



Avanan Terms of Service

Revision-2 from March \_\_, 2019

## AVANAN TERMS OF SERVICE

THESE "AVANAN TERMS OF SERVICE" IS AN AGREEMENT (THE "**AGREEMENT**" or "**TERMS OF SERVICE**") ENTERED INTO BETWEEN THE INDIVIDUAL OR CUSTOMER ENTITY (each "**CUSTOMER**") IDENTIFIED ON ANY ORDER FOR SERVICES (AS DEFINED BELOW) (WHETHER FOR TRIAL OR SUBSCRIPTION SERVICES) REFERENCING THIS AGREEMENT (EACH AN "**ORDER**") AND AVANAN, INC., A DELAWARE CORPORATION WITH OFFICES AT 259 WEST 30<sup>th</sup> SREET NEW YORK, NY 10001 ("**AVANAN**") RELATING TO THE AVANAN SERVICES. BY (I) CUSTOMER CLICKING THROUGH THIS AGREEMENT ELECTRONICALLY, OR (II) CUSTOMER USING THE SERVICES, CUSTOMER AND AVANAN MUTUALLY AGREE TO BE BOUND BY THE TERMS AND CONDITIONS HEREOF. EACH ORDER SHALL BE MUTUALLY AGREED TO AND ENTERED INTO BETWEEN CUSTOMER AND AVANAN PROVIDED THAT IF CUSTOMER PURCHASES THE SERVICES THROUGH AN AVANAN AUTHORIZED PARTNER ("**RESELLER**"), THE ORDER MAY BE ENTERED INTO BETWEEN AVANAN AND THE RESELLER FOR CUSTOMER'S USE. IF YOU DO NOT ACCEPT THE TERMS OF THIS AGREEMENT, YOU ARE NOT PERMITTED TO USE THE SERVICES.

IF YOU ARE ENTERING INTO THIS AGREEMENT AS AN AGENT, EMPLOYEE OR REPRESENTATIVE OF YOUR EMPLOYER, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO ACT ON SUCH PARTY'S BEHALF.

This Agreement incorporates Avanan's Privacy Policy at: [www.avanan.com/privacy-policy](http://www.avanan.com/privacy-policy), which constitutes an integral part of this Agreement ("**Privacy Policy**").

**DEFINITIONS.** "**Affiliate**" means any entity Controlled by, Controlling, or under common Control with a party to this Agreement, where "**Control**" means the power to direct the operation and management of an entity through the ownership of more than fifty percent (50%) of the voting stock of such entity. "**Documentation**" means this Agreement, the Order, and other user documentation related to the use or operation of the Services, each as made available by Avanan electronically via the Services or otherwise in writing. "**Services**" means the Services described in the Order (including any updates thereto provided by Avanan in its sole discretion); any software and/or systems owned or controlled by Avanan used to provide the Services; and the Documentation; and expressly excludes any third party service provider services or customer provided software or data.

### 1. SERVICES.

1.1. **Services License.** Subject to the terms and conditions of this Agreement and subject to the payment of any applicable fees, Avanan grants Customer, during the subscription term specified in an Order, a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to access and use the Services



solely for Customer's internal use, and in accordance with the Documentation, whereas in connection with such use, Customer shall have the right to allow its employees and contractors which are directly associated with the performance of Customer's business to use the Services solely on Customer's behalf ("**Authorized Personnel**").

Other than with respect to a free trial or POC (as defined below) period or beta testing, Avanan undertakes to (a) use commercially reasonable efforts to respond to a support request within the time frame set forth under the Avanan Customer Support Plan at: <https://www.avanan.com/sla> detailed in section 3 below; and (b) provide the Services in a professional manner, consistent with industry standards (collectively, the "**Services Warranty**");

#### 1.2. Ownership; Data Rights.

- A. Avanan owns and shall retain any and all right, title and interest in and to the Services including any intellectual property of any kind, whether registered or not including any technical information, content, techniques, ideas, methods, processes, software, interfaces, utilities, data, documents, designs, user interfaces, know-how, patents, copyrights, trade secrets, trademarks, moral rights. Nothing in this Agreement shall be construed to grant Customer any rights beyond those expressly provided for herein.
- B. Data Rights. Customer owns all right, title and interest in all data and/or content created or provided by Customer, and in all data derived therefrom ("**Customer Data**") excluding the Non-Identifiable Aggregated Data (as defined below). Nothing in this Agreement shall be construed to grant Avanan any rights in Customer Data beyond those expressly provided herein. As between Avanan and Customer, Customer shall retain ownership of the Customer Data at all times. Notwithstanding any other restrictions on use of data in this or any other agreement (i) Customer grants Avanan the limited, non-exclusive right to perform an automated content scan of Customer Data stored with Customer's Cloud Provider solely for the purpose of providing the Services to Customer, (ii) Customer grants Avanan the limited, non-exclusive right to view, modify, collect and use the Customer Data to create meta-data derived from Customer Data (which may include, by way of example, file encryption, file modification dates, audit trails, and the number of times a file has been accessed) ("**Customer Meta-Data**"), solely for the purpose of providing the Services to Customer, (iii) Customer grants Avanan the right to collect and use anonymized generic statistical information derived from such Customer Meta-Data (but not derived from the Customer Data directly) and aggregate it with statistical information from other customers ("**Non-Identifiable Aggregated Data**") solely for providing and improving its services, and (iv) Customer agrees that Avanan shall own all right, title and interest in any such Non-Identifiable Aggregated Data.
- C. As between Avanan and Customer, Customer is solely responsible for the content, quality and accuracy of Customer Data, for securing any necessary approvals for Avanan's use of the Customer Data as provided for herein, and for ensuring that the Customer Data as made available by Customer complies with



applicable laws and regulations. Avanan is not responsible for Customer Data once it leaves the Avanan Service, including by way of example, if Customer downloads a report from the Service to a Customer personal computer.

With your prior express permission, Avanan may log into your Avanan Service account solely to resolve a problem or support issue. In this case, the Avanan personnel investigating the problem would have the same access and abilities that you have when you are logged in to the Avanan Service; however, the Avanan personnel actions are logged in an immutable audit log.

Avanan collects and stores information including system health and availability, CPU and disk utilization over time, etc with the purpose of monitoring the availability of your service and to respond to failures in order to restore the service. Avanan also aggregates anonymized user data, including document and user meta-data, usage and volume statistical information, and other statistics (but not contact information) from our visitors and Users and may provide such anonymous aggregated information to third parties.

Avanan's Personal Data (as defined in GDPR (as defined below) processing practices are described in the Privacy Policy.

- 1.3. **License Restrictions.** Customer shall not (directly or indirectly) (i) remove any notice of proprietary rights from the Services, (ii) reverse engineer, disassemble, decompile, attempt to derive the source code or underlying ideas or algorithms of any part of the Services, attempt to recreate the Services or use the Services for any competitive purpose, (iii) copy, modify, translate or otherwise create derivative works of any part of the Services, or (iv) sell, resell, encumber, rent, lease, time-share, distribute, transfer or otherwise use or exploit or make available any of the Services to or for the benefit of any third party. Customer's authorized use of the Services hereunder is subject to (a) the purchased quantities and features set forth in the applicable Order, this Agreement and any usage guidelines and acceptable use policies applicable to Customer's usage of the Service and/or any cloud computing services delivered by a third-party service provider including Google, Amazon, Salesforce, etc. ("**Cloud Provider**") or a security provider including Symantec, Check Point, McAfee, etc.
  
- 1.4. **Customer Access to the Services.** Customer is solely responsible for ensuring that only appropriate Authorized Personnel of Customer have access to the Services, that such Authorized Personnel have been trained in proper use of the Services, and for ensuring proper usage of passwords, tokens and access procedures. Avanan reserves the right to refuse registration of, or to cancel, login IDs that violate the terms and conditions set forth in this Agreement. Customer agrees to notify Avanan immediately upon learning of any unauthorized use of Customer's account or any other breach of security relating to Customer's use of the Services.

- 1.5. **Free or Beta Versions of the Services.** If Customer is using a free trial or proof of concept version ("**POC**") of the Services or a beta version of the Services or a beta version of a specific feature within the service, Avanan makes such Services available to Customer until the earlier of (a) the end of the free trial or POC period or beta testing period as communicated by Avanan, (b) the start date of any purchased version of such Services, or (c) written notice of termination from Avanan. Customer is authorized to use a trial or proof of concept version of the Service only for evaluation and not for any commercial or productive purposes. Any data and/or content created or provided by Customer and derived therefrom and any customizations made to the Services by or for Customer during and/or in connection with the free trial version use or POC use or the beta testing period will be permanently lost unless Customer (a) has purchased a subscription to the same Services as covered by the free trial, POC or beta version or (b) exports such data before the end of such free trial or POC or beta version. Without derogating from anything herein, there is no guarantee that features or functions of the Service available in free trial or a beta or POC version of the Service will be available, or if available will be the same, in the general release version of the Service and Customer should review the Service features and functions before making a purchase.
- 1.6. **Hosting.** Customer acknowledges that Avanan's Services operate on one or more third party cloud computing platforms and that Avanan shall have the right to change or add to the cloud computing platforms on which its Services operate. Avanan shall ensure that any such third party cloud platform provider(s) are covered by an annual SSAE16 SOC2 Type 2 (or higher standard) audit.
- 1.7. **Use Policy.** Customer shall not, directly or indirectly, use the Avanan Services as follows: (1) to encumber, sublicense, transfer, distribute, rent, lease, time-share or use the Service in any service bureau arrangement or otherwise for the benefit of any third party without the prior written consent of Avanan; (2) in a manner that imposes or may impose (as determined by Avanan in its sole discretion) an unreasonable or disproportionately large load on the infrastructure of Avanan (or its third party providers) or beyond the limits of licensed usage (including without limitation the Service specific usage limitations below); (3) in a manner that interferes or attempt to interfere with the proper working of the Service or any activities conducted on the Service; (4) to bypass any privacy settings or measures used to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service); (5) run mail list, Listserv, any form of auto-responder or "spam" on the Service; (6) to use manual or automated software, devices, robot, spider, or other processes to "crawl" or "spider" or to retrieve, index, "scrape", "data mine" or in any way gather information, content or other materials from the Service in an unauthorized manner or reproduce or circumvent the navigational structure or presentation of the Service; (7) for purposes other than its intended use as a cloud security solution or in a manner that is inconsistent with the customary use of the Service; (8) to store or transmit viruses or malicious code; (9) to attempt to gain unauthorized access to the Avanan Service or their related systems or networks; (10) in a manner which interferes with or disrupt the integrity or performance of the Service; (11) use or allow



the transmission, transfer, export, re-export or other transfer of any software, technology or information forming a part of the Service in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction; or (12) in any way that is unlawful, illegal, fraudulent or harmful.

## **2. DATA PROTECTION**

If Customer data to be processed by Avanan pursuant to this Agreement is bound by the EU General Data Protection Regulation 2016/679 ("GDPR") then Customer shall be bound by the Data Protection Agreement at: [www.avanan.com/dpa](http://www.avanan.com/dpa) or which will be provided to Customer) which in such event constitutes an integral part of these Terms of Service.

**3. SUPPORT; UPDATES AND MAINTENANCE.** Avanan shall make available to Customers who have paid fees for the Service, support, updates, and maintenance in accordance with the Avanan Customer Support Plan located at <http://www.avanan.com/customer-support-plan>.

**4. FEES.** Fees for the Service are due annually in advance net thirty (30) days from date of invoice unless the Order specifies otherwise. Fees do not include sales, use, value added or other excise tax. Customer is responsible for payment of all such taxes based on fees paid or payable hereunder together with any interest on such taxes if not due to Avanan's or the Reseller's delay. Delinquent payments may be assessed interest at the rate of one-and-one-half percent per month (or the highest rate permissible by law if less) from the payment due date until paid in full. Fees for the Service are based on "normal usage" of the Service in a manner consistent with its intended purposes and as described in the Documentation. If Customer's usage is in a manner outside the quantities listed in the Order or the applicable Service specific usage limits set forth in this Agreement, then Avanan reserves the right to require Customer to either comply with such limits or pay an additional fee, not to exceed Avanan's list price for such additional usage. Notwithstanding anything herein to the contrary, it is hereby clarified that other than as explicitly set forth in this Agreement Customer shall not be entitled for any refunds, including in the event the termination of this Agreement and/or any Order, for any reason.

## **5. TERM.**

**5.1. Term and Termination of Agreement.** This Agreement shall remain in effect unless or until terminated in accordance with the terms hereof. Either party may terminate this Agreement upon thirty (30) days prior written notice, for any reason. In the event that at such termination there is an Order in effect this Agreement shall continue to apply as to such Order.

**5.2. Term of Order.** Each Order shall remain in effect for the term stated in the Order or, and in the case of a free trial or POC or beta version, for so long as Avanan determines, all unless sooner terminated in accordance with the terms of this Agreement or the Order.

**5.3. Termination or Suspension of an Order.** Either party may terminate an Order upon written notice to the

other party if the other party materially breaches this Agreement or the Order and fails to cure such breach within thirty (30) days after receiving written notice of such breach. Avanan may suspend or terminate an Order and/or the Services upon written notice to Customer if Avanan has not received payment for such Services and if such failure is not cured within thirty (30) days after Avanan provides written notice of such failure, or if Customer is in material breach of its obligations as set forth in this Agreement, in addition to any of Avanan's other rights or remedies set forth in the Agreement or otherwise available at law or in equity, and in such event no paid fees will be refundable.

**5.4. Effect of Termination.** Upon termination of this Agreement or of an applicable Order (i) Avanan will immediately stop the Services; (ii) Customer will have Fourteen (14) days after termination to export any Customer Data after which Avanan will delete any Customer Data unless required by law to retain it; (iii) each party will use commercially reasonable efforts to return any tangible Confidential Information (as defined below) and destroy any electronic Confidential Information of the other party within its possession or control; and (iv) in the event that Customer terminates due to Avanan's uncured material breach, Avanan will provide a pro-rata refund of any unused pre-paid fees paid for the period following termination as calculated on a monthly basis. The provisions of Sections 1.2, 5.4 6, 7, 8, 9, 10, 11, and 14, as well as the Data Protection Agreement referenced in section 2 above, where applicable, shall survive termination.

**6. CONFIDENTIALITY.** Each party may have access to information that is confidential or proprietary to the other party and/or its Affiliates. For purposes of this Agreement, "**Confidential Information**" means the information of a party and/or its Affiliates which is made available in connection with this Agreement, whether disclosed in written, oral, electronic, visual or other form, which is identified as confidential at the time of disclosure or should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding the disclosure, including without limitation information regarding a party's business, intellectual property, operations, finances, technologies, current and future products and services, pricing, personnel, customer and suppliers and any information with respect to the Services. The receiving party will use the disclosing party's Confidential Information solely as necessary in connection with the performance of this Agreement. The receiving party shall maintain the confidentiality of the disclosing party's Confidential Information using the same degree of care that such party uses to protect its own Confidential Information of a similar nature, and in any event not less than a reasonable degree. The receiving party shall not disclose or make available the disclosing party's Confidential Information to any third party, whereas it may disclose the disclosing party's Confidential Information solely to its employees and consultants who have a need to know such information and are bound by obligations of confidentiality and non-use no less restrictive than those set forth herein ("**Representatives**") whereas in any event, a receiving party will be fully responsible for any breach by its Representatives of the confidentiality and use obligations hereunder with respect to the disclosing party's Confidential Information; provided, that a party may disclose the disclosing party's Confidential Information if required by law and provided the receiving

party provides prompt notice of such requirement and disclosure to the other party to the extent allowed by law. Confidential Information excludes information to the extent such information (i) is or becomes part of the public domain through no act or omission of the receiving party; (ii) was in the receiving party's lawful possession prior to the disclosure and was not obtained directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or (iv) is independently developed by the receiving party without use of or reference whatsoever to the disclosing party's Confidential Information.

## **7. WARRANTIES AND DISCLAIMERS.**

**7.1. Limitation of Warranty.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, ASIDE FROM THE SERVICES WARRANTY (AS DEFINED ABOVE IN SECTION 1.1), THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND WHATSOEVER. ALL EXPRESS, IMPLIED AND/OR STATUTORY WARRANTIES IN CONNECTION WITH THE SERVICES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AS WELL AS ANY WARRANTIES REGARDING SECURITY, SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, ACCURACY AND PERFORMANCE OF THE SERVICES, ARE EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMITTED BY LAW. NO STATEMENT OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM AVANAN (OR ANYONE ON ITS BEHALF) IN ANY MEANS OR FASHION SHALL CREATE ANY WARRANTY IF NOT EXPRESSLY AND EXPLICITLY SET FORTH IN THIS AGREEMENT. FOR AVOIDANCE OF DOUBT THE COMPANY MAKES NO WARRANTIES WHATSOEVER FOR ANY THIRD-PARTY SERVICES INCLUDING WITHOUT LIMITATION IN CONNECTION WITH SECTION 1.6 ABOVE "HOSTING". CUSTOMER UNDERSTANDS THAT IF APIS ARE SUPPLIED WITH THE SERVICE, THEN SUCH APIS ARE SUBJECT TO CHANGE AND ASSUMES THE ASSOCIATED RISKS OF USING APIS FOR DEVELOPMENT PURPOSES.

## **8. INDEMNIFICATION.**

Avanan shall defend, indemnify and hold harmless Customer, against any claim, action or proceeding ("**Claim**") brought by a third party against Customer and/or its Affiliates and their officers, directors and employees (the "**Customer Indemnified Parties**") arising from an infringement or violation of Avanan and by the Services of a third party's patent, copyright or trade secret; all provided that Avanan shall not be responsible for any Claim to the extent arising from (i) use of the Services in violation of the terms of this Agreement, or (ii) use of the Services in combination with software, hardware, systems or data provided or controlled by Customer including the Customer Data or a third party to the extent the Claim would not have arisen but for such combination. If the Services become, or in Avanan's opinion are likely to become, the subject of a valid Claim of infringement or the like under any patent, copyright or trade secret, Avanan shall have the right, at its option and expense, either to (i) obtain for Customer a license permitting the continued use of the Services, (ii) replace or modify the Services so that they become non-infringing, or (iii) if neither of the foregoing options are available in a timely manner on commercially reasonable terms, terminate the affected Order and provide



Customer with a pro-rata refund of any unused pre-paid fees paid for the period following termination as calculated on a monthly basis. The indemnification obligations of Avanan in this Section are not applicable to nonpaying Customers.

Customer shall defend, indemnify and hold harmless Avanan and/or its Affiliates or their officers, directors and employees (the “*Avanan Indemnified Parties*”) against any losses, expenses, costs, claims, damages (including reasonable attorney fees, expert fees and other reasonable costs of litigation) arising from any unauthorized and/or illegal use of the Service and/or a breach of this Agreement and/or an alleged infringement or violation by the data provided or controlled by Customer including the Customer Data and any Personal Data, of any applicable data protection laws (including, without limitation GDPR if applicable), or of a third party patent, copyright or trade secret or other intellectual property, and/or from Avanan’s use of the foregoing data;

#### **9. LIMITATIONS OF LIABILITY.**

IN NO EVENT SHALL AVANAN BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, TORT OR CONSEQUENTIAL DAMAGES (INCLUDING ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF OR DAMAGE TO SOFTWARE OR DATA, LOSS OF PROFITS OR LOSS OF BUSINESS) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES FURNISHED HEREUNDER, INCLUDING FOR THE AVOIDANCE OF DOUBT THE PRIVACY POLICY, AND THE DPA REFERENCED IN SECTION 2 ABOVE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL AVANAN'S AGGREGATE LIABILITY HEREUNDER EXCEED THE TOTAL FEES PAID BY CUSTOMER TO AVANAN FOR THE PERIOD OF 12 MONTHS PRIOR TO THE CLAIM FOR WHICH AN INDEMNIFICATION IS REQUESTED. THE LIMITATIONS OF LIABILITY IN THIS PARAGRAPH APPLY WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER STATUTE OR OTHERWISE. HOWEVER, NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF SERVICE OR ANY ORDER, NO EXCLUSION OR LIMITATION OF LIABILITY SHALL APPLY TO ANY LIABILITY BASED ON FRAUD OR WILLFUL MISCONDUCT.

**10. U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT RESTRICTIONS.** If Customer is an agency or contractor of the United States Government, Customer acknowledges and agrees that (a) the Services (including any software forming a part thereof) were developed entirely at private expense, (b) the Services (including any software forming a part thereof) in all respects constitute proprietary data belonging solely to Avanan, (c) the Services (including any software forming a part thereof) are not in the public domain, and (d) the software forming a part of the Services is “Commercial Computer Software” as defined in sub-paragraph (a) (1) of DFAR Section 252.227-7014 or FAR Part 12.212. Customer agrees not to store or process any data that is subject to the International Traffic in Arms Regulations maintained by the United States Department of State. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit access to or use of the Services in any U.S. embargoed country or in violation of any U.S. export laws or regulations.



**11. PUBLICITY.** Solely subject to written consent (which may be revoked at any time for any reason) and to the limitations set forth within such consent, either party may use the other party's name and/or logo (the "Marks") on its website, customer or vendor list (as applicable) or other marketing materials to refer to the relationship between the parties pursuant to this Agreement.

**12. SERVICE SUGGESTIONS.** If Customer provides Avanan with ideas or suggestions for improvements or changes to the Service ("**Suggestions**"), Customer hereby assigns to Avanan full ownership of such Suggestions and Avanan will have sole discretion as to whether and how to implement such Suggestions into the Service.

**13. MODIFICATIONS.** Avanan may make changes from time to time to this Agreement. If Avanan makes a material change to this Agreement it will inform Customer by e-mail to the e-mail address(es) noted on the Order (or subsequently designated by Customer in writing as a contact for notifications from Avanan), or through a banner or other prominent notice within the Service, or through Avanan Support, all at Avanan's discretion ("**Avanan's Amendment Notice**"). If Customer does not agree to such change, and so notifies by e-mail to [support@avanan.com](mailto:support@avanan.com), then Customer's sole remedy would be to terminate this Agreement and any Order within a period of 14 days following Avanan's Amendment Notice. It is clarified that in any event, any use of the Services after such 14 day period will be subject to the foregoing changes made by Avanan.

#### **14. GENERAL PROVISIONS.**

**14.1. Compliance with Laws.** Each party shall comply with all applicable, laws and regulations in connection with the performance of its obligations and the exercise of its rights under this Agreement.

**14.2. Notices** All notices under this Agreement shall be made in writing and delivered to each party at the address under its signature hereto. Notices shall be deemed delivered (i) upon personal delivery with signature required, (ii) one Business Day (as defined below) after they have been sent to the recipient by reputable overnight courier service (charges prepaid and signature required), or (iii) upon successful transmission of an email containing such notice if sent between 9 a.m. and 5 p.m., local time of the recipient, on any Business Day, and as of 9 a.m. local time of the recipient on the next Business Day if sent at any other time, or (iv) three Business Days after deposit in the mail. "**Business Day**" as used in this Section 14.1 shall mean any day other than Saturday, Sunday or a day on which banks are required or authorized by law to be closed in the city of New York, New York.

**14.3. Entire Agreement.** This Agreement, including all Orders and any exhibits or attachments referenced herein, represent the entire agreement between Customer and Avanan with respect to the subject matter hereof, and supersedes all prior proposals, representations and agreements, whether written or oral, with respect thereto. This Agreement shall govern with respect to all Orders and forms of purchases, whether submitted through electronic transmissions or otherwise. Unless the Order expressly amends this Agreement, the terms and conditions of this Agreement shall take precedence over any

conflicting terms in the Order. Any waiver, amendment, or modification of any right or remedy, in whole or in part under this Agreement, or any additional or different terms in any purchase orders, acknowledgments or other documents other than the Order, will not be effective unless expressly agreed to by both parties in writing or electronic form. If Customer issues a purchase order in connection with an Order, such purchase order shall be solely for Customer's internal administrative purposes and to facilitate payment. In no event shall the terms of such purchase order modify or become part of this Agreement or become binding on Avanan even if Avanan signs an acknowledgment copy of such purchase order.

14.4. **Assignment and Subcontractors.** Customer may not assign this Agreement, without consent of Avanan, other than in connection with a change of control, merger, acquisition, of Customer and/or sale of all or substantially all of its assets.

14.5. **Governing Law.** The terms of this Agreement shall be construed in accordance with the substantive laws of New York State without regard to its principles of conflict of law or the U.N. Convention on Contracts for the International Sale of Goods. The Uniform Computer Information Transactions Act ("**UCITA**") will not apply to this Agreement regardless of when and howsoever adopted, enacted and further amended under the governing state laws.

14.6. **Force Majeure.** Other than payment matters, neither party shall be liable for any breach of this Agreement to the extent that such breach arises from factors outside its reasonable control.

14.7. **Severability.** It is intended that this Agreement shall not violate any applicable law and the unenforceability or invalidity of any provision (in accordance with a court's ruling) shall not affect the force and validity of the remaining provisions and such provisions determined to be invalid shall be deemed severed from this Agreement and, to the extent possible, be replaced with terms which as closely as possible approximate the interest and economic intent of such invalid provisions.