevented, restricted or interfered with by reasons of any event or circumstance outside the reasonable control of a party and the affected party 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 event is removed.

90. **Waiver:** Any failure or delay by a party in exercising a power or right (either wholly or partially) in relation to these terms 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.

91. **Subcontracting:** You agree that we may engage subcontractors to perform the services on our behalf.

92. **Assignment:** You may not assign, transfer or otherwise deal with all or any of your rights or obligations under these terms without our prior written consent, which will not be withheld unreasonably. Avertro may assign, transfer or novate its rights and obligations under these terms without consent to a related body corporate, or in connection with a merger, acquisition, corporate restructure, sale of business or other change of control transaction. Any purported dealing in breach of this clause is of no force or effect.

93. **Cumulative rights**: The rights arising out of these terms do not exclude any other rights of either us or you. Each indemnity in these terms is a continuing obligation that is separate and independent from other obligations under these terms. We are not obliged to take any action or incur any expense before enforcing any indemnity under these terms.

94. **Severance:** If a provision of these terms 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. 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 these terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these terms.

95. **Governing law and jurisdiction:** These terms are governed by and construed in accordance with the laws of:

    a. The State of Delaware, if your principal place of business (or, if not applicable, your place of incorporation) is located in the United States;

    b. England and Wales, if your principal place of business (or if not applicable, your place of incorporation) is located in the United Kingdom;

    c. New South Wales, Australia, if your principal place of business (or, if not applicable, your place of incorporation) is located in Australia; or

    d. Singapore, if your principal place of business (or, if not applicable, your place of incorporation) is located in any other location.

    The parties submit to the exclusive jurisdiction of the courts in those respective locations, excluding conflict of laws principles. The UN Convention on Contracts for the International Sale of Goods and UCITA are expressly excluded.

96. Discounts and promotional codes: We may offer discount or promotional codes from time to time, in our discretion. Where a discount or promotional code is applied to your Subscription, the amount, duration (including the number of Billing Cycles, if any, to which it applies) and any other conditions of that discount will be as specified at the time the code is offered or redeemed. Unless otherwise stated when the code is offered, a discount applies only to the Billing Cycle(s) specified for that code, and your Subscription will automatically renew at our then-current standard fees for your Subscription Plan (without the discount) in accordance with clause 52 (Auto-renewal) once the discount period ends. Discount and promotional codes: (a) have no cash value and are not redeemable for cash; (b) are non-transferable and may not be combined with any other discount, promotion or offer unless we expressly state otherwise; (c) may be limited to one use per customer or account, or otherwise restricted, as specified when the code is offered; and (d) may be modified, suspended or withdrawn by us at any time

without notice. If a discount or promotional code is applied in error, has expired, or was obtained or used in breach of its applicable conditions or these terms, we may correct your fees to reflect the correct amount payable and charge your payment method accordingly.

97. **Survival**: Clauses 22 to 26 (Intellectual property rights), clauses 43 to 46 (Confidentiality), clauses 61 to 66 (Mutual indemnities), clauses 67 to 70 (Liability), clauses 71 and 73 to 75 (Term and termination), clauses 76 to 82 (Dispute resolution), clause 83 (Incorporated policies), clause 87 (Non-solicitation) and any other clause that by its nature should survive termination will survive termination or expiry of these terms.