

## **DATA SERVICES TERMS & CONDITIONS**

### **1. Services**

1.1 AVANTA will use its reasonable endeavours to provide the Services requested by the Licensee in accordance with the Service Level Agreement for the duration of the Term, subject to the terms and conditions of this agreement. 1.2 Any target dates for performance of AVANTA's provided in this or any other documentation are estimates only and time for performance of AVANTA's obligations will not be of the essence.

### **2. Licensee's obligations**

2.1 The Licensee shall provide all reasonable co-operation to AVANTA without charge to assist AVANTA in performing its obligations under this agreement. Such co-operation may include:

1. (a) reasonable access to, and co-operation by, the Licensee's staff;
2. (b) reasonable access to the Accommodation (without affecting AVANTA's rights to enter the Accommodation under the Licence Agreement or otherwise);
3. (c) (promptly reporting to AVANTA any defect or error in any Services of which the Licensee becomes aware (and confirming the details in writing);
4. (d) providing any information which AVANTA may reasonably request;
5. (e) obtaining all necessary consents or licences which may be required from any third party (such as any third party licensor of any component of the Licensee's computer system) which may be required for AVANTA to provide the Services; and
6. (f) where appropriate, making available reasonable facilities for the storage and safekeeping of equipment.

2.2 The Licensee will be responsible for making back-ups of all data and AVANTA shall have no liability for loss of any of the Licensee's data.

2.3 The Licensee understands that neither AVANTA nor its Network Services Supplier is responsible for the content of the transmissions which may pass through the Internet and/or the Network Connection. The Licensee agrees that it will NOT use the Network Connection in ways that violate laws, infringe the rights of others, or interfere with the users, services, or equipment of the Network Services Supplier's network. For example, the Licensee shall not distribute unsolicited advertising, chain letters, or commercial electronic mail ("spamming"); propagate computer worms or viruses; attempt to gain unauthorized entry to other computers, data or networks; distribute child pornography, obscenity, or defamatory material over the Internet; or infringe any third party copyright, trade mark, or other intellectual property right.

2.4 The Licensee shall notify AVANTA immediately if it becomes aware of any improper use of the Network Connection and/or damage and/or likelihood of damage to the Network Connection.

2.5 The Licensee shall comply with any reasonable instructions given to it by AVANTA, in particular, but not limited to, instructions relating to the Network Connection.

2.6 In relation to any Shared Internet Access Services (ADSL and SDSL), the Services may not be used by the Licensee for the connection of Licensee Equipment that will (at AVANTA's discretion) disproportionately degrade the overall performance of the Shared Internet Access Service

### **3. Payment**

3.1 The Licensee will pay to AVANTA the charges set out in Facilities and Service Price list and as amended from time to time. Charges will be due as directed by the Licence Agreement.

3.2 Unless stated otherwise in the Facilities and Service Price List, prices set out in the agreement do not include VAT and other taxes. All VAT and other taxes on supplies must be paid by the Licensee in addition to the prices stated.

3.3 AVANTA may make reasonable increases to any of the charges specified in this agreement at any time by giving to the Licensee at least one month's notice in writing.

### **4. Assignment and sub-licensing**

4.1 AVANTA may assign any of its rights or obligations arising under this agreement to any of its associated companies. AVANTA may sub-contract any of its obligations under this agreement.

4.2 The Licensee may not without AVANTA's consent assign any of its rights or obligations arising under this agreement (such consent shall not be unreasonably withheld).

4.3 Any assignment by the Licensee of this agreement or of any licence or benefit under it shall not relieve the Licensee of any of its obligations or liabilities under this agreement.

4.4 The Licensee may not sub-license any rights granted to it under this agreement.

### **5. Programs Licences and Licensee Equipment**

5.1 If the supply of any Services by AVANTA to the Licensee involves the use by the Licensee of any computer software programs, AVANTA shall grant (or shall procure the grant of) a licence to use the programs for the purposes for which the services are supplied. The Licensee shall comply with any terms or restrictions in relation to the computer software and its use as may be notified by AVANTA to the Licensee.

5.2 If AVANTA agrees to house outside the Accommodation any Licensee Equipment, such Licensee Equipment will be held by AVANTA at the Licensee's risk. AVANTA will take reasonable care of such Licensee Equipment and will use its reasonable endeavours to ensure that (a) the IT Environment is kept at a temperature of approximately 21 degrees Celsius; and (b) the Provided Power is provided to the Licensee Equipment.

5.3 AVANTA will not do anything with or to such Licensee Equipment which the Licensee has not expressly or impliedly authorised save that AVANTA has the right to suspend or terminate the supply of power to the Licensee Equipment if the equipment is deemed to represent a safety or other hazard.

5.4 The Licensee warrants that any Licensee Equipment (a) will comply with all applicable regulations and nationally recognised standards which apply in the country in which the Accommodation is located, including, in the UK, IEC 950 concerning safety of information technology equipment; (b) will be and will remain safe to the extent required by law provided that AVANTA does not do anything in relation to it which is not in accordance with the manufacturer's recommendations; (c) will comply in all material respects with all applicable conditions and standards of any relevant telecommunications company or provider (including but not limited to BT); and (d) will be suitable in all material respects for connection to the appropriate telecommunications network.

### **6. Warranty**

6.1 AVANTA warrants that it will provide the Services with reasonable skill and care. Subject to clause 7.1 and save as expressly set out in this agreement, no conditions, warranties or other terms, whether express or implied, shall apply to the Services, including warranties of satisfactory quality and fitness for a particular purpose.

6.2 Other than as expressly set out in this agreement, AVANTA does not offer any warranty or guarantee regarding the continued and uninterrupted availability of the Services to the Licensee. AVANTA will be entitled at its discretion to take down the Services at any time in order to carry out or procure the carrying out of maintenance and support services on or in relation to the Services or for any other causes.

## 7. Exclusions and Limitations

### 7.1 AVANTA's liability:

- (a) for death or personal injury caused by AVANTA's negligence or the negligence of AVANTA's employees or agents;
- (b) under Part I of the Consumer Protection Act 1987;
- (c) for fraudulent misrepresentation;

is not excluded or limited by this agreement, even if any other term of this agreement or the Licence Agreement would otherwise suggest that this might be the case.

7.2 Other than as set out in clause 7.1, neither AVANTA nor the Network Services Supplier shall be liable (whether for breach of contract, negligence or for any other reason) for any (a) loss of profits; (b) loss of sales; (c) loss of revenue; (d) loss of any software or data; (e) loss of use of hardware, software or data; (f) loss or waste of management or staff time; or (g) any indirect, consequential or special loss.

7.3 Subject to clause 7.1, neither AVANTA nor the Network Services Supplier will be liable for unauthorized access to AVANTA's or the Licensee's transmission facilities or equipment or for unauthorized access to or alteration, theft or destruction of the Licensee's data files, programs, procedures or information through accident, any other means or devices, or any other method, regardless of whether such damage occurs as a result of AVANTA's or its Network Service Supplier's negligence.

7.4 Subject to clauses 7.1 to 7.3, AVANTA's liability under this agreement and in relation to anything which AVANTA has done or not done in connection with this agreement (and whether the liability arises because of breach of contract, negligence or for any other reason) shall be limited to:

- (a) in respect of each event or series of connected events, an amount equal to the total amount payable by the Licensee for the Services covered under this agreement during the 3 month period prior to the month in which the event (or, in the case of a series of connected events, the first such event) occurs; and
- (b) in total:

1. (i) in respect of liability incurred during the first Year of the agreement, an amount equal to 125% of the projected charges under this agreement for that Year capped at £10 000; or
2. (ii) in respect of liability incurred during any subsequent Year, an amount equal to 125% of the total charges payable by the Licensee during the previous Year capped at £10 000.

For the purposes of this clause 7.4, the term "Year" means a period of 12 months beginning on the date of this agreement or on any anniversary of that date.

7.5 Subject to clause 7.1, AVANTA shall not be liable for any delay or failure in performing any of its obligations under this agreement if such delay or failure is caused by circumstances outside AVANTA's reasonable control. Such circumstances will without limitation include: (a) any act or omission of the Licensee or any Licensee personnel; (b) exceptional weather; (c) fire or explosion; (d) power or fuel supply failure or overload; (e) failure of or problem with any network (including telecommunications) other than the network of the Network Services Supplier (meaning all equipment and software operated by the Network Services Supplier up to the point at which an IP packet travelling over the network passes to equipment or software not operated and managed by the Network Services Supplier); (f) any computer virus or any hostile applet, JavaScript, ActiveX or other plug-in or other software; (g) unsolicited or "spam" e-mail; (h) hacking or denial of service attack; (i) war or civil disorder; (j) industrial disputes; (k) acts of government or regulatory authority or other competent authorities; (l) any hardware or software provided by third parties. If such delay or failure continues for 30 days or more then until it stops either party may terminate this agreement immediately by notice to the other.

7.6 Subject to clause 7.1, AVANTA acknowledges the importance of maintaining data protection and security but the Client shall be responsible for maintaining backups of all critical software, documents and applications on all of the Client's file servers, personal PCs, organisers and other electronic equipment. The parties hereby agree that AVANTA will have no liability whatsoever for any loss or compromise of data protection or security, for any failure to backup data, failure in backups of data or for any breaches of security to the Client's equipment, loss or corruption of data or any delays in the provision of the service for any reason whatsoever, unless resulting from the negligence of AVANTA or its employees agents or subcontractors.

## 8. Termination

8.1 Subject to the clauses below, this agreement shall continue until either party has terminated the agreement by giving one month's notice in writing to the other party (such notice to expire at any time after the Initial Term) unless the parties agree an additional further term.

8.2 AVANTA may terminate this agreement at any time by giving one month's notice in writing to the Licensee.

8.3 In the event that the Licence Agreement is terminated by either party or expires this agreement shall automatically terminate with effect from the date of such termination or expiry of the Licence Agreement.

8.4 AVANTA or the Licensee may terminate this agreement forthwith if:

- (a) the other breaches any term of the agreement and it is not possible to remedy that breach; or
- (b) the other breaches any term of the agreement and it is possible to remedy that breach, but the other fails to do so within 30 days of being asked to do so.

For the purposes of this clause 8, in order for it to be possible to remedy a breach it must be possible to take steps so as to put the other party in the position it would have been in if the breach had never occurred.

8.5 Apart from any other rights which AVANTA might have, if the Licensee breaches this agreement AVANTA may suspend performance of any of its obligations or exercise of any of Licensee's rights under this agreement until the Licensee remedies the breach to the reasonable satisfaction of AVANTA.

8.6 Termination of this agreement shall not affect any accrued or other rights which might be available to AVANTA whether under this agreement or otherwise. 8.7 Upon expiration, cancellation or termination of the agreement, the Licensee shall relinquish any IP addresses or address blocks assigned to the Licensee by AVANTA or the Network Services Supplier and AVANTA may, at any time following expiration, cancellation or termination, require the Licensee to collect the Licensee Equipment which AVANTA may remove from the IT Environment. **9. Data protection**

9.1 If, in connection with the provision of Services, AVANTA is required to process personal data:

1. (a) each party will ensure that all personal data provided or disclosed by the other party (i) is kept confidential and reasonably secure; and (ii) is not disclosed to any unauthorised third parties. The party to whom such personal data is provided or disclosed will comply with all reasonable instructions from the providing or disclosing party relating to the security and confidentiality of the personal data;
2. (b) a party to whom personal data is provided or disclosed by the other party (i) will only process that personal data in accordance with the instructions of that other party; and (ii) will not do anything with any of the personal data (including processing it) other than in accordance with instructions given by the other party;
3. (c) each party (i) will obtain and maintain all appropriate registrations and consents under the Data Protection Act 1998 in order to allow that party to perform its obligations under this agreement; (ii) will process personal data in accordance with the Data Protection Act 1998; and (iii) will use its reasonable endeavours to make sure that no act or omission by it, its employees, contractors or agents results in a breach of the obligations of either party under the Data Protection Act 1998.

## 10. Interpretation and general terms

10.1 In addition to those words and phrases which are defined on the Order Form and/or in the Licence Agreement, as applicable, and unless the context otherwise requires, the following words will have the following meanings: "**Accommodation**" means the AVANTA serviced offices occupied by Licensee under the terms of the Licence Agreement;

"**Dedicated Leased Line Services**" means Services which provide the Licensee with an agreed amount of dedicated non-contended bandwidth;

"**Facilities and Service Price List**" means the price list available at the Avanta Business Centre (as set out on the Order Form) where the Service(s) is (are) provided, as varied by AVANTA from time to time;

"**Initial Term**" means the period specified in the Order Form or the period from the date of this agreement until the date specified in the Order Form (as applicable);

"**IT Environment**" means the environment in which AVANTA may have agreed to house certain Licensee Equipment;

"**Licence Agreement**" means the Licence Agreement entered into between AVANTA and the Licensee as identified on the Order Form;

"**Licensee**" means the party to the Licence Agreement entered into with AVANTA or as identified on the Order Form;

"**Licensee Equipment**" means any equipment owned or provided by the Licensee.

"**Network Connection**" means the connection to the Internet provided by AVANTA.

"**Network Services Supplier**" means any third party supplier to AVANTA of certain services in connection with the provision of the Services;

"**Order Form**" means the Order Form attached to the front of this agreement; "**Provided Power**" means the power which is to be provided to the Licensee Equipment in the IT Environment;

"**Service Description**" means a description, in writing, of a specific Service to be provided by AVANTA from time to time;

"**Service Level Agreement**" means the agreement setting out the availability of the Services contained in the Service Description as varied by AVANTA from time to time;

"**Service(s)**" means the service(s) to be supplied by AVANTA under this agreement as listed on the Licence Agreement or subsequently ordered as Additional Services further described in the relevant Service Description(s);

"**Service Provision Fee**" means the fee charged to provide the service to a Switch Port, it does not include any Licensee set up or configuration

"**IT Support**" means the fee charged to provide IT support to clients in accordance to the Avanta pricelist.

"**Additional Services**" means any services not originally listed on license agreement"

"**Shared Internet Access Services**" means Services which provide the Licensee with access to contended bandwidth shared with users other than the Licensee; "**Term**" means the duration of this agreement unless terminated by either party in accordance with clause 8. The minimum Term is 3 months.

10.2 In this agreement:

(a) the headings are for convenience only and shall not affect its interpretation;

(b) reference to persons shall include legal as well as natural persons and (where the context allows) references to the singular shall include the plural and vice versa;

(c) references to clause numbers and schedules shall be to those of this agreement unless the contrary is stated;

(d) in the event of any conflict between these terms, the Order Form and the Service Description, these terms shall prevail (and the Order Form shall prevail over the Service Description) to the extent of such conflict;

(e) references to "include" or "including" in this agreement shall be treated as being by way of example and shall not limit the general applicability of any preceding words.

10.3 This agreement (comprising this Order Form and these Terms and Conditions and/or a Licence Agreement and these Terms and Conditions) contains all the terms agreed between the parties in relation to the Services. Each party acknowledges that, in entering into this agreement, it has not relied upon any representation made by the other party that has not been set out in this agreement, whether in any Service Description document or otherwise.

10.4 If either party fails to enforce (or delays enforcing) the provisions of this agreement then such failure or delay shall have no effect on the rights of that party. Waiver by either party of any of its rights shall not operate as a waiver of any rights in relation to any subsequent breach of this agreement. No right, power or remedy available to either party under this agreement is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

10.5 Variations to this agreement shall not be effective unless they are in writing and signed on behalf of both parties.

10.6 In the event of any provision of this agreement being held for any reason to be void voidable or unenforceable this shall not affect the validity or enforceability of any other provision of this agreement or of the remainder of this agreement as a whole.

10.7 All notices, agreements and consents under this agreement shall be in writing (unless otherwise specified in this agreement).

Notices to the Licensee will be considered served if handed personally to one of the Licensee's staff at the Accommodation. Notices to AVANTA will be considered served if mailed by recorded or special delivery mail, postage prepaid, to AVANTA at AVANTA's address shown in the Order Form, or such other address as AVANTA shall designate in writing.

10.8 No term of this agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this agreement.

10.9 Without affecting clause 5.3(a), this agreement shall be governed by and interpreted in accordance with the laws of England. In relation to any disputes arising from or connected with this agreement, the parties submit to the jurisdiction of the English courts.