

# Platform License Agreement

Last Modified: March 7, 2022

This Platform License Agreement (this "**Agreement**") is a binding contract between you ("**Customer**," "**you**," or "**your**") and Avarok, Inc. ("**Avarok**," "**we**," "**our**," or "**us**"). This Agreement governs your access to and use of the Platform, which you desire to access and use solely for your internal evaluation purposes during the Trial Period.

THIS AGREEMENT TAKES EFFECT WHEN YOU CLICK THE "ACCEPT" BUTTON BELOW OR WHEN YOU ACCESS OR USE THE PLATFORM (the "**Effective Date**"). BY CLICKING ON THE "ACCEPT" BUTTON BELOW OR BY ACCESSING OR USING THE PLATFORM YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, POWER, AND AUTHORITY TO ENTER INTO THIS AGREEMENT AND, IF ENTERING INTO THIS AGREEMENT FOR AN ORGANIZATION, THAT YOU HAVE THE LEGAL AUTHORITY TO BIND THAT ORGANIZATION; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT ACCEPT THESE TERMS, YOU MAY NOT ACCESS OR USE THE PLATFORM.

**THIS AGREEMENT INCLUDES (1) AN ARBITRATION PROVISION; (2) A WAIVER OF RIGHTS TO BRING A CLASS ACTION CLAIM; AND (3) AN AUTOMATIC RENEWAL PROVISION. BY ACCESSING OR USING ANY OF THE PLATFORM, YOU AGREE TO THESE PROVISIONS.**

1. Definitions.

(a) "**Authorized User**" means Customer and Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Platform under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Platform has been purchased hereunder.

(a) "**Avarok IP**" means the Platform, Software, the Documentation, and all intellectual property provided to Customer or any other Authorized User in connection with the foregoing. For the avoidance of doubt, Avarok IP includes Aggregated Statistics and any information, data, or other content derived from Avarok's monitoring of Customer's access to or use of the Platform, but does not include Customer Data.

(b) "**Customer Data**" means, other than Aggregated Statistics, information, data, and other content, in any form or medium, that is submitted, posted, or otherwise transmitted by or on behalf of Customer or any other Authorized User through the Platform.

(c) "**Documentation**" means Avarok's user manuals, handbooks, and guides relating to the Platform provided by Avarok to Customer either electronically or in hard copy form.

(b) **"Platform"** means the services provided by Avarok under this Agreement that are reflected in the Customer's order.

(c) **"Software"** means the Avarok software application(s) and any third-party or other software, and all new versions, updates, revisions, improvements and modifications of the foregoing, that Avarok makes available to Customer part of the Platform.

(d) **"Source Code"** means the human readable source code of the Software to which it relates, in the programming language in which such Software was written, together with all related flow charts, code, and technical documentation, including a description of the procedure for generating object code, all of a level sufficient to enable a programmer reasonably fluent in such programming language to understand, build, operate, support, maintain, and develop modifications, upgrades, updates, adaptations, enhancements, new versions, and other derivative works and improvements of, and to develop computer programs compatible with, the Software.

## 2. Access and Use.

(a) Provision of Access. Subject to and conditioned on your payment of Fees and compliance with all other terms and conditions of this Agreement, Avarok hereby grants you a revocable, non-exclusive, non-transferable, non-sublicensable, limited right to access and use the Platform during the Term solely for your internal business operations by Authorized Users in accordance with the terms and conditions herein.

(b) Documentation License. Subject to the terms and conditions contained in this Agreement, Avarok hereby grants you a non-exclusive, non-sublicensable, non-transferable license for Authorized Users to use the Documentation during the Trial Period solely for your internal evaluation purposes in connection with your use of the Platform.

(e) Source Code Evaluation. Subject to the terms and conditions of this Agreement and any applicable non-disclosure agreements signed by the Avarok and Customer, Avarok hereby grants to you a revocable, non-exclusive, non-sublicensable, non-transferable license for Authorized Users to evaluate the Source Code during the Trial Period solely for your internal evaluation purposes in connection with your use of the Platform. You may download the Source Code solely for your internal evaluation purposes in connection with your use of the Platform. You shall have no right to copy, modify, transfer, or otherwise use the Source Code except as permitted herein. Avarok shall provide you the necessary passwords and access credentials to allow you to access the Source Code. For the avoidance of doubt, the Source Code shall be deemed Confidential Information under this Agreement or any applicable non-disclosure agreement. Any breach of this Section 2(c), or any breach of any use or non-disclosure obligations relating to the Source Code shall be a material breach of this Agreement.

(c) Use Restrictions. You shall not, and shall not permit any Authorized Users to, use the Platform, any software component of the Platform, or Documentation for any purposes beyond the scope of the access granted in this Agreement. You shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Platform, any software component of the Platform, or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Platform or Documentation except as expressly permitted under this Agreement; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Platform, in whole or in part; (iv) remove any proprietary notices from the Platform or Documentation; or (v) use the Platform or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law, regulation, or rule.

(d) Aggregated Statistics. Notwithstanding anything to the contrary in this Agreement, Avarok may monitor Customer's use of the Platform and collect and compile data and information related to your and the Authorized Users' use of the Platform to be used by Avarok in an aggregated and anonymized manner, including to compile statistical and performance information related to the provision and operation of the Platform ("**Aggregated Statistics**"). As between Avarok and Customer, all right, title, and interest in Aggregated Statistics, and all intellectual property rights therein, belong to and are retained solely by Avarok. You acknowledge that Avarok may compile Aggregated Statistics based on Customer Data input into the Platform. You agree that Avarok may (i) make Aggregated Statistics publicly available in compliance with applicable law, and (ii) use Aggregated Statistics to the extent and in the manner permitted under applicable law; provided that such Aggregated Statistics do not identify Customer or Customer's Confidential Information.

(e) Audit. Avarok will have the right, at its own expense, upon reasonable prior notice, periodically to have an independent auditor inspect and audit Customer's use of the Platform for purposes of determining Customer's compliance with the terms and conditions herein in such a manner as not to interfere unreasonably with Customer's normal business activities. In no event shall such audits be conducted hereunder more frequently than every twelve (12) months. Customer agrees to cooperate in the performance of any such audit, and shall provide to Avarok such access to Customer's relevant records, data, information, personnel and/or facilities as Avarok may reasonably request for such limited purposes. Avarok may request periodic certifications from Customer regarding Customer's ongoing compliance with the terms of this Agreement

(f) Reservation of Rights. Avarok reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver,

estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Avarok IP.

3. Customer Responsibilities.

(a) Acceptable Use Policy. The Platform may not be used for unlawful, fraudulent, offensive, or obscene activity, as further described and set forth in Avarok's acceptable use policy ("**AUP**") located at <https://avarok.net/aup>, as may be amended from time to time, which is incorporated herein by reference. You will comply with all terms and conditions of this Agreement and the AUP.

(b) Account Use. You are responsible and liable for all uses of the Platform and Documentation resulting from access provided by you, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, you are responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by you will be deemed a breach of this Agreement by you. You shall use reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Platform and shall cause Authorized Users to comply with such provisions.

(c) Customer Data. You hereby grant to Avarok a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for Avarok to provide the Platform to you, and a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data incorporated within the Aggregated Statistics. You will ensure that Customer Data and any Authorized User's use of Customer Data will not violate any policy or terms referenced in or incorporated into this Agreement or any applicable law. You are solely responsible for the development, content, operation, maintenance, and use of Customer Data.

(d) Passwords and Access Credentials. You are responsible for keeping your passwords and access credentials associated with the Platform confidential. You will not sell or transfer them to any other person or entity. You will promptly notify us about any unauthorized access to your passwords or access credentials.

(e) Third-Party Products. The Platform may permit access to Third-Party Products. For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to you for acceptance within the Platform by website link or otherwise. If you do not agree to abide by the applicable terms for any such Third-Party Products, then you should not install, access, or use such Third-Party Products.

2. Suspension of Services. Avarok may, directly or indirectly, suspend, terminate, or otherwise deny Customer's, any Authorized User's, or any other person's access to or use of all or any part of the Platform, without incurring any resulting obligation or liability, if: (a) Avarok receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Avarok to do so; or (b) Avarok believes, in its discretion, that: (i) Customer or any Authorized User has failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted or for a purpose not authorized under this Agreement; (ii) Customer or any Authorized User is, has been, or is likely to be involved in any fraudulent, misleading, or unlawful activities in connection with any of the Services; (iii) Customer's or any of its Authorized Users' use of the Services poses an imminent threat to the security or integrity of Services; or (iv) this Agreement expires or is terminated. This Section does not limit any of Avarok's other rights or remedies, whether at law, in equity, or under this Agreement.

4. Fees and Payment.

(a) Charges. You agree to pay the charges billed to you for the Platform (“**Fees**”) during the Term.

(b) Customer Account. You will be asked to provide a payment method when you set up your customer account. You can access and change your billing information and payment method through your customer account or by contacting us. You agree to maintain updated account and other information, including your email address and payment method details, so we can complete your transactions and contact you as needed in connection with your transactions.

(c) Billing. By providing Avarok with a payment method, you (i) represent that you are authorized to use the payment method you provided and that any payment information you provide is true and accurate; and (ii) authorize Avarok to charge you for Platform access using your payment method. We may bill you (a) in advance; or (b) on a recurring basis as designated by you. We may bill you at the same time for more than one of your prior billing periods for amounts that have not previously been processed.

(d) Recurring Payments. When you purchase a subscription to the Platform (e.g., monthly, quarterly or annually), you agree that you are authorizing recurring payments, and payments will be made to Avarok by the method and at the recurring intervals you have agreed to, until the subscription has expired or is terminated as outlined in Section 14. By authorizing recurring payments, you are authorizing Avarok to store your payment instrument and process such payments as either electronic debits or fund transfers, or as electronic drafts from your designated account (for Automated Clearing House or similar payments), or as charges to your designated account (for credit card or similar payments). Subscription fees are charged in advance of the applicable subscription period. If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Avarok or its service providers reserve the right to

collect any applicable return item, rejection or insufficient funds fee and process any such payment as an Electronic Payment.

(e) Price Changes. We may increase the Fees once at the start of each Renewal Term. If you do not agree to the price change, you must terminate this Agreement as set forth in Section 14(a).

(f) Late Payment. If you fail to make any payment when due, without limiting Avarok's other rights and remedies Avarok may suspend, in accordance with Section 4, Customer's and all other Authorized Users' access to any portion or all of the Platform until such amounts are paid in full.

(g) Taxes. All Fees and other amounts payable by you under this Agreement are exclusive of taxes and similar assessments. You are responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by you hereunder.

5. Confidential Information. From time to time during the Term, Avarok and Customer may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media/in written or electronic form or media, whether or not marked, designated, or otherwise identified as "confidential" at the time of disclosure (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees, agents, or subcontractors who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder and who are required to protect the Confidential Information in a manner no less stringent than required under this Agreement. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the date such Confidential Information is first disclosed to the receiving party and will expire five years thereafter; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

6. Privacy Policy. Avarok complies with its privacy policy (available at <https://www.avarok.net/privacy>) ("**Privacy Policy**") in providing the Platform. The Privacy Policy is subject to change as described therein. By accessing, using, and providing information to or through the Platform, you acknowledge that you have reviewed and accepted our Privacy Policy, and you consent to all actions taken by us with respect to your information in compliance with the then-current version of our Privacy Policy.

3. Intellectual Property Ownership; Feedback.

(a) Avarok IP. As between you and us, we own all right, title, and interest, including all intellectual property rights, in and to the Avarok IP.

(b) Customer Data. As between you and us, you own all right, title, and interest, including all intellectual property rights, in and to Customer Data.

(a) Feedback. If you or any of your employees, contractors, or agents sends or transmits any communications or materials to us by mail, email, telephone, or otherwise, suggesting or recommending changes to the Platform, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), we are free to use such Feedback irrespective of any other obligation or limitation between you and us governing such Feedback. All Feedback is and will be treated as non-confidential. You hereby assign to us on your behalf, and shall cause your employees, contractors, and agents to assign, all right, title, and interest in, and we are free to use, without any attribution or compensation to you or any third party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although we are not required to use any Feedback.

7. Limited Warranty and Warranty Disclaimer.

8. THE PLATFORM IS PROVIDED "AS IS" AND AVAROK HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. AVAROK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. AVAROK MAKES NO WARRANTY OF ANY KIND THAT THE PLATFORM OR THE AVAROK IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET YOUR OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF YOUR OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

9. Indemnification. Customer shall indemnify, hold harmless, and, at Avarok's option, defend Avarok from and against any losses, damages, liabilities, or costs (including attorneys' fees) resulting from any third-party claim, suit, action, or proceeding ("**Third-Party**").

**Claim**") alleging that the Customer Data, or any use of the Customer Data in accordance with this Agreement, infringes or misappropriates such third party's intellectual property rights and any Third-Party Claims based on Customer or any Authorized User's use of the Platform or the Avarok IP in a manner not authorized by this Agreement. In the event Avarok seeks indemnification or defense from Customer under this provision, Avarok shall promptly notify you in writing of the claim(s) brought against Avarok for which Avarok seeks indemnification or defense. Avarok reserves the right, at its option and in its sole discretion, to assume full control of the defense of the claim(s) with legal counsel of Avarok's choice. Customer may not enter into any third-party agreement which would, in any manner whatsoever, affect Avarok's rights, constitute an admission of fault by Avarok, or bind Avarok in any manner, without Avarok's prior written consent.

10. Limitations of Liability. IN NO EVENT WILL AVAROK BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER AVAROK WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL AVAROK'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO AVAROK UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

11. Term and Termination.

(a) Term. The term of this Agreement begins on the Effective Date and, unless terminated earlier pursuant to this Agreement's express provisions, will continue for one year ("**Initial Term**"). Unless a party provides written notice to the other party of its intent not to renew at least thirty (30) days prior to the end of the then-current term, this Agreement shall automatically renew for additional one year terms (each a "**Renewal Term**" and the Initial Term and all Renewal Terms are collectively referred to as the "**Term**").

(b) Termination. In addition to any other express termination right set forth in this Agreement:

(i) Avarok may terminate this Agreement immediately, effective on written notice to Customer, if you: (i) fail to pay any amount when due



hereunder; or (ii) breaches any of its obligations under 2(c), Section 2(d), or 6; and

(ii) Either party may terminate this Agreement, effective on written notice to the other party, if the other party breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured thirty (30) days after the non-breaching party provides the breaching party with written notice of such breach.

(iii) Avarok may terminate this Agreement, effective immediately upon written notice to the Customer, if you: (A) become insolvent or is generally unable to pay, or fails to pay, your debts as they become due; (B) file, or has filed against you, a petition for voluntary or involuntary bankruptcy or otherwise become subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) make or seek to make a general assignment for the benefit of its creditors; or (D) apply for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) Effect of Termination. Upon termination of this Agreement, Customer shall immediately discontinue use of the Platform and the Avarok. No expiration or termination of this Agreement will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination, or entitle Customer to any refund. Customer shall delete, destroy, or return all copies of the Avarok IP and Avarok Confidential Information and will certify in writing to the Avarok that the Avarok IP and Avarok Confidential has been deleted or destroyed.

(d) Survival. This Section 14(d), Sections 2(f), 5, 6, 12, 13, 16, 17, 18, 19, 20, 21 and 22, and any right, obligation, or required performance of the parties in this Agreement which, by its express terms or nature and context is intended to survive termination or expiration of this Agreement, will survive any such termination or expiration.

12. Modifications. You acknowledge and agree that we have the right, in our sole discretion, to modify this Agreement, and that modified terms become effective on posting. You will be notified of modifications through posts on avarok.net, direct email communication from us]. You are responsible for reviewing and becoming familiar with any such modifications. Your continued use of the Platform after the effective date of the modifications will be deemed acceptance of the modified terms.

13. Export Regulation. The Platform utilizes software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export, or release the Platform or the software or technology included in the Platform to, or make the Platform or the software or

technology included in the Platform accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, regulation, or rule. You shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Platform or the software or technology included in the Platform available outside the US.

14. US Government Rights. Each of the software components that constitute the Platform, Software and the Documentation is a "commercial product" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if you are an agency of the US Government or any contractor therefor, you receive only those rights with respect to the Platform, Software and the Documentation as are granted to all other end users, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government customers and their contractors.

15. Governing Law and Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of New York without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of New York. THE UNITED NATIONS CONVENTIONS ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS AGREEMENT.

4. Binding Arbitration. YOU AND AVAROK ARE AGREEING TO GIVE UP ANY RIGHTS TO LITIGATE CLAIMS IN A COURT OR BEFORE A JURY, OR TO PARTICIPATE IN A CLASS ACTION OR REPRESENTATIVE ACTION WITH RESPECT TO A CLAIM. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE OR MAY BE LIMITED IN ARBITRATION.

ANY CLAIM, DISPUTE OR CONTROVERSY (WHETHER IN CONTRACT, TORT OR OTHERWISE, WHETHER PRE-EXISTING, PRESENT OR FUTURE, AND INCLUDING STATUTORY, CONSUMER PROTECTION, COMMON LAW, INTENTIONAL TORT, INJUNCTIVE AND EQUITABLE CLAIMS) BETWEEN YOU AND US ARISING FROM OR RELATING IN ANY WAY TO YOUR PURCHASE OF PRODUCTS OR SERVICES THROUGH THE SITE, WILL BE RESOLVED EXCLUSIVELY AND FINALLY BY BINDING ARBITRATION.

The arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the Consumer Arbitration Rules (the "AAA Rules") then in effect, except as modified by this Section 17. (The AAA Rules are available at [www.adr.org/arb\\_med](http://www.adr.org/arb_med).) The Federal Arbitration Act will govern the interpretation and enforcement of this section.

The arbitrator will have exclusive authority to resolve any dispute relating to arbitrability and/or enforceability of this arbitration provision, including any unconscionability challenge or any other challenge that the arbitration provision or the agreement is void, voidable, or otherwise invalid. The arbitrator will be empowered to grant whatever relief would be available

in court under law or in equity. Any award of the arbitrator(s) will be final and binding on each of the parties, and may be entered as a judgment in any court of competent jurisdiction.

You agree to an arbitration on an individual basis. In any dispute, NEITHER YOU NOR AVAROK WILL BE ENTITLED TO JOIN OR CONSOLIDATE CLAIMS BY OR AGAINST OTHER CUSTOMERS IN COURT OR IN ARBITRATION OR OTHERWISE PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE, CLASS MEMBER OR IN A PRIVATE ATTORNEY GENERAL CAPACITY. The arbitral tribunal may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding. The arbitral tribunal has no power to consider the enforceability of this class arbitration waiver and any challenge to the class arbitration waiver may only be raised in a court of competent jurisdiction.

If any provision of this arbitration agreement is found unenforceable, the unenforceable provision will be severed and the remaining arbitration terms will be enforced.

5. Limitation on Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THESE TERMS OF USE OR THE WEBSITE MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

6. Equitable Relief. Customer acknowledges that any actual or threatened breach of this Agreement will constitute immediate, irreparable harm to Avarok for which monetary damages would be an inadequate remedy, and in the event of such actual or threatened breach, the Avarok will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

7. Miscellaneous. This Agreement constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. Any notices to us must be sent to our corporate headquarters address at: 251 Little Falls Dr., Wilmington, DE 19808.

and must be delivered either in person, by certified or registered mail, return receipt requested and postage prepaid, or by recognized overnight courier service, and are deemed given upon receipt by us. Notwithstanding the foregoing, you hereby consent to receiving electronic communications from us. These electronic communications may include notices transactional information, and other information concerning or related to the Platform. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. Any failure to act by us with respect to a breach of this

Agreement by you or others does not constitute a waiver and will not limit our rights with respect to such breach or any subsequent breaches. This Agreement is personal to you and may not be assigned or transferred for any reason whatsoever without our prior written consent and any action or conduct in violation of the foregoing will be void and without effect. We expressly reserve the right to assign this Agreement and to delegate any of its obligations hereunder.