

1 Definitions.

Affiliate means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

Agreement means this software subscription agreement between Avrium and Subscriber, as well as any documents referred to in it.

Applicable Laws means any binding laws and regulations (including Data Protection Laws) that apply to a party's exercise of its rights and obligations under this Agreement.

Avrium means Avrium Limited, a company registered under the laws of Scotland under registered number SC597282, whose registered office is at 2F2 25 Haddington Place, Edinburgh, EH74AF.

Third Party Providers means the providers of services described in more detail in Section 3.4.

Data Protection Laws means any laws and regulations relating to privacy or the use or processing of data relating to natural persons, including: (a) EU Directives 95/46/EC and 2002/58/EC (as amended by 2009/136/EC) and any legislation implementing or made pursuant to such directives, including the UK's the Data Protection Act 2018 and the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) the EU Regulation 2016/679 ("GDPR"); and (c) any laws or regulations ratifying, implementing, adopting, supplementing or replacing GDPR or DPA; in each case, to the extent in force, and as such are updated, amended or replaced from time to time.

Malicious Code means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.

Pilot Project means the free access by Subscriber to a Subscription Service for a limited term, subject to the Pilot Terms.

Pilot Terms means the terms governing access to the Pilot Project.

Subscriber means the entity agreeing to these terms and conditions and as specified in the Account Details

Subscriber Data means all electronic data or information submitted by Subscriber in the course of setting up and using the Subscription Service, including Subscriber Personal Data.

Subscription Service means the online, Web-based application provided by Avrium via <http://www.avrium.co.uk>.

Subscription Fee means the fee payable for the applicable Subscription Service and for each Subscription Term.

Subscription Term means one month.

Third Party Data means any information, analysis, report, opinion or data of any kind and on any medium, created by a Third-Party Provider and made accessible to Subscriber as part of the Subscription Service.

Trial Period means the period of free access to the applicable Subscription Service, as stated in the Registration Page at the relevant time, which may be amended by Avrium at its sole discretion from time to time.

User means an individual who is authorised by the Subscriber to use the Subscription Service. A User may include but is not limited to an employee, consultant, contractor, supplier, professional advisor and agent of the Subscriber.

User Terms means the terms of use each individual User must accept before being given access to the Subscription Service for the first time.

2 Subscription Service.

2.1 **Provision of Service.** Avrium shall make the Subscription Service available to the Subscriber and its Users pursuant to this Agreement. Subscriber agrees that the payment of Subscription Fees is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Avrium with respect to future functionality or features. Avrium does not provide financial or accounting advice through the Subscription Service.

2.2 **Users.** The Subscriber, at its discretion, may invite individuals to be Users and decides the level of access each User has, within the Subscriber's selected Subscription Service. Each User's initial access to the Subscription Service is subject to the User's acceptance of the User Terms, The Subscriber is responsible for each User's use of the Subscription Service and can revoke or change a User's access, or level of access, at any time and for any reason, in which case that person or entity will cease to be a User or shall have that different level of access, as the case may be and Avrium shall deem the Subscriber's decision as final. Notwithstanding the foregoing, Avrium has the right to instruct a Subscriber to revoke a User's access to the Subscription Service if Avrium believes that the User has, or is likely to, breach the User Terms.

3 Use of the Subscription Service

3.1 **Privacy and Data Protection.** Avrium shall: (i) in addition to its confidentiality obligations hereunder, not use, modify or disclose to anyone other than Users or Authorised Third Parties the Subscriber Data; (ii) in relation to Subscriber Personal Data in respect of which it is hereby acknowledged that Avrium is acting as data controller: (a) process the Subscriber Data in accordance with this Agreement and Avrium's [Privacy Policy](#), Subscriber's instructions and Data Protection Laws and regulations, (b) take appropriate technical, organizational and security measures against unauthorized access to or unauthorized alteration, disclosure, destruction or loss of Subscriber Personal Data, and (c) ensure that employees used by Avrium to provide the Subscription Service are aware of and are suitably trained in such technical, organizational and security measures; (iii) maintain the security and integrity of the Subscription Service and the Subscriber Data; (iv) provide standard support to Subscriber's Users at no additional charge; and, (v) use reasonable efforts to make the Subscription Service available 24 hours a day, 7 days a week, except for: (a) planned downtime (of which Avrium shall give at least 8 hours' notice via the Subscription Service and which Avrium shall schedule to the extent reasonably practicable during the weekend hours from 6:00 p.m. Friday to 3:00 a.m. GMT/BST Monday); or (b) any unavailability caused by circumstances beyond Avrium's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes (other than those involving Avrium employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Avrium's possession or reasonable control, and denial of service attacks.

3.2 **Subscriber Responsibilities.** Subscriber is responsible for all activities that occur in User accounts and for Users' compliance with this Agreement. Subscriber shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Subscriber Data and shall ensure that all instructions given by it to Avrium in respect of the Subscriber Data will be in compliance with applicable data protection legislation; (ii) prevent unauthorized access to, or use of, the Subscription Service, and notify Avrium promptly of any such unauthorized access or use; and (iii) comply with all applicable local, state, federal and foreign laws in using the Subscription Service, including without limitation all applicable data protection laws and regulations.

3.3 **Terms of Use.** Subscriber shall use the Subscription Service solely for its business purposes as contemplated by this Agreement and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Subscription Service available to any third party, other than to Users or as otherwise contemplated by this Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libellous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store Malicious Code; (v) interfere with or disrupt the integrity or performance of the Subscription Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Subscription Service or its related systems or networks.

- 3.4 **Third-Party Providers.** Certain third-party providers, some of which may be listed on pages within Avrium's website, offer products and services related to the Subscription Service, including implementation, customization and other consulting services related to Subscribers' use of the Subscription Service and applications (both offline and online) that work in conjunction with the Subscription Service, such as (i) by exchanging data with the Subscription Service or (ii) by offering additional functionality within the user interface of the Subscription Service through use of the Subscription Service's application programming interface or (iii) offering services related to the Subscription Services. Avrium does not warrant any such third-party providers or any of their products or services, whether or not such products or services are designated by Avrium as "certified," "validated" or otherwise. Any exchange of data (including personal data) or other interaction between Subscriber and a Third-Party Provider, and any purchase by Subscriber of any product or service offered by such Third-Party Provider, is subject to an agreement between Subscriber and such Third-Party Provider. In addition, from time to time, certain additional functionality (not defined as part of the Subscription Service) may be offered by Avrium to Subscriber, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by Subscriber in connection with a separate purchase by Subscriber of such additional functionality. Subscriber's use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this Agreement. No purchase of such third-party products or services is required to use the Subscription Service.
- 3.5 **Google AdWords Program.** Service features that interoperate with the Google AdWords program depend on the continuing availability of the Google AdWords application programming interface (API) and program for use with the Subscription Service. If Google Inc. ceases to make the Google AdWords API or program available on reasonable terms for the Subscription Service, Avrium may cease providing such Service features without entitling Subscriber to any refund, credit, or other compensation.
- 3.6 **Publicity.** Neither party may issue press releases relating to this Agreement without the other party's prior written consent.
- 4 Subscription Fees, Subscription Term, Suspension and Termination**
- 4.1 **Subscription Fees and Subscription Term.** Subscriber shall pay the Subscription Fee in British Pound Sterling. Subscription Fees are consideration for access to, and the ability to use, the features of the applicable Subscription Service and not actual usage. Paid Subscription Fee are non-refundable, unless expressly stated in this Agreement. Each Subscription Term is one month.
- 4.2 **Payment.** Subscription Fees are paid monthly. The first payment must be made within 48 hours of the expiry of the Trial Period, if Subscriber wishes to continue access to the Subscription Service. Subject to clause 4.5, the Subscription Service shall be renewed automatically by Avrium by one month at a time and payment for each renewal will be taken automatically by Avrium on or about the same date each calendar month. The Subscriber is responsible for maintaining complete and accurate billing and contact information within the Account Details section of each Subscriber's Account.
- 4.3 **Payments Default and Suspension.** If the Subscriber's payment details are not accurate and Avrium is unable to process payment in accordance with clause 4.2, Avrium shall notify the Subscriber by e-mail using the contact details in the Account Details section and Avrium reserves the right to suspend the Subscriber's access to the Subscription Service if payment is not made in full within 5 business days of the notice from Avrium.
- 4.4 **Taxes.** Subscription Fees exclude direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments or similar governmental assessments of any nature, including value-added, use or withholding taxes (collectively, "Taxes") which shall be added to the Subscription Fee automatically at the time of payment.
- 4.5 **Termination.** The Subscriber may choose to terminate access to the Subscription Service by selecting the "Cancel" option in the Subscription Plan section no later than 48 hrs before the expiry of the then-current Subscription Term. Upon any termination of this Agreement, without prejudice to any other rights or remedies which the parties may have under this Agreement access to the applicable Subscription Service and all rights and obligations hereunder shall immediately cease; provided that Sections 3.1, 3.4, 3.6, 4.4, 5, 6, 7.2, 8 and any other provisions with express survival language shall survive termination.
- 5 Proprietary Rights.**
- 5.1 **Reservation of Rights.** Subject to the limited rights expressly granted hereunder, Avrium reserves all rights, title and interest in and to the Subscription Service, including all related intellectual property rights. No rights are granted to Subscriber hereunder other than as expressly set forth herein.
- 5.2 **Restrictions.** Save to the extent expressly permitted by applicable law notwithstanding this limitation, Subscriber shall not (i) modify, copy or create derivative works based on the Subscription Service; (ii) frame or mirror any content forming part of the Subscription Service, other than on Subscriber's own intranets or otherwise for its own internal business purposes; (iii) reverse engineer the Subscription Service; or (iv) access the Subscription Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Subscription Service.
- 5.3 **Subscriber Data.** As between Avrium and Subscriber, Subscriber exclusively owns all rights, title and interest in and to all Subscriber Data. Subscriber Data is deemed Confidential Information under this Agreement. Avrium shall not access Subscriber's account, including Subscriber Data, except to respond to service or technical problems or at Subscriber's request.

5.4 **Suggestions.** Avrium shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into the Subscription Service any suggestions, enhancement requests, recommendations or other feedback provided by Subscriber or its Users relating to the operation of the Subscription Service.

6 Confidentiality.

6.1 **Definition of Confidential Information.** *Confidential Information* means all confidential information of a party (*Disclosing Party*) disclosed to the other party (*Receiving Party*), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including the terms and conditions of this Agreement (including pricing and other terms reflected in all Order Forms hereunder), the Subscriber Data, the Subscription Service, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information (except for Subscriber Data) shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

6.2 **Confidentiality.** The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, except with the Disclosing Party's prior written permission.

6.3 **Protection.** Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care).

6.4 **Compelled Disclosure.** If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.5 **Remedies.** If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of confidentiality protections hereunder, the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7 Warranties & Disclaimers.

7.1 **Warranties.** Each party represents and warrants that it has the legal power to enter into this Agreement. Avrium represents and warrants that (i) it will provide the Subscription Service in a manner consistent with good industry standards; (ii) the Subscription Service shall perform materially in accordance with the User Guide; (iii) the functionality of the Subscription Service will not be materially decreased during a Subscription Term; (iv) the Subscription Service will not contain or transmit to Subscriber any Malicious Code (except for any Malicious Code contained in User-uploaded attachments or otherwise originating from Users); (v) it owns or otherwise has sufficient rights in the Subscription Service to grant to Subscriber the rights to use the Subscription Service granted herein; and (vi) the Subscription Service does not infringe any intellectual property rights of any third party. Subscriber represents and warrants that the collection and processing of Subscriber Data by it and/or as contemplated by this Agreement complies in all respects with applicable data protection laws and regulations.

7.2 **Disclaimer.** Except as expressly provided herein, Avrium makes no warranties of any kind, whether express or implied and specifically disclaims all implied warranties and conditions, to the maximum extent permitted by Applicable Law. Avrium expressly does not warrant that: (i) any Third-Party Data provided to Subscriber as part of the Subscription Service is accurate, complete or fit for purpose and (ii) the Subscription Service will be error-free.

8 Limitation of Liabilities

8.1 **General:** Subject to any liability that Avrium is not able to limit or exclude as a result of the operation of Applicable Law, this Section 8 sets out Avrium's entire liability to Subscriber (whether in contract or in tort and whether foreseeable or not) arising out of or related to this Agreement.

8.2 **Liability Cap:** Subject to Sections 8.1 and 8.3, Avrium's aggregate liability, whether in contract or in tort and whether foreseeable or not, to the Subscriber shall be limited to the Fees paid by the Subscriber.

8.3 **Exclusions:** Under no circumstances shall Avrium be liable, whether in contract or in tort, to Subscriber for (i) indirect losses; (ii) consequential losses; (iii) loss of profit; (iv) loss of savings (v) loss of goodwill; (vi) the costs of debt recovery (including without limitation any costs relating to the management and/or recovery of such debt) in relation to any debt owed to Subscriber by a third party; (vii) any losses arising out of or related to the Subscriber's use of the Subscription Services during the Pilot Project and/or the Trial Period and (viii) any losses arising out of or related to the Subscriber's use of Third-Party Data or the use of services provided by a Third-Party Provider. Without prejudice to the foregoing, the Subscriber acknowledges and agrees that neither Avrium nor the Subscription Service provide financial or accounting advice and that any commercial, operational, accounting or business decision which the Subscriber makes based on the information provided by the Subscription Service (**Decision**), is made at the Subscriber's sole risk and that Avrium shall have no liability whatsoever for any losses, charges, expenses, fees, costs or damages incurred by the Subscriber as a result of ore related to such Decisions.

- 9 **Applicable Law:** This Agreement is subject to and shall be governed by English Law and all disputes (contractual or otherwise) shall be subject to the exclusive jurisdiction of the English courts.