

## TERMS AND CONDITIONS - SOFTWARE

These Terms and Conditions ("**T&Cs**") apply to any Agreement (as defined below) incorporating these T&Cs by reference, to the extent and within the scope set out in such Agreement.

### 1. Definitions and interpretation

Capitalized terms in these T&C (the "**T&C**") are defined as follows:

**"Access Credentials"** means any user name, identification number, password, license, security key or other technology or device used, alone or in combination, to verify an Authorized User's permission to access and use the Software.

**"Affiliates"** means any legal entity that directly or indirectly controls, or is controlled by, or is under common control with a Party. For the purposes of this definition, control will mean the direct or indirect ownership of, (a) in the case of corporate entities, securities authorized to cast more than fifty percent (50%) of the votes in any election for directors or (b) in the case of non-corporate entities, more than fifty percent (50%) ownership interest with the power to direct the management and policies of such non-corporate entity.

**"Agreement"** means the agreement between Avery Dennison and Client governing the access and use of the Software, consisting of a SOW and any Schedules to it, where the Parties agree to also incorporate these T&Cs by reference.

**"AUP"** means the Acceptable Use Policy that each Authorized User must adhere to before the first access or use of the Software and observe at all times while accessing and using the Software (<https://www.identificationsolutions.averydennison.com/content/dam/averydennison/rbis/global/en/documents/Terms-and-Conditions-of-Sale/AUP.pdf>).

**"Authorized User"** means the Client's employees and any other individuals involved by the Client's consultants, contractors, vendors, suppliers, agents or other third parties to whom Client authorizes to access and use the Software, subject to and in accordance with the Agreement.

**"Avery Dennison"** means the specific Affiliate of Avery Dennison Corporation entering into the Agreement.

**"Client"** or **"Customer"** means the specific legal entity entering into the Agreement as a counterparty to Avery Dennison.

**"Client Data"** means any data (including personal data) that the Client directly or indirectly (through its Authorized Users) submits or shares with Avery Dennison or its Affiliates, partners and subcontractors by using the Solution.

**"Confidential Information"** means any information which is not generally known to the public and has come to either Party's knowledge (whether before, on or after the Effective Date; and whether orally, in writing, in electronic form or other media) by virtue of its business relationship with the other Party under the Agreement; and which relates to a Party's business, including its products, data, operations, processes, designs, drawings, specifications, test results, samples, quotations, prices, marketing materials, plans or intentions, developments, trade secrets, know-how, market opportunities, personnel, suppliers and customers, any other information of a confidential nature or which would appear to a reasonable person (familiar with the Receiving Party's business and the industry in which it operates) to be confidential (including the existence or provisions of the Agreement and the negotiations relating to it) and (subject to Clause 7.3) all information derived from any of the above; but does not include information that the Receiving Party can demonstrate by written or other documentary records: (a) was rightfully known to the Receiving Party without restriction on use or disclosure prior to such information being disclosed or made available to the Receiving Party in connection with the Agreement; (b) was or becomes generally known by the public other than by the Receiving Party's or any of its representatives, employees or agents' noncompliance with the Agreement; (c) was or is received by the Receiving Party on a non-confidential basis from a third party that was not or is not, at the time of such receipt, under any

obligation to maintain its confidentiality; or (d) was or is independently developed by the Receiving Party without reference to or use of any Confidential Information.

**"Data Protection Agreement"** means the agreement detailing the processing of any personal data under the Agreement (if applicable).

**"Derived Data"** means de-identified and anonymized data derived or inferred by Avery Dennison (directly or via third-parties) from either Client Data or Software Data.

**"Disclosing Party"** has the meaning given in Clause 8.

**"Documentation"** means user manuals, handbooks and guides relating to the access or use of the Software as made available by Avery Dennison, its Affiliates or any third parties on its behalf to the Client in writing and as updated from time to time.

**"Effective Date"** means the effective date of the Agreement.

**"Feedback"** means any ideas, comments, use behaviors, suggestions, crash reports or support related communications regarding the possible creation, modification, correction, improvement or enhancement of the Software.

**"Fees"** has the meaning given in Clause 6.

**"Force Majeure Event"** means any event or circumstances beyond the Parties' reasonable control including fire, flood, war, military actions, mechanical breakdown, failures of carriers, embargo, riot, labour unrest (including strike, go-slow, work to rule), the intervention of any governmental authority, terrorist act, diseases, pandemics, epidemics, or other viral outbreaks, embargo, failure of third parties (including suppliers and/or logistics provider), telecommunications or power outage, riot, government requirements (including refusal of license by the government or other governmental agencies), natural disasters, cyber-attacks, delays by suppliers or materials shortages, difficulty in obtaining workers due to increased costs or otherwise goods or transport.

**"IPR" or "Intellectual Property Rights"** means rights in inventions, patents, trademarks, service marks, rights in designs, rights in trade names and business names, rights to sue for passing off, rights in the nature of unfair competition rights, trade secrets, know-how, copyrights (including, for the avoidance of doubt, rights in computer software), data rights, database rights and semiconductor topography rights, rights of confidentiality and other proprietary rights relating to information, including know how and other technical information (in each case whether registered or unregistered and including applications to register any of the foregoing) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world.

**"Indirect and Business Losses"** means any:

(a) consequential, incidental, indirect, exemplary, special, enhanced or punitive damages (including reasonable legal fees as awarded by a court of competent jurisdiction); and

(b) loss of production, use, goodwill, business, anticipated savings, revenue or profit or diminution in value (including loss or corruption of data or equipment, or breach of data or system security), whether direct or indirect.

**"Party"** means either Avery Dennison or Client, and **"Parties"** both of them together.

**"Receiving Party"** has the meaning given in Clause 8.

**"Software"** means the web-based or cloud-based SaaS, as well as the object code version of downloadable or pre-installed software applications or functionalities that are to be made available by Avery Dennison or its Affiliates (directly or via third parties) to the Client as part of the Solution, if and to the extent described in the SOW, including (i) APIs made available or prescribed by Avery Dennison or its Affiliates; and (ii) any software updates, upgrades or new versions.

**"Software Data"** means any data derived from the use of the Software by Client or Authorized Users, and used by Avery Dennison, its Affiliates or any third parties on its behalf for the provision of the Software to the Client.

**“SOW”** means the Statement of Work entered into by the Parties to which these T&C are incorporated by reference.

**“Term”** has the meaning given in Clause 5.

**“Third-party Services”** means any third-party data, services or technology either (i) made available by Avery Dennison or its Affiliates through the Software; or (ii) integrated with the Software by Client with Avery Dennison’s prior written consent.

## **2. The Software**

- 2.1 During the Term, and subject to the Client’s compliance with the Agreement, Avery Dennison shall grant Client a revocable, non-exclusive, non-sublicensable, non-transferable, limited right to access and use the Software, and the required Documentation.

The SOW exhaustively defines the specific Software provided to the Client, and no implied or tacit products or services whatsoever shall be derived from the SOW.

- 2.2 Unless otherwise agreed in the SOW, Avery Dennison shall not be required to provide any setup, installation, support, training, translation, customizations, updates or upgrades of or to the Software.
- 2.3 Web-based or cloud-based Software is offered on a multi-tenant basis, and therefore Avery Dennison may rollout automatic updates or upgrades thereof which (i) Client might not be allowed to opt out; or (ii) might only be available via premium subscriptions on top of the fees set forth in the SOW. Avery Dennison will use reasonable efforts to notify the Client in advance of any update, upgrade, discontinuation or other modifications that, at Avery Dennison’s sole discretion, might be deemed as partially detrimental for the Client.
- 2.4 The Software shall only be accessed or used by Authorized Users. Client shall not use Third-party Services to access, connect to or communicate with the Software without prior written consent of Avery Dennison.
- 2.5 The use of Third-party Services is subject to the Client’s compliance with the third-party terms for software elements incorporated into the Software. The Client shall indemnify and hold harmless Avery Dennison in respect of any breach of any such third-party terms by the Client or any of its Authorized Users or any losses incurred by Avery Dennison arising out of or in connection with the use of such Third-party Services. Avery Dennison shall have no liability which arises as a result of the Client’s use of Third-party Services.

## **3. Use Restrictions**

- 3.1 The Client shall not, and shall not permit any third party to, access or use the Software except as expressly permitted under the SOW.
- 3.2 Avery Dennison may permanently disable or deny Clients’ or its Authorized Users’ access to the Solution if (i) it receives a demand, request or order from a relevant authority that requires Avery Dennison to do so; or (ii) it has a reasonable suspicion that the Client has breached the Agreement or its Authorized Users have breached any terms of the AUP.
- 3.3 Client shall only appoint Authorized Users on an as-needed basis, and shall promptly withdraw (or request Avery Dennison to withdraw) any Access Credentials to Authorized Users when their use of the Software is not further required, or whenever its legal relationship with Authorized Users terminates or expires. Avery Dennison reserves the right to randomly audit any access or use of the Software by Authorized Users and their Access Credentials to ensure that Client appoints and manages Authorized Users in compliance with the Agreement.
- 3.4 Avery Dennison may change (or request Client or Authorized Users to change) any Access Credentials for the Software according to its internal policies as applicable from time to time.

## **4. Client’s obligations**

- 4.1 The Client is responsible and liable for all access and use of the Software and the Documentation, directly or indirectly, whether such access or use is permitted by or in violation of the Agreement. Without limiting the generality of the foregoing, the Client is responsible for all acts and omissions of Authorized Users

and its employees, officers, contractors and appointed personnel related to the Software. Any act or omission by Authorized User, employee, officer, contractor, or appointed personnel that constitutes a breach of the AUP or that would constitute a breach of the Agreement if taken by the Client, will be deemed a breach of the Agreement by Client, irrespective of the legal relationship between Client and such Authorized User, employee, officer, contractor, or appointed personnel.

4.2 The Client shall:

- (a) upon Avery Dennison's request, share all information regarding Authorized Users' use and access of the Software, and all details about any Access Credentials managed by Client;
- (b) comply with Clause 2 of the AUP as if it were incorporated hereunder;
- (c) cause Authorized Users to comply with the AUP; and
- (d) notify Avery Dennison as soon as it becomes aware of any unauthorised use of the Software.

4.3 Client's failure to comply with any of the foregoing shall not reduce whatsoever any of the Client's obligations and responsibilities under the Agreement.

4.4 Client shall bear all responsibility for the use of the Software, including for:

- (a) the legality, integrity, accuracy and quality of all Client Data in a timely manner during all its lifecycle;
- (b) using the Software in compliance with all applicable laws, and having all necessary permissions, licenses and authorizations required to upload or share any Client Data through the Software;
- (c) performing any operations by providing the correct input, and/or using the appropriate technology in order to achieve the expected results (including any physical components such as hardware devices and tags and labels); and
- (d) mapping, linking or otherwise associating any data in the Software with any items or products.

4.5 The Client is responsible for, and must provide all telecommunications connections, access to the Internet, servers, devices, equipment, cabling, materials, software and other technology as required for the Software to perform as expected.

4.6 The Client shall:

- (a) set up, maintain and operate in good repair and up to date all systems on or through which the Software is accessed or used, including adequate security to prevent any unauthorized access to the Software; and
- (b) immediately report to [securityoperations@averydennison.com](mailto:securityoperations@averydennison.com) any actual or alleged security breach on Client's systems on or through which the Software is accessed or used, or any exposure of the Access Credentials.

5. **Term and Termination**

5.1 Unless otherwise agreed by the Parties in the SOW, all rights and obligations hereunder shall expire 12 months after the Effective Date and shall be extended for successive periods of 12 months' each, unless prior written notice by either Party at least 3 months before expiration of the initial term or the then-current extension (the "**Term**").

5.2 Either Party may terminate the Agreement, effective on written notice to the other Party:

- (a) if the other Party materially breaches the Agreement, and such breach remains uncured thirty (30) days after the non-breaching Party provides the breaching Party with written notice of such breach;
- (b) if the other Party becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency laws; or makes or seeks to receiver, trustee, custodian or similar

agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

(c) as otherwise set forth in the SOW.

5.3 Upon termination or expiry of the Agreement:

- (a) the Client's rights and permissions to access and use the Software shall immediately cease and it shall refrain (and instruct Authorized Users to refrain) from further using the Software;
- (b) each Party shall destroy all Confidential Information of the other Party which is in its possession or control;
- (c) Client shall immediately erase any copies of the Software and all Software Data and backups thereof then in its control, unless obtained through sharing or export functionalities of the Software, or otherwise consented by Avery Dennison;
- (d) Avery Dennison shall erase any Client Data then in its control, which may thus not be available in case of subsequent licences to the Software save for any Client Data in its backups, archives and disaster recovery systems which Avery Dennison may retain for as long as Avery Dennison's internal policies require, or as may be required by applicable laws.

5.4 Avery Dennison shall not provide any post-termination assistance unless otherwise agreed by the Parties separately upon termination.

5.5 Any termination of the Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party, nor the right to claim losses arising out of an event occurring on or before termination, nor the continued existence and the validity of the rights and obligations of the Parties under any provisions of the Agreement necessary for the interpretation or enforcement thereof.

6. **Fees**

6.1 In exchange for the access and use of the Software, Client shall pay Avery Dennison the fees provided for in the SOW, plus any reimbursable out-of-pocket expenses incurred by Avery Dennison when providing the Software (the "**Fees**").

6.2 Unless otherwise stated in the SOW, the Fees are:

- (a) due for payment thirty (30) days after Client's receipt of the invoice;
- (b) net amounts, exclusive of any value added tax or other applicable taxes;
- (c) due in the currency of Avery Dennison's venue (if the SOW refers to or the invoice is issued in any different currency, the conversion shall be calculated pursuant to the rate of exchange for such currency reported in The Wall Street Journal as of the last day of the month immediately preceding the Effective Date, and shall be fixed to that rate during the whole Term);
- (d) payable (i) to the bank account specified in the invoice, in clear funds; (ii) from a bank account owned by Client;
- (e) non-refundable, and without any right to deduct or offset from the Fees any taxes, contributions or expenses; and
- (f) subject to late payment interest on any past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable laws.

6.3 Client shall make reports, withhold and pay, as applicable and when and as due, any and all customs, excise duties, charges, levies or other taxes incurred or owed for its obligations under the Agreement, and provide Avery Dennison with appropriate documentation satisfactory to the applicable taxing authorities to substantiate any claim of exemption from any such taxes. Avery Dennison shall not be responsible for the withholding, reporting, or payment of any taxes arising out of any Client's obligations under the Agreement, including obligations arising out of any applicable laws. Client shall pay an additional amount to Avery Dennison to ensure that the latter receives and retains the same amount that it would have

received had no tax been withheld from, or otherwise due as a result of, the payment. Client shall indemnify Avery Dennison for any losses or damages arising out of Client's breach of this section.

- 6.4 Without prejudice to any other rights or remedies of Avery Dennison, where Avery Dennison identifies any use of the Software outside of the scope permitted under the Agreement, Avery Dennison shall be entitled to invoice and the Client shall pay all additional fees (calculated using Avery Dennison's then current pricing) for such out of scope use.
- 6.5 Avery Dennison shall have the right to terminate the Agreement where the Client fails to pay any amount due under the Agreement on the due date for payment and remains in total or partial default for longer than 30 days after such due date.

## 7. Intellectual property rights

- 7.1 As between the Parties, the Software and all IPR contained therein, are owned by Avery Dennison or its licensors and nothing in the Agreement shall grant, by implication, waiver, estoppel, or otherwise, the Client, its Authorized Users or any third party any IPR or other right, title, or interest in or to the Software other than as set out hereunder.
- 7.2 All IPR in any materials or deliverables which are created by or on behalf of Avery Dennison as a result of the provision of the Software pursuant to the Agreement (including the Derived Data) together with any Feedback shall immediately vest in Avery Dennison on creation. If by operation of law such IPR does not automatically vest in Avery Dennison, then the Client assigns to Avery Dennison and its Affiliates (by way of present and, where appropriate, future assignment) any IPR in and to such materials, deliverables and data in each case at no cost to Avery Dennison. If such assignment is not permitted by applicable laws, Client grants to Avery Dennison (by way of present and, where appropriate, future granting) a sublicensable, worldwide, perpetual, royalty-free and (subject to applicable laws) irrevocable license to all IPR in or relating to such materials, deliverables and data to use, distribute and commercialize them, including to use and incorporate as is or any derivative works thereof to improve the Software, to develop any new products or services (including software, know-how, analytics or other purposes) or to assist third parties in such processes. The Client shall waive (or procure the waiver of) all moral rights which exist in such IPR.
- 7.3 Notwithstanding any confidentiality or other provisions to the contrary in the Agreement:
  - (a) Client grants to Avery Dennison (by way of present and, where appropriate, future granting) a sublicensable, worldwide, royalty-free and (subject to applicable laws) irrevocable license during the Term to use the Client Data to provide the Software to Client; and
  - (b) Client grants to Avery Dennison (by way of present and, where appropriate, future granting) a sublicensable, worldwide, perpetual, royalty-free and (subject to applicable laws) irrevocable license to modify, compile, create derivative works and develop other results from non-personal Client Data and Software Data; and to all IPR in or relating to such results to use, distribute and commercialize them, including to improve the Software, to develop any new products, data, technology or services (including software, know-how, analytics or other purposes) or to assist third parties in such processes.

## 8. Confidentiality

- 8.1 In connection with the Agreement, each Party (as the "**Disclosing Party**") may disclose or make available Confidential Information to the other Party (as the "**Receiving Party**").
- 8.2 As a condition to being provided with any disclosure of or access to Confidential Information, the Receiving Party shall for as long as the Confidential Information qualifies as such:
  - (a) not access or use Confidential Information other than as reasonably necessary to exercise its rights or perform its obligations under and in accordance with the Agreement;
  - (b) except as may be permitted by and subject to its compliance with this Clause, not disclose or permit access to Confidential Information other than to its employees, representatives, contractors and advisors and (in the case of Avery Dennison) its Affiliates and its Affiliates' employees, representatives, contractors and advisors who: (i) need to know such Confidential

Information for purposes of the Receiving Party's exercise of its rights or performance of its obligations under and in accordance with the Agreement; (ii) have been informed of the confidential nature of the Confidential Information and the Receiving Party's obligations under this Clause; and (iii) are bound by written confidentiality and restricted use obligations at least as protective of the Confidential Information as the terms set forth in this Clause;

- (c) safeguard the Confidential Information from unauthorized use, access or disclosure using at least the degree of care it uses to protect its own sensitive information and in no event less than a reasonable degree of care; and
- (d) ensure its representatives' compliance with, and be responsible and liable for any of its employees, representatives, contractors and advisors and (in the case of Avery Dennison) its Affiliates and its Affiliates' employees, representatives, contractors and advisors non-compliance with the terms of this Clause.

Notwithstanding Clause 5.5, the foregoing obligations shall expire 3 years after the Term, except with respect to trade secrets classified as such under applicable laws.

- 8.3 If the Receiving Party or any of its representatives is compelled by applicable law to disclose any Confidential Information then, to the extent permitted by applicable law, the Receiving Party shall promptly, and prior to such disclosure, notify the Disclosing Party in writing of such requirement. The Receiving Party shall disclose only that portion of the Confidential Information that the Receiving Party is legally required to disclose.
- 8.4 In the event of a breach of this Clause, damages may not be an adequate remedy and each Party shall be entitled to seek any legal or equitable relief, including injunctive relief or specific performance, upon the breach (or reasonably anticipated breach) of any part of this Clause.

## 9. **Data Protection**

- 9.1 Where required by applicable law, both Parties shall enter into and comply with the Data Protection Agreement.

## 10. **Disclaimer of warranties**

- 10.1 THE SOFTWARE IS PROVIDED "AS IS" AND NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY ARE MADE BY AVERY DENNISON IN RESPECT OF ANY MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, COURSE OF DEALING, USAGE, TRADE PRACTICE, INFORMATION OR FUNCTIONALITY OF THE SOFTWARE.
- 10.2 Avery Dennison does not warrant, represent or guarantee that the Software, or any products or results of the use thereof will meet the Client's requirements, achieve any intended result, be compatible with Client's or any Third-party Services, or be secure, accurate, complete, up to date, free of defects, errors, bugs or vulnerabilities, or that such faults will be corrected. All decisions, judgments and advice made by Client with the assistance or use of the Software are exclusively Client's responsibility.
- 10.3 Save as expressly set out in the SOW, Avery Dennison makes no warranty of any kind that the Software will be constantly available or subject to any service levels, operate without interruption, meet any performance expectations, endure any minimum lifespan or be integrable with any system or technology.

## 11. **Liability**

- 11.1 Subject to Clause 11.3, in no event shall either Party be liable to the other arising out of or in connection with the Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, or otherwise, for any Indirect and Business Losses regardless of whether that Party was advised of the possibility of such Indirect and Business Losses, or were otherwise foreseeable.
- 11.2 Subject to Clauses 11.1 and 11.3, each Party's maximum aggregate liability to the other Party arising out of or in connection with the Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability, or otherwise shall not exceed the amounts paid to Avery Dennison under the Agreement during the twelve months preceding the date of first claim made by that other Party.

- 11.3 Nothing in the Agreement shall limit or exclude:
- (a) either Party's liability to the other for (i) death or personal injury caused by Avery Dennison's negligence; (ii) wilful misconduct, fraud or fraudulent misrepresentation; or (iii) any other liability which cannot be validly limited or excluded by law; or
  - (b) the Client's liability for breaches of Clause 8 or Clause 12, or for any use of the Software outside the scope of the Agreement.
- 11.4 Neither Party will be liable to the other for any delay or failure to perform any obligation under the Agreement (other than payment of the Fees) if the delay or failure is due to a Force Majeure Event, in so far as such an event prevents or delays the affected Party from fulfilling its obligations.
- 11.5 Each Party agrees that the other Party's Affiliates and any respective officers, directors, shareholders, employees, agents or representatives of that Party or its Affiliates shall have no liability to the first Party arising out of or in connection with the Agreement under any legal or equitable theory, including breach of contract, tort (including negligence), strict liability or otherwise.
- 12. Indemnification**
- 12.1 Subject to Clause 11.2, Avery Dennison shall indemnify, hold harmless and defend the Client from and against all proven liabilities, costs, expenses, damages and losses incurred by the Client arising from a claim that the Client's use of the Software in accordance with the Agreement infringes the IPR of a third party.
- 12.2 Clause 12.1 shall not apply, and Avery Dennison shall have no obligation to indemnify, hold harmless or defend Client, where the claim arises in relation to:
- (a) any combination of the Software with any products, data, services or technology that is not expressly authorized by Avery Dennison;
  - (b) any Third-party Services (including open source software);
  - (c) any modifications to the Software not carried out by Avery Dennison;
  - (d) Avery Dennison's compliance with any particular specifications, instructions or requirements provided by the Client; or
  - (e) Client's failure to substantially comply with Avery Dennison's reasonable written instructions which if implemented would have rendered the Software non-infringing.
- 12.3 Client shall fully indemnify, hold harmless and, at Avery Dennison's option, defend Avery Dennison from and against all claims, liabilities, costs, expenses, damages and losses related to:
- (a) Client's use of the Software, including use of the Software outside of the scope of the Agreement and Client's failure to comply with any third-party terms for Third-party Services; or
  - (b) any use by Avery Dennison of any Client Data (or any data or material generated from such Client Data).
- 12.4 In the event that a claim arises to which the indemnity in either Clause 12.1 or 12.3 applies, the indemnified party shall:
- (a) promptly give written notice of that matter to the indemnifying party, specifying in reasonable detail the nature of the relevant matter and shall use its reasonable endeavours to avoid and mitigate the losses it incurs, allowing the indemnifying party to assume the defense of the indemnified party at the indemnifying party's expense while having control of choice of counsel, litigation strategy, negotiation and settlement, with such settlement being subject to the approval of the indemnified Party under the conditions set out under 12.4 (d) below;
  - (b) not make any admission of liability, agreement or compromise in relation to the matter in respect of which it seeks to be indemnified without the prior written consent of the indemnifying party, unless the latter does not take control of the claim within a reasonable time frame after being prompt notice of the claim as per 12.4 (a) above;



- (c) until the indemnifying party assumes the defense of the indemnified party after having been timely notified of the claim, have the option to assume conduct of all or some of the claims and proceedings relating to the indemnity at its own cost, including choice of counsel, determination of litigation and settlement strategy at its own cost, and cooperate with the indemnifying Party in relation to all such claims and proceedings; and
- (d) accept and approve any settlement, compromise, or judgment with respect to claims where the indemnifying Party takes control of the defense and negotiation as per (a) above, if it involves only payments by the indemnifying party (which are made or adequately provided for at the time of such settlement, compromise, or judgment) and provides for the unconditional release by the claimant or plaintiff of the indemnified party from all liability with respect to such claim, does not impose injunctive relief against it, and does not require any admission or statement of fault, negligence, guilt, or complicity by the indemnified party.

**13. Assignment and subcontracting**

- 13.1 The Client may not assign, transfer, charge or otherwise encumber, declare a trust over or deal in any other manner with the Agreement or any right, benefit or interest under it, or sub-contract any of its obligations under it, without the prior written consent of Avery Dennison.
- 13.2 Avery Dennison may assign any or all of its rights and obligations under the Agreement to its Affiliates, and delegate any of its obligations under the Agreement (including engaging any subcontractors for the provision of the Software).

**14. Export Regulation**

- 14.1 The Software utilizes technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Client shall not, directly or indirectly, relocate, export, re-export, or release the Software to, or make them accessible from, any other location, jurisdiction or country, regardless of whether export, re-export, or release is prohibited by law, regulation, or rule to such location or not.

**15. Compliance**

Both Parties shall comply with, and will cause all of its Affiliates and the respective directors, officers, employees, agents or representatives of such companies, and any other person or entity acting on their behalf or any of its Affiliates in connection with its obligations with the Agreement to abide by all applicable anti-bribery laws, including the U.S. Foreign Corrupt Practices Act, the U.K. Bribery Act, the OECD Convention and any local applicable anti-bribery laws.

**16. Other provisions**

- 16.1 The Agreement constitutes the entire agreement and understanding between the Parties with respect to the SOW, superseding all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral. Client shall enter into the Agreement in reliance only upon the representations, warranties and promises specifically contained or incorporated in such Agreement, and Avery Dennison shall have no liability in respect of any representation, warranty or promise unless it was made fraudulently.
- 16.2 No variation of the Agreement shall be effective unless it is in writing and signed by both Parties (or their authorised representatives). Notwithstanding the foregoing, the provisions of the Agreement might be amended by Avery Dennison as may reasonably be required to reflect changes in applicable laws.
- 16.3 To the extent that there is any conflict between these T&C and the SOW, these T&C shall prevail unless expressly stated otherwise in such SOW.
- 16.4 The Agreement excludes any other terms and conditions that the Client or Authorized Users may seek to impose or incorporate or which may be implied by law, trade custom, practice or course of dealing, and the applicability of general terms and conditions applied by the Client and any other third parties are excluded.
- 16.5 Nothing in the Agreement shall create a partnership or joint venture between the Parties or render a Party the agent of the other, nor shall a Party hold itself out as such (whether by an oral or written

representation or by any other conduct) and neither Party shall enter into or have authority to enter into any engagement, or make any representation or warranty on behalf of, or pledge the credit of, or otherwise bind or oblige the other Party.

- 16.6 Neither Party shall be responsible or liable for any obligation arising out of or related to the employment of any employees, agents, subcontractors or representatives of the other Party including any liability to such employees, agents, subcontractors or representatives, for keeping records, making or filing reports, or paying unemployment and worker's compensation taxes and/or contributions. In no event shall any of the employees, agents, subcontractors or representatives of a Party be or be construed to be or have any rights or claims as employees of the other Party.
- 16.7 To the extent that any provision of the Agreement is found by any court or competent authority to be invalid, unlawful or unenforceable in any jurisdiction, that provision shall be deemed not to be a part of the Agreement, and it shall not affect the enforceability of the remainder of the Agreement nor shall it affect the validity, lawfulness or enforceability of that provision in any other jurisdiction.
- 16.8 No single or partial exercise, or failure or delay in exercising any right, power or remedy by any Party shall constitute a waiver by that Party of, or impair or preclude any further exercise of, that or any right, power or remedy arising under the Agreement or otherwise.
- 16.9 Any and all notices or other communications required or permitted by the Agreement or by law to be served on or given to either Party under the Agreement shall be in writing and shall be deemed duly served, given, or delivered when sent by first-class postage prepaid, or via overnight courier, at the addresses specified in the SOW.
- 16.10 The SOW may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the SOW.
- 16.11 No third party shall have any right to enforce any term of the Agreement.
- 16.12 In the Agreement, except where the context otherwise requires: (a) any reference to any law includes that law as amended, extended, consolidated, re-enacted or applied by or under any other law before or after the Agreement, and any subordinate legislation made (before or after the Agreement) under that or any other applicable enactment; (b) the singular includes the plural and vice versa, and reference to any gender includes the other genders; (c) references to a person include any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having a separate legal personality); (d) references to the Agreement or any other agreement or document are to the Agreement or such other agreement or document as it may be validly varied, amended, supplemented, restated, renewed, novated or replaced from time to time; (e) references to a Party to the Agreement include a reference to its successors and permitted assigns under the Agreement; (g) any notices, consents, agreements, approvals or similar to be given under the Agreement must be in writing (including email); (f) the words "including" and "in particular" and any similar words or expressions are by way of illustration and emphasis only and do not operate to limit the generality or extent of any other words or expressions; and (g) headings are for convenience only and do not affect its interpretation.

## **17. Governing Law and Jurisdiction**

- 17.1 The Agreement and any disputes or claims (including non-contractual disputes or claims) arising out of or in connection with the agreement (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ohio, NA. Notwithstanding the foregoing, the following laws shall apply, based on Avery Dennison's registered seat in (i) EMEA, the laws of England & Wales; (ii) LATAM (except Brazil), the laws of Mexico; (iii) Brazil, the laws of Brazil; (iv) APAC (except India and China) the laws of Singapore; (v) India, the laws of India; and (vi) China, the laws of China. All the aforementioned governing laws will apply without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction. The provisions of the United Nations Convention on Contracts for the International Sale of Products shall not apply.
- 17.2 Any disputes or claims arising out of or in connection with the Agreement (including non-contractual disputes or claims) shall be brought before the courts of Ohio. Notwithstanding the foregoing, the following courts will resolve any disputes and claims, based on Avery Dennison's registered seat in (i)

EMEA, the courts of London; (ii) LATAM (except Brazil), the courts of Mexico City; (iii) Brazil, the courts of Brazil; (iv) APAC (except India and China), the courts of Singapore; (v) India, the courts of Gurugram; and (vi) China, the courts of China. Notwithstanding the foregoing, Avery Dennison may bring any such dispute before or file any claim at the competent courts of the country of Client's residence under the laws applicable to that country; and/or seek interim injunctive relief or any other interim measure of protection in any court of competent jurisdiction. The parties waive to any right to a jury trial for the adjudication of any claim or dispute arising out of this Agreement.