



TERMS OF SALE

AVAVA and Customer are referred to herein, individually, as a “**Party**” and, collectively, the “**Parties**.” Capitalized terms not defined herein have the meanings given to them in the Order Form. These terms of sale, the terms of each Order Form, and AVAVA’s privacy policy available at www.avavaskin.com (“**Privacy Policy**”) which is incorporated herein by reference, are referred to, collectively, as the “**Terms**.” These Terms govern, and will apply to, any purchase of AVAVA Offerings, Services, and Treatment Packages from AVAVA and Customer’s purchase of, access to, and use thereof. Customer’s, its Authorized Users’, and its Patients’ access to and use of the Platform are subject to, and governed by, the Platform TOS and not these Terms. No terms or conditions (pre-printed or otherwise) included in any purchase order, ordering document, or other business form provided or otherwise submitted by Customer to AVAVA will have any force or effect or otherwise be deemed to amend or modify these Terms, and all such terms and conditions are expressly rejected by AVAVA. In the event of any conflict or inconsistency between these Terms and the applicable Order Form, the Order Form will control.

1. **ORDERING; PAYMENT.** Availability of the AVAVA Offerings is not guaranteed, and AVAVA may impose quantity limits on AVAVA Offerings. Customer will purchase, and AVAVA will sell, the AVAVA Offerings, Services, and Treatment Packages pursuant to these Terms and the applicable Order Form. Customer will pay the prices and amounts due and payable to Avava (“Fees”) as set forth in the Order Form. AVAVA will invoice Customer, and Customer will pay AVAVA, based on the Fees and payment method set forth in the applicable Order Form. All Fees are denominated, and will be paid by Customer, in U.S. Dollars. All sales are final. Except as expressly set forth herein, any and all Fees payable by Customer are non-cancellable and non-refundable. If any Fees are paid using a credit card, AVAVA may seek pre-authorization of the credit card account prior to Customer’s purchase. All Fees will be paid prior to shipment and payment is not contingent upon installation and/or acceptance of the Offerings. Unless otherwise set forth in an Order Form, all Fees are due within thirty (30) days of the invoice date. Late payments are subject to a service charge of 1.5% per month or the maximum amount allowed by Applicable Laws, whichever is less. Customer will reimburse any documented costs or expenses incurred by AVAVA to collect any Fees that are not paid when due (including, without limitation, reasonable attorneys’ and chargeback fees). Fees may not be withheld or offset by Customer for any reason. Customer is responsible for any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to its payment of Fees, whether domestic or foreign (“**Taxes**”), other than Taxes based on AVAVA’s income. All Fees are exclusive of Taxes. AVAVA may terminate these Terms in the event that Customer fails to pay any sum owed by Customer to AVAVA by the applicable due date. AVAVA, at its sole discretion, may make promotional offers with different features and different pricing to any of AVAVA’s customers. These promotional offers, unless made to Customer, will not apply to Customer’s Order Form or these Terms. AVAVA may change the Fees for any AVAVA Offerings, Services, and/or Treatment Packages, including additional fees or charges, on a going-forward basis (with or without notice to Customer).

2. **DELIVERY AND SHIPMENT.** AVAVA or its designated common carrier will ship or otherwise deliver the AVAVA Offerings to the Authorized Site. AVAVA will use commercially reasonable efforts to deliver the AVAVA Offerings by the Delivery Date. All AVAVA Offerings delivered under these Terms will be packed for shipment in AVAVA’s standard packaging and marked for shipment to the Authorized Site. Unless otherwise set forth in an Order Form, AVAVA Offerings will be delivered D.D.P Authorized Site (INCOTERMS 2020). All freight, insurance, and other shipping expenses, if any, associated with the delivery and shipment of AVAVA Offerings ordered by Customer to the Authorized Site are set forth in the Order Form and will be Customer’s responsibility. Title and risk of loss in the AVAVA Offerings will transfer to Customer upon delivery to the Authorized Site. Delivery Dates and any other dates or times provided by AVAVA with respect to its performance of Services are estimates only and may be subject to change in AVAVA’s sole discretion. AVAVA will not be responsible or liable for any delays in the performance of its obligations with respect to Services or for any changes to Delivery Dates under these Terms. Customer is solely responsible for (a) preparing the Authorized Site for delivery of the AVAVA Offerings and for AVAVA’s performance of Services, and (b) for ensuring that all Customer Equipment is acquired, in place and ready for use (in each case of (a) and (b) prior to the Delivery Date and/or the date scheduled for the performance of Services), and any failure to do so may result in delays or additional charges being assessed against Customer for such delays.

USE; RESTRICTIONS

3.1. **General.** Customer will access and use the AVAVA Offerings, and will be solely responsible for ensuring that AVAVA Offerings are maintained, stored, operated, registered (if applicable), and used, in accordance with Applicable Laws, the Documentation, and these Terms and, if applicable, the Training Services provided by AVAVA. Authorized Users will use reasonable care when using and operating the AVAVA Offerings. AVAVA is not responsible for any liabilities arising from Customer’s or its Authorized Users’ failure to comply with any Applicable Laws, these Terms, or the Documentation. Customer will not be able to use a Device unless all Updates made available by AVAVA to Customer are properly installed on a Device. Customer acknowledges that (a) certain AVAVA Offerings (including the Devices) are provided only for, and shall only be used for, the intended uses expressly set forth in the instructions for use provided by AVAVA in the Documentation, Specifications, and the approved or cleared labeling for such AVAVA Offerings (the “**Intended Uses**”), and (b) any other use of such AVAVA Offerings is a material breach of these Terms resulting in (i) all representations and warranties in these Terms regarding such AVAVA Offerings being rendered null and void, and (ii) AVAVA being entitled to pursue any and all remedies that may be available to it under these Terms and at law and in equity. AVAVA is under no obligation to provide Customer with any Updates, but reserves the right, in its sole discretion, to provide Updates to Customer.

3.2. **Accounts.** Customer and its Authorized Users must register an Account to access and use a Device. When registering for an Account, Customer and its Authorized Users will be required to provide AVAVA with certain registration information (including, the full corporate name of Customer, an email address, and other contact information). Customer acknowledges and agrees, on behalf of itself and its Authorized Users, that the information provided to AVAVA is accurate, complete, and not misleading, and that Customer will keep, and will require that its Authorized Users keep, such information accurate and up to date at all times. Each Account is personal to that Authorized User and may not be transferred, sold, or otherwise assigned to or shared with any other third party. Authorized Users must keep their login credentials for their Accounts confidential and not share them with anyone else. Customer is responsible and liable for its Authorized Users’ compliance with these Terms and any acts or omissions associated with their Accounts. Customer will immediately notify AVAVA through the Contact Channel if it becomes aware of, or has a reasonable basis to believe that, any of its Authorized Users’ login credentials or their Accounts have been compromised or are no longer secure.

3.3. **Software.** Subject to Customer’s and its Authorized Users’ compliance with these Terms, AVAVA grants Customer a nonexclusive, revocable, non-assignable, and non-sublicensable license to use the Software as embedded or otherwise incorporated in the applicable Device (and not separate and apart therefrom) solely to the extent necessary to use the Device. In no event may Customer, Authorized Users, or any third party extract or copy Software for any reason.

3.4. **Device Connections; Restrictions.** Customer will use the AVAVA Offerings, and will provide and maintain all Customer Equipment required for Customer’s use of the AVAVA Offerings and any other AVAVA Offerings, in accordance with their Specifications and the applicable Documentation (including, without limitation, keeping the Devices connected to a power source and to a stable and continuous Internet connection so that Imaging Data can be uploaded from the Devices to the Platform and that any Updates made available to Customer by AVAVA (if any), can be remotely installed on the Devices). AVAVA is not responsible or liable to Customer for the improper functioning of AVAVA Offerings or interruptions to Customer’s access to their features and functionalities, in each case, that are due to Customer’s power sources, Internet connectivity, network traffic problems, and other issues arising in or from Customer Equipment. Except as otherwise expressly permitted herein, Customer and its Authorized Users will not (and will not permit any third party to) do any of the following (directly or indirectly): (a) distribute, rent, lease, resell, sell, sublicense, transfer, or otherwise permit third parties to access or use the AVAVA Offerings, Services, or Treatment Packages; (b) use the AVAVA Offerings, Services, or Treatment Packages on behalf of third parties except for Patients; (c) use the AVAVA Offerings or Services to develop a similar or competing product or service; (d) download, remove, or modify the Software; (e) reverse engineer, decompile, disassemble, or seek to access the source code of any part of the AVAVA Offerings (except, with respect to the Software, to the extent expressly permitted by Applicable Laws); (f) modify, alter, or create derivative works of the AVAVA Offerings or copy any element of the AVAVA Offerings; (g) remove, alter, or obscure any proprietary notices displayed or otherwise contained on the AVAVA Offerings; (h) perform or conduct any benchmarking or similar activities; (i) circumvent, disable, or otherwise interfere with the operation, security, or other technical features or measures of the AVAVA Offerings or any part thereof (including any access or usage restrictions); (j) conduct any security or vulnerability testing of the AVAVA Offerings; (k) transmit or upload any viruses, trojan horses, backdoors, malware, or any other forms of harmful or malicious materials to or through the AVAVA Offerings; or (l) disassemble, dismantle, take apart, tamper with, repair or alter the Devices or otherwise attempt to access the internal parts, mechanisms, instruments, systems or other components of the Devices. Without limiting the foregoing, Customer will not allow anyone from the public, any third party, or any of

its employees or contractors (other than Authorized Users) to access or closely examine the Devices. CUSTOMER WILL NOT MOVE, TRANSFER, UNINSTALL, REMOVE, OR DISASSEMBLE A DEVICE UNDER ANY CIRCUMSTANCE. ONLY AN AUTHORIZED REPRESENTATIVE OF AVAVA IS PERMITTED TO DO SO. CUSTOMER SHALL CONTACT AVAVA THROUGH THE CONTACT CHANNEL TO SUBMIT A REQUEST FOR DE-INSTALLATION SERVICES. To the extent that any De-Installation Services are performed for a Device, Customer must request that an authorized representative of AVAVA perform Installation Services at the new Authorized Site by contacting AVAVA through the Contact Channel ("**Re-Installation Services**"). Re-Installation Services do not include: (a) packaging the Device for transportation, (b) transporting the Device to the new Authorized Site, or (c) items related to site preparation, additional training or re-training of Customer personnel.

3.5. Certifications; Compliance. APPLICABLE LAWS AND OTHER STANDARDS ENFORCED OR PROMULGATED BY REGULATORS MAY REQUIRE THAT CUSTOMER AND ITS AUTHORIZED USERS BE PROPERLY LICENSED, ACCREDITED, PERMITTED, OR OTHERWISE BE CERTIFIED IN ORDER TO USE CERTAIN AVAVA OFFERINGS (INCLUDING THE DEVICES) ("**CERTIFICATIONS**"). CUSTOMER AND ITS AUTHORIZED USERS ARE SOLELY RESPONSIBLE AND LIABLE FOR ENSURING THAT THEY HAVE OBTAINED AND WILL MAINTAIN ALL CERTIFICATIONS AND FOR THEIR ACTS AND OMISSIONS IN CONNECTION ANY USE OF SUCH AVAVA OFFERINGS (WHETHER OR NOT SUCH CERTIFICATIONS ARE OBTAINED OR MAINTAINED). Customer will comply with all Applicable Laws relating to the accounting, reimbursement, and application of discounts relating to the AVAVA Offerings. In accordance with the discount provisions of the federal anti-kickback statute, 42 U.S.C. § 1320a-7b(b), and the discount safe harbor regulations at 42 C.F.R. § 1001.952(h), Customer shall fully and accurately report all Fees paid for such AVAVA Offerings net of discounts where appropriate, and as appropriate, and Customer will provide information upon request to Medicare, Medicaid and other federal health care programs on all discounts and price reductions received from AVAVA. Customer shall not improperly seek reimbursement for such AVAVA Offerings, and Customer agrees not to remove any label on the AVAVA Offerings indicating that reimbursement is prohibited.

3.6. No Support; Additional Services. AVAVA is under no obligation to provide any technical support and maintenance services to Customer under these Terms, except to the extent that Customer purchases any such technical support and maintenance services as part of Additional Services. In addition to these Terms, Additional Services are provided to Customer subject to, and in accordance with, Schedule 1 of these Terms.

4. DATA. Customer grants AVAVA a non-exclusive, royalty-free, fully paid-up, perpetual, worldwide license to use, reproduce, publicly display, modify, and create derivative works of the Imaging Data: (a) for purposes of performing and fulfilling its obligations to (1) Customer under these Terms and the Platform TOS, and (2) Patients under the Platform TOS; and (b) as otherwise permitted under these Terms (including the Privacy Policy). AVAVA may collect, generate, derive, and use Usage Data and Aggregated Data for AVAVA's lawful business purposes, including, without limitation, to: (i) track use of the AVAVA Offerings for billing purposes; (ii) provide Services; (iii) monitor the performance and stability of the AVAVA Offerings; (iv) prevent or address technical issues with the AVAVA Offerings; (v) improve the AVAVA Offerings and AVAVA's other products and services; (vi) develop new products and services; and (vii) create analytics, benchmarking information, and reports. Customer will not interfere with the collection of Usage Data. AVAVA owns all right, title, and interest, including all intellectual property rights, in and to the Usage Data and Aggregated Data. Customer is solely responsible for, and will take all reasonable security measures necessary for, maintaining the security of the AVAVA Offerings and preventing unauthorized access to and use of the AVAVA Offerings. These measures will include keeping AVAVA Offerings in a secure location, and allowing only Authorized Users to access and use the Devices. Customer will, within five (5) business days, report any misuse of, or any unauthorized access to, the Devices in writing to AVAVA. Customer acknowledges that AVAVA will not be liable for any loss or damage of any nature arising from Customer's failure to adequately secure the AVAVA Offerings or to comply with Applicable Laws regarding information and data security.

5. INTELLECTUAL PROPERTY RIGHTS

5.1. AVAVA. Except as expressly set forth herein, AVAVA owns and retains all right, title, and interest, including all intellectual property rights, in and to the AVAVA Offerings (including any improvements, modifications, and enhancements thereto). Customer will not use the AVAVA Offerings in a manner that infringes the intellectual property rights or proprietary rights of a third party. If Customer acquires any intellectual property rights in or relating to the AVAVA Offerings by operation of law or otherwise, Customer hereby irrevocably assigns to AVAVA all such intellectual property rights without further action by the Parties. Customer shall exercise only those of AVAVA's intellectual property rights expressly granted to Customer herein solely for the purpose of using the AVAVA Offerings subject to, and only in accordance with, these Terms. Except for those rights expressly granted in these Terms, no other rights or licenses are granted, whether by implication or otherwise, to Customer, its Authorized Users, or any third party claiming under Customer. If Customer or any of its Authorized Users provides AVAVA with feedback or suggestions relating to AVAVA Offerings or Services ("**Feedback**"), Customer hereby grants AVAVA an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right and license to exploit the Feedback in any manner and for any purpose, including to improve AVAVA's products and services and to create other products and services. AVAVA will have no obligation to provide Customer or Authorized Users with attribution for any Feedback.

5.2. Infringement. If use of a Device is enjoined or AVAVA reasonably believes use of the Device will be enjoined or the Device may or does infringe or misappropriates any Intellectual Property Right, AVAVA may, at its option, either (a) secure for Customer the right to continue using the Device, (b) at AVAVA's own expense, replace the Device with a Device that is non-infringing or does not misappropriate any Intellectual Property Right, (c) remove the applicable Device and provide Customer with a pro-rata refund for any Fees pre-paid for the Device based on a five year straight line depreciation basis. **THE FOREGOING STATES AVAVA'S ENTIRE LIABILITY AND OBLIGATION AND CUSTOMER'S SOLE REMEDY WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.**

6. REPRESENTATIONS AND WARRANTIES

6.1. Customer Warranty. Customer represents and warrants that: (a) it has provided all notices to, and obtained all consents, authorizations, permissions from, third parties that are required to grant AVAVA the rights and licenses set forth herein and for AVAVA's performance of its obligations under these Terms (including, without limitation, any necessary consents from landlords or other third parties, if required for performance of Services); and (b) it and its Authorized Users (1) will comply with Applicable Laws, and (2) are not and will not be in breach of Section 3.1 and Section 3.5.

6.2. Services Warranty. AVAVA represents and warrants that it will perform the Services in a workmanlike and professional manner in accordance with generally recognized industry standards for similar services. AVAVA's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this Section shall be to reperform the applicable Services or part thereof at no additional cost to Customer.

6.3. Device Warranty. AVAVA warrants that, if a Device is found to exhibit defects in material or workmanship under normal use in accordance with these Terms and the Documentation during the one (1) year period from the date Installation Services are completed for such Device or such longer period as may be required by Applicable Laws (the "**Warranty Term**"), AVAVA will, at its sole discretion, repair or replace such Device through its provision of Support Services; provided that Customer promptly notifies AVAVA of such defect during the Warranty Term in accordance with Section 6.4 and, if requested by AVAVA, returns such defective Device to AVAVA (the "**Standard Device Warranty**"). Subject to Applicable Laws, the Standard Device Warranty is Customer's sole and exclusive remedy, and AVAVA's sole and exclusive obligation, to the original purchaser of the applicable Device for any defects in material or workmanship of a Device under normal use in accordance with these Terms and the Documentation. The Standard Device Warranty (a) applies to Devices purchased directly from AVAVA or an authorized AVAVA distributor, and (b) is only provided to the original purchaser of the Device and shall not extend to subsequent owners. Repaired or replaced Devices supplied under the Standard Device Warranty shall be covered only by the unexpired portion of the Warranty Term for the original Device that as repaired or replaced. Once the Device is repaired or replaced, an authorized representative of AVAVA will perform the Installation Services required to re-install such Device at the Authorized Site at no additional cost to Customer. AVAVA reserves the right to use new, used, or refurbished parts, components, or materials to repair a Device; provided that such parts, components, or materials are functionally equivalent to that which was used for such Device. The Standard Device Warranty shall be null and void, and AVAVA shall have no liability under the Standard Device Warranty, if: (a) the Device has been operated in an application or environment other than that for which it was prescribed by AVAVA (whether set forth in the Documentation or otherwise); (b) the Device has been misused, abused, lost, stolen, or accidentally damaged; (c) the Device is not maintained, operated, and/or stored in accordance with the Documentation and these Terms; (d) the Device is installed, repaired, altered, serviced or modified in any way by anyone other than an authorized representative of AVAVA; (e) the Device is combined with any components, equipment, or other technology not provided by AVAVA (including unauthorized replacement parts or Customer Equipment) that are not authorized by these Terms or the Documentation; (f) the Customer and/or its Authorized Users have breached these Terms; (g) Customer and/or its Authorized Users have failed to install any Updates made available

to Customer by AVAVA (if any); (h) the Device is moved, relocated, transferred, removed, or uninstalled from the Authorized Site by anyone other than an authorized representative of AVAVA pursuant to De-Installation Services; (i) AVAVA determines (in its sole discretion) that any defects in the Device are due to adverse environmental factors including incorrect line voltages, improper wiring, improperly rated fuses or circuit breakers, incorrect temperatures or a Force Majeure Event; or (j) the serial number of the Device has been altered, defaced or removed (collectively, (a) through (j) are referred to as “**Exclusions**”). To the maximum extent permitted under Applicable Laws, AVAVA disclaims its liability for damages or other liabilities arising out of or in connection with the manufacture, sale, installation, delivery, or use of the Devices and AVAVA shall not be liable for any claim with respect thereto that is made by a third party or by the Customer for a third party.

6.4. **Third-Party Components.** Certain AVAVA Offerings and components thereof (but excluding Devices in all cases) are provided by third parties (“**Third-Party Components**”). The Standard Device Warranty does not cover or apply to Third-Party Components, and AVAVA will not be liable to Customer for the Third-Party Components, including any support or maintenance relating thereto. AVAVA makes no representation or warranty regarding Third-Party Components, and, as between the Parties, all Third-Party Components are provided “AS IS” and “WITH ALL FAULTS.”

6.5. **Submitting Claims.** To make a warranty claim under Section 6.2 or Section 6.3, Customer shall promptly contact AVAVA through the Contact Channel and provide AVAVA with (a) a short description of the warranty issue (along with reasonable supporting documentation), and (b) the serial number of the Device (where applicable). If the warranty claim is not otherwise eligible for coverage, AVAVA will notify Customer of such determination. AVAVA, in its sole discretion, will determine what action, if any, is required under the warranties set forth in such Sections with respect to the Device and/or Services that are the subject matter of any such warranty claim which is eligible for coverage. No Device may be returned for credit exchange or warranty service without prior authorization from AVAVA.

6.6. **Disclaimer.** EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS SECTION 6: (A) THE AVAVA OFFERINGS AND SERVICES ARE PROVIDED “AS IS,” “AS-AVAILABLE” AND WITH ALL FAULTS, AND (B) AVAVA HEREBY SPECIFICALLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY (INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE). EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THESE TERMS, CUSTOMER’S USE OF THE AVAVA OFFERINGS AND SERVICES IS ENTIRELY AT ITS OWN RISK. CUSTOMER WILL NOT HAVE THE RIGHT TO MAKE OR PASS ON TO ANY THIRD PARTY INCLUDING ANY COVENANT, REPRESENTATION OR WARRANTY ON OR BEHALF OF AVAVA.

7. **LIMITATIONS OF LIABILITY.** THE TOTAL LIABILITY OF AVAVA, INCLUDING ITS SUBCONTRACTORS, ADVISORS, AGENTS, AND SUPPLIERS, FOR ANY AND ALL CLAIMS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR FROM THE MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR, REPLACEMENT, PROVISION, OR USE OF ANY AVAVA OFFERINGS OR ANY SERVICES, SHALL NOT EXCEED THE FEES RECEIVED BY AVAVA UNDER THESE TERMS FOR THE AVAVA OFFERING OR SERVICES WHICH DIRECTLY GAVE RISE TO THE CLAIM. IN NO EVENT, WHETHER AS A RESULT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR PATENT INFRINGEMENT) OR OTHERWISE, SHALL AVAVA, INCLUDING ITS SUBCONTRACTORS, ADVISORS, AGENTS, AND SUPPLIERS, BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT OR EXEMPLARY DAMAGES, EVEN IF AVAVA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR CLAIM. If AVAVA furnishes Customer or an Authorized User with advice or other assistance that is not required by these Terms, the furnishing of such advice or assistance shall not subject AVAVA to any liability, whether in contract, warranty, tort (including negligence or patent infringement) or otherwise. CUSTOMER ACKNOWLEDGES THAT THESE LIMITATIONS OF LIABILITY REFLECT THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND THAT AVAVA WOULD NOT ENTER INTO THESE TERMS WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

8. **INDEMNIFICATION.** Customer will indemnify, defend, and hold AVAVA, its affiliates and their respective directors, officers, employers, agents, suppliers, contractors, licensors, successors, and assigns (collectively, “**AVAVA Entities**”) harmless from and against all claims, costs, damages, losses, liabilities, fines, penalties, and expenses (including without limitation reasonable attorneys’ fees) (collectively, “**Losses**”) arising from or in connection with: (a) Customer’s or its Authorized Users’ negligence, willful misconduct, or fraud; (b) Customer’s or its Authorized Users’ breach or non-fulfillment of any representation, warranty, or covenant under these Terms; (c) Losses arising out of the Exclusions; (d) Customer Equipment; or (e) bodily injury (including death) or damage, loss, or destruction of any real or personal property. In the event of any claim against any AVAVA Entity for which it claims a right of indemnification hereunder, the AVAVA Entity shall provide Customer prompt written notice of such claim and reasonable information and assistance, at the Customer’s expense, to defend or settle the claim. Customer will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, but Customer, may not settle or compromise such claim, action or allegation, except with prior written consent of the AVAVA Entity.

9. **CONFIDENTIALITY.** The Receiving Party agrees that it shall take, and shall cause each of its directors, officers, employees, contractors, agents and consultants, including those of its affiliate(s) (collectively, “**Representatives**”) to take, all reasonable measures to protect the secrecy of, and avoid disclosure and unauthorized use of, the Disclosing Party’s Confidential Information. Without limiting the foregoing, the Receiving Party shall protect the Disclosing Party’s Confidential Information using the same degree of care, but no less than a reasonable degree of care, as the Receiving Party uses to protect its own Confidential Information. The Receiving Party may only use the Disclosing Party’s Confidential Information solely as required to perform its obligations or to exercise its rights under these Terms and for no other purpose, and the Receiving Party shall not disclose the Confidential Information of the Disclosing Party to any of its Representatives or to any third parties (except to those of its Representatives who have a “need to know” the Confidential Information in order to perform obligations and exercise rights under these Terms on behalf of Customer; provided that: (a) such persons are bound by confidentiality obligations that are at least as protective as this Section 9, and (b) the Receiving Party remains liable for the acts and omissions of such Representatives). If the Receiving Party is subject to judicial or governmental proceedings requiring disclosure of the Confidential Information of the Disclosing Party, then, where permitted by law, prior to any such disclosure, the Receiving Party will provide the Disclosing Party with reasonable prior written notice (to the extent legally permitted) and will obtain, or provide the Disclosing Party with an opportunity to obtain, a protective order or confidential treatment of the Confidential Information of the Disclosing Party. Each Party acknowledges and agrees that a breach of this Section 9 may result in irreparable harm to the other Party for which damages would be an inadequate remedy and, therefore, in addition to its rights and remedies otherwise available at law, each Party shall be entitled to seek equitable relief, including an injunction, from any court of competent jurisdiction (without being deemed to have breached Section 10.5) in the event of any breach or threatened breach of this Section 9 in order to enforce its rights hereunder without the necessity of proving actual damages or posting any bond.

10. **MISCELLANEOUS**

10.1. **Recalls.** If AVAVA is required by a Regulator to recall any AVAVA Offerings, or AVAVA voluntarily initiates a recall of any AVAVA Offerings, Customer agrees to cooperate with and assist AVAVA in locating and retrieving the recalled AVAVA Offerings. Customer shall promptly report to AVAVA any complaints or other information regarding the AVAVA Offerings of which it becomes aware that could reasonably be expected to lead to recall or other action, investigation, or other proceeding being brought or instituted against AVAVA by a Regulator.

10.2. **Force Majeure.** AVAVA shall not be liable for any nonperformance or delays caused by shortage of raw materials, manufacturing problems, labor problems, acts of Regulators, discontinuation of a product line, acts of God, or other causes beyond AVAVA’s control (each a “**Force Majeure Event**”). Customer agrees that upon the occurrence of a Force Majeure Event, AVAVA may allocate resources, in its sole discretion, to its customers without liability. In the event that AVAVA ceases to manufacture or distribute any of the AVAVA Offerings for any reason, AVAVA shall have no obligation to supply such AVAVA Offerings.

10.3. **Modifications.** AVAVA may, from time to time, change these Terms. Please check these Terms periodically for changes. Revisions will be effective immediately except that, for existing Customers, material revisions will be effective 30 days after AVAVA posts or provides notice of the revisions unless otherwise stated. AVAVA may require that Customer accept modified Terms in order to continue to use the AVAVA Offerings or Services. If Customer does not agree to the modified Terms, Customer must notify AVAVA through the Contact Channel within such 30 day period and the Terms then in effect will continue to apply without modification (unless otherwise agreed upon by the Parties in writing). Except as expressly permitted in this Section, these Terms may be amended only by a written agreement signed by authorized representatives of the Parties to these Terms.

10.4. **Communications.** Customer hereby agrees that AVAVA and those acting on AVAVA's behalf may send Customer text (SMS) messages at the phone number provided to AVAVA. These messages may include operational messages about Customer's or its Authorized Users' use of the AVAVA Offerings or Services, as well as marketing messages. Text messages may be sent using an automatic telephone dialing system. Standard data and message rates may apply whenever Customer sends or receives such messages, as specified by Customer's carrier. IF CUSTOMER WISHES TO OPT OUT OF MARKETING TEXT MESSAGES FROM AVAVA, CUSTOMER CAN EMAIL AVAVA THROUGH THE CONTACT CHANNEL OR REPLY TO ANY SMS MESSAGE FROM AVAVA WITH "STOP" OR TEXT THE WORD "STOP" TO THE NUMBER FROM WHICH CUSTOMER IS RECEIVING THE MESSAGES. IF CUSTOMER WISHES TO OPT OUT OF ALL TEXT MESSAGES FROM AVAVA, CUSTOMER CAN EMAIL AVAVA THROUGH THE CONTACT CHANNEL OR TEXT THE WORD "STOPALL" TO THE NUMBER FROM WHICH CUSTOMER IS RECEIVING THE MESSAGES. HOWEVER, CUSTOMER ACKNOWLEDGES THAT OPTING OUT OF RECEIVING ALL MESSAGES MAY IMPACT CUSTOMER'S USE OF THE AVAVA OFFERINGS. Customer may continue to receive text messages for a short period while AVAVA processes Customer's request, including messages confirming the receipt of the opt-out request. Customer's agreement to receive marketing texts is not a condition of any purchase. AVAVA may send Customer emails concerning its products and services, as well as those of third parties. Customer may opt out of promotional emails by following the unsubscribe instructions in the promotional email itself. By using the AVAVA Offerings or Services, Customer consents to receiving certain electronic communications from AVAVA as further described in AVAVA's Privacy Policy. Please read the Privacy Policy to learn more about AVAVA's electronic communications practices. Customer agrees that any notices, agreements, disclosures, or other communications that AVAVA sends to Customer electronically will satisfy any legal communication requirements, including that those communications be in writing.

10.5. **Other.** The Parties are acting independently and shall at all times act as independent contractors of each other and are not partners, joint venturers, agents, or legal representatives of each other, for any purpose. These Terms contain the entire agreement and understanding between the Parties on this subject matter. AVAVA may assign these Terms to any of its affiliates, or to any acquirer of all or substantially all of its assets relating to these Terms. These Terms may be amended or waived only by a writing signed by an authorized representative of AVAVA. Any notice required or permitted under these Terms or required by Applicable Laws must be in writing (email sufficient) and shall be deemed sufficiently given when received, if (a) delivered in person, (b) sent by first class registered mail, or air mail, as appropriate at the addresses indicated in the applicable Order Form, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth in the applicable Order Form, or (d) sent to the email address indicated in the applicable Order Form. Either Party may change its address for notice by notice to the other Party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, three (3) business days after deposit in the mail as set forth above, or one day after delivery to an overnight air courier service. Customer acknowledges that AVAVA may desire to use Customer's name in press releases, product brochures and financial reports indicating that Customer is a customer of AVAVA, and Customer agrees that AVAVA may use its name in such a manner, subject to Customer's consent, which consent will not be unreasonably withheld. The Parties do not intend that any payments made pursuant to these Terms be in return for the purchasing or ordering of any AVAVA Offerings or services other than those set forth in the Order Form. These Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law provisions. Any dispute between the Parties regarding these Terms will be subject to the exclusive venue of the state and federal courts located in Middlesex County, Massachusetts. The Parties hereby consent to the exclusive jurisdiction and venue of such courts. Customer acknowledges that the AVAVA Offerings may be subject to Applicable Laws governing import, export, distribution and use. Any diversion or re-export contrary to, or any violation of, such Applicable Laws with is prohibited. Customer is responsible for its and its Authorized Users' compliance with such Applicable Laws and shall not export, use or transmit the Devices to anyone on the United States Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Order.

11. DEFINITIONS

11.1. **"Account"** means an account enabling an Authorized User to access and use a Device through such Authorized User's login credentials.

11.2. **"Aggregated Data"** means Patient Data that is deidentified or aggregated with other data such that the resulting data no longer reasonably identifies Patient.

11.3. **"Applicable Laws"** means all applicable relevant local, state, federal and international laws, regulations, standards, and conventions enforced or promulgated by Regulators (including without limitation (a) those related to data privacy and data transfer, international communications and export of technical or personally identifiable data, (b) the Health Insurance Portability and Accountability Act (as amended and supplemented) ("**HIPAA**"), and (c) those that are promulgated or enforced by the U.S. Food and Drug Administration ("**FDA**")).

11.4. **"Authorized Site(s)"** means the specific address and location within the address where a Device is installed by AVAVA as specified in the Order Form.

11.5. **"Authorized User(s)"** means the employees, contractors, or other personnel of Customer who are authorized by Customer to access and use the Device(s) on behalf of Customer and have obtained all Certifications. For the avoidance of doubt, Authorized Users do not include Patients.

11.6. **"AVAVA Offerings"** means, collectively, the following: (a) AVAVA's proprietary hardware device used for Treatments and/or any other device made available by AVAVA for sale from time to time (including the MIRIA™ Device) ("**Device(s)**") and the software embedded, incorporated into, or provided with a Device ("**Software**"); and (b) any accessories provided by AVAVA that are used with, and sold separately from, the Devices ("**Accessories**").

11.7. **"AVAVA Site"** means AVAVA's marketing website available at www.avavaskin.com

11.8. **"Confidential Information"** means any information, whether in tangible or intangible form, disclosed by or on behalf of one Party ("**Disclosing Party**") to the other Party ("**Receiving Party**") that (a) is identified as "confidential," "proprietary," or with a similar marking at the time of disclosure, or (b) should reasonably be considered to be confidential or proprietary due to its nature or the context of its disclosure. Confidential Information shall not include information which: (a) was rightfully in the possession of, or was known by, the Receiving Party prior to its receipt from the Disclosing Party, without an obligation to maintain its confidentiality; (b) is or becomes generally known to the public without violation of these Terms; (c) is obtained by the Receiving Party from a third party, without an obligation to keep such information confidential; (d) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (e) is Patient Data or Imaging Data.

11.9. **"Contact Channel"** means AVAVA's service@avavaskin.com and/or telephone number 617-912-2680 published on the AVAVA Site.

11.10. **"Customer Equipment"** means any systems, hardware, software, facilities, equipment, infrastructure, or other forms of technology that are required for Customer's access to and use of AVAVA Offerings or Services as set forth in the Documentation (including, without limitation, Customer's facilities and premises and its electrical and Internet connectivity infrastructure, equipment, or components).

11.11. **"De-Installation Services"** means certain services performed by or on behalf of AVAVA at the Authorized Site to deinstall, deactivate, and remove a Device from the Authorized Site.

11.12. **"Documentation"** means the standard printed and digital instructions, on-line help files, technical documentation, user manuals, and other documentation AVAVA makes available to all of its customers relating to the AVAVA Offerings.

11.13. **"Imaging Data"** means any images, data, content, and materials that are - collected by a Device or otherwise input, uploaded, or submitted by Customer or Authorized Users to the Platform.

11.14. **"Installation Services"** means certain services performed by or on behalf of AVAVA at the Authorized Site to install, configure, and activate a Device.

11.15. **"Order Form(s)"** means an ordering document provided by AVAVA pursuant to which Customer purchases AVAVA Offerings that (a) references these Terms, and (b) is executed by the Parties or otherwise submitted by Customer through any other ordering mechanism that AVAVA may establish from time to time (including, the Platform).

11.16. **"Patient"** means the person for whom Customer will use a Device to perform a Treatment.

11.17. **"Patient Data"** means any data, materials, or information that relates to a Patient and is not "personal data," "personal information," "personally identifiable information," "nonpublic personal information," or any similar concept under Applicable Laws. Patient Data does not include Imaging Data, Aggregated Data, or Usage Data.

- 11.18. **“Platform”** means AVAVA’s proprietary cloud platform onto which Imaging Data is transmitted or uploaded and through which users of the Platform who have agreed to the Platform TOS may access Imaging Data.
- 11.19. **“Platform TOS”** means the terms of service (available at www.avavaskin.com that Customer’s users and Patients must agree to in order to access and use the Platform.
- 11.20. **“Regulator(s)”** means any (a) governmental regulatory, administrative, authority, or body (including the FDA and the U.S. Department of Health & Human Services); or (b) medical association or other similar licensing or certification authority or body (in each case, that governs, has jurisdiction over, or oversees Customer, its Authorized Users, and/or Treatments).
- 11.21. **“Services”** means, collectively, the Installation Services, De-Installation Services, Re-Installation Services, Training Services, and Additional Services.
- 11.22. **“Specifications”** means the published performance, operational, and functional specifications for a Good.
- 11.23. **“Additional Services”** means certain additional services provided by AVAVA to Customer (other than Installation Services, De-Installation Services, Re-Installation Services, or Training Services) that are purchased by Customer from AVAVA.
- 11.24. **“Training Services”** means certain training services performed by or on behalf of AVAVA either at the Authorized Site or remotely by video conference.
- 11.25. **“Treatments(s)”** means the medical or healthcare treatment or other procedure provided by Customer to a Patient through the use of a Device.
- 11.26. **“Treatment Package”** means the quantity of Treatments purchased from AVAVA that are consumed by Customer with each Treatment provided to a Patient.
- 11.27. **“Update(s)”** means any AVAVA Offering system updates, patches, bug fixes, enhancements, additions, new modules, or other modifications to a Device or any component of a Device that is necessary in order for same to function properly and that AVAVA, at its discretion, may provide to Customer. Updates do not include AVAVA Offering system or Device upgrades that are separately available for purchase and which add new, additional functionality to the AVAVA Offering system or Device over the basic configuration of same purchased by Customer.
- 11.28. **“Usage Data”** means any data, materials, or information generated from the use of the AVAVA Offerings which data does not identify any Patient or Authorized User, any other natural human persons, or Customer, such as technical logs, data, and learnings about Customer’s use of the AVAVA Offerings, but excluding any identifiable Patient Data or data regarding Authorized Users.

SCHEDULE 1
ADDITIONAL SERVICES

1. **SERVICES AGREEMENT**. AVAVA will provide Additional Services to Customer pursuant to separate terms and conditions agreed to by the Parties as memorialized in mutually agreed upon document executed by authorized representative of the Parties that will be incorporated into and a part of these Terms ("**Services Agreement**").
2. **ADDITIONAL SERVICES – SUPPORT SERVICES**. To the extent that Additional Services include certain technical support and maintenance services for Devices ("**Support Services**"), unless otherwise specified in the Services Agreement, the Support Services will include:
 - TBD upon request from Customer