AVELIENT

Terms of Service

Effective as of: October 17, 2023

1. Definitions:

- **Acceptance** – Customer's acceptance of Work Product pursuant to this Agreement.

- **Agreement** - these Terms Of Service, the Customer Contract, and any exhibits to either of them. In case of a conflict between terms in these Terms Of Service and the Customer Contract, the terms in the Customer Contract shall prevail.

- **Avelient** - Avelient, Inc., also referred to as "we" or "us."

- **Content** - all text, pictures, sound, graphics, video and other data supplied by Customer to Avelient to incorporate into the Work Product.

- **Content Management System (CMS)** – software that gives users the ability to create, manage and modify content on a website without technical knowledge. A CMS allows the user to manage website content without affecting the overall design.

- **Customer** - An individual or organization that has contracted with Avelient to perform a web-based or digital marketing service, also referred to as "you."

- **Customer Contract** – the Customer Service Agreement, the Customer Proposal, and any exhibits to either of them. In case of a conflict between the terms in the Customer Service Agreement and the Customer Proposal, the terms in the Customer Proposal shall prevail. If no Customer Service Agreement or Customer Proposal exists, the Customer Contract may be any written or electronically submitted request for Avelient services by Customer that has been accepted in writing or electronically by Avelient.

- **Customer Liaison** – the person in charge of coordinating communication and decision-making on behalf of Customer.

- **Customer Service Agreement (CSA)** - the contract between the Customer and Avelient that establishes the terms and conditions that govern all current and future activities and responsibilities between the two parties.

- **Customer Proposal** – the document highlighting the fees and services contracted to Avelient by the Customer for a specific service transaction or project. It defines the requirements and objectives of the transaction or project and typically includes the timeline and budget for implementation.

- **Domain Name** - the website address specified for the Website by Customer.

- **Expected Project Timeline** - the schedule for development of the Work Product included in the Customer Contract.

- **Fees** – all amounts that Customer agrees to pay Avelient, as described in the Customer Contract, including but not limited to Website development fees, Website hosting fees, SEM fees and/or other fees included in this Agreement.

- **Hourly Rate** – The hourly rate specified in the Customer Contract. If no hourly rate is provided in the Customer Contract, it shall be USD $150 per hour for all services performed by Avelient or any of its subcontractors pursuant to this Agreement.

- **Initial Content –** The Content necessary for Avelient to begin developing Work Product.

- **Intellectual Property Rights** - any and all now known or hereafter known tangible and intangible (a) rights associated with works of authorship throughout the universe, including but not limited to copyrights, moral rights, and mask-works, (b) trademark and trade name rights and similar rights, (c) trade secret rights, (d) patents, designs, algorithms and other industrial property rights, (e) other intellectual and industrial property rights of every kind and nature throughout the universe and however designated (including logos, "rental" rights and rights to remuneration), whether arising by operation of law, contract, license, or otherwise, and (f) registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing).

- **Invoice Date** - the date on which an invoice was issued to the Customer by Avelient.

- **Provider Tools** – any technology that is owned by Avelient, developed by Avelient prior to or independently of the preparation of the Work Product, or technology which Avelient independently develops for or licenses from a third party, including without limitation, pre-existing data, methods, concepts, know-how, techniques, processes, software code, development tools, and all Intellectual Property Rights inherent.

- **Search Engine Marketing (SEM)** - The act of optimizing a website, completing external directory listings and initiating other online marketing strategies so the Customer's website pages appear as relevant, high-ranking search engine results. SEM may also be referred to as Digital Marketing or DM.

- **SEM Intake Call** - The first call made by Avelient's SEM team to a new Customer in order to initiate SEM Services, establish goals and gather existing account information.

- **Specifications** - Customer's requirements set forth in the Customer Contract or otherwise agreed to in writing by Customer and Avelient.

- **Terms Of Service** – the terms and conditions defined in this document

- **User Content** - all text, pictures, sound, graphics, video and other data provided by Website users.

- **Website Hosting** – a service that allows an entity to publish their website on the internet. It involves storing the website files on a server and providing a way for people to access those files through a web browser.

- **Website** - the user interface, functionality and Content made available on pages under the Domain Name.

- **Website Network** – a collection of independent Websites that share common technical, design, and functional elements.

- **Website Network Program** – the Website Network Platform and operational procedures developed by Avelient to support a Website Network for an entity or business vertical. FlexSite and Sitebuilder are examples of Website Network Programs that are managed by Avelient.

- **Website Network Platform** – integrated hardware and software that Avelient uses to develop and host a Website Network.

- **Work Product** - all HTML files, Java files, graphics files, animation files, data files, technology, scripts and programs, both in object code and source code form, all documentation and any other deliverable prepared for Customer by Avelient in accordance with the terms of this Agreement.

2. Website Development:

- **Applicability.** This Section 2 applies only if the Customer Contract includes Website Development services.

- **Delivery of Initial Content**. Customer shall deliver to Avelient all Initial Content as indicated in the Customer Contract. Avelient will not begin development on the Work Product until the Initial Content has been delivered by the Customer.

- **Development.** Avelient shall provide design, programming and other consulting services for the Work Product to Customer in accordance with the Expected Project Timeline.

- **Acceptance.** Once the first complete version of the Work Product is provided to Customer for review, Customer shall have 15 business days after that date to review and evaluate the Work Product (the "Acceptance Period") to assess whether it meets the Specifications and meets industry standards for professional, technical and artistic quality. During the Acceptance Period, Customer may provide a consolidated list of requested changes in writing to the Avelient team based on their review of the Work Product. Avelient will accept two rounds of requested changes during the Acceptance Period. If additional changes are requested after the second round of changes, Customer and Avelient may mutually agree to: (a) accept the Work Product as is and implement the additional changes as a Change Order after website launch; (b) reject the Work Product and implement the additional changes as a Change Order prior website launch; or (c) terminate this Agreement (See "Term and Termination"). Customer shall provide acceptance or rejection of the Work Product in writing. If Customer has neither accepted nor rejected the Work Product within the Acceptance Period, including any extensions, then Acceptance of the Work Product shall be presumed.

- **Website Launch**. Upon Acceptance of the Work Product, Avelient will establish a website launch date in collaboration with Customer, based on resource availability. A minimum of five business days is required between the Acceptance date and the launch date.

- **Website Registrations.** If requested by Customer, Avelient shall, for a negotiated fee, register the Website with search engines, online business directories/listings, and advertising portals as agreed upon by Customer and Avelient.

- **Back up of Work Product.** Prior to Acceptance of the Work Product, Avelient shall back up its work at least once every day and store such back-up materials in a secure site at a separate location.

3. Search Engine Marketing:

- **Applicability.** This Section 3 applies only if the Customer Contract includes SEM services.

- **SEM Intake Call**. After execution of this Agreement by both Avelient and Customer, Avelient will contact Customer within 10 business days to schedule an SEM Intake Call for your SEM services.

- **Content Updates.** As part of SEM activities, Avelient may need to update Content on Customer's Website in order to achieve better search engine ranking for a particular keyword or term. Customer authorizes Avelient to make these changes without any additional consent if the intent of the change is to achieve better ranking in search engine results.

- **Reporting.** Customer shall have access to an online report, available at any time, to review current progress on its SEM activities. The link provided shall be publicly accessible from any browser, however, it will not be crawled or ranked by search engines. Avelient shall update this report with the latest project status at least one day every month.

- **Renewal.** Ongoing SEM services auto-renew on a month-to-month or annual basis and may be terminated by Customer at any time with a 30-day advance written notice.

- **Back up of Work Product.** Prior to completion of the Work Product, Avelient shall back up its work at least once every day and store such back-up materials in a secure site at a separate location.

4. Change Orders:

- **Change Request**. If Customer desires to modify the Website Development (including the platform requirements) or SEM services at any time during the term of this Agreement, Customer shall describe to Avelient the additional requested services or deliverables in writing (the "Change Request").

- **Change Order**. Within 10 business days after receiving a Change Request, Avelient shall provide to Customer a change order proposal (the "Change Order") which includes a statement of any additional charges and, if the Change Request is provided prior to Acceptance, any adjustments to the Expected Project Timeline resulting from the proposed Change Request. Upon Customer's written approval of the Change Order, the Change Order will become a part of this Agreement. Any additional deliverables or changes to the Website or SEM services described in the Change Order shall be subject to Acceptance testing.

5. Website Hosting:

- **Applicability.** This Section 5 applies only if the Customer Contract includes Website Hosting services.

- **Services.** Avelient shall provide the following Website Hosting services:

  - *Domain Name Registration.* If requested by Customer, Avelient shall, at Customer's expense, reserve requested Domain Name(s) with an accredited registrar. Customer shall own all right, title and interest in and to the Domain Name(s) and all Intellectual Property Rights related thereto. Unless otherwise specified by Customer, Avelient shall list itself as the administrative, technical and billing contact.

  - *Site Backup & Disaster Recovery.* Avelient shall maintain a complete and current copy of the Website no more than three days old. In the event that servers experience failure, the stored copy shall be restored to a working server. No guarantees

are made of any kind, either expressed or implied, as to the integrity of these backups. It is Customer's responsibility to maintain recent local copies of the Website Content.

- *Server Logs.* At Customer's written request, Avelient shall provide to Customer access to the minimum tools necessary to view and analyze the server logs of Website activity (the "Server Logs").

- **Content Control.** Customer shall have sole control over the Content. Avelient shall not supplement, modify or alter any Work Product that has been accepted by Customer or any Content (other than modifications strictly necessary to upload the Content to the Website or Content Updates authorized for SEM purposes) except with Customer's prior written consent. In order to maintain a secure network and ensure best practices for any content uploaded to the website, Avelient does not allow customers access to the Content Management System (CMS). Our support team is available to assist with any changes or updates you need to make to your website. Avelient may, in its sole discretion, agree to perform Content updates at the Customer's request for an additional fee.

- **Network Website Server Logs**. If your Website is part of one of Avelient's Website Network Programs, Avelient may additionally provide regular, anonymous server statistics to the sponsoring entity for the purpose of measuring the success of sites created through the program.

- **Security.** Avelient shall implement measures to prevent unauthorized access to Website restricted areas and any databases or other sensitive material generated from or used in conjunction with the Website, and Avelient shall notify Customer of any known security breaches or holes.

- **Third-Party Software.** Customer is strictly prohibited from installing any third-party software on Avelient's servers without the prior express written authorization of Avelient. In the event that any authorized third-party software disrupts Avelient's server, Avelient shall have the right to temporarily disable the software until the problem can be resolved. If Customer installs third-party software on Avelient's servers without Avelient's express written authorization, Avelient shall have the right to immediately terminate this Agreement without notice.

- **Acceptable Use.** Avelient maintains an Acceptable Use policy for all hosting services. Customer shall be responsible to adhering to this policy as it is continued and updated. Avelient's Acceptable Use policy is available online at: http://avelient.co/aup

- **Customer License.** During the period that Avelient provides Website Hosting services pursuant to this Agreement, Customer hereby grants to Avelient a non-exclusive, non-sublicenseable, royalty-free, worldwide license to reproduce, distribute, publicly perform, publicly display and digitally perform the Content and Work Product only on or in conjunction with the Website.

- **Customer Marks.** Subject to the terms and conditions of this Agreement, Customer hereby grants Avelient a limited, non-exclusive, non-sublicenseable, royalty-free, worldwide license to use Customer's trademarks, service marks, trade names, logos or other commercial or product designations (each a "Customer Mark") for the purposes of creating content directories or indexes and for marketing and promoting the Website.

- **Renewal.** Website Hosting services auto-renew on a month-to-month or annual basis and may be terminated by Customer at any time with a 30-day advance written notice.

6. Project Schedule:

- **Customer Response Time.** The Expected Project Timeline set forth in the Customer Contract assumes a two business day response time from Customer when information, review and feedback are requested by Avelient. If Customer does not respond within two business days, Customer agrees that the Expected Project Timeline is subject to change.

- **Project Holds**. Except as otherwise specified in this Agreement, if Customer does not respond to a request for information or review within 10 business days, Avelient shall have the right to put the project on hold and release resources to other projects until a response is received from Customer. A fee may be assessed, at the sole discretion of Avelient, to recommit resources to complete the project.

- **Termination**. Customer's failure to respond to a request for information or review within 60 calendar days may result in termination of this Agreement by Avelient and deletion of all Content, Initial Content and Work Product. All amounts received by Avelient will be nonrefundable and Customer will incur an additional fee, payable immediately, to restart the project.

7. Payments:

- **Fees.** Except as otherwise specified in the Customer Contract, Avelient shall invoice all fees on a one-time, monthly or annual basis as applicable, and payment is due 30 days after the Invoice Date. For recurring fees, billing starts on the first day that the service is provided, and the fees are invoiced on the first day of each applicable recurrence period. If the fees are not invoiced on the first day of the recurrence period, then the fees will be applied retroactively to the first day of the recurrence period.

- **Prorated Fees.** Avelient may, in its sole discretion, invoice fees on a prorated basis. If applicable, fees will be prorated at a daily rate. The daily rate will be calculated by taking the annual cost of the service (minus any discounts or credits) divided by 365 days.

- **Delivery Method.** Avelient delivers invoice notifications to the Customer's billing email address from billing@avelient.com. Upon receipt of its first billing statement, the Customer will receive a login to our billing system, where it will be able to review its transaction history, pay outstanding invoices, and manage payment information using an encrypted server. Customer is responsible for ensuring email delivered from billing@avelient.com is not redirected by spam filters to a junk mail folder.

- **Forms of Payment.** Avelient accepts Mastercard, Visa, American Express, Discover, electronic funds transfers, and business or personal checks. No cash is accepted. All funds are in US dollars only. If paying by debit card or credit card, Customer authorizes Avelient to automatically charge Customer's credit or debit card for all fees and charges due and payable to Avelient, without any additional authorization, for which Customer will receive an electronic receipt. Customer also agrees that Avelient is authorized to share any payment information and instructions required to complete the payment transactions with its third-party payment service providers (e.g., credit card transaction processing, merchant settlement, and related services).

- **Expenses**. Customer shall reimburse Avelient for all reasonable out-of-pocket expenses which have been approved in advance by Customer and which are incurred by Avelient in the performance of services hereunder, including but not limited to travel and lodging expenses, long distance calls, and material and supply costs, within 30 days after Customer's receipt of expense statements including appropriate receipts or other evidence of the expense.

- **Late Fees.** For invoices 30 days or more past due (60 days past the Invoice Date), Avelient will assess a 3% compounding late fee on the unpaid invoice balance.

- **Collections.** On any balance more than 90 days overdue (120 days past the Invoice Date), Avelient reserves the right to send Customer's open bill to a collections company. A 15% processing fee will be added to Customer's open balance prior to submitting to collections. Customer agrees to reimburse Avelient for all collection and/or legal fees and expenses necessitated by lateness or default in payment.

- **Limited Refunds**. If Customer terminates this Agreement and requests a refund in writing within 5 business days following Customer's execution of this Agreement, any work completed by Avelient prior to termination shall be billed at the Hourly Rate and retained by Avelient, and any remaining balance shall be returned to Customer. If, at the time of the request for refund, the hourly value of Avelient's work completed exceeds the amount paid to Avelient, Customer agrees to immediately pay Avelient for all work completed at the Hourly Rate. Customer understands and agrees that no other refunds will be provided.

8. Term and Termination:

- **Term.** This Agreement shall remain in effect until it expires or is terminated by either party pursuant to this Agreement.

- **Termination for Cause.** Except as otherwise provided for herein, Avelient may terminate any services provided under this Agreement or this Agreement in full upon a material breach by Customer, if such breach remains uncured for 10 days following written notice to Customer.

- **Termination without Cause.** Customer may terminate Avelient's services at any time and agrees to pay all amounts due Avelient pursuant to this Agreement. Avelient may terminate any services provided under this Agreement or this Agreement in full upon 60 days advance written notice to Customer.

- **Termination During Website Development.** In the event that Customer terminates the Agreement prior to Acceptance of the Work Product, Customer shall have the option to retain any part of the Work Product related to documentation, videos, images or other media completed for the project for which Customer has paid. Avelient shall return any Initial Content to

Customer. Customer agrees to pay Avelient for actual hours performed but not yet billed at the Hourly Rate. All licenses granted hereunder shall terminate.

- **Termination During SEM Services.** In the event of expiration or termination of any SEM services provided under this Agreement, upon payment in full by Customer of all amounts due Avelient, Avelient shall relinquish control of any and all services related to external directory listings, web site metrics and visitor tracking.

- **Termination During Website Hosting.** In the event of expiration or termination of any Website Hosting services provided under this Agreement, Avelient shall, at the Customer's request and upon payment of any then unpaid invoices, download all Content that is on the Website and in Avelient's possession at the time of termination and deliver such materials to Customer within 5 business days. Upon payment of an additional fee, Customer may engage Avelient to: (a) keep the Website publicly accessible for a period of 14 days following the date of termination of Website Hosting services under this Agreement; (b) if the transfer requires a change in the Domain Name, immediately upon the date that the Website is no longer publicly accessible, and for a period of no less than 12 months thereafter, maintain the Website's URL and, at such URL, provide 1 page (including a hypertext link) that Customer may use to direct its users to its new Website or some other URL of Customer's choosing; c) if the transfer does not require a change in the Domain Name, cooperate with Customer in assigning a new IP address to the Domain Name as Customer may request; and (d) transfer any licenses of any applicable third-party Provider Tools to Customer, to the extent permitted by the third-party's license agreement.

- **Effect of Termination.** Sections 1, 7, and 9 through 17, in addition to Acceptance and this Effect of Termination shall survive termination of this Agreement. Upon the termination of services under this Agreement for any reason, Customer agrees that no refunds will be provided (other than the Limited Refunds described above) and agrees to pay Avelient for actual hours performed but not yet billed at the Hourly Rate. Upon written request by Customer and Avelient's receipt of all amounts due under this Agreement, Avelient shall promptly return, in their original form, all Content in Avelient's possession at the time of termination and copies thereof and deliver the originals and all copies of the Work Product in whatever stage of completion to Customer. Subject to Avelient's obligations pursuant to Termination during Website Hosting, Avelient shall remove all copies of the Content from servers within its control and use reasonable efforts to remove any references to Customer or the Content from any site which caches, indexes or links to the Website.

9. Customer Covenants:

- **General Covenants.** During the period that Avelient provides Website Hosting services, Customer shall not distribute on the Website any Content that: (a) infringes on the Intellectual Property Rights of any third party or any rights of publicity or privacy; (b) violates any law, statute, ordinance or regulation (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination or false advertising); (c) is defamatory, trade libelous, or unlawful in any way; (d) is obscene, child pornographic or indecent; or (e) contains any viruses, trojan horses, worms, time bombs, cancelbots or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or personal information.

- **Ownership of Content**. Customer represents to Avelient and unconditionally guarantees that all Content furnished to Avelient for inclusion in the project is owned by Customer, or that Customer has lawful permission from the rightful owner to use the Content. Customer agrees to hold harmless, indemnify and defend Avelient and its subcontractors from any claim or suit arising from or relating to Avelient's use of any Content.

- **Compliance with Laws.** Customer agrees that Customer is solely responsible for knowledge of and compliance with all laws, taxes, and tariffs relating to the Work Product.

- **Resold Third-Party Services.** Avelient resells certain third-party services. The third-party services that Avelient resells include, but are not limited to: Enom, Rackspace Mail, Hushmail, CallRail, and WhatConverts. If Customer subscribes to any third-party services through Avelient, Customer agrees to abide by the terms and conditions specified in the third-party provider's terms of service and acceptable use policies as applicable, and Customer is subject to the third-party provider's privacy policy. The third-party provider's policies can usually be found on the provider's website. Avelient can provide applicable third-party provider policies to Customer upon request.

10. Disclaimer of Warranties:

ALL OF AVELIENT'S PRODUCTS AND SERVICES ARE PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AVELIENT DISCLAIMS ALL CONDITIONS, REPRESENTATIONS,

AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. AVELIENT DOES NOT REPRESENT OR WARRANT THAT: (A) THE USE OF ITS SERVICES OR PRODUCT WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE, (B) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (C) ERRORS OR DEFECTS WILL BE CORRECTED, OR (D) SERVER(S) THAT MAKE THE SERVICES AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. AVELIENT DOES NOT MAKE ANY REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY, OR COMPLETENESS OF THE SERVICES. AVELIENT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS.

11. Limitations of Liability:

IN NO EVENT SHALL AVELIENT BE LIABLE FOR ANY LOST PROFITS OR INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (HOWEVER ARISING, INCLUDING NEGLIGENCE), EVEN IF AVELIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CUSTOMER AGREES THAT AVELIENT'S MAXIMUM LIABILITY FOR ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE FEES AVELIENT RECEIVED FROM CUSTOMER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING CUSTOMER'S CLAIM.

12. Ownership:

- **Ownership of Work Product.** With the exception of Provider Tools, Avelient hereby irrevocably assigns to Customer all right, title and interest in and to all Work Product including, without limitation, all applicable Intellectual Property Rights thereto. If Avelient has any such rights that cannot be assigned to Customer, Avelient waives the enforcement of such rights, and if Avelient has any rights that cannot be assigned or waived, Avelient hereby grants to Customer an exclusive, irrevocable, perpetual, worldwide, fully paid license, with right to sublicense through multiple tiers, to such rights. Avelient acknowledges that there are, and may be, future rights that Customer may otherwise become entitled to with respect to the Work Product that do not yet exist, as well as new uses, media, means and forms of exploitation throughout the universe exploiting current or future technology yet to be developed, and Avelient specifically intends the foregoing assignment of rights to Customer to include all such now known or unknown uses, media and forms of exploitation throughout the universe.

- **Ownership of Content.** As between Avelient and Customer, any Content given to Avelient by Customer under this Agreement or otherwise, and all User Content, shall at all times remain the property of Customer or its licensor. Avelient shall have no rights in such Content or User Content other than the limited right to use such content for the purposes expressly set forth in this Agreement. If your Website is part of one of Avelient's Website Network Programs, the sponsoring entity of the program or Avelient may own some of the content on the Website. If you leave the program, you may lose the right to display or use the owner's content on your Website.

- **Ownership of Provider Tools.** During the course of this Agreement, Avelient may develop new Provider Tools and/or modify existing Provider Tools specific to Customer's needs and requirements. Avelient retains ownership of these Provider Tools.

- **Provider Tools License.** In the event any Provider Tools are incorporated into or are used in conjunction with the Work Product, or any Provider Tools are used to manipulate Content for distribution on the Website, with the exception of the Website Network Platform on which the Website resides if applicable, then Avelient hereby grants to Customer a worldwide, non-exclusive, sub-licenseable (through multiple tiers), royalty-free right to use, reproduce, publicly perform, publicly display, digitally perform, make, or have made such Provider Tools in any media now known or hereafter known, for Customer's purpose in maintaining the Work Product as it sees fit. Additionally, Customer may create derivative works of any Provider Tools for internal use if Avelient provided the source code; those derivative works remain subject to this license. Throughout the term of this Agreement and immediately upon termination, Avelient shall provide to Customer the most current copies of any Provider Tools to which Customer has rights pursuant to this license, plus any related documentation. Third-party licenses shall be transferred to the Customer only to the extent permitted by a third-party agreement. Customer may not assign, sell, or offer to sell any Provider Tools without prior express written consent from Avelient. If the Website resides on one of Avelient's Website Network Platforms, Customer shall not be granted any rights to the Website Network Platform, and Customer shall not be able to manage or maintain the Website on the Website Network Platform.

- **Avelient Marks.** If Avelient includes any of its trademarks, service marks, trade names, logos or other commercial or product designations on the Website (each, an "Avelient Mark"), Avelient grants Customer a revocable, non-transferable license to display such Avelient Mark on the Website. Any other use of an Avelient Mark without Avelient's prior express written permission is strictly prohibited. Any benefits accruing from use of an Avelient Mark shall automatically vest in Avelient.

13. Indemnity:

- **Customer Indemnity.** Subject to the Mechanics of Indemnity below, Customer shall defend Avelient against any third-party claim, action, suit or proceeding arising from any breach of Customer's obligations in this Agreement, and indemnify Avelient for all losses, damages, liabilities and all reasonable expenses, attorneys' fees and costs incurred by Avelient as a result of a final judgment entered against Avelient or settlement in any such claim, action, suit or proceeding.

- **Avelient Indemnity.** Subject to the Mechanics of Indemnity below, Avelient shall defend Customer against any third-party claim, action, suit or proceeding arising from any breach of Avelient's obligations in this Agreement, and indemnify Customer for all losses, damages, liabilities and all reasonable expenses, attorneys' fees and costs incurred by Customer as a result of a final judgment entered against Customer or settlement in any such claim, action, suit or proceeding.

- **Mechanics of Indemnity.** The indemnifying party's obligations are conditioned upon the indemnified party: (a) giving the indemnifying party prompt written notice of any claim, action, suit or proceeding for which the indemnified party is seeking indemnity; (b) granting control of the defense and settlement in writing to the indemnifying party if requested in writing by the indemnifying party; and (c) reasonably cooperating with the indemnifying party at the indemnifying party's expense.

14. Confidentiality:

- Customer's "Confidential Information" are any passwords used in connection with the Website or SEM services, all server logs, all Work Product and documents related to the Work Product, any Content which Customer designates as confidential, and any other materials of Customer which Customer designates as confidential or which Avelient should reasonably believe to be confidential. Customer's "Confidential Information" also includes the Website itself until such time as Customer decides to make the Website publicly available to users.

- Avelient's "Confidential Information" is defined as the source code of any Provider Tools, any other materials which Avelient Customer designates as confidential or which Customer should reasonably believe to be confidential.

- Each party shall hold the other party's Confidential Information in confidence and shall not disclose such Confidential Information to third parties nor use the other party's Confidential Information for any purpose other than as necessary to perform under this Agreement. The foregoing restrictions on disclosure shall not apply to Confidential Information which is (a) already known by the recipient, (b) becomes, through no act or fault of the recipient, publicly known, (c) received by recipient from a third party without a restriction on disclosure or use, or (d) independently developed by recipient without reference to the other party's Confidential Information.

15.   Non-Solicitation:

During the term of this Agreement and for a period of six (6) months after its termination, Customer agrees that it will not hire or solicit for employment any Avelient personnel from whom it received, or to whom it was introduced as the direct result of, any services performed pursuant to this Agreement.

16. General Provisions:

- **Force Majeure.** Neither Customer nor Avelient shall be responsible for any losses or damages to the other occasioned by delays in the performance or non-performance of any of its obligations when caused by Acts of God, strike, acts of war, epidemic, pandemic, unavailability of supplies or material or labor, or any other cause beyond the reasonable control of the obligated party.

- **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of New Jersey without giving effect to principles of conflict of laws. Both parties agree to submit to jurisdiction in New Jersey and further agree that any cause of action arising out of or related to this Agreement may only be brought in a court of competent jurisdiction in or nearest to Monmouth County, New Jersey. The prevailing party in any dispute between the parties arising out of or related to this Agreement, whether resolved by negotiation, mediation, or litigation, shall be entitled to recover its attorneys' fees and costs from the other party.

- **Severability Waiver.** If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The waiver by either party of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

- **Headings.** Headings used in this Agreement are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Agreement.

- **Assignment and Subcontracting.** Avelient may assign its rights, delegate its duties, and/or subcontract its rights and obligations pursuant to this Agreement to any person or entity without Customer's prior consent. Customer may assign, transfer, delegate or grant all or any part of its rights pursuant to this Agreement to any person or entity. The parties' rights and obligations will bind and inure to the benefit of their respective successors and permitted assigns.

- **Independent Contractors.** The parties to this Agreement are independent contractors, and no agency, partnership, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party shall have the power to obligate or bind the other party. Personnel supplied by Avelient shall work exclusively for Avelient and shall not, for any purpose, be considered employees or agents of Customer. Avelient assumes full responsibility for the acts of such personnel while performing services hereunder and shall be solely responsible for their supervision, direction and control, compensation, benefits and taxes.

- **Notice.** Any notices required or permitted hereunder shall be given to the appropriate party at the address specified below or at such other address as the party shall specify in writing. Such notice shall be deemed given: upon personal delivery; if sent by telephone facsimile, upon confirmation of receipt; if sent by email, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, 5 days after the date of mailing.

- **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be taken together and deemed to be one instrument.

- **Entire Agreement.** These Terms Of Service, the Customer Contract, and all exhibits attached to either, set forth the entire understanding and agreement of the parties and supersede any and all oral or written agreements or understandings between the parties as to the subject matter of this Agreement. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

17. Your Consent:

Avelient reserves the right to unilaterally modify or update these Terms Of Service at any time. You will be notified of changes via email to your billing email address or to your Project Liaison email address if Avelient does not have a billing email address on file. You will have a period of thirty (30) days after the date of the email to review and, if desired, terminate services under this Agreement as described above. If you do not terminate, your continued use of Avelient's services shall constitute your consent to the amended Terms Of Service.

18. Privacy Statement:

We are committed to protecting your privacy. We constantly review our systems and data to ensure the best possible service to our customers.

Avelient's privacy policy is available online at http://avelient.co/privacy

19. Contacting Us:

If there are any questions regarding this Agreement, you may contact us using the information below.

Avelient
PO Box 402
Holmdel, NJ 07733 USA
888-333-3731
legal@avelient.com
http://www.avelient.co