

## End User Service Agreement

Date of Last Revision: July 17, 2019

Effective Date: August 17, 2019

Welcome to Avetta, a SaaS supply chain management platform that connects the world's leading organizations with qualified professional suppliers, contractors, and vendors. Except as specifically described below the Avetta services and Site are operated by Avetta, LLC and its corporate affiliates and are provided through the Avetta website at [www.avetta.com](http://www.avetta.com) or the mobile version thereof (together the "**Site**"). Your use of the Avetta Services and the Site are governed by this End User Service Agreement ("**Agreement**"), whether or not you are a registered subscriber to the Avetta Services or the Site.

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE USING THE SITE OR AVETTA SERVICES. THIS AGREEMENT CONTAINS IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS, INCLUDING VARIOUS LIMITATIONS AND EXCLUSIONS OF LIABILITY, YOUR OBLIGATION NOT TO UPLOAD SENSITIVE DATA, A DISPUTE RESOLUTION CLAUSE THAT GOVERNS HOW AND WHERE DISPUTES WILL BE RESOLVED, AS WELL AS A CLASS ACTION ARBITRATION WAIVER.

BY CLICKING THE BOX BELOW YOU ARE SIGNIFYING THAT YOU HAVE READ, UNDERSTAND AND AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. 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 THIS AGREEMENT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS OF THIS AGREEMENT, DO NOT ACCEPT THIS AGREEMENT AND YOU MAY NOT USE THE AVETTA SERVICES.

### 1. DEFINITIONS.

As used herein, or with any document associated with this Agreement:

- "**Audit**" refers to Avetta's objective evaluation of Supplier procedures and practices to assess Supplier's compliance with relevant regulatory standards or industry best practices.
- "**Avetta**" refers to Avetta, LLC or its affiliates and subsidiaries.
- "**Avetta Network**" refers to all Clients and Suppliers that subscribe to the Avetta Services.
- "**Avetta Services**" refers to the services provided by Avetta, including the Site.
- "**Client**" means a company, business entity or other person that seeks to engage or qualify one or more Suppliers and has agreed to become a member of the Avetta Network.
- "**Compliance Information**" refers to information provided by Avetta to Supplier when implementing and providing the Avetta Services, including but not limited to information on regulations, interpretation of regulations, compliance, insurance and qualifications, certifications and licenses for Employees.
- "**Content**" means information, data, text, software, graphics, messages, tags, or other materials publicly posted or privately transmitted by a Supplier, Client or Avetta.
- "**Employee**" refers to any employees or agents of a Client or Supplier accessing the Avetta Services and/or Site on behalf of the Client or Supplier.
- "**General Access Data**" is a Supplier's account information, name, description of services, the states, countries and jurisdictions in which Supplier operates and/or have

offices, contact information of Supplier's listed main point of contact, and Supplier's logo, trademarks and service marks.

- “**Limited Access Data**” is a Supplier's PQF, specific insurance information, any and all data gathered during an Audit, and EMR and OSHA data.
- “**PQF**” means a Supplier's Prequalification Form.
- “**Sensitive Data**” refers to, but is not limited to, information about physical or mental health or condition, racial or ethnic origin, sex life, trade union membership, political opinions or criminal records (including commission or alleged commission of any offense) concerning any individual whomsoever.
- “**Supplier**” means the individual, company, business entity, or other person that provides or seeks to provide contractor services to one of more Clients and has agreed to become a member of the Avetta Network.
- “**Supplier Content**” refers to all Content Supplier uploads or submits to Avetta in connection with Supplier's use of the Avetta Services and Site. Supplier Content may include Limited Access Data, General Access Data, and PQFs.
- “**You**” and “**Your**” refer to, and includes, You (i) as an individual, (ii) as the Employee of the Client or Supplier using or accessing the Site, and (iii) as the Client or Supplier entity you represent.

## 2. FEES AND CHARGES

IF YOU ARE THE BILLING ADMINISTRATOR FOR YOUR COMPANY'S AVETTA ACCOUNT, SEE [ATTACHMENT 1](#), WHICH IS INCORPORATED INTO THIS AGREEMENT, FOR THE TERMS AND CONDITIONS GOVERNING AVETTA'S BILLING AND REFUND POLICY.

## 3. AVETTA SERVICES

The Avetta Services are provided to You as a member of the Avetta Network through the Site or otherwise. The Avetta Services are an online subscription service providing its Client and Supplier subscribers with access to a variety of services related to prequalification checks. Avetta provides prequalification checks based on the parameters provided by Clients. Such prequalification services are carried out in an automated manner.

The Avetta Services are offered through a variety of subscription plans at varying price levels, including special promotional plans or subscriptions with limitations.

Avetta reserves the right to change, modify, suspend or discontinue all or any portion of the Site or any of the Avetta Services, in its sole discretion, by providing 30 days' advance written notice. Avetta may also impose limits on certain features or restrict Your access to parts of or the entire Site or the Services in its sole discretion without notice or liability.

Avetta may change pricing for the Avetta Services at any time. You will be notified, in writing, at least 30 days before any increase in service fees beyond the then current pricing. This Agreement (including the changed pricing) will remain in effect unless You deliver written notice of termination to Avetta within 30 days following such notice.

## 4. THIRD PARTY SERVICES

Avetta may use and make available third party services to You through the Avetta Services and Site (“**Third Party Services**”). Use of Third Party Services is governed by the terms provided by the suppliers of the Third Party Services. Avetta assumes no liability or responsibility whatsoever for Third Party Services You elect to use. You may not install or use any Third Party Services in a manner that creates any obligations for Avetta. Avetta may include convenience charges for the Third-Party Services as part of Your subscription.

## 5. USE OF THE AVETTA SERVICES

You are granted a limited, non-exclusive, non-transferable, revocable license to access and use the Avetta Services and Site for which you have a valid subscription which may only be exercised strictly in accordance with this Agreement and solely for Your legitimate internal business purposes. Only Employees authorized by the subscribing Client or Supplier may access and use the Avetta Services and Site. You may not use login credentials to access the Avetta Services and Site from outside the country for which your credentials were issued. Your login credentials may restrict Your access to certain materials otherwise available through the Avetta Services. Use of or access to the Avetta Services other than as specifically authorized herein, without the prior written permission of Avetta, is strictly prohibited and will terminate the license granted herein. Such license is subject to this Agreement and does not permit use of any data mining, robots, scraping or similar data gathering or extraction methods. Such unauthorized use may also violate applicable laws including copyright and trademark laws and applicable communications regulations and statutes. All rights not expressly granted herein are reserved by Avetta. The license granted herein may be revoked, in whole or in part, by Avetta at any time without notice and with or without cause.

Your license to access and use the Avetta Services is subject to the following restrictions and prohibitions on use: You may not (a) copy, print (except for Your own archival purposes in connection with your authorized use of the Avetta Services), republish, display, distribute, transmit, sell, rent, lease, loan or otherwise make available in any form or by any means all or any portion of the Avetta Services or any Content (defined below) obtained through the Avetta Services; (b) use the Avetta Services or any Content obtained through the Avetta Services to develop, or as a component of, any information, storage and retrieval system, database, information base, or similar resource (in any media now existing or hereafter developed), that is offered for commercial distribution of any kind, including through sale, license, lease, rental, subscription, or any other commercial distribution mechanism; (c) create compilations or derivative works of any Content available through the Avetta Services; (d) use any Content obtained through the Avetta Services in any manner that may infringe any copyright, intellectual property right, proprietary right, or property right of Avetta or any third parties; (e) remove, change or obscure any copyright notice or other proprietary notice or terms of use contained in the Avetta Services; (f) make any portion of the Avetta Services available through any timesharing system, service bureau, the Internet or any other technology now existing or developed in the future; (g) remove, decompile, disassemble or reverse engineer any Avetta Services or Avetta software or use any network monitoring or discovery software to determine the Avetta Services architecture; (h) use any automatic or manual process to harvest information from the Avetta Services; (i) use the Avetta Services for the purpose of gathering information for or transmitting (1) unsolicited commercial email; (2) email that makes use of headers, invalid or nonexistent domain names, or other means of deceptive addresses; and (3) unsolicited telephone calls or facsimile transmissions; (j) use the Avetta Services in a manner that violates any applicable law, rule or regulation including without limitation, those regulating email, facsimile transmissions or telephone solicitations; and (k) export or re-export the Avetta Services or any portion thereof, or any software available on or through the Avetta Services, in violation of export control laws or regulations of the United States or any other country.

When You use the Avetta Services, You agree not to:

- upload, post, email, transmit or otherwise make available any Content that is false, misleading, unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, discriminatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or otherwise objectionable;
- use the Avetta Services or Site to harm anyone in any way;

- use the Avetta Services or Site to impersonate any person or entity, or otherwise misrepresent Your affiliation with a person or entity;
- forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Avetta Services or Site;
- remove any proprietary notices from the Site or the Avetta Services;
- cause, permit or authorize the modification, creation of derivative works, or translation of the Avetta Services or Site without the prior written permission of Avetta;
- use the Avetta Services or Site for fraudulent or unlawful purposes;
- attempt to decompile, reverse engineer, disassemble or access in an unauthorized manner the Site or the Avetta Services, or to defeat or overcome any encryption technology or security measures implemented by Avetta with respect to the Site or the Avetta Services, or any of the Avetta Services and/or data transmitted, processed or stored by Avetta;
- upload, post, email, transmit or otherwise make available any Content that You do not have a right to make available (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements);
- upload, post, email, transmit or otherwise make available any (i) Content that infringes any patent, trademark, trade secret, copyright or other proprietary rights of any party; (ii) unsolicited or unauthorized advertising, promotional materials, "junk mail," "spam," "chain letters," "pyramid schemes," or any other form of solicitation; or (iii) material that contains software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;
- interfere with or disrupt the Site, the Avetta Services, or servers or networks connected to or operated in connection with the Site or Avetta Services, or disobey any requirements, procedures, policies or regulations of networks connected to or operated in connection with the Site or Avetta Services;
- use the Site or the Avetta Services to intentionally or unintentionally violate any applicable local, state, national or international law, rule or regulation;
- use the Site or the Avetta Services to provide material support or resources (or to conceal or disguise the nature, location, source, or ownership of material support or resources) to any organization(s) designated by the United States government as a foreign terrorist organization pursuant to section 219 of the U.S.A, Immigration and Nationality Act or any similar legislation in other jurisdictions;
- use the Site or the Avetta Services to "stalk" or otherwise harass another; and/or
- use the Site or the Avetta Services to collect or store personal data about other users in connection with the prohibited conduct and activities set forth above.

## 6. CONTENT

Suppliers expressly agree that as part of the Avetta Services, Avetta will carry out Audits, which are objective evaluations of Supplier procedures and practices to assess Your compliance with relevant regulatory standards or industry best practice. Content may be provided through the Avetta Services or on the Avetta Site, by Avetta, Clients and/or Suppliers. You understand that all Content, whether publicly posted or privately transmitted, is the sole responsibility of the party from whom such Content originated. Avetta does not control the Client or Supplier Content posted on the Site, or provided through the Avetta Services and, as such, does not guarantee the accuracy, integrity or quality of such Content. Under no circumstances will Avetta be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred because of the use of any Content posted, emailed, transmitted or otherwise made available on the Site or through the Avetta Services.

Avetta and its designees reserve the right (but not the obligation), in their sole discretion, to pre-screen, refuse to post or transmit, or remove any Content that is available on the Site or through the Avetta Services. Without limiting the foregoing, Avetta and its designees shall have the right

to remove (at its sole discretion) any Content that violates this Agreement or is otherwise objectionable. You agree and acknowledge that You must evaluate, and bear all risks associated with, the use of any Content, including any reliance on the accuracy, completeness, or usefulness of such Content.

You acknowledge and agree that Avetta may access, retain, store and disclose Your account information and Content if required to do so by law or based on Avetta's good faith belief that such access, preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) respond to Your requests for customer service; or (e) protect the rights, property or safety of Avetta, its users and the public. Avetta reserves the right to investigate complaints or reported violations of this Agreement and to take any action Avetta deems appropriate, including but not limited to, reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to your profile, account information, email addresses, usage history, posted materials, IP addresses and traffic information.

You understand that the technical processing and transmission of the Site, including Your Content, may involve (a) transmissions over various networks and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

YOU EXPRESSLY AGREE NOT TO UPLOAD OR SUBMIT ANY SENSITIVE DATA TO AVETTA IN CONNECTION WITH YOUR USE OF THE AVETTA SERVICES AND SITE. YOU ARE SOLELY RESPONSIBLE FOR ENSURING THAT ALL INFORMATION AND DOCUMENTS YOU UPLOAD OR SUBMIT IN CONNECTION WITH YOUR USE OF THE AVETTA SERVICES AND SITE CONTAIN NO SENSITIVE DATA.

## 7. SUPPLIER CONTENT AND SUPPLIER LISTS

**License to Supplier Content.** If you are a Supplier and have submitted Supplier Content, You hereby grant to Avetta a non-exclusive, transferable, fully-paid up, worldwide, perpetual, irrevocable license and right (a) to use, modify, copy, reproduce, transmit, sub-license, index, model, aggregate, publish, display and distribute Your Supplier Content to provide the Avetta Services to You and all of Avetta's other Client customers, and (b) to irrevocably anonymize and aggregate Your Supplier Content in order to perform research and development activities and statistical analysis, develop analytic models and to develop and provide other products and services relating to prequalification checks.

If You are a Supplier and have submitted Supplier Content, You acknowledge and agree that: (a) Your Supplier Content will be shared with other authorized Client users appearing on Your "**Client List**" which are linked to Your account; (b) Clients can link to Your account and You can review Your Supplier Content at any time by logging in to Your account; (c) at any time You can add or remove any Client from Your Client List by either contacting Avetta or using the Web interface; (iv) any user from a Client not listed on Your Client List cannot access Your Limited Access Data; and (v) other Suppliers do not have access to Your Limited Access Data.

You further acknowledge and agree that: (a) General Access Data will be used to assist Clients and potential Clients who are searching for potential bidders; (b) only Clients listed on the Avetta Client list and potential Avetta Clients will be able to view General Access Data; and (c) General Access Data is not public data, but is password protected and shared only with Avetta Clients that are part of the Avetta Network and in certain circumstances, with potential Avetta Clients.

Avetta will use commercially reasonable efforts to accurately record, store and provide access to the Supplier Content submitted by You through Your account that appears on the Site and through the Avetta Services. Upon logging in or by request, You will be provided with a completed



copy of any Audit that Avetta has performed on You as it will appear to Avetta and Clients on the Site and through the Avetta Services. It shall be Your responsibility to review the Supplier Content contained in such completed Audits and to verify that the information contained in the Audit form is and remains complete and accurate. You further agree to promptly notify Avetta of any errors or omissions in the Supplier Content pertaining to You contained on the Site or available through the Avetta Services.

You acknowledge and agree that any Audit performed by Avetta is for the purpose of gathering the required documentation for review by potential Clients. Avetta is not responsible for record retention with respect to Your records or any information You provide to Avetta in connection with Your use of the Avetta Services and Site. Unless, prior to Avetta's disposal of any of Your information, You specifically request Avetta in writing to have any of Your documentation returned to You, Avetta has the right to dispose of such information without returning such information to You.

## **8. AVETTA PROPRIETARY RIGHTS**

Avetta (and its licensors, where applicable) own all right, title and interest, including all related intellectual property rights, in and to the Avetta Services (and all underlying technology, software and analytics), and Content provided by Avetta (but excluding Client and Supplier Content), any models, methods, algorithms, discoveries, inventions, modifications, customizations, enhancements, extensions, derivatives, materials, ideas and other work product that is conceived of, originated or prepared in connection with the Avetta Services or related to the provision of Services pursuant to this Agreement.

All trademarks, logos, and service marks displayed through the Avetta Services and Site, are registered and unregistered trademarks of Avetta, its affiliates, licensors or other third parties. All of these trademarks, logos and service marks are the property of their respective owners. You may not use such marks without the prior written permission of Avetta, or the owner of the marks. Avetta reserves all rights not expressly granted in and to the Avetta Services and Site, and all Avetta Content. The Avetta Services and Site, and all of the Avetta Content, including but not limited to text, design, graphics, interfaces and code, and the selection and arrangement thereof, is owned by Avetta and its licensors, and protected by U.S. and international copyright laws.

## **9. YOUR REPRESENTATIONS AND WARRANTIES**

You represent, warrant, and covenant that:

- You are entering into this Agreement in Your professional capacity for trade, business, or professional purposes only, as a specialized services provider (if You are a Supplier), or as an operator in the field for which You seek a Supplier (if You are a Client);
- You possess the legal right and ability to enter into this Agreement and to comply with its terms;
- You will use the Avetta Services and Site for lawful purposes only and in accordance with this Agreement and all applicable laws, regulations and policies;
- the information that You provide is true and accurate and You have the right to provide such information;
- You are, at minimum, the age of majority in your jurisdiction of residence and You are an individual who is capable to form legally binding contracts under applicable law on behalf of the entity You represent.

## **10. CONFIDENTIALITY OBLIGATIONS**

Avetta Confidential Information is defined as (a) any and all information to which Supplier or Client is given access or receives regarding any other Supplier or Client, and (b) any information, including, but not limited to, business and marketing plans, technology and technical information,

product plans and designs, and business processes, disclosed by Avetta or revealed as a result of Avetta's provision of the Avetta Services. Avetta Confidential Information shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to Avetta or any Client or Supplier, (ii) was known by You prior to its disclosure by Avetta or any Client or Supplier, (iii) is received from a third party without breach of any obligation owed to Avetta or any Client or Supplier, or (iv) was independently developed by You without the use of or reference to Avetta Confidential Information.

You shall not use or disclose any Avetta Confidential Information for any purpose other than for Your legitimate internal business purposes as necessary to realize the benefits of the Avetta Services offered by Avetta to You. You will use the same degree of care that You use to protect Your own confidential information of a like kind (but not less than reasonable care). You will limit access to Avetta Confidential Information to those employees and personnel who need that access for purposes consistent with using the Avetta Services and Site provided by Avetta to Supplier.

Supplier or Client Confidential Information is defined as Supplier's or Client's, as applicable, proprietary, non-public information, including, but not limited to, business and marketing plans, technology and technical information, product plans and designs, and business processes, disclosed by Supplier or Client, as applicable, to Avetta as a result of Avetta's provision of the Avetta Services. Supplier or Client Confidential Information shall not include any information that (i) was known by Avetta prior to its disclosure by You or any Supplier or Client, (ii) is received from a third party without breach of any obligation owed to You or any Supplier or Client, or (iii). Avetta may disclose Supplier or Client Confidential Information for Avetta's legitimate business purposes as necessary to provide the Avetta Services offered to You and Avetta Clients or Suppliers. Avetta will limit access to Client and Supplier Confidential Information to those Avetta employees and personnel and Clients or Suppliers, as applicable, who need access to Client or Supplier Confidential Information for purposes of Avetta's provision of the Avetta Services and Site, as provided by Avetta to Supplier and Clients.

## 11. INDEMNIFICATION FOR THIRD PARTY CLAIMS

You agree to defend, indemnify and hold harmless Avetta and Avetta's officers, directors, members, managers, employees, agents, successors and assigns from and against all losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers ("**Losses**") arising out of or resulting from any third party claim, suit, action or proceeding based on (a) Your use of the Avetta Services or Site, including, but not limited to, any third party claim, suit, action or proceeding arising out of such third party accessing the Supplier Content provided by You in connection with Your use of the Avetta Services or Site, or (b) Your use of or reliance upon any and all Content provided through the Site or Avetta Services.

The indemnification obligation herein shall be contingent on Avetta promptly providing (a) written notice of any request for indemnification covered by this indemnification and (b) cooperation in connection with Your provision of the indemnification, defense or settlement of such claims hereunder. The foregoing indemnification obligations shall not apply to any portion of a claim that results from the negligence or misconduct, or other intentional act or omission of Avetta.

## 12. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL AVETTA OR YOU BE LIABLE FOR ANY LOSS OF USE, LOST REVENUE OR PROFIT, OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR

OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITH THE EXCEPTION OF AVETTA'S OR YOUR LIABILITY FOR BREACH OF CONFIDENTIALITY (SECTION 10) AND INDEMNIFICATION OBLIGATIONS (SECTION 11), NEITHER AVETTA'S NOR YOUR AGGREGATE LIABILITY ARISING FROM OR RELATING TO A BREACH OF THIS AGREEMENT SHALL EXCEED THE AMOUNTS ACTUALLY PAID BY OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.

### **13. FORCE MAJEURE**

Notwithstanding anything to the contrary herein, neither You nor Avetta shall be deemed to be in default of any provision of this Agreement, or be liable to each other or to any third party for any delay, error, failure in performance or interruption of performance due to any act of God, war, insurrection, acts of terrorism, riot, boycott, strikes, interruption of power service, interruption of Internet or communications service, labor or civil disturbance, acts of any other person not under its control or other similar causes.

### **14. NO WARRANTIES**

YOU ACKNOWLEDGE AND AGREE THAT AVETTA MAKES NO WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AVETTA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, AND GUARANTEES OR REPRESENTATIONS IMPOSED BY LAW, INCLUDING THOSE RELATING TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, ACCURACY, CORRECTNESS, COMPLETENESS OR CORRESPONDENCE WITH DESCRIPTION AND ANY WARRANTY, GUARANTEE, OR REPRESENTATION ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. ALL SERVICES PROVIDED BY AVETTA HEREUNDER ARE PERFORMED AND PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

You also acknowledge and agree that Your use of the Avetta Services and/or Site does not guarantee your hiring or acceptance by any Client of Avetta. You are solely responsible for your interactions with other members of the Avetta Network. Avetta is not responsible for and hereby disclaims any responsibility or liability regarding interactions or disputes between or among You and any other Avetta Clients or Suppliers.

### **15. DISCLAIMER REGARDING QUALIFICATION, REGULATORY AND COMPLIANCE INFORMATION.**

Avetta may provide Compliance Information to you when implementing and providing the Avetta Services. Such Compliance Information is offered for informational purposes only and Avetta does not warrant the accuracy, legality or completeness of the Compliance Information in any way. Avetta has no duty to update you on any changes to the Compliance Information or any legal or regulatory changes. Compliance Information may vary by jurisdiction. You agree (a) to assume full responsibility for confirming the accuracy, legality and jurisdictional applicability of all Compliance Information before you use such Compliance Information; (b) that Avetta shall have no liability with respect to any Compliance Information; and (c) use of or reliance upon any Compliance Information is at your own risk.

### **16. NOTICES, PERMISSIONS, AND APPROVALS**

All notices, permissions and approvals provided hereunder shall be in writing and shall be deemed to have been given upon: (a) personal delivery, (b) the second business day after mailing, (c) the second business day after sending by confirmed facsimile, or (d) the first business day after sending by email. Avetta's address for such purposes is: Avetta, LLC, 549 Timpanogos



Circle, Orem UT 84097, Attention: Legal Department. The address Avetta shall use to provide you with any notice shall be the address Supplier provides to Avetta in Supplier's profile.

## **17. MODIFICATIONS AND CHANGES**

Avetta reserves the right, in its sole discretion, to change, modify, add, or delete portions of this Agreement at any time with 30 days' prior notice sent via email. If Avetta does this, Avetta will also post the changes to this Agreement on this page with 30 days' notice prior to the effective date of such changes and will indicate at the top of this page the date this Agreement was last revised. Your continued use of the Avetta Services after the effective date of any such changes constitutes your acceptance of the updated Agreement.

## **18. GOVERNING LAW AND VENUE; ARBITRATION**

Avetta and You agree that this Agreement shall be governed exclusively by Utah law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction. The United Nations Convention on Contracts for International Sale of Goods is hereby expressly excluded. YOU EXPRESSLY WAIVE ANY RIGHT TO INVOKE OR CLAIM APPLICATION OF ANY OTHER LAW TO GOVERN THE CONCLUSION, PERFORMANCE, FAILURE TO PERFORM, TERMINATION OR EXPIRY OF THIS AGREEMENT. Subject to the Agreement to Arbitrate provisions below, Avetta and You agree that any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Avetta Services shall be subject to the exclusive jurisdiction of the state and federal courts located in Salt Lake County, Utah.

IN THE EVENT OF A DISPUTE BETWEEN YOU AND AVETTA ARISING UNDER OR RELATING TO THE SITE OR AVETTA SERVICES, EXCEPT WHERE PROHIBITED BY LAW, YOU OR AVETTA MAY CHOOSE TO RESOLVE THE DISPUTE BY BINDING ARBITRATION, AS DESCRIBED BELOW, INSTEAD OF IN COURT. ANY CLAIM (EXCEPT FOR A CLAIM CHALLENGING THE VALIDITY OR ENFORCEABILITY OF THIS ARBITRATION AGREEMENT, INCLUDING THE CLASS ACTION WAIVER) MAY BE RESOLVED BY BINDING ARBITRATION IF EITHER SIDE REQUESTS IT. THIS MEANS IF EITHER YOU OR WE CHOOSE ARBITRATION, NEITHER PARTY SHALL HAVE THE RIGHT TO LITIGATE SUCH CLAIM IN COURT OR TO HAVE A JURY TRIAL. DISCOVERY AND APPEAL RIGHTS ARE LIMITED IN ARBITRATION.

### **Class Action Waiver**

EXCEPT WHERE PROHIBITED BY LAW, ARBITRATION MUST BE ON AN INDIVIDUAL BASIS. THIS MEANS NEITHER YOU NOR WE MAY JOIN OR CONSOLIDATE CLAIMS IN ARBITRATION BY OR AGAINST OTHER USERS, OR LITIGATE IN COURT OR ARBITRATE ANY CLAIMS AS A REPRESENTATIVE OR MEMBER OF A CLASS OR WITH A PRIVATE ATTORNEY GENERAL CAPACITY.

Only a court, and not an arbitrator, shall determine the validity and effect of the Class Action Waiver. Even if all parties have opted to litigate a claim in court, You or Avetta may elect arbitration with respect to any claim made by a new party or any new claims later asserted in that lawsuit.

### **Governing Laws and Rules for Arbitration**

These arbitration terms are governed by the Federal Arbitration Act (FAA). Arbitration must proceed only with Judicial Arbitration and Mediation Services, Inc (JAMS). The rules for the arbitration will be those in this arbitration agreement and the procedures of JAMS, but the rules in this arbitration agreement will be followed if there is disagreement between the agreement and

JAMS' procedures. If JAMS' procedures change after the claim is filed, the procedures in effect when the claim was filed will apply.

### **Fees and Costs**

Each party shall pay for its own costs to litigate or arbitrate this Agreement including, but not limited to, the costs of its attorney's fees, filing fees, proceedings, or travel. The parties shall share equally in the arbitrator's fees and expenses and the cost of third-party facilities used for arbitration hearings.

### **Hearings and Decisions**

Arbitration hearings will take place in Salt Lake County, Utah, USA. A single arbitrator will be appointed. The arbitrator must: (i) follow all applicable substantive law, except when contradicted by the FAA; (ii) follow applicable statutes of limitations; (iii) honor valid claims of privilege; and (iv) issue a written decision including the reasons for the award.

The arbitrator's decision will be final and binding except for any review allowed by the FAA. However, if more than \$100,000 was genuinely in dispute, then either You or Avetta may choose to appeal to a new panel of three arbitrators. The appellate panel is completely free to accept or reject the entire original award or any part of it. The appeal must be filed with the arbitration organization not later than 30 days after the original award issues. The appealing party pays all appellate costs unless the appellate panel determines otherwise as part of its award. Any arbitration award may be enforced (such as through a judgment) in any court with jurisdiction.

### **Other Beneficiaries of this Provision**

In addition to You and Avetta, the rights and duties described in these arbitration terms apply to Avetta's affiliates and Avetta's and Avetta's Affiliates' officers, directors and employees; any third party co-defendant of a claim subject to this arbitration provision; and all joint account holders and authorized users of Supplier's account(s).

### **Survival of this Provision**

This Section 18 shall survive: (a) closing of Your account; (b) voluntary payment of Your Account or any part of it; (c) any legal proceedings to collect money You owe; and (d) any bankruptcy by You.

## **19. MISCELLANEOUS TERMS**

You and Avetta are independent contractors of each other. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between You and Avetta. You may not assign or delegate Your rights or obligations under this Agreement without the prior written consent of Avetta. Avetta may assign its rights under this Agreement including without limitation, in connection with the sale of Avetta, whether by merger, asset sale, stock sale or otherwise. Further, Avetta may perform any or all of its obligations through an affiliate or a third party contractor. Any provisions of this Agreement which are intended by their nature to survive termination or expiration shall so survive termination of this Agreement, including without limitation, Your indemnification obligations, limitations on liability, confidentiality obligations, and the governing law and venue provisions. The titles or captions used in this Agreement are for convenience only and will not be used to construe or interpret any provision hereof. This Agreement is the entire agreement between You and Avetta regarding Your use of the Avetta Services and the Site and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Any provision of this Agreement that is held to be wholly or partially invalid, illegal or unenforceable will be deleted from this Agreement to the extent that it is invalid, illegal, or unenforceable and the remaining

provisions will continue in full force and effect. This Agreement will not be more strongly construed against either party, regardless of who is more responsible for its preparation.

## 20. SUPPLEMENTAL POLICIES

The terms of this Agreement are applicable for all users of the Site and Avetta Services. In addition, Your use of the Site and the Avetta Services are subject to Avetta's [privacy policy](#), its [billing, refund & renewal policy](#), and its [GDPR policy](#), all which are incorporated herein by reference. These Policies may be updated from time to time, and You will be provided with notice of such updates.