

**STRATA TERMS OF SERVICE**  
**(Maverics Identity Orchestration Platform)**

These Strata Terms of Service (together with the Order, the “**Agreement**”) is a binding agreement between Strata Identity, Inc., a Delaware corporation (“**Strata**”) and the person or entity identified on the Order as the Customer of the Strata Services (“**Customer**”) for whom you (“**You**” or “**Your**”) are acting. You represent and warrant that you are entering into this Agreement on behalf of Customer and that You have the authority to bind Customer to this Agreement.

From time to time, Strata may modify this Agreement. Unless otherwise specified by Strata, changes become effective for Customer upon the earlier of the renewal of the then-current Term or the effective date of a new Order after the updated version of this Agreement goes into effect. Strata will use reasonable efforts to notify Customer of the changes through communications to Customer’s designated contact(s) or other means.

STRATA PROVIDES THE STRATA SERVICES SOLELY ON THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT AND ON THE CONDITION THAT YOU ON BEHALF OF CUSTOMER ACCEPT THEM. BY CLICKING “I AGREE”, INSTALLING THE SOFTWARE ON COMPUTER(S) YOU CONTROL, OR OTHERWISE ACCESSING OR USING THE STRATA SERVICES, YOU ACCEPT THIS AGREEMENT AND AGREE THAT CUSTOMER SHALL BE BOUND BY THIS AGREEMENT. IF CUSTOMER HAS NOT OR DOES NOT AGREE TO THIS AGREEMENT, YOU MUST NOT USE THE STRATA SERVICES.

**1. Definitions.**

**1.1** “**Affiliate**” means, with respect to a party, any other entity that directly or indirectly controls, is controlled by or is under common control with such entity, where “control” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such entity through the ownership of fifty percent (50%) or more of the outstanding voting securities (but only for as long as such entity meets these requirements).

**1.2** “**Application**” means a Customer owned or licensed software, web application, or collection of web resources and/or API endpoint URL built, packaged and deployed in a runtime framework that will leverage the Software for authentication, access control, personalization and/or authorization. For clarity in portal use cases where the Software is used to secure an application portal that serves multiple downstream applications, if the downstream applications can only be accessed by Users that have been authenticated by the Software then these discrete applications are considered “Applications” for purposes of this Agreement. If the downstream applications can be accessed directly by a User without previously being authenticated by the Software then the applications are not considered “Applications” for purposes of this Agreement. For illustration, an application called “order management” that only can be accessed by Users that have authenticated with the Software would be considered an “Application” for licensed purposes. For further illustration, a different application such as a search engine (e.g. Google Search) that can be accessed directly by Users without being authenticated by the Software would not be considered an “Application” for purposes of this Agreement.

**1.3** “**Customer Data**” means the information provided by Customer and its Users in order to use the Strata Services and the content uploaded by Customer and its Users to the Strata Services.

**1.4** “**Documentation**” means the user manuals made available to the Customer for the Strata Services in either online or other electronic format.

**1.5** “**Effective Date**” means: (a) for Free Trials, the date the Customer’s account activation is completed, which entails Customer affirmatively agreeing to the Strata Terms of Service and Privacy Policy; or (b) for paid-for Strata Services, the subscription start date set forth in the Order.

**1.6** “**Free Trial**” means access and use by a User to the Strata Services to try at no charge, for a limited time, and in accordance with Section 2.9 below.

**1.7** “**Identity Provider**” or “**IdP**” means a service that is provided by the Customer or a third party that interoperates with the Strata Services and provides capabilities including but not limited to performing authentication, authorization, attributes, or multi-factor authentication.

**1.8** “**Intellectual Property Rights**” means all worldwide intellectual property rights, including without limitation, copyrights, trademarks, service marks, trade secrets, know-how, inventions, patents, patent applications, moral rights, and all other proprietary rights, whether registered or unregistered.

**1.9** “**Software**” means the Strata instances for software that are included as part of the Strata Services, including all applicable Documentation and any updates and new releases thereto provided to Customer pursuant to this Agreement.

**1.10** “**Strata Services**” means the products or services, ordered by the Customer as set forth in an Order, through an online purchasing tool, or from a marketplace, and provided to the Customer as defined in the Documentation. Strata Services includes the Software, including any downloadable Software.

**1.11 “Technology”** means algorithms, concepts, data, designs, developments, discoveries, inventions or innovations, whether or not patentable; and object models and modeling tools, HTML code, know-how, methods, executable code, source code, procedures, programs, techniques, text, and web pages.

**1.12 “Third Party Strata Services”** means the third party Strata Services components provided by Strata with the Strata Services, as further described in Section 2.6.

**1.13 “User”** means any individual employee or contractor of Customer or its Affiliates for whom access to the Strata Services is authorized by Customer.

## **2. Registration; License; Restrictions.**

**2.1 Order.** A Customer must complete an “Order” before it can use the Strata Services. An Order is the process by which: (a) Customer creates a Strata account; (b) Customer orders a Free Trial and Strata accepts such order; and/or if Customer chooses to subscribe to the Strata Services (c) Customer and Strata complete a written order detailing Customer’s subscription to the Strata Services. Each Order is incorporated by reference into this Agreement.

**2.2 Strata Accounts.** When a Customer creates a Strata account to use or access the Strata Services, Customer must provide accurate, current, and complete information as requested on the online sign-up form, and must maintain and keep updated such information. Customer agrees to notify Strata immediately of any unauthorized use of its account. Strata shall not be liable for any losses Customer incurs as a result of someone else’s use of its Strata account, either with or without Customer’s knowledge. A Customer may be held liable for any losses incurred by Strata, its Affiliates, officers, directors, employees, and agents due to someone else’s use of Customer’s account.

**2.3 Rights Granted.** Subject to the terms and conditions of this Agreement, Strata grants to Customer a limited, non-exclusive, non-sublicensable, non-transferable (except as provided in Section 11.2): (a) right to access and use the Strata Services; (b) license to use the Software in executable code form only in connection with Customer’s use of the Strata Services; and (c) right to display, and reproduce without modification the Documentation. The foregoing license does not apply to a Free Trial, which is instead governed by Section 2.9. All rights granted herein are solely for Customer’s internal business purpose in accordance with the Documentation and the other terms and conditions of this Agreement. Customer shall install the Software in compliance with all applicable export laws and regulations and in accordance with Section 11.1.

**2.4 Users.** Under the rights granted to Customer for Strata Services under this Agreement, Customer may permit Customer’s employees and contractors of Customer and its Affiliates to become Users to access and use the Strata Services in accordance with this Agreement; provided that Customer shall be: (a) responsible for any User’s compliance with this Agreement; and (b) liable for the acts and omissions of all Customer Affiliates and Users to the extent any of such acts or omissions, if performed by Customer, would constitute a breach of, or otherwise give rise to liability to Customer under this Agreement. A Customer shall not and shall not permit any User to use the Strata Services except as expressly permitted under this Agreement.

**2.5 Restrictions on Use.** Customer acknowledges that the Strata Services and the structure, organization, and source code thereof constitute valuable trade secrets of Strata. Accordingly, except as expressly permitted in Section 2.3 or as otherwise authorized by Strata in writing, Customer will not, and will not permit any third party to (a) modify, adapt, alter, translate, or create derivative works from the Strata Services; (b) sublicense, lease, rent, loan, sell, distribute, make available or otherwise transfer the Strata Services to any third party, (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code for the Strata Services; (d) publicly disseminate information regarding the performance of Strata; (e) break or circumvent any security measures or usage tracking of the Strata Services or configure the Strata Services (or any component thereof) to avoid sending events or transactions or to otherwise avoid incurring Fees; (f) access or use the Strata Services to benchmark or conduct comparative analysis without Strata’s prior written approval; (g) remove or obscure any proprietary or other notices contained in the Strata Services; (h) use or permit the Strata Services to be used for any purpose that violates applicable law; or (i) otherwise use or copy the Strata Services except as expressly allowed herein. **THE STRATA SERVICES MAY NOT BE ACCESSED OR USED WITH THE INTENT OF BUILDING A COMPETITIVE PRODUCT OR SERVICE, COPYING ITS FEATURES, OR CONDUCTING A COMPETITIVE STUDY OR ANALYSIS OF ALL OR ANY PORTION OF THE STRATA SERVICES.** Failure to comply with this Section may result in the immediate termination of this Agreement and Customer’s license to use the Strata Services, and Strata may pursue legal action and / or equitable remedies against Customer and You.

**2.6 Third Party Services.** Strata makes available recipes and connectors, which are configured by and at the Customer’s discretion, for the Strata Services that interact with third party applications, and Strata may or may not have a commercial or contractual relationship with the providers of those applications. Strata monitors the working condition of these recipes and connectors and will use commercially reasonable efforts to resolve any issues that may arise from such a provider updating or revising its application. However, the Customer acknowledges and agrees that Strata is not responsible for any changes to or functionality or defect of any third-party applications and that interoperability with the Strata Services can be broken temporarily or permanently at any time.

**2.7 Technical Support Services.** Subject to the terms and conditions of this Agreement, Strata will provide Customer with the technical support as set forth in <https://www.strata.io/legal/support-policy>, as amended from time to time (“Support Terms”). To the extent necessary for Strata to perform the technical support, Customer shall use commercially reasonable efforts to provide Strata with

such access to Customer's staff and resources as Strata may reasonably request to perform the technical support. Strata and Customer will work together to expeditiously satisfy these requirements.

**2.8 Professional Services.** Professional services are not part of the Strata Services. If Customer wishes to engage Strata for professional services, the parties shall finalize a services agreement (or if none, then pursuant to the terms set forth in <https://www.strata.io/legal/master-services-agreement>, as amended from time to time ) and detail the scope of the professional services in an executed statement of work.

**2.9 Free Trials.** If Customer uses a Free Trial, then Customer must use the Free Trial appropriately in good faith for its intended purpose. Strata will make such Free Trial available to Customer on a trial basis, free of charge, until the earlier of: (a) the end of Customer's Free Trial period, which by default is 30 days from a Customer activating a Strata account; or (b) termination of the Free Trial by Strata in its sole discretion. Strata reserves the right to suspend or delete a Customer account (including data uploaded to such account) when a Free Trial expires and Customer does not subscribe to paid-for Strata Services. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, A FREE TRIAL IS PROVIDED "AS IS" WITHOUT INDEMNIFICATION, SERVICE LEVEL COMMITMENT, SUPPORT, OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. EXCEPT WHERE NOT ENFORCEABLE UNDER APPLICABLE LAW, STRATA'S AGGREGATE LIABILITY (EXCLUDING INDIRECT DAMAGES, FOR WHICH STRATA EXPRESSLY DISCLAIMS ALL LIABILITY) FOR ANY CLAIM ARISING OUT OF OR RELATING TO A FREE TRIAL IS \$100. CUSTOMER SHALL NOT USE THE FREE TRIAL IN A MANNER THAT VIOLATES APPLICABLE LAWS AND WILL BE FULLY LIABLE FOR ANY DAMAGES CAUSED BY ITS USE OF A FREE TRIAL.

**2.10 Reservation of Rights.** Strata reserves to itself all rights in and to the Strata Services and Documentation not expressly granted to Customer under this Agreement.

### **3. Privacy and Security.**

**3.1 Strata Privacy Policy.** The information that the Customer provides to Strata or that Strata collects will be used as described in this Agreement and in the Strata privacy policy ("**Privacy Policy**"), currently available at <https://www.strata.io/privacy-policy/>. Please read the Privacy Policy as it contains important information about Strata's collection, use, and retention of Customer Data.

**3.2 Protection against Unauthorized Use.** Safeguarding the security of Customer Data that resides within the Strata Services is a shared responsibility between Strata and Customer and, consequently: (a) Strata is responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store and/or process any Customer Data that can be traced back to Strata's personnel or Strata's security control failure; and (b) Customer is responsible for any unauthorized access to, alteration of, or the deletion, destruction, damage, loss or failure to store and/or process any Customer Data that can be traced back to Customer's personnel or Customer's security control failure. Furthermore, Strata will take reasonable and appropriate measures to secure the Strata Services and protect Customer Data. Customer shall be responsible for Customer Data that is added, modified, and removed from its Strata Services account and for maintaining the security of its systems that interface with the Strata Services and any account access credentials relevant to the Strata Services, will use reasonable efforts to prevent any unauthorized use of the Strata Services and Documentation, and immediately notify Strata in writing of any unauthorized use that comes to Customer's attention. If there is unauthorized use by anyone who obtained access to the Strata Services directly or indirectly through Customer, Customer will take all steps reasonably necessary to terminate the unauthorized use. Customer will cooperate and assist with any actions taken by Strata to prevent or terminate unauthorized use of the Strata Services or Documentation.

### **4. Fees and Payment.**

**4.1 Fees and Payment.** Customer shall pay to Strata the fees as set forth in an Order ("**Fees**"). Except as otherwise set forth herein, all Fees are non-refundable.

**4.2 Overage.** If Customer exceeds any specified usage limitations as set forth in the Order, Strata shall provide Customer with an invoice for the applicable Fees for such usage in excess of such limitations, and such invoice shall include a report detailing the excess usage on monthly basis during the preceding period. Customer shall pay to Strata all undisputed amounts set forth in such invoice in accordance with Section 4.3. If Customer has a good faith dispute of any overage fees contained in such invoice, Customer shall notify Strata and the parties will discuss any disputed amounts in good faith in an effort to seek resolution within 60 days after Strata's receipt of such notice.

**4.3 Payment Terms.** Unless otherwise set forth in an Order, all Fees will be due and payable by Customer no later than 30 days after Customer's receipt of the applicable invoice from Strata. All payments must be made in U.S. dollars. Strata may charge interest for all outstanding balances at a rate equal to the lesser of one percent (1%) per month (equivalent to 12% per annum) and the maximum rate permitted by applicable law, from the due date until paid. All Fees due hereunder are exclusive of, and Customer will pay, all sales, use and other taxes (other than taxes on Strata's income), export and import fees, customs duties and similar charges applicable to the transactions contemplated by this Agreement.

**4.4 Reports.** During the Term of this Agreement, Customer will maintain complete and accurate records of its installation and use of the Software, including without limitation the number and location of installed or deployed instances. Upon Strata's written

request, Customer will provide Strata a report stating the number of installed or deployed instances and other usage metrics in connection with the Strata Services. If any report reveals that Customer has underpaid the amounts owed to Strata and Customer's current license is based upon usage other than enterprise-wide usage, Customer will promptly pay to Strata any such amounts owed plus interest as provided in Section 4.3.

**4.5 Audit Rights.** Strata will have the right, during normal business hours and upon at least five (5) business days prior notice, to audit Customer's records relating to Customer's activities pursuant to this Agreement in order to verify that Customer has complied with the terms of this Agreement.

## **5. Ownership and Feedback.**

**5.1 Customer Data.** As between the parties, Customer retains all right, title and interest (including any Intellectual Property Rights of Customer) in and to the Customer Data. Customer grants Strata a non-exclusive, worldwide, royalty-free right and license to collect, use, copy, store, transmit, modify and create derivative works of the Customer Data to the extent necessary to provide the Strata Services or as otherwise permitted in this Agreement. Customer authorizes Strata to use and process Customer Data as described in this Agreement and the Privacy Policy. The foregoing licenses and authorizations extend to Strata's Affiliates and trusted third parties that assist Strata in connection with the Strata Services.

**5.2 Aggregate/Anonymous Data.** Customer agrees that Strata has the right to generate aggregate or anonymous data and that aggregate or anonymous data is owned by Strata. Strata may use generated aggregate or anonymous data for any business purpose during or after the term of this Agreement, including but not limited to developing and improving the Strata Services. For clarity, aggregate or anonymous data will not include Customer Data.

**5.3 Strata Property.** Strata will own and retain all right, title and interest in and to (a) all Technology, including without limitation the Strata Services and the Software, (b) any enhancements, modifications, improvements and derivative works of any of the foregoing and (c) all Intellectual Property Rights in or to the foregoing (all of the foregoing collectively, the "**Strata Property**"). Except as otherwise expressly provided in this Agreement, Customer will have no right in or to any Strata Property or license under Strata's Intellectual Property Rights. Customer shall abide by and maintain all intellectual property notices, information, and restrictions contained in the Strata Services.

**5.4 Feedback.** If Customer provides feedback to Strata concerning the functionality or performance of the Strata Services (including identifying improvements), Customer assigns to Strata all right, title and interest in and to the feedback, and Strata is free to use and disclose the feedback without payment or restriction. However, in connection with its use of feedback, Strata will not disclose any information that identifies Customer or any of its users to any third party.

## **6. Warranties; Disclaimer.**

**6.1 General.** Each party represents and warrants the other party that: (a) such party has the requisite corporate power and authority to enter into the Agreement and to carry out the transactions contemplated by the Agreement; (b) such party is, and covenants that during the Term it will as the case may be, either the owner of, or authorized to use, the Strata Services made available by such party or used in connection with this Agreement; and (c) entering into and carrying out the terms and conditions of this Agreement will not violate or constitute a breach of any agreement or other obligation between such party and a third party.

**6.2 Strata Services.** Strata represents warrants that the Strata Services, when used as permitted by Strata and in accordance with the instructions in the Documentation, will operate as described in the Documentation in all material respects. Strata does not warrant the Customer's use of the Strata Services will be error-free or uninterrupted. Strata will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, exert commercially reasonable efforts to restore the availability of the Strata Services. In the event that Strata is unable to correct such error within a reasonable time of receiving written notice of such error, Customer shall have the right to terminate this Agreement, and Strata shall refund to Customer a pro-rata amount of Fees paid for the Strata Services but remain unearned as of the date of termination.

**6.3 Disclaimers.** THE EXPRESS WARRANTIES IN THIS SECTION ARE IN LIEU OF AND STRATA HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE STRATA SERVICES AND SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

## **7. Term; Termination.**

**7.1 Term.** This Agreement will remain effective for so long as any Order remains effective. The initial term of each Order will begin on the date of such Order and will continue for the term specified in the Order (the "Initial Term"). Thereafter, the Order will automatically renew for additional one-year terms or other renewal period set forth in the Order (each, a "Renewal Term") unless a party notifies the other party of its intent not to renew no later than 30 days before the end of the Initial Term or any Renewal Term. The Initial Term and all Renewal Terms are collectively referred to as the "Term". For each successive Renewal Term, Strata may, with prior written notice to Customer, adjust its fees payable by Customer. The foregoing does not apply to a Free Trial, which is instead governed by Section 2.9.

**7.2 Right to Suspend, Deactivate or Terminate.** Strata reserves the right to deactivate, terminate, prevent access to, disable services for, and/or delete any accounts or access to the Strata Services at any time at our sole discretion, including for nonpayment, late payment, breach of any portion of this agreement, or suspension is necessary to prevent harm or liability to other customers or third parties, or to preserve the security, stability or availability of the Strata Services. Strata will have no liability for taking any of the foregoing actions. For clarity, Customer remains responsible for paying the applicable Fees during any suspension period. However, unless this Agreement has been terminated for cause, Strata will work in good faith to promptly restore the Strata Services upon confirming Customer resolved the issue(s) leading to the suspension.

**7.3 Termination for Cause.** Either party may terminate the Agreement if the other party breaches any material provision of the Agreement (including a failure to pay undisputed fees) and does not cure such breach within fifteen (15) days after receiving written notice thereof.

**7.4 Effects of Termination.** Upon termination or expiration of this Agreement for any reason, any undisputed amounts due and owed hereunder to Strata under this Agreement before such termination or expiration will be immediately due and payable, all rights granted in this Agreement will immediately cease to exist, and Customer must promptly discontinue all use of the Strata Services, uninstall the Software (including any downloaded Software), erase all copies of the Documentation or any Strata Confidential Information, and return to Strata or destroy all copies of the Documentation and other Strata Confidential Information in Customer's possession or control; provided however, Customer may retain copies of the Documentation and other Strata Confidential Information as required by law, rule, regulation, or administrative order or as necessary to comply with standard computer back-up procedures. Sections 1, 2.3, 5, 6, 7.4, 8, 9, 10, and 11, together with any accrued payment obligations, will survive expiration or termination of the Agreement for any reason.

## **8. Indemnification.**

**8.1 Claims Against Customer.** Strata will defend at its own expense any claim or action against Customer, its officers, directors, employees, personnel, agents, and representatives ("**Customer Indemnitees**") brought by a third party to the extent that the claim or action is based upon an allegation that the Strata Services infringes or is a misappropriation of any Intellectual Property Rights of such third party (each, a "**Customer Claim**"), and Strata will indemnify and hold Customer Indemnitees harmless from and against those damages, liabilities, assessments, losses, fines, penalties, costs (including costs relating to breach notification, investigation and mitigation), and expenses ("**Losses**") arising from or related to such Customer Claim or those costs and damages agreed to in a monetary settlement of such Customer Claim. Notwithstanding the foregoing, Strata will have no obligation under this Section 8.1 or otherwise with respect to any claim or action arising under Section 8.2 below, or to the extent such claim or action is based upon: (a) any use of the Strata Services not in accordance with this Agreement; (b) any use of the Strata Services in combination with an Application, or other products, equipment, Strata Services to the extent such claim arises from such combination; (c) any unauthorized use of any release of the Strata Services other than the most current release made available to Customer; provided that Strata made the release available to Customer and notified Customer that such release could avoid infringement; or (d) any unauthorized modification of the Strata Services by any person other than Strata or its authorized agents or subcontractors. If Customer's use of Strata Services is enjoined due to a Customer Claim, Strata may, at its option and expense, either (i) procure for Customer the right to continue using the Strata Services, or (ii) replace or modify the Strata Services so that it becomes non-infringing and remains functionally equivalent. In the event that Strata is unable to procure the right to continue using or replace or modify the Strata Services pursuant to clauses (i) and (ii) above, Customer shall have the right to terminate this Agreement, and Strata shall refund to Customer a prorated amount of prepaid Fees that remain unearned as of the date of termination. This Section 8.1 states Strata's entire liability and Customer's exclusive remedy for infringement claims and actions.

**8.2 Claims Against Strata.** Customer will defend at its own expense any claim or action against Strata, its officers, directors, employees, personnel, agents, and representatives ("**Strata Indemnitees**") brought by a third party to the extent that the claim or action: (a) is based upon an allegation that Customer's use of the Strata Services or Customer Data infringes or is a misappropriation of any Intellectual Property Rights of such third party; (b) arising out of Customer's breach of its representations and warranties; or (c) arising out of or relating to violation or a breach of any agreement between Customer and a third party (each, a "**Strata Claim**"), and Customer shall indemnify and hold Strata Indemnitees harmless from and against those Losses arising from or related to such Strata Claim or those costs and damages agreed to in a monetary settlement of such Strata Claim.

**8.3 Indemnification Procedure.** If any claim or action identified above ("**Claim**") is commenced with respect to which an indemnified party is entitled to indemnification under this Section 8, the applicable indemnified party will provide notice thereof to the indemnifying party. The indemnifying party will be entitled, if it so elects in a notice promptly delivered to the indemnified party, to immediately take control of the defense, settlement, and investigation of the Claim and to engage attorneys reasonably acceptable to the indemnified party to handle and defend the same, at the indemnifying party's sole cost. The indemnified party will cooperate in all reasonable respects, at the indemnifying party's cost and request, in the investigation, trial and defense of such Claim and any appeal arising therefrom. The indemnifying party will not consent to the entry of any judgment or enter into any settlement with respect to a Claim without the indemnified party's prior written consent, which shall not be unreasonably withheld. The indemnified party may also, at its own cost, participate through its attorneys or otherwise in such investigation, trial and defense of any Claim and related appeals. If the indemnifying party does not assume full control over the defense of a Claim as provided in this Section, the indemnified party will have the right to defend the Claim in such manner as it may deem appropriate, at the reasonable cost and expense of the indemnifying party.

**9. Limitation of Liability.** IN NO EVENT EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), OR ANY DAMAGES RELATED TO LOSS OF USE, INTERRUPTION OF BUSINESS, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR ANY OTHER LEGAL OR EQUITABLE THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL A PARTY'S TOTAL AGGREGATE LIABILITY FOR ALL CLAIMS OR CAUSES OF ACTION RELATING TO THIS AGREEMENT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO STRATA HEREUNDER DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

**10. Confidentiality.**

**10.1 Confidential Information.** "Confidential Information" means information that is disclosed by a party ("Discloser") to the other party ("Recipient"), or which Recipient has access to in connection with this Agreement, and that should reasonably have been understood by Recipient to be proprietary and confidential to Discloser or to a third party, because of legends or other markings, the circumstances of disclosure or the nature of the information itself. Confidential Information may be disclosed in written or other tangible form or by oral, visual or other means. Confidential Information of Strata includes, without limitation, the Strata Services and Documentation.

**10.2 Protection of Confidential Information.** Recipient will not use any Confidential Information of Discloser for any purpose not expressly permitted by the Agreement, and will disclose the Confidential Information of Discloser only to the employees or contractors of Recipient who have a need to know such Confidential Information for purposes of the Agreement and who are under a duty of confidentiality no less restrictive than Recipient's duty hereunder. Recipient will protect Discloser's Confidential Information from unauthorized use, access, or disclosure in the same manner as Recipient protects its own confidential or proprietary information of a similar nature and with no less than reasonable care.

**10.3 Exceptions.** Recipient's obligations under Section 10.2 with respect to any Confidential Information of Discloser will terminate if such information: (a) was already known to Recipient at the time of disclosure by Discloser; (b) was disclosed to Recipient by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of Recipient has become, generally available to the public; or (d) was independently developed by Recipient without access to, or use of, Discloser's Confidential Information. In addition, Recipient will be allowed to disclose Confidential Information of Discloser to the extent that such disclosure is (i) necessary for Recipient to enforce its rights under the Agreement in connection with a legal proceeding; or (ii) required by law or by the order of a court of similar judicial or administrative body, provided that in each case described in clauses (i), and (ii) above, Recipient notifies Discloser of such required disclosure promptly and in writing and cooperates with Discloser, at Discloser's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

**10.4 Return of Confidential Information.** Except as otherwise expressly provided in this Agreement, Recipient will return to Discloser or destroy all Confidential Information of Discloser in Recipient's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of Discloser upon the expiration or termination of the Agreement; provided however, that Recipient may retain copies of Confidential Information as required by law, rule, regulation, or administrative order or as necessary to comply with standard computer back up procedures. Upon request of Discloser, Recipient will certify in writing that it has fully complied with its obligations under this Section 10.4.

**10.5 Mutual Non-Solicitation.** Neither party will, during the Term and for one (1) year thereafter, directly or indirectly hire or attempt to hire any employee of the other party who performed substantial work on any project covered by this Agreement without such other party's prior written consent; provided that the foregoing will not prohibit either party from issuing advertisements of a general nature not specifically directed at any such employee and hiring any such employee so long as such party is in compliance with this Section 10.

**11. General**

**11.1 Compliance with Laws.** Each party will comply with all applicable export and import control laws and regulations in its use of the Strata Services and, in particular, Customer will not export or re-export the Strata Services (or the Software) without all required government licenses and Customer agrees to comply with the export laws, restrictions, national security controls and regulations of all applicable foreign agencies or authorities. In no event shall Customer export or re-export the Strata Services nor install the Software in countries that are subject to OFAC sanctions, which are currently Belarus, Central African Republic, People's Republic of China, Crimea, Cuba, Democratic Republic of Congo, Ethiopia, Iran, Iraq, Lebanon, Libya, Mali, Nicaragua, North Korea, Russia, Somalia, South Sudan and Sudan, Syria, Ukraine, Venezuela, West Balkans, Yemen, Zimbabwe.

**11.2 Assignment.** Neither party may assign or transfer, by operation of law or otherwise, any of its rights under the Agreement (including the license rights granted to Customer to the Strata Services) to any third party without the other party's prior written consent, which consent will not be unreasonably withheld or delayed; except that a party may assign this Agreement, without consent, to (a) an Affiliate or (b) a successor to all or substantially all its business or assets to which this Agreement relates, whether by merger, sale of assets, sale of stock, reorganization or otherwise. Any attempted assignment or transfer in violation of the foregoing will be null and void.

**11.3 Force Majeure.** A party's (the "Affected Party") performance of any part of this Agreement will be excused to the extent that it is unable to perform due to any cause which is beyond the reasonable control of such party and not avoidable by reasonable due diligence (a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the Affected Party will promptly notify the other party of the Force Majeure Event, including an estimate of its expected duration and probable impact on the performance of the Affected Party's obligations under this Agreement. In addition, the Affected Party will (a) exercise commercially reasonable efforts to mitigate damages to the other party and to overcome the Force Majeure Event and (b) continue to perform its obligations under this Agreement to the extent it is able.

**11.4 U.S. Government End Users.** If Customer is a branch or agency of the United States Government, the following provision applies. The Strata Services is comprised of "commercial computer Strata Services" and "commercial computer Strata Services documentation" as such terms are used in 48 C.F.R. 12.212 and are provided to the Government (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

**11.5 Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by courier, or by certified or registered mail, (postage prepaid and return receipt requested) to the other party at the address set forth in the Order with the appropriate postage prepaid. Either party may change its address by giving notice of the new address to the other party. Notices are deemed given two (2) business days following the date of mailing or one (1) business day following delivery by a courier.

**11.6 Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Colorado, without reference to its choice of laws rules. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. The provisions of the Uniform Computer Information Transactions Act will not apply to this agreement.

**11.7 Remedies.** Except as otherwise set forth herein, the parties' rights and remedies under the Agreement are cumulative. Customer acknowledges that the Strata Services contains valuable trade secrets and proprietary information of Strata, that any actual or threatened breach of Section 2 will constitute immediate, irreparable harm to Strata for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought by a party to enforce the Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**11.8 Waivers.** All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

**11.9 Severability.** If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect. Without limiting the generality of the foregoing, Section 9 will remain in effect notwithstanding the unenforceability of any provision in Section 6.

**11.10 Entire Agreement.** This Agreement, including the Order, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement sets forth the terms and conditions applicable to all Strata Services and services provided by Strata to Customer under the specific terms and conditions set forth in this Agreement. By executing this Agreement, the parties agree that the provision and receipt of Strata Services, including use of the Software, are expressly conditioned on the acceptance of terms in this Agreement. No other terms apply. In the event that Strata signs or returns an acknowledgement copy of a Customer purchase order, the parties expressly agree that Strata's signature thereon is being provided solely as an accommodation to Customer for Customer's internal purposes, and does not signify Strata's to any terms or conditions contained therein which vary, conflict with, or impose additional obligations to the provisions set forth in this Agreement.

Updated: May 10, 2023