

# SAAS ACCESS AGREEMENT

Document: SAGAVTMS2016RG

Issue: 3

Date: October 2016

The “Software-as-a-Service” product accessed at <https://www.machinesentry.com> (the “**Service**”) has been produced by AV Technology Limited. In this Software-as-a-Service access agreement (the “**Access Agreement**”) it is referred to as “**AVT**”.

AVT is a company incorporated and registered in England and Wales under company registration number 01829338), the registered office of which is at AES Engineering Limited, Global Technology Centre Bradmarsh Business Park, Mill Close, Rotherham, South Yorkshire, S60 1BZ, United Kingdom.

This Access Agreement sets out AVT’s contractual relationship with you (the “**Licensee**”).

General conditions of this Access Agreement, including additional terms with specified meanings (denoted with capital letters) are set out under “General Terms” below.

During the course of this Access Agreement the Licensee may obtain one or more licence keys permitting access to parts of the Service. This enables the Licensee to permit access to individual users and devices for a certain period of time. Authorised Licensees can access this information and can advise AVT of individuals or roles who can order additional licences on behalf of the Licensee. The Licensee should also provide a single point of contact for AVT.

By a Licensee permitting others to use the Service it is agreeing with the terms of this Access Agreement, and specifically acknowledges and confirms that its authorised representatives can act as its agent to vary its licence to use the Service and commit the Licensee to additional expenditure as set out below.

By using this Service the Licensee is agreeing with AVT that:

- it will pay AVT fees according to pricing quoted to it and the number of Device, Service User and other licences or authorisations assigned to it;
- it consents to the Data Processing Policy;
- it will abide by the Acceptable Use Policy;
- the Licensee will ensure that its authorised users including those authorised to login as Contract Manager are aware of the terms of this Access Agreement, and agree to the Data Processing Policy and not to contravene the Acceptable Use Policy before making use of the Service and will provide AVT with documentary evidence of this if requested;
- the Licensee will have the rights, access and obligations as set out below. Licensees can view the licences they hold by having a Contract Manager log in to the administration area of the Service; and
- ‘Service User’ licence credentials are personal to an individual and logins should not be shared.

If there is a breach of this Access Agreement, AVT reserves the right to suspend access to the Service for the Licensee and may suspend access for any of its Services Users because of the breach by the Licensee in some circumstances.

## Licence Types

<u>Device</u>	
<i>This license permits the Licensee to:</i>	<i>The Licensee must:</i>
Grant access to the Service for one device provided it is used by an authorised Service User.	<ul style="list-style-type: none"> <li>Not (and should ensure that any Service User should not) attempt to connect more devices than the total number of Device licences held by the Licensee to the Service.</li> </ul>

<u>Service User</u>	
<i>This license permits the Licensee:</i>	<i>The Licensee must:</i>
<p>The right to enable three named individuals to:</p> <ul style="list-style-type: none"> <li>Access the Service provided that only one named individual accesses the Service at any one time;</li> <li>Manually enter information into the Service to enable a licenced Device to upload data to the Service; and</li> <li>Provide authorisation or credentials for the Service to import data from select other sources.</li> </ul>	<ul style="list-style-type: none"> <li>Not permit a Service User to attempt to connect a device (other than a licenced Device) to the Service;</li> <li>Ensure that Service Users abide by the current AVT Acceptable Use Policy;</li> <li>Ensure that Service Users consent to any personal information provided to AVT being used in accordance with the current AVT Data Processing Policy;</li> <li>Where authorisation or login credentials, are provided to AVT, ensure that the data subject consents to any details that amount to Personal Data being used in accordance with the current AVT Data Processing Policy; and</li> <li>Where any third party data is provided to AVT, ensure that the third party consents to the data being used in accordance with the current AVT Data Processing Policy and Acceptable Use Policy.</li> </ul>

<u>Contract Manager</u>	
<i>This license permits the Licensee:</i>	
<p>The right to enable a person who has been assigned a Service User licence to also:</p> <ul style="list-style-type: none"> <li>Access a basic administration page; and</li> <li>View the scope of the Licensee's licence of the Software.</li> </ul>	

# General Terms

## 1 FORCE MAJEURE

AVT shall not be in breach of this Access Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Access Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances AVT shall be entitled to a reasonable extension of the time for performing such obligations. The Licensee's licence(s) shall be automatically extended free of charge for the same time period which AVT has been prevented from performing such obligations. If the period of delay or non-performance continues for 3 months, the Licensee may terminate its licence and request a refund for the affected period by giving 30 days' written notice to AVT.

## 2 CONFIDENTIALITY

The Licensee and AVT each undertake that they will not at any time hereafter use, divulge or communicate to any person, except to its professional representatives or advisers or as may be required by law or any legal or regulatory authority or as permitted by the owner of the confidential information, any confidential information concerning the business or affairs of any of the other parties which may have or may in future come to its knowledge and each of the parties shall use its reasonable endeavours to prevent the publication or disclosure of any confidential information concerning such matters.

## 3 IP OWNERSHIP

- 3.1 AVT does not own any information which is inputted into the Service by or on behalf of the Licensee or data from third parties to which the Licensee has permitted access ("**User Data**").
- 3.2 The Licensee permits AVT to use data in accordance with its then current Data Processing Policy.
- 3.3 As between the Licensee and AVT, AVT owns all other copyright and other intellectual property associated with the Service.

## 4 SOFTWARE MADE AVAILABLE FOR DOWNLOAD

- 4.1 Where software is made available to the Licensee or its authorised users, the Licensee hereby accepts a non-exclusive, non-transferable licence to use that software while it subscribes to the Service on the following conditions:
  - 4.1.1 the Licensee shall not copy (except to the extent permissible under applicable law which is not capable of exclusion by agreement), reproduce, translate, adapt, vary or modify the software, nor communicate it to any third party, without the AVT's prior written consent;
  - 4.1.2 the Licensee shall not use the software on any equipment other than equipment authorised by AVT to use that software, and shall not remove, adapt or otherwise tamper with any copyright notice, legend or logo which appears in or on the software;
  - 4.1.3 the licence terminates automatically if the continued use or possession of the software by the Licensee infringes any third party rights or AVT is compelled to terminate the licence by law.
  - 4.1.4 AVT may terminate the licence with immediate effect by giving written notice to the Licensee:
    - 4.1.4.1 if the Licensee (or one of its authorised users, as applicable) has

failed to comply with any term of this agreement, AVT's then-current Acceptable Use Policy or AVT's then-current Data Processing Policy; or

- 4.1.4.2 if the Licensee (or one of its authorised users, as applicable) has failed to comply with any of the terms of any associated software-as-a-service access agreement or similar linked agreement.

## **5 WARRANTIES AND DISCLAIMERS**

- 5.1 AVT has committed to using its commercially reasonable efforts to provide and operate the Service. Where it is able to do so using those efforts, AVT will endeavour to make sure the Service reflects information published about it.
- 5.2 AVT does not warrant that operation of the Service will be error free or uninterrupted, or that all non-conformities can be corrected.
- 5.3 From time to time AVT may change parts of the Service and may add new or change existing functions provided by the Service. Where such a change is to be made, AVT will seek to provide Licensees with reasonable notification of such changes.

## **6 LIABILITY**

- 6.1 Except as set out in this Access Agreement all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the Service and its general availability are excluded to the extent permitted by law.
- 6.2 Subject to the provisions of clause 6.3 below, AVT is not liable to Licensees in contract, tort (including negligence or breach of statutory duty) or otherwise for any of the following losses or damages, whether direct or indirect, arising out of or in connection with the Service and its general availability or otherwise in connection with this Access Agreement:
  - 6.2.1 loss or damage incurred by Licensees or the Service Users as a result of third party claims;
  - 6.2.2 loss of actual or anticipated profits;
  - 6.2.3 loss of business opportunity;
  - 6.2.4 loss of anticipated savings;
  - 6.2.5 loss of goodwill;
  - 6.2.6 injury to reputation; or
  - 6.2.7 any indirect, special or consequential loss or damage howsoever caused even if AVT was advised of the possibility of them in advance.
- 6.3 Nothing in this Access Agreement shall operate to exclude or restrict any party's liability for:
  - 6.3.1 death or personal injury resulting from negligence;
  - 6.3.2 breach of the obligations arising from section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982); or
  - 6.3.3 fraud or deceit.

## **7 DATA PROTECTION**

- 7.1 The Licensee and AVT each shall comply with all relevant Legal Requirements relating to the Processing of Personal Data, together with all reasonable requirements of the other party. To the extent that either party is Processing Personal Data on behalf of the other party, the provisions of clause 7.3 below shall apply to such Processing.
  - 7.2 The Licensee acknowledges that the data AVT shall process in accordance with its Data Processing Policy may include Personal Data.
  - 7.3 Unless otherwise authorised in writing by the other party, the party undertaking the Processing shall:
    - 7.3.1 only undertake Processing of Personal Data to the extent reasonably required to enable it to perform its obligations under this Access Agreement;
    - 7.3.2 not disclose Personal Data to any third parties other than:
      - 7.3.2.1 its employees, agents and permitted subcontractors;
      - 7.3.2.2 support agents and resellers of licence keys to access the Service who have been so authorised by the Licensee or AVT; or
      - 7.3.2.3 to the extent required by Legal Requirements.
    - 7.3.3 give written notice to the other party of any requirement to disclose Personal Data under clause promptly after becoming aware of that requirement.
    - 7.3.4 immediately notify the other party if it receives a written request from the subject of any Personal Data for access to any relevant Personal Data, and respond to that request in accordance with the other party's instructions.
    - 7.3.5 where requested by the other party, provide details of the Personal Data held by it in relation to any individual promptly after its receipt of the other party's request.
    - 7.3.6 bring into effect and maintain appropriate technical and organisational measures:
      - 7.3.6.1 to maintain security; and
      - 7.3.6.2 to prevent unauthorised or unlawful access to or Processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data;
- and shall supply a detailed written description of such measures immediately on request, which must contain sufficient detail to enable the other party to determine whether or not any applicable Personal Data is being or has been processed in compliance with all relevant Legal Requirements relating to the Processing of Personal Data.

## **8 PRICING AND PAYMENT**

- 8.1 AVT shall invoice the Licensee monthly in advance.
- 8.2 The Licensee shall pay each invoice submitted by AVT:
  - 8.2.1 within 30 days of the date of the invoice; and

8.2.2 in full and in cleared funds to a bank account nominated in writing by AVT, and

8.2.3 time for payment shall be of the essence of the Contract.

8.3 AVT reserves the right to increase its license fees, provided that such charges cannot be increased more than once in any 12 month period. AVT will give the Licensee written notice of any such increase 3 months before the proposed date of the increase. If such increase is not acceptable to the Licensee, it shall notify AVT in writing within 4 weeks of the date of AVT's notice and AVT shall have the right without limiting its other rights or remedies to terminate this Access Agreement by giving 8 weeks' written notice to the Customer.

## 9 ANTI CORRUPTION

9.1 The Licensee shall:

9.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**") including but not limited to the UK's Bribery Act 2010 (the "**Bribery Act**");

9.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act if such activity, practice or conduct had been carried out in the UK;

9.1.3 maintain in place and comply with the AES Engineering Limited Group Anti-Bribery and Corruption Policy, ref: Issue 7, dated 2015 (a copy of which will be provided on request), as may be amended from time to time, ("**Relevant Policies**") to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

9.1.4 maintain in place Relevant Policies to ensure that all persons associated with the Licensee or any persons (including any employee, agent, subcontractor or subsidiary) shall comply with the Relevant Requirements.

## 10 NOTICES

10.1 All notices between the parties with respect to this Access Agreement shall be in writing and signed by or on behalf of the party giving it. Any notice shall be duly served (i) on delivery if delivered by hand, (ii) 48 hours after sending if sent by first class post or recorded delivery or (iii) on sending if sent by fax or email (provided that a copy is also sent by post), provided that in each case the notice is sent to the address of the addressee given at the start of the Access Agreement or such other address as the addressee may from time to time have notified for the purpose of this condition.

10.2 Any notice or communication given under this Access Agreement shall not be validly served if sent by text messaging via mobile phone.

## 11 ENTIRE AGREEMENT

11.1 This Access Agreement, together with the attached Service Schedule or any other pricing quoted to it by AVT, sets out the whole agreement between the parties and supersedes any previous arrangement, understanding or agreement (whether written or oral) between them relating to the subject matter of this Access Agreement. Except as required by law, no terms shall be implied (whether by custom, usage or otherwise) into this Access Agreement.

11.2 Each party confirms that, in agreeing to be bound by this Access Agreement, it is not relying on any statement, representation, assurance or promise made by any person (whether a party to this agreement or not) that is not expressly set out in this Access

Agreement (“**Representation**”).

11.3 Each party agrees that it has no rights or remedies arising out of or in connection with a Representation and that its only rights and remedies are set out in this Access Agreement and are limited to damages for breach of contract.

11.4 Nothing in this clause 11 shall limit or exclude any liability for fraud or fraudulent misrepresentation.

## **12 WAIVER**

12.1 A party can only waive a right or remedy provided in this Access Agreement or by law by express written notice.

12.2 No failure or delay to exercise, or other relaxation or indulgence granted in relation to, any power, right or remedy under this Access Agreement shall operate as a waiver of it, impair, or prejudice it.

12.3 Any single or partial exercise or waiver of any power, right or remedy shall not preclude its further exercise or the exercise of any other power, right or remedy.

12.4 All rights of any person contained in this Access Agreement are in addition to all rights vested or to be vested in it pursuant to common law or statute.

## **13 SEVERANCE**

13.1 Each of the provisions of this Access Agreement is distinct and severable from the others. If at any time one or more of those provisions is or becomes invalid or unenforceable (whether wholly or partly), the validity and enforceability of the remaining provisions (or the same provision to any other extent) shall not be affected or impaired in any way.

13.2 If any provision of this Access Agreement is or becomes invalid or unenforceable (whether wholly or partly) but it would be valid or enforceable if deleted in part or reduced in application, then the provision shall apply with the minimum deletion or modification necessary to make it valid or enforceable.

## **14 ASSIGNMENT**

14.1 Save as provided in clause 14.2 no party shall assign, transfer, charge or deal in any other manner with this Access Agreement or any of their rights under it nor purport to do the same.

14.2 AVT shall be entitled to assign, transfer or charge its rights under this Access Agreement as follows:

14.2.1 to any Affiliate of AVT (provided that where such entity ceases to be an Affiliate of that party, that party shall procure that such rights shall be assigned back to it immediately prior to this); or

14.2.2 to a purchaser of all of the business of AVT which relates to this contract.

## **15 SUB-CONTRACTING**

Licensees are permitted in the performance of their duties under this Access Agreement to sub-contract any of their respective functions, powers or duties to any third party, though they may notify AVT of any employees it wishes to represent it.

## **16 SUCCESSORS**

This Access Agreement shall be binding on and enure to the benefit of the lawful successors and permitted assigns of each party.

## **17 NO PARTNERSHIP OR AGENCY**

17.1 Nothing in this Access Agreement shall be deemed to constitute a partnership or agency relationship between any of the parties or any other person.

17.2 Save as expressly provided in this Access Agreement, the execution, completion and implementation of this agreement shall not confer on either party or any other person any power to bind or impose any obligations on other party.

## **18 THIRD PARTY RIGHTS**

18.1 Except as expressly provided elsewhere in this Access Agreement a person who is not a party to this Access Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of it.

18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Access Agreement are not subject to the consent of any other person.

## **19 GOVERNING LAW AND JURISDICTION**

19.1 This Access Agreement, and all disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with the laws of England.

19.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute or claim that arises out of or in connection with this Access Agreement or its subject matter or formation (including non-contractual disputes or claims).

## **20 DEFINITIONS**

In this Access Agreement the following definitions apply:

### **“Acceptable Use Policy”**

means AVT’s current Acceptable Use Policy available here:  
<https://www.machinesentry.com/AUP.pdf>;

### **“Affiliate”**

means, in relation to any entity or person, any other entity or person who:

- (i) employs or is employed by such entity or person;
- (ii) owns or Controls such entity or person;
- (iii) is owned or Controlled by such entity or person;
- (iv) is under common ownership or Control with such entity or person; or
- (v) any group company.

### **“Competent Authority”**



means any court of competent jurisdiction and any national or supra-national agency, inspectorate, minister, ministry, official, local authority, public or statutory person (whether autonomous or not) of the government of the United Kingdom or the European Community;

**“Control”**

means the power to direct, directly or indirectly, the management or policies of such other person whether through the ownership of voting securities, by contract or otherwise and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

**“Data Processing Policy”**

means AVT’s current Data Processing Policy, available here:  
<https://www.machinesentry.com/DPP.pdf>;

**“Device”**

means any equipment supplied by AVT which is used to operate software supplied by AVT to access the Service;

**“Legal Requirements”**

means all laws, proclamations, decisions, rules, regulations, orders, resolutions, notices, rules of court, bye-laws, directives, statutes, statutory instruments, standards, codes of conduct or other otherwise enacted, created or given effect by, without limitation, HM Parliament, the Council, Commission or Parliament of the European Union, any court or other judicial forum, any coroner or commission of inquiry, any local authority or any statutory undertaker or other Competent Authority or any other person having such power related to or affecting the Service;

**“Personal Data”**

means, in relation to information held by a party, information relating to an individual which could be used to identify the individual to whom it relates either alone or in conjunction with other information the party holding also has in its possession or is likely to acquire;

**“Process”**

means, in relation to Personal Data, holding or taking any action in relation to such Personal Data, and **“Processing”** shall be interpreted accordingly;

**21 INTERPRETATION**

- 21.1 Unless otherwise expressly stated the rules of interpretation set out in this clause 21 apply in this Access Agreement.
- 21.2 The headings and sub-headings in this Access Agreement are for ease of reference only and do not affect its meaning.
- 21.3 Words in the singular include the plural and vice versa.
- 21.4 The masculine includes the feminine and vice versa.
- 21.5 Any reference to a party is to a party to this Access Agreement and includes the respective successors or permitted assigns of the original parties.

- 21.6 Where examples are given by using words or phrases such as **“include”**, **“including”** or **“in particular”**, the examples do not restrict the meaning of the related general words.
- 21.7 A reference to a person includes an individual, firm, partnership, company, corporation, association, organisation or trust (in each case whether or not having a separate legal personality).
- 21.8 A reference to a clause is to a clause of to this Access Agreement.
- 21.9 A reference to a company includes any company, corporation or any other body corporate (wherever incorporated).
- 21.10 A reference to legislation is a reference to all legislation having effect in the United Kingdom at any time, including directives, decisions and regulations of the Council or Commission of the European Union, Acts of Parliament, orders, regulations, consents, licences, notices and bye-laws made or granted under any Act of Parliament or directive, decision or regulation of the Council or Commission of the European Union, or made or granted by a local authority or by a court of competent jurisdiction and any approved mandatory codes of practice issued by a statutory body.
- 21.11 A reference to a statute or statutory provision includes:
- 21.11.1 that statute or statutory provision as amended, modified or replaced (before, on or after the date of this Access Agreement);
- 21.11.2 any statute or statutory provision which re-enacts (with or without modification) such statute or statutory provision; and
- 21.11.3 any subordinate legislation or any mandatory codes of practice made (before, on or after the date of this Access Agreement) under that statute or statutory provision.
- 21.12 A reference to this Access Agreement or to any other document shall include any variation, amendment or supplement made to this Access Agreement or that other document.
- 21.13 The words **“holding company”**, **“subsidiary”** or **“subsidiary undertaking”** have the same meaning as their respective definitions in the Companies Act 2006.
- 21.14 The words **“writing”** and **“written”** shall include any method of reproducing words in a legible and permanent form.