

AVIDIAN TECHNOLOGIES, INC. – TERMS AND CONDITIONS

1. BINDING AGREEMENT. BY ACCEPTING THESE “**TERMS AND CONDITIONS**,” EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THESE TERMS AND CONDITIONS, YOU AGREE TO THESE TERMS AND CONDITIONS AND THE ORDER FORM (TOGETHER, THE “**AGREEMENT**”), WHICH CONSTITUTES A LEGALLY BINDING AGREEMENT BETWEEN YOU (“**CUSTOMER**,” “**YOU**,” OR “**YOUR**”) AND AVIDIAN TECHNOLOGIES, INC. (“**AVIDIAN**” OR “**WE**”). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THE AGREEMENT, IN WHICH CASE THE TERMS “CUSTOMER,” “YOU” OR “YOUR” SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

THIS AGREEMENT REQUIRES THE USE OF ARBITRATION ON AN INDIVIDUAL BASIS TO RESOLVE DISPUTES, RATHER THAN JURY TRIALS OR CLASS ACTIONS, AND ALSO LIMITS THE REMEDIES AVAILABLE TO YOU IN THE EVENT OF A DISPUTE.

UNLESS OTHERWISE INDICATED, CAPITALIZED TERMS SHALL HAVE THE MEANINGS ASCRIBED TO THEM IN SECTION 17 BELOW.

2. License Grant & Restrictions

2.1 Customer License to Use the Services. Subject to the terms and conditions of this Agreement, Avidian hereby grants you a limited, non-exclusive, non-sublicensable, revocable (in accordance with this Agreement), non-transferable, worldwide right to use the Services selected by you in the Order Form, solely for your own internal business purposes. By way of clarification, the right to “use” the Services means the right to access and operate the Services in accordance with any Documentation. To the extent you have selected in the Order Form to subscribe for Services which require you to host any software components underlying the Services, upon receipt of the applicable Fees, (i) the applicable software underlying the Services will be delivered by electronic download or other means mutually agreed upon by the parties and (ii) you may make copies of such software for use, backups, tests, and training environments; provided that Avidian’s copyright and proprietary rights notices are maintained on such copies. You may allow Users to use the Services in accordance with this Agreement, however, you acknowledge that (a) you will communicate to Users your obligations under this Agreement and (b) you will be responsible for the acts and omissions of your Users with respect to their use of the Services (i.e., a violation of the terms of this Agreement by a User shall be held a breach of this Agreement by you). All rights not expressly granted to you are reserved by Avidian and its licensors. The license granted under this Section 2.1 is conditioned on your continued compliance this Agreement (including, without limitation, User compliance with restrictions and obligations set forth herein).

2.2 Restrictions; Limitations. You may not access the Services if you are a direct competitor of Avidian, except with Avidian's prior written consent. In addition, you may not access the Services for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes. You shall not: (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Services or Avidian Materials in any way; (ii) modify or make derivative works based upon the Services or the Avidian Materials; (iii) create Internet "links" to the Services or "frame" or "mirror"

any Avidian Materials on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Services in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Services, or (c) copy any ideas, features, functions or graphics of the Services.

Additionally, you shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violates any third party rights (including, but not limited to, privacy rights); (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Services or the data contained therein; or (v) attempt to gain unauthorized access to the Services or its related systems or networks.

2.3 Term and Termination.

2.3.1 Term; Termination. This Agreement shall be effective throughout the Term (as defined in the Order Form). Subject to the Fee provisions set forth in the Order Form, either party may terminate the Agreement for convenience (i.e., for any reason or no reason) by providing the other party at least thirty (30) days prior written notice. Either party may terminate the Agreement if the other party breaches the Agreement; provided that the non-breaching party provides the breaching party at least seven (7) days prior written notice and the breaching party fails to cure such breach. Subject to the requirements set forth in the Terms and Conditions, if Customer ordered a perpetual license Prophet service, Customer shall receive a perpetual license to use the applicable Prophet software suite; provided that (i) Customer has subscribed for Maintenance and Support Services for at least one (1) year from the Effective Date, (ii) Customer has not terminated the Agreement for any reason prior to the date one (1) year from the Effective Date, and (iii) Avidian has not terminated the Agreement due to Customer's uncured breach.

2.3.2 Effect of Termination. If this Agreement is terminated and Avidian is hosting the Customer Data, Avidian will make available to you a file of the Customer Data within 60 days of termination if you so request at the time of termination for the then current data extraction fee. Notwithstanding the foregoing, Avidian reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination by Avidian for your breach, your right to access or use Customer Data immediately ceases, and Avidian shall have no obligation to maintain or forward any Customer Data. Except as set forth in Section 2.3.3 below, you agree and acknowledge that Avidian has no obligation to retain the Customer Data, and may delete such Customer Data, more than 60 days after termination. Except as set forth in Section 2.3.3 (perpetual licenses) below, all licenses granted in favor of you shall terminate upon the termination of this Agreement, for any reason. Those sections which by their nature should survive the expiration or termination of this Agreement (e.g., indemnification, disclaimer of warranties, and limitation of liability). To the extent you are hosting any of the software underlying the Services, you will remove all such software underlying the Services within your control unless you have a right to continue to use the Services in accordance with Section 2.3.3 below.

2.3.3 Perpetual Licenses; Migration. Unless otherwise stated in the Order Form, and provided that you comply with the conditions set forth in this Section 2.3.3, if you ordered Avidian's (i) Prophet Perpetual Client License (OnPremise) software solution ("**PPOP**") or (ii) Prophet Perpetual Client License (Avidian Hosted) software solution ("**PPAH**") you may continue to use PPOP and PPAH, as applicable, in perpetuity after the termination of (a) the Agreement

(other than termination by Avidian for your breach of the Agreement) and/or (b) the Maintenance and Support Agreement, provided that (A) you have subscribed for the Services pursuant to this Agreement and a Maintenance and Support Agreement for at least (1) year from the Effective Date, (B) you have not breached the Agreement, (C) you host the software underlying PPAH or PPOP, as designated by Avidian, on servers controlled by you and (D) you host the Customer Data on server(s) controlled by you. To the extent Avidian hosts the server side software or Customer Data for PPOP or PPAH and you are entitled to use PPOP or PPAH by satisfying the aforementioned conditions, Avidian will migrate the foregoing to your servers within a reasonable time after the termination of this Agreement and/or the Maintenance and Support Agreement, as applicable; provided, however, that such migration work shall constitute Professional Services and will be billed at the Professional Services rate set forth in the Order Form (if the Order Form does not contain a Professional Services rate, you will be billed at Avidian's standard Professional Services rate as of the date of termination). You acknowledge that if you qualify for the perpetual license and have terminated this Agreement and/or the Maintenance and Support Agreement, your use of the Services will be "as is" and you will not be entitled to any Updates, Upgrades, indemnification rights, Professional Services or any other services from Avidian with respect to your use of PPOP or PPAH, as applicable unless you submit a new Order Form for Maintenance and Support Services. Moreover, Sections 1, 2.1, 2.2, 3, 4, 5, 6, 7, 8.2, 9.2, 10, 11, 12, 13, 16 and 17 shall continue to apply to your use of the Services, and Avidian may permanently terminate your right to use the Services upon your breach of any of such surviving Sections of this Agreement. You acknowledge that without Maintenance and Support, the Services may not operate as intended, and you have no right to alter the source code underlying the Services for any reason.

2.3.4 Early Termination Right. If the Order Form gives you an express right to terminate the Agreement during an Early Termination Period (as defined in the Order Form), you acknowledge that such early termination right shall be your sole and exclusive remedy to the extent you are not satisfied with the Services or for any breach of this Agreement by Avidian during the Early Termination Period.

3. Your Responsibilities. You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Services, including those related to data privacy, international communications and the transmission of technical or personal data. To the extent Customer hosts the Customer Data, Customer is solely responsible for maintaining appropriate security, protection and backup of the Customer Data. Avidian is not responsible for any unauthorized access to, alteration of, or the deletion, destruction, or loss of, or damage to, or failure to store, any Customer Data or other data that Customer or its Users submit or use in connection with the Customer's account (including as a result of Customer's errors, acts or omissions). Avidian makes no representations or warranties that the Software meets any legal requirements regarding Customer Data that is subject to any state or federal laws (e.g., HIPAA). Customer acknowledges that to the extent Customer needs a customized software solution to meet such requirements, Avidian will charge Customer its standard rates to develop a customized solution for Customer, and the foregoing must be evidenced in an Order Form. You shall: (i) notify Avidian immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Avidian immediately and use reasonable efforts to stop immediately any copying or distribution of Avidian Materials that is known or suspected by you or your Users; and (iii) not impersonate another Avidian user or provide false identity information to gain access to or use the Services. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former

Users who have terminated employment or otherwise changed job status or function and no longer use the Services.

4. Account Information and Data. You, not Avidian, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Avidian shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data.

5. Proprietary Rights.

5.1 Avidian Materials and Services. Avidian alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Avidian Materials and the Services and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Services. This Agreement is not a sale of, and does not convey to you any rights of ownership in or related to, the Services, the Avidian Materials or the Intellectual Property Rights embodied therein.

5.2 Trademarks. As between Avidian and Customer, Avidian owns all right, title and interest in and to the Avidian Marks and any goodwill arising out of the use of the Avidian Marks will remain with and belong to Avidian and its licensors. The Avidian Marks may not be copied, imitated or used, in whole or in part, without the prior written consent of Avidian or the applicable trademark holder. Customer may not use any metatags or any other "hidden text" utilizing "Avidian", "Prophet" or any Avidian Mark without the prior written consent of Avidian. At no time will Customer challenge or assist others to challenge any Avidian Marks or the registration thereof or attempt to use or register any trademarks or trade names confusingly similar to those of Avidian or its affiliates. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Avidian website are the property of their respective owners. Reference to any products, services, processes or other information, by trade name, trademark, manufacturer, supplier or otherwise does not constitute or imply endorsement, sponsorship or recommendation thereof by Avidian.

5.3 Additional Protection of Proprietary Rights. Customer will not infringe or violate, and will take appropriate steps and precautions for the protection of, Avidian's Intellectual Property Rights. Without limiting the generality of the foregoing, Customer will: (i) not make any Services or Avidian Materials available to any third party without the prior written consent of Avidian; and (ii) otherwise use its best efforts to prevent any Unauthorized Use. Customer will immediately notify Avidian of any Unauthorized Use that comes to Customer's attention. In the event of any Unauthorized Use relating to the activities of Customer or any employees, agents, or representatives of any such entity, Customer will take all steps reasonably necessary to terminate such Unauthorized Use. Customer will immediately notify Avidian of any legal proceeding initiated by Customer in connection with any such Unauthorized Use. Avidian may, at its option and expense, assume control of such proceeding. If Avidian assumes such control, Avidian will have exclusive control over the prosecution and settlement of the proceeding, and Customer will provide such assistance related to such proceeding as Avidian may reasonably request. Customer will assist Avidian in enforcing any settlement or order made in connection with such proceeding.

5.4 Customer-Furnished Items. Except for any license or other right expressly granted under this Agreement, Customer reserves any and all right, title and interest (including, without limitation, any Intellectual Property Rights) that it may have in the Customer Data. Except as otherwise agreed upon by the parties in writing, no title to or ownership of any Customer Data is

transferred to Avidian under this Agreement. Customer hereby grants to Avidian a nonexclusive, royalty-free license to use the Customer Data as reasonably required for Avidian to perform its obligations in accordance with this Agreement. Customer warrants that it has the right to make the Customer Data available to Avidian as provided for in this Agreement.

6. Third Party Interactions. During use of the Services, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Services. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. Avidian and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. Avidian does not endorse any sites on the Internet that are linked through the Services. Avidian provides these links to you only as a matter of convenience, and in no event shall Avidian or its licensors be responsible for any content, products, or other materials on or available from such sites. Avidian provides the Services to you pursuant to this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different licenses or other terms prior to your use of or access to such software, hardware or services.

7. Fees.

7.1 Amount. Customer will pay Avidian the fees, reimbursable expenses, compensation and other amounts specified in the applicable Order Form and these Terms and Conditions (collectively, the "**Fees**") in accordance with the payment terms specified therein and these Terms and Conditions respectively. You acknowledge that you must pay all charges in advance unless otherwise mutually agreed upon in an Order Form. You agree to provide Avidian with complete and accurate billing and contact information and to the extent you provide a credit card or bank account information to Avidian, you grant Avidian permission to recover amounts owed by debiting/charging such credit card or bank account. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 60 days of any change to it. If the contact information you have provided is false or fraudulent, Avidian reserves the right to terminate your access to the Services in addition to any other legal remedies. All amounts payable under this Agreement are denominated in United States Dollars and Customer will pay all such amounts in lawful currency of the United States. All invoices are final and may not be disputed by you unless you contact Avidian in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit. Unless the Order Form specifically grants you a Limited Refund Right (in which case the Limited Refund rights as set forth in the Order Form shall apply), if you terminate this Agreement for any reason, or Avidian terminates this Agreement due to your breach of this Agreement, you will be responsible for all Fees that accrued prior to the termination date and any Fees that would have accrued for the duration of the Initial Term or any Renewal Term but for the termination of this Agreement.

7.2 Other Fees; Taxes. Services not clearly identified in this Agreement will be charged on an as-quoted basis. Unless otherwise indicated in an Order Form, Avidian's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Avidian's income.

7.3 Late Payments. In addition to any other rights granted to Avidian herein, Avidian reserves the right to suspend or terminate this Agreement and your access to the Services if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection (including reasonable attorneys' fees). You will continue to be charged for User licenses during any period of suspension, and Avidian reserves the right to impose a reactivation or reconnection fee in the event you are suspended and thereafter request access to the Services.

8. Representations & Warranties; Disclaimer.

8.1 Mutual Representations and Warranties. Each party represents and warrants that it has the legal power and authority to enter into this Agreement. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Services and that your billing information is correct.

8.2 Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. SERVICES AND SOFTWARE USED WITHOUT A MAINTENANCE AND SUPPORT AGREEMENT ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTY WHATSOEVER, I.E., ALL EXPRESS AND IMPLIED WARRANTIES ARE DISCLAIMED TO THE MAXIMUM AMOUNT ALLOWED BY LAW. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS.

9. Indemnification.

9.1 By Avidian. Avidian shall defend at its expense any third party suit or proceeding brought against you to the extent that such suit or proceeding is based on any claim that Avidian Materials infringe any United States patent issued as of the date of this Agreement. We will pay any finally settled or court imposed damages and costs finally awarded against you, up to an amount that does not exceed the amount paid to us by you for the infringing Avidian Materials; provided that (i) We are promptly notified by you in writing of such claim, and (ii) We are given full authority, information, and assistance by you to defend and settle the matter. We shall have the right and option at any time in order to avoid such claims or actions and minimize potential liability to (a) procure for you the right to use the allegedly infringing Avidian Materials, (b) modify the Avidian Materials so that they are non-infringing, or (c) replace the Avidian Materials with non-infringing Avidian Materials. Notwithstanding the foregoing, we will not indemnify you for claims regarding Avidian Materials if you alter the Avidian Materials or uses the Avidian Materials outside the license and scope of use identified in this Agreement, nor will we indemnify you to the extent that an infringement claim is based upon any information, design, specification, instruction or other material not provided by us or a combination of the Avidian Materials with any products or services not provided by us.

9.2 By Customer. You will defend, indemnify and hold harmless Avidian and its employees, officers, directors and affiliates (collectively the "***Avidian Parties***") from and against any third party claims, suits or actions and any resulting damages, costs, liabilities and expenses (including, but not limited to, reasonable attorneys' fees) arising out of or related to: (i) unauthorized use of the Services by you or any Users; (ii) violation of any terms of this Agreement by you or any of

your Users; or (iii) any alleged or actual infringement, violation, or misappropriation of any intellectual property rights, by you, your agents or representatives, or by Users related to any Customer Materials. You will provide Avidian prompt written notice of any assistance you may reasonably request to help you defend any claim subject to this paragraph. You will pay or reimburse all of the costs and expenses reasonably incurred by Avidian in connection with any such assistance. You will not have any right to settle any claim without Avidian's written consent. Avidian will have the right to approve the counsel you select for defense of any claim. Further, Avidian may, at its option and expense, participate in or assume control of the defense and settlement of any claim at any time. Each of the Avidian Parties is an intended third party beneficiary under this paragraph and consequently has the right to assert and enforce this paragraph directly against you on its own behalf. Avidian, however, has no obligation to assert or enforce this paragraph on behalf of any of the Avidian Parties.

10. LIMITATION OF LIABILITY. IN NO EVENT SHALL AVIDIAN'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL AVIDIAN AND/OR ITS LICENSORS BE LIABLE TO YOU FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. Qualification. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

12. Confidentiality.

12.1 Confidentiality Obligations. Each party reserves any and all right, title and interest (including, without limitation, any Intellectual Property Rights) that it may have in or to any Confidential Information that it may disclose to the other party under this Agreement. Commencing on the date a party disclosed Confidential Information and for three (3) years thereafter, the Recipient will protect Confidential Information of the Discloser against any unauthorized use or disclosure to the same extent that the Recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information. Notwithstanding the foregoing, each party will hold in confidence the Confidential Information of the other party that is a "trade secret" under Washington law until such Confidential Information is no longer a trade secret under Washington law through no fault of the Recipient. The Recipient will use any Confidential Information of the Discloser solely for the purposes for which it is provided by the Discloser. This paragraph will not be interpreted or construed to prohibit: (i) any use or disclosure which is necessary or appropriate in connection with the Recipient's performance of its obligations or exercise of its rights under this Agreement or any other agreement between the parties; (ii) any use or disclosure required by applicable law (e.g., pursuant to applicable securities laws or legal process), provided that the Recipient uses reasonable efforts to give the Discloser reasonable advance notice thereof (e.g., so as to afford the Discloser an opportunity to intervene and seek an order or other appropriate relief for the

protection of its Confidential Information from any unauthorized use or disclosure); or (iii) any use or disclosure made with the consent of the Discloser. In the event of any breach or threatened breach by the Recipient of its obligations under this paragraph, the Discloser will be entitled to injunctive and other equitable relief to enforce such obligations. The foregoing shall not restrict Avidian from its rights to remove Customer Data in accordance with this Agreement.

12.2 Definitions. ***“Confidential Information”*** means any proprietary information, technical data, trade secrets or know-how of the disclosing party, including, but not limited to, the Customer Data, the Services, product plans, prices and costs, or other business or technical information of the disclosing party that is designated to be confidential or proprietary or which reasonably appears to be confidential or proprietary. Confidential information will not include anything that is already in the possession of the receiving party without obligation of confidence, is independently developed by the receiving party without use of Confidential Information, becomes available to the general public without breach of this Agreement, or is rightfully received by the receiving party from a third party without obligation of confidence. Each party agrees that for a period of three (3) years following the date of such party’s receipt of Confidential Information from the other party, the receiving party will hold all Confidential Information in confidence and not disclose it to others or use it in any way except in performing the receiving party’s obligations under this Agreement, unless otherwise required by law or court order, and take actions reasonably necessary to protect the confidentiality of the Confidential Information. The receiving party agrees to promptly return or destroy all Confidential Information provided by the disclosing party at the disclosing party’s request. ***“Recipient”*** means a party that receives any Confidential Information of the other party. ***“Discloser”*** means a party that discloses any of its Confidential Information to the other party.

13. Local Laws and Export Control. The Services use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies. You and your respective Users acknowledge and agree that the Services shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States maintains an embargo (collectively, ***“Embargoed Countries”***), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury’s List of Specially Designated Nationals or the U.S. Department of Commerce’s Table of Denial Orders (collectively, ***“Designated Nationals”***). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Services, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

The Services may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

Avidian and its licensors make no representation that the Services is appropriate or available for use in other locations. If you use the Services from outside the United States of America, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States law is prohibited. None of the Content, nor any information acquired through the use of the Services, is or will be used for nuclear activities, chemical or biological weapons, or

missile projects, unless specifically authorized by the United States government for such purposes.

14. Maintenance and Support Agreement. This Section 14 (the “***Maintenance and Support Agreement***”) shall only apply to you if you signified your order of Maintenance and Support Services in the Order Form or a Change Order.

14.1 Support Services. For the period commencing on the Effective Date and for as long as Customer subscribes to receive Maintenance and Support Services and complies with the Agreement, Avidian will use reasonable efforts to: (i) respond to Customer’s requests for error Resolution within the target time frames set forth in the applicable Documentation for the maintenance and support package which you ordered; (ii) produce a Resolution or Workaround for any error within the target time frames set forth in the applicable Documentation given the severity of the error, in accordance with priorities reasonably established by Avidian and disclosed in any Documentation; and (iii) provide Web-based and telephone support at the levels set forth in the Documentation related to the support package your ordered, if any. You acknowledge that Avidian shall not be deemed to be in breach of this Maintenance and Service Agreement for failing to provide a Resolution or Workaround within the target time frames referenced in the Documentation; provided that Avidian uses reasonable efforts to provide a Resolution or Workaround as soon as reasonably practical for Avidian.

Customer shall reimburse Avidian for any reasonable travel related expenses for any onsite Maintenance and Support Services. Customer acknowledges and agrees that extended hours of support, professional services (e.g., customization services outside the scope of this Maintenance and Support Agreement), and additional training will be provided under a separate Change Order mutually agreeable to the parties at Avidian’s standard rates.

Avidian reserves the right at any time and without prior notice to Customer to limit Customer’s access to the Services in order to perform repairs, make modifications or as a result of circumstances beyond Avidian’s reasonable control.

14.2 Maintenance Services. – Updates and Upgrades; Data Security. Avidian will make Updates and Upgrades to the Services available to Customer at no additional charge depending on the level of Maintenance and Support Services the Customer subscribed for in the Order Form. All Upgrades and Updates shall be part of the Services and subject to the terms of this Agreement. Additional services related to an Upgrade or Update, such as data migration and training, will be provided by Avidian at its standard Professional Services rates. Moreover, if you subscribe for Maintenance and Support Services, Avidian will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of the Customer Data to the extent we host such Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Avidian personnel except (i) to provide the Services, (ii) to prevent or address service or technical problems, (iii) as compelled by law, (iv) as you expressly permit in writing or (v) as otherwise allowed by our Privacy Policy located at <http://www.avidian.com/privacy-policy>.

14.3 Hosting. If the Customer elects for Avidian to host the server side software underlying the Services or otherwise subscribes for PPAH (the “***Hosted Software***”), Avidian will implement, install, deploy and host the Hosted Software at Avidian’s (or its hosting partner’s) hosting facilities. Avidian will use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which we shall give at least 8 hours electronic notice and which We shall schedule to the extent practicable during the weekend hours between

6:00 p.m. Friday and 3:00 a.m. Monday Pacific time), and (ii) any unavailability caused by circumstances beyond our reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving Avidian employees), Internet service provider failure or delay, third party applications, or denial of service attacks ("**Excused Downtime**") The operational "uptime" of the Hosted Software will be at least 99.9%, not including scheduled downtime or downtime due to Excused Downtime ("**Uptime Commitment**"), as measured by Avidian in good faith. Scheduled downtime shall be no greater than six (6) hours per calendar quarter and shall occur at a scheduled time during off-peak periods between 12:00 AM PST and 6:00 AM PST. If Avidian fails to meet the Uptime Commitment by more than two percent (2%) in any calendar month, Customer may, as its sole and exclusive remedy, immediately terminate this Maintenance and Support Agreement with written notice and host the Hosted Software at its own facilities. If Customer initially chooses to have Avidian host the Hosted Software, Customer may move the Hosted Software to its own hosting facility by providing Avidian at least thirty (30) days prior written notice; however, Customer acknowledges that (a) it shall be subject to Avidian's standard migration fees and (b) it shall pay Avidian the hosting fees, if any, for the remaining duration of the applicable Maintenance and Support Term. Hosting pricing shall be as set forth in the Order Form.

14.4.1 Maintenance and Support Term; Fees. Unless earlier terminated in accordance with this Maintenance and Support Agreement, the term of this Maintenance and Support Agreement shall begin on the Effective Date and shall continue for an identical term as the prior thereafter (the "**Maintenance and Support Term**"). This Maintenance and Support Agreement shall automatically renew for successive period(s) annually unless Customer provides written notice of termination at least thirty (30) days prior to the expiration of the initial term or any renewal term. The Maintenance and Support Services fees shall be as set forth in the Order Form. The Maintenance and Support Services fees for each subsequent renewal period shall be the same as the prior year and due within thirty (30) days prior to the beginning of such year unless otherwise notified within or earlier than 90 Days prior to the contract end date. . If a request for cancellation is received within thirty (30) days of the payment due date a 20% cancellation penalty will be applied based on the Total Invoiced amount to the Account and reissued for processing. If payment has been processed and received and a request for refund is submitted following the New Effective Date no refund shall be processed.

14.4.2 Subscription Renewal Term; Fees: *Unless earlier terminated in accordance with this Subscription Agreement, the term of this Subscription Agreement shall begin on the Effective Date and shall continue for an identical term as the prior thereafter (the "Subscription Term"). This Subscription Agreement shall automatically renew for successive period(s) unless Customer provides written notice of termination at least thirty (30) days prior to the expiration of the initial term or any renewal term. The Subscription Service fees shall be set forth in the Order Form. The Subscription Service fees for each subsequent renewal period shall be the same as the prior year(s) unless otherwise notified within or earlier than 90 Days prior to the contract end date. If a request for cancellation is received within thirty (30) days of the payment due date a 20% cancellation penalty will be applied based on the Total Invoiced amount to the Account and reissued for processing. If payment has been processed and received and a request for refund is submitted following the New Effective Date no refund shall be processed.*

14.5 Qualifications and Exceptions; Remedies. Notwithstanding anything to the contrary herein, Avidian shall have no liability and have no obligation to provide Maintenance and Support Services if: (i) Customer makes any unauthorized modifications or changes to the Software (ii) Avidian cannot reproduce or identify the defect; (iii) the difficulties or defects are due to changes to the Software by the Customer, the computer equipment at the Customer site or hosting facilities, other causes external to the Software, or failure to use the Software in accordance with the Documentation; (iv) Customer is not using the most current Upgrade of the Software; or (v) Customer is in breach of the Agreement. Avidian's entire liability and Customer's exclusive remedy for failure to remedy any defect or error shall (a) in the case of a PPOP Customer, for Avidian to supply Customer with a corrected or modified copy of the Hosted Software within a reasonable period of time given the severity of the defect, in accordance with priorities reasonably established by Avidian, so as to resolve and remedy any error if said error is reproducible; or (b)(1) if the failure to resolve the error occurs during the Limited Refund Period, terminate the Agreement in its entirety and receive a refund as described in the Order Form, or (2) if the failure to resolve an error occurs after the expiration of the Limited Refund Period, terminate this Maintenance and Support Agreement (provided however that if you are a PPAH Customer, you will be converted to a PPOP Customer).

14.6 Miscellaneous. Avidian reserves the right to provide Maintenance and Support Services only for the most current version of the Services and Hosted Software, except, at a minimum, Avidian shall continue to provide Maintenance and Support Services for the immediately prior version for a period of twelve (12) months following the public release (to similarly situated customers) of the superseding version to Customer. By way of clarification, to the extent you decline to implement or facilitate an Update or Upgrade, you acknowledge and agree that Avidian may solely determine whether to maintain or support prior versions of the Services. Avidian shall charge its standard rates for: (i) corrections and remedies to the Services which Avidian provides in response to a request by Customer and which Avidian is not obligated to provide under this Maintenance and Support Agreement; (ii) corrections for difficulties or defects traceable to Customer's or its Users' errors or system changes; or (iii) consultation or assistance with installation or use of the Hosted Software beyond the consultation and training services described in this Maintenance and Support Agreement. Customer agrees to limit direct interaction with Avidian regarding the Maintenance and Support Services to Customer employees that have received end-user training or otherwise possess sufficient skills to use the Services and have subscribed to receive Maintenance and Support Services. This Maintenance and Support Agreement supersedes all prior agreements and understandings between the parties related to the subject matter hereof, with the exception of the rest of the Agreement and the Order Form (which are incorporated herein by reference).

14.7 Training. To the extent the Order Form signifies your purchase of training services, Avidian will provide you on-site or off-site training to use the Services, as designated in the Order Form, at the levels set forth in the Order Form or any Documentation. You acknowledge that if you do not order training services in your initial Order Form, any subsequent request for training will be subject to the terms in any Change Order.

15. Professional Services. If you do you not subscribe for Maintenance and Support Services or you otherwise need additional services, custom development, assistance, consulting services, or training that is not specifically cited in any Order Form ("**Professional Services**"), subject to Avidian's availability and approval, Avidian shall provide such Professional Services at the rates set forth in the Order Form or Change Order. To the extent the Order Form does not set forth a rate for Professional Services, such rate shall be at Avidian's standard rates which are communicated to you prior to the rendering of the Professional Services. Avidian shall exclusively own all the Intellectual Property Rights arising from any deliverable produced by any Professional Service unless otherwise stated in an Order Form or Change Order.

16. Miscellaneous

16.1 Independent Contractors. Each party is an independent contractor and not a partner or agent of the other. This Agreement will not be interpreted or construed as creating or evidencing any partnership or agency between the parties or as imposing any partnership or agency obligations or liability upon either party. Further, neither party is authorized to, and will not, enter into or incur any agreement, contract, commitment, obligation or liability in the name of or otherwise on behalf of the other party.

16.2 Non-Exclusive Relationship. This Agreement will not be interpreted or construed to prohibit or in any way restrict Avidian's right to license any software to or from third parties or to perform any services for any third party.

16.3 Publicity; Trademarks. Neither party may issue press releases or any other public announcement of any kind relating to the Agreement without the other party's prior written consent. Notwithstanding the foregoing, during an applicable Service, either party may include the names, trademarks and other logos of the other party (collectively the "Marks") in lists (including on its website) of customers or vendors in accordance with the other party's standard usage guidelines relating to its Marks. In addition, Avidian may use the Customer's Marks in connection with its authorized provision of the Platform and solely to the extent Customer has uploaded or incorporated such Marks into the form of communication to be delivered, and has initiated the distribution of the same, through its use of the Platform.

16.4 No Third Party Beneficiaries. Except as set forth in Section 9.2 above and the Avidian Parties' indemnity rights, this Agreement does not create any third party beneficiary rights in any individual or entity that is not a party to this Agreement.

16.5 Notices. Any notice or other communication under this Agreement given by either party to the other party will be deemed to be properly given if given in writing and delivered in person, sent via overnight courier or mailed via registered mail, properly addressed and stamped with the required postage, to the intended recipient at its address specified on the Order Form. Notice will be effective upon receipt. Either party may from time to time change its address for purposes of this paragraph by giving the other party notice of the change in accordance with this paragraph.

16.6 Assignment. Customer may not assign this Agreement, or delegate any of its rights under this Agreement, without Avidian's prior written consent. Subject to the foregoing, this Agreement will be binding upon, and inure to the benefit of the parties and their respective successors and assigns. Avidian may assign this Agreement without consent to an affiliate or in connection with a change of control, reorganization, or sale of at least a majority of its assets or outstanding voting securities.

16.7 No waiver. The failure of either party to insist upon or enforce performance by the other party of any provision of this Agreement, or to exercise any right or remedy under this Agreement or otherwise by law, will not be construed as a waiver or relinquishment of such party's right to assert or rely upon the provision, right, or remedy in that or any other instance; rather the provision, right or remedy will be and remain in full force and effect. Notwithstanding the foregoing, Customer acknowledges that certain remedies set forth in this Agreement are exclusive (when stated herein).

16.8 Dispute Resolution Procedures.

(i) The parties will attempt to resolve through good faith discussion any dispute that arises under this Agreement. Any such dispute may at any time, at the election of either party, be referred to a senior executive of each party for discussion and possible resolution. If the senior executives are unable to resolve the dispute within sixty (60) days after delivery of written notice of the dispute, then either party may, by notice to the other party, demand mediation under the mediation rules of the American Arbitration Association in Seattle, Washington. The parties give up their right to litigate their disputes and may not proceed to arbitration without first attempting mediation, except that the parties are NOT required to arbitrate any dispute in which either party seeks equitable and other relief from the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets or patents. Whether the dispute is heard in arbitration or in court, the parties will not commence against the other a class action, class arbitration or other representative action or proceeding.

(ii) If settlement is not reached within sixty (60) days after service of a written demand for mediation, any unresolved controversy or claim shall be resolved by arbitration in accordance with the rules of the American Arbitration Association before a single arbitrator in Seattle, Washington. The language of all proceedings and filings shall be English. The arbitrator shall render a written opinion including findings of fact and law and the award and/or determination of the arbitrator shall be binding upon the parties, and their respective administrators and assigns, and shall not be subject to appeal. Judgment may be entered upon the award of the arbitrator in any court of competent jurisdiction. The expenses of the arbitration shall be shared equally by the parties unless the arbitration determines that the expenses shall be otherwise assessed and the prevailing party may be awarded its attorneys' fees and expenses by the arbitrator. It is the intent of the parties that, barring extraordinary circumstances, arbitration proceedings shall be concluded within ninety (90) days from the date the arbitrator is appointed. The arbitrator may extend this time limit only if failure to do so would unduly prejudice the rights of the parties. Failure to adhere to this time limit shall not constitute a basis for challenging the award. Consistent with the expedited nature of arbitration, pre-hearing information exchange shall be limited to the reasonable production of relevant, non-privileged documents, carried out expeditiously.

(iii) You and Avidian agree that either may bring claims against the other only on an individual basis and not as part of any purported class or representative action or proceeding unless both you and Avidian agree otherwise. The arbitrator may not consolidate or join more than one person's or party's claims and may not preside over any form of a consolidated, representative or class proceeding. Also the arbitrator may award relief (including monetary, injunctive and declaratory relief) only in favor of the individual party seeking relief and only to the extent necessary to provide relief necessitated by that party's claim(s).

16.9 Severability. This Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Agreement is held to be invalid or unenforceable to any

extent, then (i) such provision will be interpreted, construed and reformed to the extent reasonably required to render the same valid, enforceable and consistent with the original intent underlying such provision and (ii) such invalidity or unenforceability will not affect any other provision of this Agreement.

16.10 Applicable Law. This Agreement will be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington, U.S.A., without reference to its choice of law principles to the contrary. The 1980 UN Convention on Contracts for the International Sale of Goods or its successor will not apply to this Agreement. Subject to Section 16.8 Customer hereby consents to the jurisdiction and venue of the state and federal courts located in King County, State of Washington, U.S.A. with respect to any claim arising under or by reason of this Agreement.

16.11 Entire Agreement. This Agreement, collectively with the Order Form and any Change Order (defined below), constitutes the entire agreement, and supersedes any and all prior agreements, between Avidian and Customer with respect to the subject matter herein, including any acceptance by Customer or any of its employees, personnel, contractors, agents or representatives of any click through agreements on the Avidian website. If the terms of these Terms and Conditions are inconsistent with the terms contained in any Order Form or Change Order, the terms contained in these Terms and Conditions will control unless the Order Form or Change Order clearly state that the applicable conflicting term should supersede the terms in these Terms and Conditions. To the extent the parties desire to modify any Order Form, such changes shall not be effective or enforceable unless the parties each execute a Change Order (the form of which will be provided by Avidian) and such Change Order shall be incorporated into the Agreement. The parties may execute multiple Order Forms or Change Orders.

16.12 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement (except with respect to monetary obligations) as a result of any cause or condition beyond such party's reasonable control (including, without limitation, any act or failure to act by the other party). This paragraph will not apply to any payment obligation of either party.

17. Definitions.

"Avidian Materials" means the information, documents, software, products and services contained or made available to you in the course of using the Services, including, but not limited to, Avidian's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Avidian in providing the Services.

"Customer Data" means any data, information or material provided or submitted by you to Avidian in the course of using the Services.

"Documentation" means the user manuals, technical manuals, specifications and other documentation relating to any Services furnished by Avidian to Customer under this Agreement.

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world.

“License Administrator(s)” means those Users designated by you who are authorized to purchase licenses online using the Online Order Cart or by executing written Order Forms and to create User accounts and otherwise administer your use of the Services.

“Maintenance and Support Services” shall mean the support, maintenance and Software management services set forth in Section 14.

“Order Form(s)” or **“Change Order(s)”** means the document executed by Avidian and Customer (by wet signature or click-wrap consent) evidencing the initial subscription for the Services and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties.

“Resolution” shall mean the correction of the condition giving rise to the error.

“Services” means any software, service, or software as a service provided by Avidian (whether the underlying software is hosted by Customer or Avidian), which may include, but not limited to, the specific edition of Avidian's on-premise and online customer relationship management, billing, data analysis, or other corporate ERP services selected by Customer in the Order Form, developed, operated, or maintained by Avidian, or ancillary online or offline products and services provided to you by Avidian, to which you are being granted access under this Agreement, including the Avidian Materials.

“Unauthorized Use” means any use, reproduction, modification, distribution, disposition, possession, disclosure or other activity involving the Services, Avidian Materials or Confidential Information of Avidian that is not expressly authorized under the Agreement or otherwise in writing by Avidian.

“Update” shall mean any software (i.e., bug patches, fixes and minor enhancements) and related Documentation that corrects errors or provides minor functionality enhancements.

“Upgrade” means an upgraded version of the Software that includes material changes to the overall utility, functional capability, or application of the Software.

“User(s)” means your employees, representatives, consultants, contractors or agents who are authorized to use the Services and have been supplied user identifications and passwords by you (or by Avidian at your request).

“Workaround” means with respect to any error, the provision of a temporary Resolution used to bypass, mask, or minimize the error, or otherwise avoid the error until a Resolution is available.