

# Terms of Service

LAST UPDATED APRIL 12, 2024

**IMPORTANT - READ CAREFULLY:** BY (A) EXECUTING AN ORDER OR SOW THAT INCORPORATES THESE TERMS OF SERVICE (“**Terms of Service**”), (B) OTHERWISE EXPRESSLY AGREEING TO THESE TERMS OF SERVICE, (C) CLICKING THE “AGREE & CONTINUE” OR SIMILAR BUTTON, OR (D) DOWNLOADING, INSTALLING, ACCESSING, OR USING THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS OF THESE TERMS OF SERVICE. THESE TERMS OF SERVICE SET FORTH THE TERMS AND CONDITIONS FOR THE USE OF THE SERVICES LISTED ON THE ORDER (AS DEFINED BELOW). IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, YOU MUST NOT DOWNLOAD, INSTALL, ACCESS, OR USE THE SERVICES, AND YOU MUST DELETE OR DESTROY THE SOFTWARE. IF YOU DO NOT AGREE TO THESE TERMS OF SERVICE, YOU ACKNOWLEDGE AND AGREE THAT AVERISOURCE MAY TERMINATE ACCESS TO THE SERVICES OR REMOTELY DISABLE THE SOFTWARE.

## 1. Definitions

**1.1 “Affiliate”** means, with respect to a party at a given time, an entity that then is directly or indirectly controlled by, is under common control with, or controls that party, and here “control” means an ownership, voting or similar interest representing 50% or more of the total interests then outstanding of that entity.

**1.2 “Agreement”** means these Terms of Service and each Order and SOW that You and Averisource execute.

**1.3 “Averisource”** means Averisource, LLC, a Texas limited liability company.

**1.4 “Documentation”** means that documentation that Averisource provides to You with the Services, as revised by Averisource from time to time, and which may include end user manuals, operating instructions, installation guides, release notes, and on-line help files regarding the use of the Services.

**1.5 “Intellectual Property Rights”** means all worldwide intellectual property rights, including copyrights, trademarks, service marks, trade secrets, know how, inventions, patents, patent applications, moral rights and all other proprietary rights, whether registered or unregistered.

**1.6 “License Key”** means a serial number that enables You to activate and use the Software.

**1.7 “OnPrem Subscription”** means a subscription for You to download and run the Software in computing environments owned or controlled by You as listed on an Order.

**1.8 “Open Source Components”** means any software component that is subject to any open source license agreement, including software available under a license that is approved by the Open Source Initiative.

**1.9 “Operational Data”** means data and information related to Your use of the Services, such as statistical and performance information related to the provision and operations of the Services. Operational Data does not include Your Data.

**1.10 “Order”** means a purchase order, quote, order page, or other ordering document issued or made available to You (including online) by Averisource or an Averisource authorized marketplace provider or reseller that described the Services to which you are Subscribing and is accepted by Averisource as set forth in Section 4 (Order).

**1.11 “Professional Services”** means professional services, such as implementation, training, and customization services, AveriSource will provide to You pursuant to a SOW or Order.

**1.12 “SaaS Subscription”** means a subscription for You to access over the internet and use the Software in computing environments owned or controlled by AveriSource as listed on an Order.

**1.13 “Services”** means, collectively, any Subscriptions (including the applicable Software), Professional Services, and maintenance and support services that AveriSource provides to You.

**1.14 “Software”** means the AveriSource computer programs listed on an Order, together with any software code relating to the foregoing that is provided to You pursuant to a support and subscription service contract and that is not subject to a separate license agreement.

**1.15 “SOW”** means a statement of work or similar ordering document executed by You and AveriSource describing Professional Services to be provided by AveriSource.

**1.16 “Subscription”** means each SaaS Subscription and OnPrem Subscription.

**1.17 “Subscription Term”** means the initial term of Your Subscription, as set forth in the applicable Order, together with any renewal terms (if applicable and as set forth in the Order).

**1.18 “Third Party Agent”** means a third party delivering information technology services to You pursuant to a written contract with You.

**1.19 “You” or “Your”** means the entity that signs an Order; if accepting or using the Services on behalf of a business entity, the person accepting and using represents that such person has the authority to accept these Terms of Service on behalf of the business entity and that these Terms of Service will be binding on such business entity.

**1.20 “Your Data”** means information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of You through the SaaS Subscription Services.

## **2. License Grant**

**2.1 OnPrem Subscriptions.** Subject to the terms and conditions of the Agreement, for any OnPrem Subscription, AveriSource grants You a non-exclusive, non-assignable (except as set forth in Section 15.1 (Transfers; Assignment)), non-sublicensable license to use the Software and the Documentation during the Subscription Term solely for Your internal business operations. Your license is limited to use of object code of the Software only and commences on the date You are provided the applicable License Key.

**2.2 SaaS Subscriptions.** Subject to the terms and conditions of the Agreement, for any SaaS Subscription, AveriSource grants You a non-exclusive, non-assignable (except as set forth in Section 15.1 (Transfers; Assignment)), non-sublicensable right to access and use the Software and the Documentation during the Subscription Term solely for Your internal business operations. Your license commences on the date AveriSource first makes the Software available for you to access over the Internet.

**2.3 Reporting.** No more than once every rolling six-month period during any Subscription Term for any OnPrem Subscription, You shall, within seven days of a request from AveriSource: (a) run certain of the Software’s functionality specified by AveriSource to assess usage and compliance with the license use restrictions set out in the Agreement; and (b) return the resulting report to AveriSource in full and without modification. If the resulting report shows that Your use of the Software has exceeded the license use restriction set out in the Agreement, You shall cease such unlicensed or unauthorized uses, and if the same is curable by the purchase of additional licenses to the Software, pay AveriSource’s invoice at the rates set out in the applicable Order for a sufficient number of licenses to the Software needed to comply with the

Agreement. You must make such payment within 15 days after receipt of an AveriSource invoice for the same; such payment is in addition to any other rights or remedies available to AveriSource. If such a report shows that Your use of the Software violates applicable restrictions on use, then AveriSource may thereafter make further requests under this section on a rolling, quarterly calendar basis. You acknowledge that for SaaS Subscriptions, AveriSource may monitor Your use of the Software to assess usage and compliance with the license use restrictions set out in the Agreement.

**2.4 Third Party Agents.** The license granted to You in Section 2.1 permits Your Third Party Agents to access, use, or operate the Software on Your behalf for the sole purpose of delivering services to You, provided that You will be fully responsible for Your Third Party Agents' compliance (or non-compliance) with the terms and conditions of the Agreement and any breach of the Agreement by a Third Party Agent shall be deemed to be a breach by You.

**2.5 Copying Permitted.** For OnPrem Subscriptions, You may copy the Software solely as necessary to install and run the quantity of copies licensed, but otherwise for reasonable archival purposes only. You may copy the Documentation solely as necessary for use in connection with Your use of the Software.

**2.6 Changes to Services.** AveriSource may, in its sole discretion, make any changes to the Services (such as infrastructure, security, technical configurations, application features, etc.) that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of AveriSource's products or services to its customers, (b) the competitive strength of, or market for, AveriSource's products or services, and (c) the cost efficiency or performance of the Services, or (ii) comply with applicable law.

**2.7 Open Source Software.** The Software includes Open Source Components. You may request in writing, and AveriSource will provide, a copy of the then-current list of such Open Source Components, which You acknowledge may change from time to time in our discretion. Any use of the Open Source Components by You is governed by, and subject to, the terms and conditions of its applicable license, which may contain additional or different terms to these Terms of Service. To the extent the license for any Open Source Component requires AveriSource to make available to You its corresponding source code or modifications thereto (the "Source Files"), You may request a copy of the applicable Source Files by sending a written request, with Your name and address to: AveriSource, LLC, 5960 Berkshire Lane, 6<sup>th</sup> Floor, Dallas, TX 75225, United States of America. All requests should clearly specify: Open Source Files Request, Attention: General Counsel. This offer to obtain a copy of the Source Files is valid for three years from the date You acquired this Software.

**2.8 Free Versions.** From time to time, AveriSource may offer, either directly itself or through a third party marketplace (e.g., AWS Marketplace), Services to You free of charge for a specified period of time (each, a "**Free Trial**"). The Free Trial will last until the earlier of (a) the end of the Free Trial period for which You registered to use the Services, (b) the period limited by the License Key that AveriSource issued to You, (c) the start date of any revenue generating Subscription ordered by You for such Software, or (d) termination by AveriSource in its sole discretion. Additional terms and conditions for a Free Trial may appear on the relevant registration web page or upon installation, access, or operation of such Services. Any such additional terms and conditions are incorporated into the Agreement by reference and are legally binding. AveriSource reserve the right, in its absolute discretion, to determine Your eligibility for a Free Trial, and, subject to applicable laws, to withdraw or to modify a Free Trial at any time without prior notice and with no liability, to the greatest extent permitted under law.

NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, INCLUDING SECTIONS 6, 8, AND 9.1, SERVICES PROVIDED IN CONNECTION WITH A FREE TRIAL IS PROVIDED “AS-IS” AND “AS AVAILABLE” WITHOUT ANY INDEMNITY, DEFENSE OBLIGATION, WARRANTY, REPRESENTATION, SUPPORT OBLIGATION, OR COVENANT OF ANY KIND.

### **3. Restrictions; Ownership.**

**3.1 License Restrictions.** Without Averisource’s prior written consent, You must not, and must not allow any third party to: (a) use Services in an application services provider, service bureau, or similar capacity for third parties, except that You may use the Services to deliver hosted services to Your Affiliates; (b) make available Services in any form to anyone other than Your individual employees or as specified in Section 2.4 (Third Party Agents); (c) transfer or sublicense Services or Documentation to an Affiliate or any third party, except as expressly permitted in Section 15.1 (Transfers; Assignment); (d) use any Services in conflict with the terms and restrictions of the Services’ licensing model and other requirements specified herein, in the Documentation, or Averisource quote; (e) except to the extent permitted by applicable mandatory law, modify, translate, enhance, or create derivative works from the Services, or reverse engineer, decompile, or otherwise attempt to derive source code from the Services, except as specified in Section 3.3 (Decompilation); (f) remove any copyright or other proprietary notices on or in any copies of the Services; (h) violate or circumvent any technological restrictions within the Services or specified in the Agreement, such as via software or services; (i) access the Services via any automated means, such as via robotic process automation; or (j) access or use the Services (i) for purposes of competitive analysis of the Services, including in the development or provision of a competing software product or service, (ii) in any manner or for any purpose or application prohibited by law, regulation, or government order or decree in any relevant jurisdiction, or (iii) in any manner or for any purpose or application not permitted by the Agreement. You are responsible for purchasing and licensing from applicable third parties the hardware and software required for accessing and operation of the Services as specified in the Documentation and for maintaining current license and support relationships with such third parties as required to enable Your use of the Services as specified in the Documentation.

**3.2 Your Responsibility.** You shall (i) be responsible for identifying and authenticating all of Your permitted users of the Services, for approving access by such permitted users to the Services, for controlling against unauthorized access by permitted users, and for permitted users’ compliance with the Agreement, (ii) be responsible for the accuracy, quality, and legality of Your Data and the means by which You acquired such Data, and Your represent and warrant to Averisource that You have all rights, licenses, and permissions that are necessary and sufficient to provide the Your Data to Averisource for the purposes of the Agreement, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of Services and any usernames, passwords, or accounts for the Services, and notify Averisource promptly of any such unauthorized access or use, and (iv) use Services only in accordance with the Agreement and applicable laws and government regulations. Averisource is not responsible for any harm caused by your users. You are responsible for all activities that occur under Your and Your users’ usernames, passwords, or accounts or as a result of Your or Your users’ access to the Services, and agree to notify Averisource immediately of any unauthorized use.

**3.3 Decompilation.** Decompiling the Software is permitted to the extent applicable laws give You the express right to do so to obtain information necessary to render the Software

interoperable with other software; provided, however, You must first request such information from Averisource and provide all reasonably requested information to allow Averisource to assess Your claim, and Averisource may, in its discretion, either provide such interoperability information to You, impose reasonable conditions, including a reasonable fee, on such use of the Software, or offer to provide alternatives to ensure that Averisource proprietary rights in the Software are protected and to reduce any adverse impact on Averisource proprietary rights.

**3.4 Ownership of Services and Documentation.** The Services and Documentation are licensed, not sold. The Services, Documentation, and Operational Data, all copies and portions thereof, and all improvements, enhancements, modifications, and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of Averisource and its licensors. Your rights to use the Services and Documentation is limited to those expressly granted in the Agreement. No other rights with respect to the Services, Documentation, or any related Intellectual Property Rights are implied. You are not authorized to use (and shall not permit any third party to use) the Services, Documentation, or any portion thereof except as expressly authorized by the Agreement. You grant to Averisource a worldwide, perpetual, irrevocable, royalty-free, sublicensable (through multiple tiers) license to use and incorporate into its software, products, and services any suggestion, enhancement request, recommendation, correction, or other feedback provided by You or Your employees relating to the Services or Documentation.

**3.5 Deliverables.** All deliverables or other work product provided by Averisource to You pursuant to the Professional Services (“**Deliverables**”), all copies and portions thereof, and all improvements, enhancements, modifications, and derivative works thereof, and all Intellectual Property Rights therein, are and shall remain the sole and exclusive property of Averisource and its licensors. Subject to the terms and conditions of the Agreement, Averisource grants You a non-exclusive, non-assignable (except as set forth in Section 15.1 (Transfers; Assignment)), non-sublicensable license to use any Deliverables actually provided by Averisource to You solely in connection with the Services and the Documentation during the Subscription Term solely for Your internal business operations.

**3.6 Your Data.** Averisource acknowledges that, as between Averisource and You, You own all right, title, and interest, including all intellectual property rights, in and to Your Data. You hereby grants to Averisource a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display Your Data and perform all acts with respect to Your Data as may be necessary for Averisource to provide the Services to You, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Your Data incorporated within the Operational Data. It is Your sole responsibility to back-up Your Data during the applicable Subscription Term, and You acknowledge that You will not have access to Your Data through Averisource or the Services following the expiration or termination of the applicable Subscription Term. The Services are not intended to receive or to process any Personal Information and You shall not input into any Service any Personal Information. “**Personal Information**” means information that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal

identifiers). Your and Your employees' business contact information is not by itself Personal Information.

**3.7 Reservation of Rights.** Averisource reserves all rights not expressly granted to You in the Agreement.

**3.8 Compliance Measures.** The Services may contain technological copy protection or other security features designed to prevent unauthorized use of the Services, including features to protect against any use of the Services that is prohibited under the Agreement. You shall not, and shall not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

**3.9 Collection and Use of Information.** You acknowledge that Averisource may, directly or indirectly through the services of third parties, collect and store information regarding use of the Services and about equipment on which the Services is installed or through which it otherwise is accessed and used, through: (a) the provision of maintenance and support services; and (b) security measures included in the Services. You agree that Averisource may use such information for any purpose related to any use of the Services by You or on Your equipment, including: (i) improving the performance of the Services or developing Updates; and (ii) verifying Your compliance with the terms of this Agreement and enforcing Averisource's rights, including all Intellectual Property Rights in and to the Services.

## **4. Order.**

Each Order shall specify and further describe the applicable Software, Subscription type, user limitations, geography limitations, fees, the Subscription Term, and other applicable terms and conditions. Your Order is subject to these Terms of Service. No Orders are binding on Averisource until accepted by Averisource. Orders for OnPrem Subscriptions are deemed accepted upon Averisource delivery of the License Key permitting the download and installation of the Software included in such Order. Orders for SaaS Subscriptions are deemed accepted upon Averisource making the Software included in such Order available to you for access over the Internet. Orders issued by Averisource do not have to be signed to be valid and enforceable if You have downloaded the Software or are otherwise accessing or using the Software.

## **5. Records and Audit.**

During the Subscription Term and for two years after its expiration or termination, You will maintain accurate records of Your use of the Services sufficient to show compliance with the terms of the Agreement. During this period, Averisource will have the right to audit Your use of the Services to confirm compliance with the terms of the Agreement. That audit is subject to reasonable notice by Averisource and will not unreasonably interfere with Your business activities. Averisource may conduct no more than one audit in any 12-month period, and only during normal business hours. You will cooperate with Averisource and any third party auditor and will, without prejudice to other rights of Averisource, address any non-compliance identified by the audit by promptly paying additional fees. You will promptly reimburse Averisource for all reasonable costs of the audit if the audit reveals either underpayment of more than 5% of the Services fees payable by You for the period audited or that You have materially failed to maintain accurate records of Service use.

## **6. Maintenance and Support Services.**

**6.1 Maintenance.** During the applicable Subscription Period, Averisource will provide you such updates, upgrades, bug fixes, patches, and other error corrections (collectively, “**Updates**”) as Averisource makes generally available free of additional charge to all licensees of the Software then entitled to maintenance services. Averisource may develop and provide Updates in its sole discretion, and You agree that Averisource has no obligation to develop any Updates at all or for particular issues. You further agree that all Updates are Software, and related documentation is Documentation, all subject to all terms and conditions of the Agreement. Maintenance services do not include any new version or new release of the Software that Averisource may issue as a separate or new product, and Averisource may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

**6.2 Support Services.** If identified in Your Order, Averisource will provide you with its customary support services for the Software at the level identified in the Order for the periods for which You have subscribed to such support services as per the Order.

**6.3 Limitations.** Averisource has no obligation to provide maintenance and support services, including Updates: (i) for any but the most current or immediately preceding version or release of the Software; (ii) for any copy of Software for which all previously issued Updates have not been installed; (iii) for any software or other products You have obtained from any third party; (iv) for any Software that has been modified other than by Averisource, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation; or (v) if You are in breach under the Agreement.

## **7. Professional Services.**

**7.1 Start Up ProServe Hours.** If identified in Your Order, Averisource will provide to you up to the number of hours of Professional Services set forth in the Order to support Your installation, configuration, and initial training on the Services (the “**ProServe Hours**”). You must request Averisource’s performance of any ProServe Hours, and Averisource’s performance will be subject to the availability of its applicable resources and will be scheduled at mutually-agreed upon times. All ProServe Hours will be performed remotely. All ProServe Hours must be used in the first year of the Subscription Term for the applicable Order, and no refund or roll-over will be provided for unused ProServe Hours.

**7.2 Other Professional Services.** All Professional Services other than ProServe Hours will only be provided as per mutually agreed upon SOWs between You and Averisource. Each SOW is subject to these Terms of Service. Averisource shall perform all Professional Services expressly set out in a SOW. No changes to the scope or performance of the Professional Services under any SOW may be made except pursuant to a mutually-executed amendment or change order to such SOW.

## **8. Warranties.**

**8.1 Software Warranty, Duration and Remedy.** During the initial one year following the start of the Subscription Terms (the “**Warranty Period**”), Averisource warrants to You that the Software will substantially conform to the applicable Documentation, provided that the Software: (a) has been properly installed (including all Updates provided by Averisource) and used at all times in accordance with the applicable Documentation; and (b) has not been

modified or added to by persons other than Averisource or its authorized representative. Averisource shall not be in breach of the foregoing warranty of any nonconformance with the foregoing warranty is caused by an update, add-on, integration, product, software, or service not provided by Averisource. Averisource will, at its own expense and as its sole obligation and Your exclusive remedy for any breach of this warranty, either replace that Software or correct any reproducible error in that Software reported to Averisource by You in writing during the Warranty Period. If Averisource determines that it is unable to correct the error or replace the Software, Averisource will refund to You a pro-rated amount paid by You for that Software covering the unused, remaining portion of the Warranty Period, in which case Your subscription and license for that Software will terminate. Any issues with any Software's substantially non-conformance to the applicable Documentation following the Warranty Period will be addressed solely pursuant to the support services, if any, that You have separately contracted with Averisource to provide.

**8.2 Software Disclaimer of Warranty.** OTHER THAN THE WARRANTY IN SECTION 8.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVERISOURCE AND ITS SUPPLIERS OR LICENSORS MAKE NO OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS UNDER THE AGREEMENT, INCLUDING WITH RESPECT TO ANY SERVICES, AND DISCLAIM ALL IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ANY WARRANTY ARISING BY STATUTE, OPERATION OF LAW, COURSE OF DEALING OR PERFORMANCE, OR USAGE OF TRADE. AVERISOURCE AND ITS SUPPLIERS OR LICENSORS DO NOT WARRANT THAT THE SERVICES OR DELIVERABLES WILL OPERATE UNINTERRUPTED OR THAT IT WILL BE FREE FROM DEFECTS OR THAT IT WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULT, OR BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATION, SYSTEM, OR SERVICE. ALL OPEN SOURCE COMPONENTS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN YOU AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH OPEN SOURCE COMPONENTS.

**8.3** No employee or agent or reseller of Averisource is authorized to make any modifications, extensions, or additions to Agreement, including to the disclaimers of warranties and limitations of liabilities.

## **9. Intellectual Property Indemnification.**

**9.1 Defense and Indemnification.** Subject to the remainder of this Section 9 (Intellectual Property Indemnification), Averisource shall defend You against any third party claim that Your use of the Software as authorized by Averisource infringes any patent, trademark or copyright of such third party, or misappropriates a trade secret (but only to the extent that the misappropriation is not a result of Your actions), in each case, under the laws of the United States ("**Infringement Claim**") and indemnify You from any settlements agreed to by Averisource and damages finally awarded against You by a court of competent jurisdiction in such an Infringement Claim. The foregoing obligations are applicable only if You: (i) promptly notify Averisource in writing of the Infringement Claim; (ii) allow Averisource sole control over the defense for the claim and any settlement negotiations; and (iii) cooperate in response to

AveriSource requests for assistance. You may not settle or compromise any Infringement Claim without the prior written consent of AveriSource.

**9.2 Remedies.** If the alleged infringing Software becomes, or in AveriSource's opinion is likely to become, the subject of an Infringement Claim, AveriSource will, at AveriSource's option and expense, do one of the following: (a) procure the rights necessary for You to make continued use of the affected Software; (b) replace or modify the affected Software to make it non-infringing; or (c) terminate Your license to the affected Software and discontinue the related support services, and, upon Your certified deletion of the affected Software, refund a pro-rated portion of the fees paid by You for the unused, remaining portion of the Subscription Term as of the effective date of termination.

**9.3 Exclusions.** Notwithstanding the foregoing, AveriSource will have no obligation under this Section 9 (Intellectual Property Indemnification) or otherwise with respect to any claim based on: (a) a combination of Software with non-AveriSource products; (b) use for a purpose or in a manner for which the Software was not designed; (c) use of any older version of the Software when use of a newer version from AveriSource would have avoided the infringement; (d) any modification to the Software made without AveriSource's express written approval; (e) any claim that relates to an Open Source Component or derivative thereof; or (f) any Software provided on a no charge, beta, or evaluation basis. **THIS SECTION 9 (INTELLECTUAL PROPERTY INDEMNIFICATION) STATES YOUR SOLE AND EXCLUSIVE REMEDY AND AVERISOURCE'S ENTIRE LIABILITY FOR ANY INFRINGEMENT CLAIMS OR ACTIONS.**

## **10. Indemnification By You.**

You shall indemnify, hold harmless, and, at AveriSource's option, defend AveriSource from and against any and all losses, damages, liabilities, costs (including attorneys' fees) resulting from any third party claim (a) arising out of Your negligence or fraud; (b) arising out of Your use of the Services not in accordance with the Agreement; and/or (c) that Your Data, or any use of Your Data in accordance with the Agreement, infringes or misappropriates any third party's intellectual property rights or violates the privacy rights of any individual (each, an "**Indemnity Claim**"). AveriSource must: (i) promptly notify You in writing of the Indemnity Claim; (ii) allow You control over the defense of the Indemnity Claim and any settlement negotiations provided that You may not settle any Indemnity Claim against AveriSource unless AveriSource consents to such settlement; and (iii) cooperate in response to Your requests for assistance. Notwithstanding the foregoing, AveriSource will have the right, at its option, to defend itself against any such Indemnity Claim or to participate in the defense thereof by counsel of its own choice.

## **11. Economic Terms.**

**11.1 General.** You shall pay the fees set out in the applicable Order or SOW in accordance therewith. Unless otherwise noted, all fees are set out in U.S. dollars.

**11.2 Travel Expenses.** You shall reimburse AveriSource for all reasonable travel and out-of-pocket expenses (including travel and lodging) incurred by AveriSource for any travel of AveriSource personnel requested or agreed upon by You in connection with the provision of Services.

**11.3 Purchase Order Numbers.** You will assign a separate purchase order number to each Order or SOW (each, a “**PO Number**”). Averisource shall reference the applicable PO Number on all invoices it submits for payment.

**11.4 Fees and Payment.** You shall make all payments in U.S. dollars. Unless otherwise expressly agreed to in an Order or SOW, payment terms are net 30 days from the date of an invoice, which You may pay via ACH. Fees are non-cancelable and non-refundable. Fees and expenses due from You under this Agreement may not be withheld or offset by You against other amounts for any reason. If Your Order is with an Averisource-authorized reseller, You will pay all fees and expenses to such reseller unless otherwise directed by Averisource.

**11.5 Late Fees.** If any invoiced amount is not received by Averisource by the due date, then those amounts will accrue interest at a rate of 1.5% per month or the maximum allowed under state law (whichever is lower). Averisource, at its option, may disable the Software remotely, suspend access to Services, and suspend performance of any other obligation arising hereunder, in whole or in part, if Averisource does not receive all amounts due and owing under this Agreement within 30 days after delivery of notice to You of the failure to pay such overdue balances.

**11.6 Taxes.** You shall be solely liable for, and shall pay, any and all taxes arising in connection with Your purchases of Services hereunder other than any federal, state, local, or other taxes based on or measured by Averisource’s net income or receipts. Fees under this Agreement are exclusive of federal, state, or local taxes, or other sales, use, value-added, excise, personal property, or other similar taxes.

## **12. Limitation of Liability.**

**12.1 Limitation of Liability.** TO THE MAXIMUM EXTENT MANDATED BY LAW, IN NO EVENT WILL AVERISOURCE AND ITS LICENSORS BE LIABLE FOR ANY DAMAGES BASED ON LOST PROFITS OR BUSINESS OPPORTUNITIES, LOSS OF USE, LOSS OF REVENUE, LOSS OF GOODWILL, BUSINESS INTERRUPTION, LOSS OF DATA, OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT, NEGLIGENCE, PRODUCT LIABILITY, OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE PRECEDING LIMITATION MAY NOT APPLY TO YOU. AVERISOURCE’S AND ITS LICENSORS’ AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THE AGREEMENT WILL NOT, IN ANY EVENT, REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EXCEED THE GREATER OF THE LICENSE FEES YOU PAID FOR THE SERVICES GIVING RISE TO A CLAIM DURING THE 12-MONTH PERIOD ENDING ON THE DATE THE FIRST SUCH CLAIM AROSE OR \$5000. THE FOREGOING LIMITATION IS INTENDED TO BE IN THE AGGREGATE AND WILL NOT BE INCREASED BY THE PRESENCE OF MORE THAN ONE CLAIM. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF WHETHER AVERISOURCE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

**12.2 Further Limitations.** Averisource’s licensors shall have no liability of any kind under the Agreement and Averisource’s liability with respect to any third party software embedded in the

Software shall be subject to Section 12.1 (Limitation of Liability). You may not bring a claim under the Agreement more than 24 months after the cause of action arises.

## **13. Termination.**

**13.1 Term; Subscription Term.** This Agreement commences on the effective date of the initial Order and will continue until the last Order or SOW expires or terminates. Each Order will set out its own Subscription Term and each SOW will have its own term.

**13.2 Termination for Breach.** Averisource may terminate the Agreement, an Order, or an SOW effective immediately upon written notice to You if: (a) You fail to pay any portion of the fees under an applicable Order or SOW within ten days after receiving written notice from Averisource that payment is past due; or (b) You breach any other provision of the Agreement and fail to cure within 30 days after receipt of Averisource's written notice thereof.

**13.3 Termination for Insolvency.** Averisource may terminate the Agreement, any Order, or any SOW effective immediately upon written notice to You if You: (a) terminate or suspend Your business; (b) become insolvent, admit in writing Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors, or become subject to control of a trustee, receiver, or similar authority; or (c) become subject to any bankruptcy or insolvency proceeding.

**13.4 Effect of Termination.** Upon Averisource's termination of this Agreement, an Order, or a SOW: (a) Your rights to all Services granted to You under the Agreement, or the applicable Order, as the case may be, immediately cease; (b) You must cease all use of all applicable Software and Services, and, if applicable, return or certify destruction of all such Software and License Keys (including copies) to Averisource, and return, or if requested by Averisource, destroy, any related Averisource Confidential Information in Your possession or control and certify in writing to Averisource that You have fully complied with these requirements; and (c) Averisource will have no further obligation to perform the Professional Services under the SOW. Any provision will survive any termination or expiration if by its nature and context it is intended to survive, including Sections 1 (Definitions), 2.7 (Open Source Software), 3 (Restrictions; Ownership), 5 (Records and Audit), 8.2 (Software Disclaimer of Warranty), 12 (Limitation of Liability), 13 (Termination), 14 (Confidential Information) and 15 (General).

## **14. Confidential Information.**

**14.1 Definition.** "Confidential Information" means information or materials provided by one party ("Discloser") to the other party ("Recipient") which are in tangible form and labelled "confidential" or the like, or, information which a reasonable person knew or should have known to be confidential. Without limiting the generality of the foregoing, the following information is Averisource's Confidential Information whether or not marked or identified as such: (a) License Keys; (b) information regarding Averisource's pricing, product roadmaps, or strategic marketing plans; (c) the Software and Documentation; and (d) non-public materials relating to the Software and Documentation.

**14.2 Protection.** Recipient may use Confidential Information of Discloser solely to exercise its rights and perform its obligations under the Agreement. Recipient will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of these Terms of Service and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Confidential Information from unauthorized use, access, or disclosure in the same manner as

Recipient protects its own confidential or proprietary information of a similar nature but with no less than reasonable care.

**14.3 Exceptions.** Recipient's obligations under Section 14.2 (Protection) with respect to any Confidential Information will terminate if Recipient can show by written records that such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Information. In addition, Recipient will be allowed to disclose Confidential Information to the extent that such disclosure is required by law or by the order of a court of similar judicial or administrative body, provided that Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

## **15. General.**

**15.1 Transfers; Assignment.** You may not assign the Agreement, or any right or obligation herein or delegate any performance without Averisource's prior written consent, which consent will not be unreasonably withheld. Any other attempted assignment or transfer by You will be void. Averisource may freely assign the Agreement. Averisource may use its Affiliates or other sufficiently qualified subcontractors to provide services to You, provided that Averisource remains responsible to You for the performance of the services.

**15.2 Publicity.** Notwithstanding Section 14, You agree that Averisource may (a) issue one or more press releases disclosing the relationship entered into hereby and announcing the delivery of the Services to You; and (b) refer to You in marketing materials and electronic and print media, including its website and case studies, as a customer.

**15.3 Notices.** Any notice delivered by Averisource to You under these Terms of Service will be delivered via mail or email at the address listed in the Order.

**15.4 Waiver; Excused Performance.** Failure to enforce a provision of the Agreement will not constitute a waiver. Averisource will not be liable for any delays or failures to perform due to causes beyond Averisource's reasonable control (including a force majeure event). Further, Averisource shall be excused from its obligations in the Agreement or any SOW based on Your failure to perform any of Your obligations in the Agreement or such SOW or the failure or inaccuracy of any assumption set forth in the Agreement or such SOW.

**15.5 Severability.** If any part of the Agreement is held unenforceable, the validity of all remaining parts will not be accepted.

**15.6 Compliance with Laws; Export Control; Government Regulations.** Each party shall comply with all laws applicable to the actions contemplated by the Agreement. You acknowledge that the Services, Documentation, and Deliverables are of United States origin, is provided subject to the U.S. Export Administration Regulations, may be subject to the export control laws of the applicable territory, and that diversion contrary to applicable export control laws is prohibited. You represent that (1) You are not, and are not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions; or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons, or the U.S. Commerce Department Denied Persons List or Entity List; and (2) You will not permit the Services, Documentation, or Deliverables to be used for, any purposes prohibited

by law, including, any prohibited development, design, manufacture or production of missiles or nuclear, chemical or biological weapons. The Services, Documentation, and Deliverables are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFARS Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Services, Documentation, or Deliverables by or for the U.S. Government shall be governed solely by the terms and conditions of the Agreement.

**15.7 No Construction Against Drafter.** If an ambiguity or question of intent or interpretation arises with respect to any term of the Agreement, the Agreement will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise, and no rule shall be enforced, favoring or disfavoring either party by virtue of authorship of any of the terms of the Agreement.

**15.8 Construction.** The headings of sections of these Terms of Service are for convenience and are not to be used in interpreting these Terms of Service. Unless otherwise indicated to the contrary herein by the context or use thereof (i) the words "hereof," "hereby," "herein," "hereto," and "hereunder" and words of similar import shall refer to the Agreement as a whole and not to any particular Section or paragraph of the Agreement, (ii) the words "include," "includes" or "including" are deemed to be followed by the words "without limitation," (iii) the word "or" has the same meaning as "and/or," (iv) references to a "Section" are references to a section of this Agreement, and (v) derivative forms of defined terms will have correlative meanings.

**15.9 Governing Law.** The Agreement is governed by the laws of the State of Texas, United States of America (excluding its conflict of law rules), and the federal laws of the United States. Any dispute, controversy, or claim arising out of, relating to, or in connection with the Software, Services, or the other activities contemplated hereby, including the breach, termination, or validity of the Agreement, shall be finally resolved by arbitration except that You and Averisource are NOT required to arbitrate any dispute (a) in which either party seeks equitable or other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents, (b) in which either party seeks a temporary or preliminary injunction (but not a permanent injunction), (c) that can be adjudicated in a small claims court on an individual basis, or (d) that cannot be subject to mandatory arbitration as a matter of law. The arbitration will be administered by a panel of three arbiters of the American Arbitration Association ("AAA") in accordance with the Commercial Arbitration Rules (the "AAA Rules") then in effect, except as modified by this section. The Federal Arbitration Act will govern the interpretation and enforcement of this section. The tribunal will have the power to rule on any challenge to its own jurisdiction or to the validity or enforceability of any portion of the agreement to arbitrate. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. **THE PARTIES AGREE TO ARBITRATE SOLELY ON AN INDIVIDUAL BASIS, AND THAT THE AGREEMENT DOES NOT PERMIT CLASS ARBITRATION OR ANY CLAIMS BROUGHT AS A PLAINTIFF OR CLASS MEMBER IN ANY CLASS OR REPRESENTATIVE ARBITRATION PROCEEDING.** The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. Notwithstanding the tribunal's power to rule on its own jurisdiction and the validity or enforceability of the agreement to arbitrate, the tribunal has no power to rule on the validity or enforceability of the agreement to arbitrate solely on an individual basis. The arbitrators will not have authority to make any award that could not be made by a court of competent jurisdiction. In the event the prohibition on class arbitration is

deemed invalid or unenforceable, then the remaining provisions of the Agreement regarding arbitration will remain in force. To the extent permitted by law, the state and federal courts located in Dallas, Texas will be the exclusive jurisdiction for disputes arising out of or in connection with the Agreement. The U.N. Convention on Contracts for the International Sale of Goods does not apply.

**15.10 Third Party Rights; Relationship of Parties.** Other than as expressly set out in these Terms of Service, the Agreement does not create any rights for any person who is not a party to it, and no person who is not a party to the Agreement may enforce any of its terms or rely on any exclusion or limitation contained in it. No agency, partnership, joint venture, or employment is created as a result of this Agreement, and neither party has authority of any kind to bind the other party in any respect whatsoever.

**15.11 Order of Precedence.** With respect to any inconsistency between these Terms of Service, an Order, or a SOW, the terms of these Terms of Service shall supersede and control over any conflicting or additional terms and conditions of any Order or SOW. The Agreement prevail over any of Your general terms and conditions of purchase or license regardless of whether or when You have submitted a purchase order or such terms, and Averisource expressly rejects all such terms and conditions offered by You. Fulfillment of Your order does not constitute acceptance of any of Your terms and conditions and does not serve to modify or amend the Agreement.

**15.12 Entire Agreement.** The Agreement and any amendments hereto, contain the entire agreement of the parties with respect to the subject matter of the Agreement and supersede all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties regarding the subject matter hereof. The Agreement may be amended only in writing signed by authorized representatives of both parties.