

Avoira Terms and Conditions of Maintenance and Support.



Avoira has supplied certain hardware products and/or has supplied and/or licensed certain software products to the Customer and has agreed to provide support and maintenance for the products on the terms set out in this agreement.

Agreed terms

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Additional Services: any emergency maintenance and/or any Excluded Maintenance or other services performed by Avoira under this agreement.

Additional Services Fees: the fees payable in consideration of the provision of any Additional Services, which shall be calculated at the Additional Services Rates.

Additional Services Rates: Avoira's rates for additional services which are available upon request.

Avoira: Avoira Limited, a company registered in England and Wales under CRN:01763970.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks are open for business.

Charges: the Standard Maintenance Fees and the Additional Services Fees.

Commencement Date: unless a commencement date is specified in the Order Form, the date of the first invoice to the Customer for the Services.

Confidential Information: all confidential information (however recorded or preserved) disclosed by a party or its employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services, who need to know the confidential information in question ("Representatives") to the other party and that party's Representatives in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Controller, processor, data subject, personal data, personal data breach, processing, and appropriate technical and organisational measures: as defined in the Data Protection Legislation.

Critical Fault: a reproducible fault which substantially hinders or prevents the Customer from using a material part of the functionality of the Software.

Customer: as specified in the Order Form.

Data Protection Legislation: the UK Data Protection Legislation and any other European Union legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

Excluded Causes:

- a. a defect in the manufacturer's design of the Hardware and/or Software;
- b. faulty materials or workmanship in the manufacture of the Hardware and/or Software;
- c. use of the Hardware and/or Software with computer equipment or materials not supplied or approved in writing by Avoira;
- d. misuse, incorrect use of or damage to the Hardware and/or Software from whatever cause (other than any act or omission by Avoira);
- e. any maintenance, alteration, connection, modification or adjustment performed by persons other than Avoira or its employees or agents unless approved by Avoira in accordance with clause 6(i);
- f. the Customer or a third party moving the Hardware and/or Software or amending the configuration of the Customer's system;
- g. the use of the Hardware and/or Software in breach of any of the provisions of the manufacturer's specifications or Good Industry Practice; the neglect or misuse of the Maintained Equipment;
- h. a failure, interruption or surge in the electrical power or its related infrastructure connected to the Hardware and/or Software;
- i. a failure or malfunction in the air conditioning or other environmental controls required for the normal operation of the Hardware and/or Software, or an error or omission in the correct use of that air conditioning or other environmental controls by the Customer;
- j. the neglect or misuse of the Hardware and/or Software;
- k. damage caused by act of god, fire, flood, terrorism, adverse weather event, explosion, lightning, frost, water, labour disturbance, act of government (including statute, order or enforced government lockdown), the neglect or omission of any person other than a representative of Avoira or any other unforeseeable event out of the control of Avoira;
- l. failure to ensure that a suitable environment is provided for the Hardware and/or Software;
- m. any back-ups of data held on the Hardware and/or Software and system configuration;
- n. the effects of a cyber attack, Virus caused by third party products or any other unauthorised access to the Hardware and/or Software;
- o. failure of network provider or network carrier service or SIP trunking;
- p. damage from any cause external to the Customer's equipment cabinets;
- q. failure of any element unique to the Customer's equipment;
- r. under the agreement Avoira will provide Maintenance Services on Hardware and/or Software involving servers (hardware or virtual) or PCs. In the event that the Customer runs third party products on any of the PC's, Avoira will not be responsible for providing a service on these third party products or for issues to the Hardware and/or Software caused by such products;
- s. any breach of the Customer's obligations under this agreement howsoever arising or having the Hardware and/or Software maintained by a third party; or
- t. operator error.

Excluded Maintenance: any Services required to restore any malfunctioning or failed Hardware and/or the Software to Good Working Order where the malfunction or failure results from or is caused by any of the Excluded Causes.

Good Industry Practice: in relation to any undertaking and any circumstances, the exercise of skill, diligence, prudence, foresight and judgement and the making of any expenditure that would reasonably be expected from a skilled person engaged in the same type of undertaking under the same or similar circumstances.

Good Working Order: the Hardware and/or Software operates in accordance with the manufacturer's specifications with all vulnerabilities mitigated where reasonably practicable in accordance with Good Industry Practice.

Hardware: any hardware detailed in the Proposal.

Location: the location of the Hardware and/or the Software at the Customer's premises as

specified on the Order Form, or any other location as may be agreed by the parties in writing from time to time.

Maintenance: a release of the Software which corrects faults, adds functionality or otherwise amends or upgrades the Software, but which does not constitute a New Version.

New Version: any new version of the Software which from time to time is publicly marketed and offered for purchase by Avoira in the course of its normal business.

Non-Critical Fault: any reproducible fault in the Software other than a Critical Fault.

Normal Business Hours: 8.30 am to 5.00 pm GMT on a Business Day.

Order Form: Avoira's standard order form which the Customer is required to sign in order to obtain the Services.

Proposal: Avoira's business policies which are available upon request, as amended by Avoira from time to time.

Proposal: the proposal provided to the Customer by Avoira as referenced in the Order Form.

Response Time: the applicable response times as set out in the Service Levels.

Services: the maintenance and support services provided in accordance with this agreement and as set out in the Proposal.

Service Levels: the levels to which Avoira must perform the Services which can be found at www.avoira.com/legal

Software: any software detailed in the Proposal.

Standard Maintenance Fees: the fees payable by the Customer for the provision of the Services, as set out in the Proposal, as these fees are varied from time to time in accordance with the terms of this agreement.

Term: the contract term specified in the Order Form.

UK Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.

Virus: any program which contains malicious code or infiltrates or damages a computer system without the owner's informed consent or is designed to do so or which is hostile, intrusive or annoying to the owner or user and has no legitimate purpose.

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 A reference to writing or written includes e-mail.

1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

1.12 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.13 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

2. Services

2.1 During the Term, Avoira shall provide the Customer with the Services for the Hardware and/or the Software.

2.2 Avoira may provide a service outside of this agreement at the Customer's request. Any such services will be charged as Additional Services.

2.3 In the event that any Avoira personnel or Representatives are required to attend the Location(s) to perform the Services, Avoira shall procure that they comply with the Customer's reasonable health and safety and security policies provided that these policies have been brought to the attention of its personnel in writing in advance.

2.4 In the event that any material amendments, alterations or additions are made to the Hardware and/or Software by anyone other than Avoira which has not been agreed in writing with Avoira, Avoira may inspect the amendments, additions or alterations and increase the Standard

Maintenance Fees accordingly to provide the additional support or maintenance.

2.5 In the event that additional equipment, whether hardware software or otherwise, is purchased by the Customer from Avaira, this will be added to the Hardware and/or Software and any applicable support and maintenance will be charged by Avaira on a pro-rata basis at the Additional Services Rates or at such rates as may be mutually agreed between the parties.

2.6 Avaira may charge reasonable abortive costs as Additional Fees in the following circumstances

- a. if the Customer incorrectly reports the Hardware and/or the Software as faulty;
- b. any fault is found to be the result of the Customer failing to comply with the terms of this agreement;
- c. the fault is proved to be from an external source unrelated to Avaira and outside of its control; or
- d. the visit to repair the Hardware and/or Software, judged from the viewpoint of a reasonably skilled and qualified engineer, was unnecessary.

2.7 The Customer shall be liable for all charges made by any public telephone network or network services provider relating to the Hardware and/or Software during the term of this agreement arising from the use of the telephone network.

3. Service Levels

3.1 Avaira shall use reasonable endeavours to perform the Services in accordance with the Service Levels.

4. Scope of Service

Avaira agree to provide the Services in accordance with the Proposal and to provide the Services as follows:

4.1 Avaira shall use reasonable endeavours to provide such preventive and on-call remedial maintenance as it shall deem necessary to ensure effective use of the Hardware and/or Software for the Customer in accordance with the Service Levels;

4.2 Avaira shall carry out all work which is reasonably necessary to enable the Hardware and/or Software to operate in accordance with the Proposal and/or manufacturer's specification and in particular will carry out all necessary repairs to the Hardware and/or Software and, where applicable, shall supply and fit such replacement parts as are necessary through normal wear and tear.

4.3 In relation to Hardware, Avaira may, where repairs cannot be effected by component replacement, provide replacement assemblies and sub-assemblies excluding telephones and handsets and Avaira will retain a written record of all replacement items supplied. All replacements shall be deemed to be acceptable to the Customer as a permanent replacement.

4.4 On the Customer informing Avaira that the Hardware and/or Software is malfunctioning or has failed or is otherwise not in Good Working Order, Avaira shall:

- a. use reasonable endeavours to perform or ensure that its supplier performs (as the case may be) corrective maintenance of the Hardware and/or Software in accordance with the response time stated in the Service Levels; and
- b. if specified in the Service Levels, where, in Avaira's opinion, corrective maintenance cannot reasonably be performed remotely, it shall use reasonable endeavours to send an engineer to attend at the Location(s) during Normal Business Hours within the relevant Response Time.

4.5 On the Customer informing Avaira outside of Normal Business Hours that the Hardware and/or Software is malfunctioning, has failed or is not in Good Working Order, Avaira shall:

- a. use all reasonable endeavours to perform emergency maintenance of the Hardware and/or Software in accordance with the response time stated in the Service Levels; and
- b. if specified in the Service Levels, where, in Avaira's opinion, corrective maintenance cannot reasonably be performed remotely, use reasonable endeavours to send an engineer to attend at the Location(s) within the relevant Response Time.

4.6 Services or Additional Services performed by Avaira outside of Normal Business Hours shall be charged at the Additional Services Rates for each of Avaira's personnel involved in the performance of such services. In the event that emergency maintenance or Additional Services are required on the Hardware and/or Software outside of the scope of this agreement, it shall be charged at the Additional Services Rates. Any additional charges shall be calculated, in the case of emergency maintenance that is performed remotely, from the time at which the relevant Supplier personnel commence performance of emergency maintenance, and in the case of emergency maintenance that is performed at the Location(s), from when the personnel arrive at the Location(s) until they leave the Location(s).

4.7 In performing any Services, Avaira shall use reasonable endeavours to restore any malfunctioning or failed Hardware and/or Software to Good Working Order either remotely or while in attendance at the Location(s), if applicable. Where this is not reasonably practicable, or not reasonably practicable within Normal Business Hours, Avaira shall either arrange for a further visit to the Location(s) within Normal Business Hours to complete the repair, or remove the Hardware and/or Software or part of the Hardware and/or Software for repair off-site.

4.8 All work undertaken under this agreement will be recorded on Avaira's fault management system, details of which are available on request. Avaira retains a record of all service reports, details of helpline and remote access fixes.

4.9 Avaira may, on prior notice to the Customer, make changes to the Services, provided such changes do not have a material adverse effect on the Customer's business operations.

4.10 In relation to Software:

- a. this agreement does not include free software upgrades for new features and enhancements. Software upgrades may be installed in order to rectify software related problems that may arise, however Avaira is not responsible for upgrading the end-user application. If a software upgrade is installed the Customer will have to purchase rights to use new enhancements and features if the Customer wishes to benefit from these
- b. Avaira shall from time to time make Maintenance Releases available to the Customer;
- c. where a Non-Critical Fault is to be corrected in a forthcoming Maintenance Release, then for a reasonable period before the issue of such Maintenance Release Avaira may decline to provide assistance in respect of that Non-Critical Fault.
- d. if Avaira releases a New Version and the Customer decides not to acquire and install such New Version, that decision shall not give rise to any right to terminate this agreement, nor shall it result in any adverse effect on the Services or the performance of Avaira's obligations under this agreement.

4.11 Software Upgrades - Avaya Equipment only

Software upgrades may be installed through the course of maintenance provision in order to rectify software related problems that may arise. However, this agreement does not include free software upgrades for new features and enhancements unless Avaya Software Support Options are purchased. There may be cases where software upgrades to rectify faults or provide additional features require a system hardware upgrade to comply with current manufacturer's specifications. Hardware upgrades are not included. The Company will provide the Customer with a cost estimate prior to providing any chargeable hardware upgrades. Implementation,

installation, and customization services may be required and may be provided by Avaira at an additional cost and are outside the scope of this agreement. Customers who purchase the Avaya Software Support package will be subject to the following Avaya Terms:

[Avaya Service Description for SW Support](#)

[Avaya Global Software Licence](#).

4.12 In relation to mast installation and maintenance work:

- a. if it is necessary for Avaira to cease works for a short period of time due to heavy rain or high winds and should that extend the works beyond 10 hours, Avaira shall charge the Additional Services Rates for that time;
- b. if it is deemed necessary for Avaira to postpone works due to prolonged inclement weather, it is the Customer's option whether to retain Avaira's engineer at a cost of 50% of the day rate per day plus the overnight and evening meal costs, or, the Customer has the option to cancel the works and re-schedule at a later date. The Customer will be invoiced for the days worked or any part day thereof and a cancellation fee will be charged to cover additional travelling costs and administration;
- c. Avaira shall cease any painting works in the event of any rain, as the structure must remain dry for a minimum of 6 hours to ensure correct adhesion of the painted coating. Should this be necessary then the Customer shall have the same options as set out in clause 4.12(b).

In the event of postponement or cancellation of works, the following charges shall apply:-

72 hours = no charge

48 hours = 20% of total labour content of quotation cost plus VAT

24 Hours = 75% of total labour content of quotation cost plus VAT

5. Replacements and spare parts

5.1 In performing the Services, Avaira shall use reasonable endeavours to source spare parts (whether new or pre-used) required to restore the Hardware to Good Working Order. Where Avaira can reasonably source individual spare parts, Avaira shall have the right to charge the Customer for the spare parts.

5.2 All spare parts and/or replacements provided by Avaira to the Customer shall become part of the Hardware and the property of the Customer. Avaira will assign to the Customer, with full title guarantee and free from all third-party rights, all spare parts and/or replacements provided by Avaira. All parts and components removed from the Hardware by Avaira in the course of performing the Services shall no longer constitute part of the Hardware and will be the property of Avaira. The Customer will assign to Avaira, with full title guarantee and free from all third-party rights, all parts and components removed from the Hardware by Avaira in accordance with this clause 5.2.

5.3 In circumstances where the Hardware and/or Software and/or spare parts and/or skills relevant to the Hardware and/or Software become unavailable or obsolete, Avaira may be unable to continue to offer the Services. In this event, Avaira will immediately contact the Customer and inform them of the reasons for the inability to provide the Services and shall, where possible, provide alternative options to the Customer to enable the Services to be resumed. If no other options are available or the available options are not acceptable to the Customer, Avaira may terminate this agreement with 60 days' written notice.

6. Customer's obligations

The Customer Shall:

- a. ensure that the Hardware and/or the Software is installed and kept at the Location(s), under suitable conditions, as specified in the manufacturer's specifications, and permit only trained and competent personnel to use it ensuring it is used in an appropriate manner and that frequent functional checks are undertaken and any operating instructions as Avaira may give from time to time are followed;
- b. report faults promptly and notify Avaira if the Hardware and/or the Software is discovered to be operating incorrectly or to contain a vulnerability and to record details of the malfunction including any warning lights or indicators showing at the time of the malfunction. Failure to do this may result in charges being incurred by the Customer at the Additional Services Rates;
- c. at all reasonable times permit full and free access (including remote access) to the Location(s) and to the Hardware and/or the Software to Avaira, its employees, contractors and agents, and provide them with adequate and safe working space, and any telecommunications facilities as are reasonably required to enable Avaira to perform the Services and the Additional Services while at the Location(s);
- d. purchase, install and maintain telecommunications facilities to allow Avaira to perform remote maintenance on the Hardware and/or the Software and dedicate an appropriate number of the Customer's staff to ensure that this is readily available. Failure to do so could result in response times in excess of those stated in the Service Levels;
- e. in line with the Customer's network access policies to provide full and free access into the Customer's network to Avaira, its employees, contractors and agents in order to carry out remote maintenance to performance the Services and the Additional Services. In the event that remote access is unavailable Avaira reserves the right to charge Additional Services Fees for applicable call out charges;
- f. provide any equipment that may be required by Avaira to carry out routine maintenance on Hardware and/or Software situated at more than two metres high;
- g. provide Avaira with any information that is reasonably requested in the performance of the Services and the Additional Services;
- h. take any steps reasonably necessary to ensure the safety of Avaira's personnel when attending the Location(s);
- i. not allow any person other than Avaira to maintain, alter, modify, adjust or make connection to the Hardware and/or Software without the prior written approval of Avaira. Any breach of this clause by the Customer shall entitle Avaira to terminate this agreement without notice and Avaira may retain the Charges paid by The Customer. Alternatively, the Customer shall be liable for Additional Services Rates incurred by Avaira in the restoration of the Hardware and/or Software;
- j. not move the Hardware and/or Software from the Location(s) without the prior written approval of Avaira (such approval not to be unreasonably withheld or delayed). Any relocation of the Hardware and/or Software may result in an increase to the Standard Maintenance Fees as mutually agreed between the parties;
- k. at all times maintain and where necessary replace data storage facilities. Avaira is not responsible for maintenance of data storage under the agreement;
- l. maintain a regular back up of the Hardware and/or Software and any data contained within and system configuration and customer data records;
- m. store any reserve equipment only in conditions approved by Avaira, and make this equipment available for periodic maintenance, as with all other Hardware and/or Software;
- n. ensure the availability of any ancillary equipment which the Customer has agreed to provide in Good Working Order in order to enable Avaira to carry out the Services;
- o. provide Avaira with access to audit the Hardware and/or Software as and when required in order to ensure compliance with this agreement;
- p. only use equipment, supplies or materials supplied or approved by Avaira (such approval not to be unreasonably withheld or delayed);
- q. provide and maintain a suitable data network;
- r. ensure the public telephone network connection point is kept secure and is accessible to Avaira;
- s. ensure any passwords which Avaira require to provide maintenance and service on the Hardware and/or Software are not changed without prior notification to Avaira;

- t. ensure statutory requirements relating to the Hardware and/or Software are complied with at all times;
- u. ensure any necessary wayleaves, licences or other permissions are obtained where required in relation to the Hardware and/or Software;
- v. where the place of service defined in the Order Form is shown as Avoira's workshops, on reasonable request by Avoira, the Customer shall at the Customer's own expense send any of the Hardware and/or Software which is portable or mobile to Avoira for inspection and repair;
- w. ensure all licences required to operate the Hardware and/or Software are purchased and updated where necessary; and
- x. where applicable, the Customer must install or arrange for the installation of Avoira-approved remote access methodology for systems/devices that support remote access no later than the delivery date of the Hardware and/or Software by the Company or installation of systems/devices and in any event prior to the commencement of support. Remote access will be via a traditional phone line for modem-equipped products or through an Avoira-approved VPN access solution. The line number or IP address must be provided to Avoira by the Customer as soon as reasonably practicable. This modem line or VPN must remain available to provide remote access on a 24x7 basis or there may be degradation to the service and support the Customer can receive from Avoira.
- 6.2 The Customer shall indemnify Avoira against any losses, damages, costs (including legal fees) and expenses incurred by or awarded against Avoira as a result of the Customer's breach of this agreement howsoever arising or any negligent or wrongful act of the Customer, its officers, employees, contractors or agents
- 7. Excluded Maintenance**
- 7.1 Avoira is not obliged to perform any Excluded Maintenance but, subject to clause 7.2, shall use reasonable endeavours to provide assistance to ensure that the Customer has effective use of the Hardware and/or Software.
- 7.2 Where Avoira is performing or has performed the Services in circumstances where it is established that the Hardware and/or the Software were not in Good Working Order due to any of the Excluded Causes, Avoira may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.
- 7.3 On the Customer informing Avoira that the Maintained Equipment is malfunctioning or has failed or is otherwise not in Good Working Order, Avoira shall:
- electrical work external to the Hardware and/or Software such as the power supply or the maintenance of any accessories, attachments, machines or other devices not listed in the Proposal;
 - the repair or replacement of any aerials, mast antennae and their associated cable/connector assemblies;
 - the furnishing of supplies or accessories, painting or refinishing of purchased equipment or furnishing equipment therefore making specification changes or performing services connected with the relocation of the Hardware and/or Software, or adding or removing accessories, attachments or other devices;
 - any back-ups of data held on the Hardware and/or Software and system configuration including but not limited to loss of historical data or system configuration due to hard disc failure;
 - the replacement of magnetic tapes, discs or other software devices or media and other accessories, except where they are an integral part of the Hardware and/or Software.
 - the repair of wiring which is external to equipment cabinets and enclosures, unless specifically included in the Proposal.
 - the maintenance or replacement of batteries or individual battery cells;
 - the investigation of or implementation of cures for radio interference.
 - the failure of a network provider or network carrier service;
 - mains electricity failure; or
 - where PVC security seals fitted to the Hardware and/or Software are broken, Avoira reserves the right to carry out a full mechanical and electrical check on the Hardware and/or Software. Avoira reserves the right to charge the Customer for the additional costs of carrying out such checks before new seals are affixed.
- 8. Charges**
- 8.1 For the performance of the Services, the Customer shall pay to Avoira the Standard Maintenance Fees.
- 8.2 For the performance of any Additional Services, the Customer shall pay to Avoira the Additional Services Fees.
- 8.3 The Customer shall reimburse any reasonable expenses incurred by Avoira where such expenses are incurred wholly and exclusively for the purpose of providing on-site support as part of the Services, provided that any request for reimbursement is in the form of a proper invoice accompanied by appropriate receipts.
- 8.4 The Standard Maintenance Fees shall be due and payable in full to Avoira annually in advance, within 30 days of receipt of a valid invoice from Avoira.
- 8.5 Any Additional Services Fees shall be due and payable monthly, within 30 days of receipt of a valid invoice from Avoira. Any charges for spare parts recoverable in accordance with clause 5.1 shall be due within 30 days of receipt of a valid invoice from Avoira.
- 8.6 If the Customer fails to make any payment due to Avoira under this agreement by the due date for payment, then, without limiting Avoira's remedies under clause 13, the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.7 If the Customer fails to make any payment due to Avoira under this agreement by the due date for payment and the sum is not validly disputed by the Customer, then, without limiting Avoira's remedies under clause 13, Avoira shall be entitled to suspend the Services and any other services provided under this Agreement until the outstanding sums are paid in full.
- 8.8 All Charges are exclusive of VAT or any other applicable sales tax, which shall be paid by the Customer at the rate and in the manner for the time being prescribed by law.
- 8.9 All amounts due under this agreement shall be paid by the Customer to Avoira in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8.10 Avoira may, at any time after the first anniversary of the Commencement Date, increase the Standard Maintenance Fees and the Additional Services Rates by giving to the Customer not less than three months written notice, in the following circumstances:
- a percentage equal to the percentage increase in the Retail Prices Index published by the Office for National Statistics (or its successor from time to time) for the period from the Commencement Date (in the case of the first increase) or the date on which the immediately preceding increase came into effect pursuant to this clause (in the case of the second or any subsequent increase) up to the date of this notice; or
 - an increase of manufacturer's costs, software assurance, costs in obtaining specialist support services from manufacturers and software providers, licences, taxes, currency fluctuations or unexpected cost of doing business.
- 9. Avoira Warranties**
- 9.1 Avoira represents and warrants to the Customer that:
- the Services and the Additional Services shall be performed:
 - by an appropriate number of suitably qualified and experienced personnel;
 - using all reasonable skill and care and in accordance with Good Industry Practice; and
 - in accordance with all laws and regulations in force from time to time which are applicable to Avoira.
 - all components and equipment supplied or used in the course of the provision of the Services and the Additional Services shall operate materially in accordance with their technical specifications, limited to the manufacturer the manufacturer warranty and support for both hardware and software;
 - Avoira has the full capacity and authority and all necessary permissions, licences and consents necessary to enter into, and perform its obligations under, this agreement;
 - Avoira shall take reasonable steps to not introduce any vulnerabilities or Viruses into the Hardware and/or the Software, or the Customer's network and information systems, by way of the Services or the Additional Services or otherwise.
- 9.2 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise (including satisfactory quality, fitness for purpose and suitability) are hereby excluded to the fullest extent permitted by law.
- 10. Liability**
- 10.1 Neither party excludes or limits liability to the other party for:
- fraud or fraudulent misrepresentation;
 - death or personal injury caused by negligence; or
 - a breach of any obligations implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982.
- 10.2 Subject always to clause 10.1, neither party shall be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, for:
- any loss (whether direct or indirect) of profits, business, revenue, or goodwill;
 - loss or corruption (whether direct or indirect) of data or information; or
 - any special, indirect or consequential loss, costs, damages, charges or expenses,
- in each case, however arising under this agreement.
- 10.3 Subject always to clause 10.1, each party's total aggregate liability in contract, tort (including negligence and breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance, contemplated performance, or non-performance of this agreement shall be limited to the total Charges paid by the Customer to Avoira during the 12-month period immediately preceding the date on which the first cause of action under this agreement first arose.
- 10.4 No action, other than for the non-payment of Charges due to Avoira, regardless of form, may be brought by either party more than one year after the cause of action has accrued.
- 11. Confidentiality and compliance with policies**
- 11.1 The term Confidential Information does not include any information that:
- is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
 - was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - was, is, or becomes, available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - was known to the receiving party before the information was disclosed to it by the disclosing party;
 - the parties agree in writing is not confidential or may be disclosed; or
 - is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 11.2 Each party shall keep the other party's Confidential Information confidential and shall not:
- use any Confidential Information except for the purpose of exercising or performing its rights and obligations under this agreement ("Permitted Purpose"); or
 - disclose any Confidential Information in whole or in part to any third party, except as expressly permitted by this clause.
- 11.3 A party may disclose the other party's Confidential Information to those of its Representatives who need to know that Confidential Information for the Permitted Purpose, provided that:
- it informs those Representatives of the confidential nature of the Confidential Information before disclosure; and
 - at all times, it is responsible for the Representatives' compliance with the confidentiality obligations set out in this clause 10.
- 11.4 A party may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of the disclosure as possible.
- 11.5 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information, other than those expressly stated in this agreement, are granted to the other party, or are to be implied from this agreement.
- 11.6 The above provisions of this clause 11 shall continue to apply after termination of this agreement.
- 11.7 In performing its obligations under this agreement the Customer shall comply with the Policies.
- 12. Non-Solicitation**
- 12.1 The Customer shall not, for the duration of this agreement, and for a period of six months following termination, directly or indirectly induce or attempt to induce any employee of Avoira who has been engaged in the provision, receipt, review or management of the Services and/or the Additional Services or otherwise in connection with this agreement to leave the employment of Avoira.

13. Term and termination

13.1 This agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with this clause 13, this agreement shall continue for the Contract Term and shall continue indefinitely until either party gives written notice to the other party, not later than 90 days before the end of the Term, to terminate this agreement.

13.2 Where Avaira is performing or has performed the Services in circumstances where it is established that the Hardware and/or the Software were not in Good Working Order due to any of the Excluded Causes, Avaira may charge, and the Customer shall pay, the Additional Services Fees in respect of that work.

- a. the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make that payment;
- b. the other party commits a material breach of any material term of this agreement (other than failure to pay any amounts due under this agreement) and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- c. the other party:
 - i. suspends, or threatens to suspend, payment of its debts;
 - ii. is unable to pay its debts as they fall due or admits inability to pay its debts;
 - iii. (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - iv. (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or
 - v. (being a partnership) has any partner to whom any of clause 13.2(c)(i) to clause 13.2(c)(iv) apply.
- d. the other party commences negotiations with all or any class of its creditors with a view to rescinding any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- e. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- f. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over that other party (being a company);
- g. the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- h. a person becomes entitled to appoint a receiver over the assets of that other party or a receiver is appointed over the assets of that other party;
- i. a creditor or encumbrancer of that other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of that other party's assets and that attachment or process is not discharged within 14 days;
- j. any event occurs or proceeding is taken with respect to that other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2(c) to clause 13.2(i) (inclusive);
- k. that other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- l. there is a change of control of that other party (within the meaning of section 1124 of the Corporation Tax Act 2010).

13.3 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination of this agreement shall remain in full force and effect.

13.4 Termination of this agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

13.5 On termination of this agreement for any reason, each party shall as soon as reasonably practicable:

- a. return or destroy (or, in the case of electronic data, delete), as directed in writing by the other party, any documents, handbooks, CD-ROMs or DVDs or other information or data provided to it by the other party for the purposes of this agreement, including all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information. If required by the other party, it shall provide written evidence in the form of a letter no later than 14 days after termination of this agreement that these have been destroyed or deleted and that it has not retained any copies of them, except for one copy that it may use for audit purposes only, and subject to the confidentiality obligations in clause 11;
- b. delete any proprietary software belonging to the other party and all the other party's Confidential Information from its IT network and hard disks or other storage means associated with any computer equipment owned or controlled by the other party. Each party shall provide written confirmation in the form of a letter no later than 14 days after termination of this agreement that this software and Confidential Information has been deleted;
- c. return all of the other party's equipment and materials, failing which the other party may enter the relevant premises and take possession of them. Until these are returned or repossessed, the party remaining in possession shall be solely responsible for their safe-keeping;
- d. Avaira shall provide all reasonable assistance to the Customer and/or any third party engaged by the Customer in connection with the maintenance and support of the Hardware and/or the Software;
- e. the Customer shall immediately pay any outstanding amounts owed to Avaira pursuant to this agreement.

13.6 If a party is required by any applicable law or regulation, or government or regulatory body of competent jurisdiction to retain any documents or materials which it would otherwise be required to return or destroy under clause 11.5, it shall notify the other party in writing of that retention, giving details of the documents or materials that it must retain and the reasons for such retention, and it shall be entitled to retain such documents or materials for the period required by the relevant applicable law or regulation or government or regulatory body provided at all times that clause 11 shall continue to apply to any retained documents and materials.

13.7 Electronic data shall be considered deleted, for the purposes of clause 11.5, where it has been put beyond use by the deleting party.

14. Data Protection

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

14.2 The parties acknowledge that:

- a. if Avaira processes any personal data on the Customer's behalf when performing its obligations under this agreement, the Customer is the controller and Avaira is the

- b. processor for the purposes of the Data Protection Legislation. the personal data may be transferred or stored outside the EEA or the country where the Customer is located in order to carry out the Services and Avaira's other obligations under this agreement

14.3 Without prejudice to the generality of clause 14.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Avaira for the duration and purposes of this agreement so that Avaira may lawfully use, process and transfer the personal data in accordance with this agreement on the Customer's behalf.

14.4 Without prejudice to the generality of clause 14.1, Avaira shall, in relation to any personal data processed in connection with the performance by Avaira of its obligations under this agreement:

- a. process that personal data only on the instructions of the Customer unless Avaira is required by the laws of any member of the European Union or by the laws of the European Union applicable to Avaira and/or Domestic UK Law (where Domestic UK Law means the UK Data Protection Legislation and any other law that applies in the UK) to process personal data (Applicable Laws);
- b. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Avaira, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
- c. not transfer any personal data outside of the EEA unless the following conditions are fulfilled:
 - i. the Customer or Avaira has provided appropriate safeguards in relation to the transfer;
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. Avaira complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
 - iv. Avaira complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data;
- d. assist the Customer, at the Customer's cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- e. notify the Customer without undue delay on becoming aware of a personal data breach;
- f. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- g. maintain complete and accurate records and information to demonstrate its compliance with this clause 14 and allow for audits by the Customer or the Customer's designated auditor and immediately inform the Customer if, in the opinion of Avaira, an instruction infringes the Data Protection Legislation.

14.5 Either party may, at any time on not less than 30 days' notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

15. Force majeure

Neither party shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of its obligations under this agreement if such delay or failure results from events, circumstances or causes beyond its reasonable control (including for the avoidance of doubt an inability to perform its obligations due to the effects of the coronavirus pandemic). In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the period of delay or non-performance continues for three months, the party not affected may terminate this agreement by giving 14 days' written notice to the affected party.

16. Assignment

16.1 Subject to Clause 16.2, this agreement is personal to the parties and neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of its rights and obligations under this agreement without the prior written consent of the other party (which is not to be unreasonably withheld or delayed).

16.2 Avaira shall have the right to sub-contract all or any part of its rights and obligations under this agreement. Any such arrangement shall not release Avaira from its responsibilities or liabilities under this Agreement.

17. Waiver

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18. Notice

18.1 Any notice or other communication required to be given to a party under or in connection with this contract shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next-working-day delivery, at its registered office (if a company) or (in any other case) its principal place of business.

18.2 Any notice or communication shall be deemed to have been received, if delivered by hand, on signature of a delivery receipt, or otherwise at 9.00 am on the second Business Day after posting.

18.3 This clause 18 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include e-mail.

19. Entire agreement

19.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20. Variation

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

21. Severance

- 21.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 21.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

22. No partnership or agency

- 22.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.
- 22.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

23. Third-party rights

No person other than a party to this agreement shall have any rights to enforce any term of this agreement.

24. Rights and remedies

The rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

25. Rights and remedies

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

26. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).