

# **Terms and Conditions of Use**

(hereinafter referred to as “the Terms”)

**between**

**Avitus Software (Pty) Ltd**

(hereinafter referred to as “Avitus”)

**and**

**The Registered User**

(hereinafter referred to as “the Customer”)

Avitus provides an Online, Integrated Task, Contacts Management and Calendar Application (hereinafter referred to as “Cascades”), subject to the Terms and Conditions of Use set out in this Agreement.

Cascades is offered to the Customer, accepting without modification (other than any Special Terms which may be agreed upon by the Parties) of all the Terms and Conditions contained herein and all other Operating Rules, Policies, and any Future Modifications thereof, and procedures that may be published from time to time on the Avitus Platform.

When accepted by the Customer, these Terms form a legally binding contract between the Customer and Avitus.

**PLEASE READ THESE TERMS AND CONDITIONS OF USE CAREFULLY.**

**YOU ACKNOWLEDGE, BY ACCEPTING THE TERMS AND CONDITIONS, THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THEM.**

**IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS THEN DO NOT ACCEPT THEM.**

Avitus may, in its sole discretion, elect to suspend or terminate access to, or use of Cascades, to anyone who violates any of the Terms.

## **1. Legal Capacity**

The use of Cascades is subject to acceptance of the Terms,

To accept the Terms for or on behalf of the Customer, a person must have the legal capacity to do so. In the case of a legal entity, the entity must be duly incorporated and in good standing.

In the case of an individual, the individual must be at least 18 years of age or have valid authorisation from his/her legal representative or custodian.

Once accepted, these Terms remain effective until terminated as provided for herein.

## 2. Modifications to Terms

Avitus reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time by posting such changes on or through the Avitus Platform. Any amended Terms will automatically be effective upon the Customers' continued use of Cascades. Notwithstanding the foregoing, the resolution of any dispute that arises between the Customer and Avitus will be governed by the Terms in effect at the time such dispute arose.

## 3. Responsibilities of Avitus

Avitus will, according to these Terms,

- 3.1. make Cascades, Content, and Customer Data available to the Customer;
- 3.2. provide applicable standard helpdesk support using [support@avitus.co.za](mailto:support@avitus.co.za)
- 3.3. use commercially reasonable efforts to make Cascades available 24 hours a day, 7 days a week, except for;
  - 3.3.1. planned downtime (of which Avitus shall give advance electronic notice as provided in the Guidelines);
  - 3.3.2. any unavailability caused by circumstances beyond Avitus's reasonable control, including, for example, an act of God, an act of government, flood, fire, earthquake, civil unrest, an act of terror, strike or other labour problem,
  - 3.3.3. Internet service provider failure or delay, or denial of service.

## 4. Using Cascades

If the Customer has designated Users and granted them Permissions, such Users will be deemed to be authorised to act on behalf of the Customer when using Cascades. Avitus is not responsible for verifying the right of representation or validity of Permissions of any User. However, Avitus may, if need be, request additional information or proof of the person's credentials.

The Customer and any User associated with the Customer, must upon request from Avitus provide Avitus with true, accurate, current, and complete information about the Customer and Users and keep it up to date. The Customer must promptly notify Avitus of,

- 4.1. any disclosure, loss, or unauthorised use of any Login Credentials;
- 4.2. of a User's departure from the Customer's organisation;
- 4.3. of a change in a User's role in the Customer's organisation
- 4.4. of any termination of a User's right for any reason

## 5. Termination of Agreement

The Customer may terminate these Terms at any time by giving 30 days written notice of such termination. Avitus shall permanently disable the Account as soon as reasonably practicable after the effective date of the termination.

## 6. Cascades Subscription Fees

The use of Cascades is subject to a Monthly Subscription Fee per User.

- 6.1. All Fees are non-refundable, i.e. there are no refunds or credits for periods where the Customer did not use an activated Account, used it only partially, or deactivated the Account or terminated these Terms during an on-going payment interval;
- 6.2. All Fees are inclusive of all taxes, levies or duties applicable under any applicable law;

6.3. Subscription Fees are payable monthly, or annually, in advance.

## 7. Customer Data

Customer Data consist of files, documents of any kind, and any other digital data and information, which is inserted into the Cascades System by the Customer.

- 7.1. Data inserted into Cascades must be in compliance with these Terms and any applicable law;
- 7.2. All rights, title, and interest in and to the Customer Data belong to the Customer whether posted and/or uploaded by the Customer or made available through the Cascades Platform;
- 7.3. By uploading Customer Data to the Cascades Platform, the Customer authorises Avitus to process the Customer Data.

The Customer is responsible for ensuring that,

- 7.4. the Customer and any of the Users associated with the Account do not create, transmit, display or make otherwise available any Customer Data that violates any term of this Agreement, the rights of Avitus, other Customers or Users, Persons or Organisations or is harmful (for example viruses, worms, malware, and other destructive codes);
- 7.5. content is not offensive, threatening, abusive, harassing, tortuous, defamatory, vulgar, pornographic, obscene, invasive of another's privacy, defamatory, hateful, or otherwise unlawful;
- 7.6. the Customer and all of the Users associated with the Customer have the necessary **Permissions to Insert, Edit or Delete Data** in the Cascades Platform;
- 7.7. the Customer is solely responsible for its Customer Data and the consequences of posting or publishing them on or through the Cascades Platform

## 8. Use of Customer Data

Avitus may use the Customer Data in an aggregated and anonymized format for research, educational, and other similar purposes.

Avitus may not otherwise use or display the Customer Data without the Customer's written consent. Avitus respects the Customer's right to the exclusive ownership of the Customer's Data. Unless specifically permitted by the Customer the use of Cascades does not grant Avitus the license to use, reproduce, adapt, modify, publish or distribute the Customer Data created by the Customer for any commercial, marketing, or any similar purpose.

The Customer expressly grants Avitus the right to use and analyse aggregate system activity data associated with the use of Cascades by the Customer and its Users to optimise, improve, or enhancing the way Cascades operate, and to create new features and functionality in connection with Cascades in the sole discretion of Avitus.

## **9. Guarantee of Accuracy**

Avitus does not guarantee any accuracy for any information contained in any Customer Data. The Customer understands that all information contained in Customer Data is the sole responsibility of the person from whom such Customer Data originated.

This means that the Customer, and not Avitus, is entirely responsible for all Customer Data that is uploaded, posted, transmitted, or otherwise made available through Cascades.

## **10. Unlawful Customer Data**

Avitus is not obliged to pre-screen, monitor, or filter any Customer Data or acts of its processing by the Customer or any User to discover any unlawful nature therein.

However, if any unlawful Customer Data or the action of its unlawful processing is discovered or brought to the attention of Avitus or if there is reason to believe that certain Customer Data is unlawful, then Avitus,

- 10.1. has the right to notify the Customer of such unlawful Customer Data;
- 10.2. deny its publication or insertion on the Avitus or Cascades Platform;
- 10.3. demand that the Customer bring the unlawful Customer Data into compliance with these Terms and any applicable law;
- 10.4. temporarily or permanently remove the unlawful Customer Data from the Platforms;
- 10.5. restrict access to it or delete it and/or suspend the Customer Account.

If Avitus is presented convincing evidence that the Customer Data is not unlawful, Avitus may, at its sole discretion, restore such Customer Data, which was removed from the platform or Account or access to which was restricted.

In addition, in the event Avitus believes in its sole discretion Customer Data violates any applicable laws, rules, or regulations or these Terms, Avitus may remove such Customer Data at any time with or without notice.

## **11. Use of Cascades**

Avitus will, subject to these Terms, and the payment of the applicable Subscription Fees,

- 11.1. grant the Customer and its authorised Users a non-exclusive, non-transferable, non-sublicensable license to use Cascades to collect, store and organise Customer Data, such as add new Users and grant them Permissions, assign Activities to a particular User; modify and delete Customer Data;
- 11.2. receive reasonable help and guidance from Avitus regarding the use of Cascades

## **12. Technical Support**

Avitus shall, after acceptance of these Terms, provide reasonable technical support to the Customer and its authorised User/s at the reasonable request of the Customer. Avitus shall respond to inquiries of support from a Customer utilising the contacts set forth below as soon as reasonably possible.

The contact for all inquiries for support is [support@avitus.co.za](mailto:support@avitus.co.za).

### **13. Modifications to Cascades**

Avitus reserves the right to modify Cascades or any part or element thereof from time to time without prior notice, including, without limitation, rebranding Cascades at its sole discretion; ceasing providing or discontinuing the development of any part or element of Cascades temporarily or permanently; taking such action as is necessary to preserve Avitus's rights upon any use of Cascades that may be reasonably interpreted as a violation of Avitus's intellectual property rights, distribution of Internet viruses, worms, Trojan horses, malware, and other destructive activities or illegal activity.

The Customer may be notified of the effective date of such modifications. Should the Customer not accept the change, the Customer shall notify Avitus before the effective date of the modification, and these Terms will terminate on the effective date of the modification. The Customer's continued use of Cascades, or any part or element thereof, after the effective date of modifications, shall indicate its consent to the changes. Avitus shall not be liable to the Customer or any Third Party for any modification, suspension, or discontinuance of Cascades, or any part or element thereof.

### **14. Restrictions**

The Customer and its authorised Users may use Cascades and any part or element thereof only in the scope, with the means, and for purposes as identified in these Terms and any applicable law. By way of example, neither the Customer nor any User may use Cascades or any part or element thereof to commit a crime, breach any applicable law or entice or invite others to carry out such illegal actions;

The Customer may not copy, duplicate, distribute, modify, adapt, hack, create derivative works, reverse engineer or decompile Cascades or any part or element thereof, or attempt to extract the source code thereof, unless it is expressly allowed under any applicable law or to the extent that the Avitus is not permitted by any applicable law to exclude or limit the foregoing rights; The Customer may not use Cascades or any part or element thereof unless it has agreed to these Terms.

The Customer or any User may not, without Avitus's prior express written consent sell, resell, lease, license, sublicense, distribute, provide, disclose, divulge, exploit or otherwise grant access or make Cascades available in whole or in part to any Third Party unless such Third Party is another authorised User of the same Customer.

### **15. Intellectual Property Rights**

The Avitus and Cascades trade names and trademarks, and any parts or elements thereof are solely and exclusively owned and operated by Avitus and its third party vendors and hosting partners. Cascades are protected by copyright, trade dress, patent, trade secrets, and trademark laws, international conventions and treaties, and all other relevant intellectual property and proprietary rights laws.

Avitus, its Affiliates, and Licensors retain all rights, title, and interest in Cascades, Avitus trade names and trademarks and any parts or elements.

The Customer's use of Cascades, and any parts or elements thereof does not grant to the Customer any ownership right or intellectual property rights therein.

Any commercial or promotional distribution, publishing, or exploitation of the Avitus and/or Cascades Materials is strictly prohibited unless the Customer has received the express prior written permission from Avitus or the otherwise applicable rights holder.

Avitus reserves all rights to Cascades and Avitus trade names and trademarks not expressly granted in the Terms.

## **16. Feedback**

If the Customer or a User provides Avitus with any comments, bug reports, feedback, or modifications for Cascades ("Feedback"), Avitus shall have the right to use such Feedback at its discretion, including, but not limited to the incorporation of such suggested changes into Cascades.

The Customer or User hereby grants Avitus a perpetual, irrevocable, non-exclusive, royalty-free license under all rights necessary to incorporate, publish, reproduce, distribute, modify, adapt, prepare derivative works of, publicly display, publicly perform, exploit and use Feedback for any purpose.

The contact for all suggestions and support is [support@avitus.co.za](mailto:support@avitus.co.za).

## **17. Third-Party Sites, Products and Services**

Cascades may include links to other websites or services ("Linked Sites") solely as a convenience to the Customer. Avitus does not endorse any such Linked Sites or the information, material, products, or services contained on or accessible through Linked Sites.

Avitus makes no express or implied warranties concerning the information, material, products, or services that are contained on or accessible through Linked Sites.

## **18. Disclaimers and Warranties**

The Customer acknowledges and agrees that in entering into these Terms and Conditions it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of Avitus and/or its Directors / Shareholders / Trustees relating to the subject matter of this Agreement.

Avitus and its Directors / Shareholders / Trustees or any of its Employees or Representatives or Subsidiaries shall have no liability to the Customer under this Agreement if it is prevented from performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (involving the workforce of Avitus or any other party), failure of a utility service or transport or telecommunication network, an act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of software or internet website, application or content, fire, flood, storm or default of sub-contractors.

## **19. Indemnification**

The Customer agrees to defend, indemnify and hold harmless Avitus and its Affiliates, and their respective Directors, Officers, Employees, and Agents, from any claims, losses, damages, liabilities, including attorney's fees, arising out of the Customer's use or misuse of Cascades, representations made to Avitus, its Affiliates and/or Third Parties, violation of these Terms, violation of the rights of any other person or entity, or any breach of the foregoing representations, warranties, and covenants.

Avitus reserves the right, at its own expense, to assume the exclusive defence and control of any matter for which the Customer is required to indemnify Avitus and the Customer agrees to cooperate with such defence of these claims.

## **20. Limitation of Liability**

Avitus shall not be liable to the Customer or User

- 20.1. for any consequences resulting from any modifications in these Terms;
- 20.2. calculation and rates of Fees, or any part or element thereof including any error, permanent or temporary interruption, discontinuance, suspension or another type of unavailability of Cascades;
- 20.3. for the deletion of, corruption of, or failure to store any Data;
- 20.4. for unauthorised use of the Customer Data by the Customer or any of the Users associated with Cascades;
- 20.5. for any disclosure, loss, or unauthorised use of the login credentials of the Customer or any authorised User due to the Customer's failure to keep them confidential;
- 20.6. for the application of any remedies to the Customer or authorised Users, for example, if the Customer or User has committed a crime or conducted a breach of any applicable law by using Cascades or any part or element thereof;
- 20.7. for any differences between technologies and platforms used for access, for example if certain features, functions, parts, or elements of Cascades are designed for use on a personal computer or laptop and do not function on a mobile platform or a tablet.

In addition, Avitus and its affiliates shall not be liable to the Customer for any claim by any User, Person, Organisation, or Third Party against the Customer arising out of the Customer's

- 20.8. failure to provide Avitus with accurate information about the Customer, Users or Account;
- 20.9. failure to notify Avitus of any reasons due to which a User does not have the right to use the Account on behalf of the Customer;
- 20.10. failure to ensure the lawfulness of the Customer Data;
- 20.11. failure to obtain the necessary rights to use the Customer Data;
- 20.12. failure to abide by any of the restrictions described in these Terms

## **21. Exclusion of Consequential and Related Damages**

In no event will either Party or its Affiliates have any Liability arising out of or related to these Terms for any Loss of Profits, Goodwill, Losses of an Indirect, Special, Incidental, Consequential, Business Interruption or Punitive nature whether an action is in Contract or Tort and regardless of the theory of Liability, even if a Party or its Affiliates have been advised of the possibility of such damages or if a Party's or its Affiliates' remedy otherwise fails of its essential purposes.

This Disclaimer will not apply to the extent prohibited by Law.

## **22. Termination of the Agreement**

The Agreement between Avitus and the Customer will terminate

- 22.1. upon non-payment of the Subscription Fees after the lapse of a 14 day grace period;
- 22.2. the breach of any of the Terms of the Agreement which is not corrected within 14 days from receiving a notice;
- 22.3. if proceedings are initiated for the other party's liquidation or insolvency or a negotiated settlement with the other party's creditors is concluded or an assignment is made on behalf of the other party for the benefit of creditors, by Avitus upon the decision to end the provision of Cascades and close the Platform;
- 22.4. Avitus shall deactivate and permanently disable the Account, as soon as reasonably practicable after the effective date of termination;

- 22.5. The Customer must stop using and prevent the further usage of Cascades;  
22.6. The Customer must discharge any liability to Avitus which was incurred by the Customer before the termination of the Agreement

Notice of Termination of the Agreement must be in writing

### **23. Governing Laws and Jurisdiction**

This Agreement is the exclusive and complete agreement between the parties and no warranties, guarantees, representations, or any other terms and conditions of whatsoever nature not contained herein will be binding to the parties. South African laws are applicable regarding the use. Users consent to the Jurisdiction of the Gauteng High Court, Pretoria and/or the Pretoria Magistrates' Court in the event of any civil dispute

### **24. Relationship of the Parties**

The parties will act solely as independent contractors. These Terms shall not be construed as creating an agency, partnership, joint venture, fiduciary duty, or any other form of legal association between the Customer and Avitus, and the Customer shall not represent to the contrary, whether expressly, by implication, appearance, or otherwise. These Terms are not for the benefit of any third parties.

### **25. Severability.**

If any term, condition, and/or provision, of these Terms is held to be invalid, unenforceable, or illegal in whole or in part for any reason, that provision shall be enforced to the maximum extent permissible to affect the intent of the Parties. The validity and enforceability of the remaining terms, conditions, or provisions, or portions of them, shall not be affected.

### **26. Assignment**

The Customer may not, directly or indirectly, in whole or in part, by operation of law or otherwise, assign or transfer these Terms or delegate any of its rights and/or obligations under these Terms without Avitus's prior written consent. Any attempted assignment, transfer, or delegation without such prior written consent will be void and unenforceable

Notwithstanding the foregoing, the Customer, or its permitted successive assignees or transferees, may assign or transfer these Terms or delegate any rights or obligations hereunder without consent: to any entity controlled by, or under common control of the Customer, or its permitted successive assignees or transferees; or in connection with a merger, reorganisation, transfer, sale of assets or product lines, or change of control or ownership of the Customer, or its permitted successive assignees or transferees.

### **27. No Waiver**

Failure of either Party to exercise or enforce any provision of or any of its rights under these Terms shall not be deemed a waiver of future enforcement of that or any other provision or right.

January 2021