

Services Agreement

Version v2026-08

This is the Stratum Software Services Agreement. Under it, Stratum Software Pty Ltd ABN 60 692 038 510 (Stratum Software) provides the Client with the services described in each Order Form (Services).

An Order Form, together with this Services Agreement and any document that the Order Form expressly incorporates, forms a single agreement between the parties (Agreement). Where the parties enter into more than one Order Form, each Order Form forms a separate Agreement, and a breach or termination of one does not of itself affect any other.

If there is a conflict, the Order Form prevails over this Services Agreement, and this Services Agreement prevails over any other document incorporated by the Order Form, in each case to the extent of the conflict, unless the Order Form expressly states a different order of precedence.

This Services Agreement covers both advisory engagements, including virtual executive and consulting retainers, and project engagements, including software development and implementation work. Some clauses apply only to one or the other, and say so. The Order Form records which of them apply and carries every detail specific to the engagement.

Capitalised terms are defined in clause 18.

1. Services

- 1.1 **Provision of Services.** Stratum Software will provide the Services described in the Order Form for the Term. Services that are not described in an Order Form are provided only where the parties agree them in writing under clause 1.9, or under a further Order Form.
- 1.2 **Standard of care.** Stratum Software will perform the Services:
 - (a) with due care and skill;
 - (b) using personnel who are suitably qualified and experienced for the work;
 - (c) in accordance with good industry practice for services of that kind; and
 - (d) in compliance with the Client's applicable and reasonable site, security and workplace policies that the Client provides to Stratum Software in writing with sufficient time to review before the relevant work is performed. A new or changed policy does not materially expand the scope, cost or time required for the Services unless the resulting change is agreed under clause 1.9.
- 1.3 **Personnel.** Stratum Software will resource the Services with personnel holding the skills and experience the work requires, and may allocate and reallocate them at its discretion. Stratum Software remains responsible for clause 1.2 and for each of its other obligations under the Agreement regardless of who performs the work. The Client may, on reasonable grounds notified in writing, require Stratum Software to cease using a particular individual on the engagement.
- 1.4 **Subcontracting.** Stratum Software may engage subcontractors to perform any part of the Services. Stratum Software remains responsible for the Services and for the acts and omissions of its subcontractors as if they were its own, and must, before they begin work, ensure each subcontractor is bound by obligations concerning confidentiality, intellectual

property assignment, moral rights, privacy and security sufficient to allow Stratum Software to meet the Agreement.

- 1.5 **Relationship of the parties.** Stratum Software is an independent contractor. Nothing in the Agreement creates a relationship of employment, partnership, joint venture, franchise or agency between the parties, and neither party may bind the other or hold itself out as having authority to do so. Where the Services include a virtual executive, advisory or similar role:
- (a) the individual performing that role does so as a representative of Stratum Software and does not become an officer, director, employee or company secretary of the Client;
 - (b) that individual does not assume the statutory or fiduciary duties of an officer of the Client;
 - (c) the Client remains responsible for its own governance, statutory obligations and decisions; and
 - (d) the Client must not appoint or represent that individual as an officer, director or company secretary, or give the individual authority to bind the Client, unless the parties enter into a separate written agreement dealing expressly with that appointment or authority.
- 1.6 **Advice and decisions.** Where the Services include advice, recommendations, strategy, architecture, governance or similar work:
- (a) Stratum Software advises and recommends, and the Client decides;
 - (b) the advice is based on the information the Client makes available and on the circumstances known at the time it is given; and
 - (c) the Client is responsible for evaluating the advice and for the consequences of the decisions it makes.
- 1.7 **Retainer engagements.** Where the Order Form specifies a Committed Volume, being a number of days or hours in each period:
- (a) the Committed Volume is committed by both parties for each period of the Initial Term, and the Fee for a period is payable whether or not the Client uses the full Committed Volume in that period;
 - (b) unused Committed Volume does not carry forward into a later period unless the Order Form states that it does;
 - (c) work in excess of the Committed Volume is performed only where agreed in writing in advance, and is charged at the rate for additional volume stated in the Order Form; and
 - (d) the deliverables for each period are agreed between the parties at the start of that period, in the manner the Order Form describes.
- 1.8 **Project engagements and acceptance.** Where the Order Form specifies Deliverables, milestones or stages:
- (a) Stratum Software will deliver each Deliverable in accordance with the Order Form;
 - (b) the Client has the Acceptance Period from delivery to test the Deliverable against the acceptance criteria in the Order Form and to notify Stratum Software in writing of any material failure to meet them;
 - (c) if the Client does not give that notice within the Acceptance Period, or uses the Deliverable in its production environment, the Deliverable is taken to be accepted;

- (d) if the Client gives that notice, Stratum Software will remedy the failure at its own cost within a reasonable period and resubmit the Deliverable, and this clause applies again to the resubmitted Deliverable;
- (e) the Client must not withhold acceptance because of a defect that does not materially affect the use of the Deliverable, or because of a matter outside the scope stated in the Order Form; and
- (f) if a Deliverable still materially fails its acceptance criteria after two resubmissions, the Client may reject the affected Deliverable and require a refund of the Fees paid for it, or terminate the affected project stage. This does not limit a remedy that cannot be excluded by Law.

- 1.9 **Change to the Services.** Either party may request a change to the Services, the Deliverables, the timeframes or the Fees. A commercial change takes effect only when its scope, timing and price are recorded in writing and signed, or clearly confirmed by email, by an Authorised Representative of each party. An email confirmation under this clause cannot vary any other term of the Agreement. Stratum Software is not obliged to perform work outside the scope stated in the Order Form.
- 1.10 **Assumptions and dependencies.** The Order Form may record assumptions and dependencies. If an assumption proves to be incorrect, or a dependency is not met, Stratum Software is relieved from any affected timeframe, and the parties will agree any resulting change to the Fees and the timeframes under clause 1.9.
- 1.11 **No exclusivity.** Nothing in the Agreement prevents Stratum Software from providing services to any other person, including a competitor of the Client. This clause is subject to clauses 6 and 9.

2. Client obligations

- 2.1 The Client must, at its own cost and in a timely way:
- (a) give Stratum Software the access it reasonably requires to the Client's premises, systems, data, documents and people;
 - (b) provide information that is accurate and complete in all material respects, and correct it promptly if the Client becomes aware that it is not;
 - (c) make decisions, give approvals and provide feedback within the periods stated in the Order Form or, if none is stated, within a reasonable period;
 - (d) provide the third party software licences, subscriptions, hardware, environments and network access needed for the Services;
 - (e) nominate an Authorised Representative with authority to give instructions, agree changes and accept Deliverables, and notify Stratum Software of any change to that appointment; and
 - (f) keep its own backups of Client Data held in systems the Client controls.
- 2.2 **Client Delay.** If Stratum Software is delayed or prevented from performing the Services because the Client has not met clause 2.1, Stratum Software is relieved from the affected obligations for the period of the delay, and the parties will agree any resulting change to the Fees and the timeframes under clause 1.9. Stratum Software may charge for time reserved for the Client that it is not able to use only where the Order Form states both that standby charges apply and the applicable rate or calculation.

3. Term and termination

- 3.1 **Term.** The Agreement commences on the Commencement Date and continues for the Initial Term. If the Order Form states that the Renewal Term is not applicable, the Agreement does not renew and expires at the end of the Initial Term or, where the Initial Term is stated to run until project completion, when the final Deliverable is accepted. Outstanding payment and other surviving obligations are not affected by expiry. Otherwise, at the end of the Initial Term it continues for successive Renewal Terms unless either party gives the other written notice of non-renewal at least the Notice Period before the end of the then current Term.
- 3.2 **Termination for convenience.** After the end of the Initial Term, either party may terminate the Agreement by giving the other written notice of at least the Notice Period. Neither party may terminate for convenience during the Initial Term unless the Order Form states that it may and records the applicable notice and payment consequences. If the Order Form permits termination during the Initial Term but does not state a different notice period, the Notice Period applies.
- 3.3 **Termination for breach.** Either party may terminate the Agreement immediately by written notice to the other if that other party commits a material breach and either the breach is not capable of remedy, or the breach is not remedied within 15 Business Days after written notice of it.
- 3.4 **Termination for insolvency.** Either party may terminate the Agreement immediately by written notice to the other if that other party suffers an Insolvency Event.
- 3.5 **Consequences of termination.** On termination or expiry of the Agreement:
- (a) the Client must pay for all Services performed up to the termination date and all expenses properly incurred. Where the Order Form provides for a Committed Volume, the Fee for the period in which termination takes effect remains payable, except where the Client terminates under clause 3.3 for Stratum Software's unremedied material breach;
 - (b) ownership of each paid Deliverable remains with, or passes automatically to, the Client in accordance with clause 5.4;
 - (c) Stratum Software will hand over the work in progress, documentation, decision logs and reports produced under the Agreement, in the formats in which it holds them. Once the Fees properly payable for that work are paid, the work in progress is treated as a Deliverable for the purposes of clause 5.4;
 - (d) each party must return or destroy the other party's Confidential Information, other than a copy retained for legal, regulatory or routine backup purposes, which remains subject to clause 6;
 - (e) the Client must revoke Stratum Software's access to the Client's systems, and Stratum Software must return or destroy any credentials it holds; and
 - (f) where Stratum Software holds Client Data, it will make that data available for export in commonly used, machine readable formats for 30 days after the termination date. It will then delete active copies within a further 30 days, except for copies retained for legal or regulatory purposes or in routine backups. Retained copies remain protected by the Agreement, must not be used for another purpose, and will be deleted in the ordinary backup cycle.
- 3.6 **Transition assistance.** Where the Order Form provides for it, Stratum Software will provide transition assistance after the termination date, for the period and at the rates stated in the Order Form.

- 3.7 **Survival.** Clauses 3.5, 3.7, 5, 6, 7, 8, 10, 11, 13, 14, 17 and 18, and any other clause which by its nature is intended to survive, survive termination or expiry of the Agreement.

4. Fees and payment

- 4.1 **Fees.** The Client must pay Stratum Software the Fees set out in the Order Form.
- 4.2 **Expenses.** The Client must reimburse Stratum Software for expenses that the Order Form provides for, or that the Client approves in writing in advance. Expenses are charged at cost without margin unless the Order Form states otherwise.
- 4.3 **Invoicing.** Stratum Software will issue tax invoices in accordance with the billing frequency in the Order Form, to the billing contact named in the Order Form or to any other address the Client notifies in writing.
- 4.4 **Payment.** All Fees:
- (a) must be paid within the payment terms stated in the Order Form or, if none is stated, within 14 days of the date of the invoice;
 - (b) must be paid in cleared funds, without set off, counterclaim or deduction, in Australian dollars unless the Order Form specifies another currency; and
 - (c) are exclusive of GST and of any other applicable taxes, duties or levies.
- 4.5 **Change in Fees.** Stratum Software may adjust the Fees with effect from the start of a Renewal Term by giving the Client written notice at least 30 days, and at least the Notice Period plus 10 Business Days, before the end of the then current Term. An increase must not exceed the change in CPI (Perth, All Groups) for the 12 months before the notice, plus 5%, unless the parties agree otherwise in writing. If notice is given later, the increase does not take effect until the following Renewal Term unless the Client agrees otherwise.
- 4.6 **Overdue Fees.** Without limiting any other right, if an amount payable by the Client is overdue Stratum Software may:
- (a) after giving at least 10 Business Days' written notice, suspend the Services until payment is received;
 - (b) charge interest on the overdue amount at the Reserve Bank of Australia cash rate plus 4% per annum, accruing daily; and
 - (c) recover its reasonable costs of recovering the overdue amount, including reasonable legal costs.
- 4.7 **Disputed invoices.** If the Client disputes an invoice in good faith it must notify Stratum Software within 10 Business Days of the date of the invoice, setting out the reason, and must pay the undisputed part by the due date. The disputed part is dealt with under clause 14. Clause 4.6 does not apply to an amount properly disputed under this clause.

5. Intellectual property

- 5.1 **Meaning.** In this clause 5:
- (a) **Background IP** of a party means Intellectual Property Rights that the party owns or is licensed to use before the Commencement Date, or creates independently outside the performance of the Services, including an improvement, modification or enhancement created outside the performance of the Services. An improvement, modification or enhancement created in performing the Services is a Deliverable unless the Order Form identifies it as Background IP.

- (b) **Stratum Products** means the commercial software products Stratum Software owns and sells, in all their versions, including their source code, databases, designs, datasets and documentation. Stratum Track is a Stratum Product. Stratum Products form part of Stratum Software's Background IP.
 - (c) **Deliverables** means the reports, documents, designs, specifications, standards, registers, models, configurations, software and other materials Stratum Software creates for the Client in performing the Services and delivers to the Client, including paid work in progress treated as a Deliverable under clause 3.5. Deliverables do not include Stratum Software's Background IP.
 - (d) **Client Materials** means materials, data and Intellectual Property Rights the Client provides to Stratum Software for use in the Services.
- 5.2 **Background IP.** Each party retains ownership of its Background IP. Nothing in the Agreement transfers Background IP from one party to the other.
- 5.3 **Disclosure of overlapping functionality.** The Order Form must identify any Stratum Product known before signing to have functionality materially similar to part of the Deliverables, or state that there is no known overlap. For each product identified, the Client acknowledges that Stratum Software disclosed the overlap before the Agreement was signed, that Stratum Software owns and sells that product, and that the fact the Client is paying for work that covers similar ground does not give the Client any right in it.
- 5.4 **Ownership of the Deliverables.** On payment of the Fees properly payable for the period, stage or work in which a Deliverable is created, Stratum Software assigns to the Client all Intellectual Property Rights in that Deliverable, including present and future copyright. The assignment takes effect automatically on payment, and the parties intend the signed Order Form and this clause to constitute signed writing for that assignment. Stratum Software will sign any further document the Client reasonably requires to record or perfect it. Until payment is made, the Client has a revocable licence to use the Deliverable for internal testing, acceptance and business purposes. That licence ends if the Agreement is terminated for the Client's failure to pay the relevant Fees.
- 5.5 **Background IP inside the Deliverables.** A Deliverable may be built on, or may include, Stratum Software's Background IP. That Background IP is not assigned to the Client. On payment of the Fees properly payable for that Deliverable, Stratum Software grants the Client a perpetual, irrevocable, worldwide, non-exclusive, royalty free and fully paid licence to use that Background IP as part of the Deliverable, including to use, run, copy, modify and maintain it, and to permit its related bodies corporate, hosting providers and contractors to do so solely for the Client's business. Before payment, use of that Background IP is limited by the revocable licence in clause 5.4. The licence does not permit the Client to extract that Background IP from the Deliverable and use it separately, or to licence, sell or distribute it as a product in its own right.
- 5.6 **No licence to Stratum Products.** The Client obtains no right to use, access, copy, modify, resell or licence any Stratum Product. No licence to Stratum Software's Background IP is granted by the Agreement, by any payment made under it, or by anything delivered under it, other than the licence in clause 5.5 and any licence the Order Form expressly grants. No further licence is to be implied.
- 5.7 **Stratum Software's own products and residual knowledge.** Nothing in the Agreement prevents Stratum Software from:
- (a) continuing to develop, market, sell and support its own products, including Stratum Products;
 - (b) developing the same or similar functionality for itself or for any other client; or

- (c) using the general skills, knowledge, techniques and methods its personnel hold or acquire in the course of their work.

This clause does not permit Stratum Software to copy a Deliverable, and it does not permit Stratum Software to use the Client's Confidential Information.

- 5.8 **Ideas and feedback.** The Client will raise ideas, requests and feedback during the Services. Some may already exist in a Stratum Product or on Stratum Software's roadmap, and some may appear in a Stratum Product later. None of that gives the Client any ownership, licence, royalty, credit or other claim over any Stratum Product. If Stratum Software later releases something in a Stratum Product that resembles something discussed during the Services, that is not a breach of the Agreement or of clause 6, provided Stratum Software has not copied a Deliverable and has not used the Client's Confidential Information.
- 5.9 **Third party and open source components.** A Deliverable may include third party or open source components. Those components are licensed to the Client under their own terms rather than under clause 5.4. On delivery, Stratum Software will provide a list of material components, their versions and applicable licences, and any notices or source code required by those licences. Stratum Software will conduct a reasonable dependency review and will not knowingly include a component whose licence terms would prevent the Client from using the Deliverable in the way the Order Form contemplates.
- 5.10 **Moral rights.** Australian law does not permit the assignment of moral rights. Before an individual author contributes to a Deliverable, Stratum Software must obtain that author's genuine written consent, to the extent permitted by Law, to the Client and its licensees, successors and authorised persons using, reproducing, adapting, modifying and publishing the Deliverable without attribution. The consent must cover the acts and classes of acts reasonably required for the Client to exercise its rights under the Agreement. Stratum Software will provide evidence of those consents on reasonable request.
- 5.11 **Client Materials.** The Client retains ownership of Client Materials and grants Stratum Software a non-exclusive, royalty free licence to use them to the extent necessary to perform the Services. The Client warrants that Stratum Software's use of Client Materials in accordance with the Agreement will not infringe the rights of any third party or breach any Law.
- 5.12 **Records as evidence.** Each party may rely on its own dated internal records, including roadmaps, tickets, commits, design notes and file metadata, as evidence of what it held or planned before the Commencement Date.

6. Confidentiality

- 6.1 **Obligation.** A party that receives Confidential Information of the other party (Receiving Party and Disclosing Party) must keep it confidential and secure, must not disclose it to any person without the Disclosing Party's prior written consent, and must use it only to perform its obligations or exercise its rights under the Agreement.
- 6.2 **Information not covered.** Clause 6.1 does not apply to information that:
 - (a) is or becomes public other than through a breach of the Agreement;
 - (b) the Receiving Party already held without a duty of confidence;
 - (c) the Receiving Party receives from a third party without restriction; or
 - (d) the Receiving Party develops independently.
- 6.3 **Permitted disclosure.** A Receiving Party may disclose Confidential Information:
 - (a) where the Agreement permits it or the Disclosing Party authorises it;

- (b) where required by Law, or by a court or regulator, having first given the Disclosing Party notice where it is lawful to do so; or
 - (c) to its personnel, subcontractors, professional advisers and insurers who need it, and who are bound by obligations of confidence no less restrictive than this clause 6.
- 6.4 **Interaction with clause 5.7.** Clause 5.7 permits the use of general skills, knowledge, techniques and methods only where that use does not disclose, reproduce or rely on the Client's Confidential Information. It does not create a broader exception to this clause 6.
- 6.5 **Personnel.** Each party must ensure that its personnel and subcontractors comply with this clause 6.
- 6.6 **Return.** On the Disclosing Party's written request, or on termination or expiry of the Agreement, the Receiving Party must deal with the Confidential Information in accordance with clause 3.5(d).

7. Client Data, privacy and security

- 7.1 **Ownership.** The Client owns all Client Data. The Client grants Stratum Software a non-exclusive, worldwide, royalty free licence to access, copy, store, transmit and use Client Data solely to perform the Services.
- 7.2 **Where the work is held.** Where the Order Form requires it, Stratum Software will create and hold the Deliverables and its working materials in the Client's own systems or tenancy, and will not hold the only copy of anything the Client needs in order to operate.
- 7.3 **Security.** Stratum Software will maintain administrative, physical and technical safeguards consistent with good industry practice, and will comply with any security standard the Order Form specifies. A new or changed standard that materially affects the scope, cost or time required for the Services is dealt with under clause 1.9.
- 7.4 **Access and credentials.** Stratum Software will access the Client's systems only as needed for the Services, using accounts issued to named individuals, with the least privilege required for the work and with multi-factor authentication where the Client's systems support it. Stratum Software must not share credentials, and must return or destroy them on termination.
- 7.5 **Security incidents.** If Stratum Software becomes aware of any actual or reasonably suspected unauthorised access to, or disclosure, loss or corruption of, Client Data or the Client's Confidential Information (Security Incident), it must notify the Client in writing as soon as reasonably practicable, and in any event within 72 hours of becoming aware of it. Stratum Software must take reasonable steps to contain and mitigate the Security Incident, preserve relevant evidence, give the Client material information and updates as they become available, and cooperate reasonably with the Client in responding and meeting legal obligations. Neither party may notify a third party in the other party's name without prior written approval, except where required by Law.
- 7.6 **Privacy.** Each party must comply with the Privacy Laws that apply to it. In addition, Stratum Software will collect, use, disclose, protect and delete Personal Information handled in the Services in a manner consistent with the Australian Privacy Principles, whether or not an exemption would otherwise apply to it. The Client warrants that Personal Information it discloses to Stratum Software has been collected and disclosed lawfully. The Client must not intentionally provide Sensitive Information to Stratum Software unless the parties agree in writing on the purpose and safeguards.
- 7.7 **Artificial intelligence.** Where Stratum Software uses artificial intelligence tools in performing the Services:

- (a) it will comply with any artificial intelligence standard or policy the Client provides to it in writing before the relevant use, subject to clause 1.9 where a new or changed standard materially affects the Services;
 - (b) it will not input the Client's Confidential Information, Personal Information or Client Data into a tool whose provider may use that input to train or improve a model or for another provider purpose, unless the Client consents in writing;
 - (c) it remains responsible for reviewing and verifying the output, and the standard of care in clause 1.2 applies to any output that forms part of a Deliverable; and
 - (d) it will not use Client Data, including aggregated or de-identified data derived from it, to train or improve an artificial intelligence model or to improve Stratum Software's services unless the Order Form expressly permits that use. Any permitted de-identification must make it not reasonably practicable to identify the Client or an individual.
- 7.8 **Third party processing.** Where a Third Party Vendor processes Client Data for the Services, Stratum Software remains responsible for its use of that vendor, must limit the vendor's access to what is reasonably necessary, and must impose written confidentiality, privacy and security obligations appropriate to the Client Data. Stratum Software will identify material vendors and the location of processing on reasonable request, and will obtain prior approval where the Order Form requires it.
- 7.9 **Retention.** Stratum Software will retain Client Data only for as long as reasonably necessary to provide the Services or meet a legal or regulatory obligation, and will deal with it on termination or expiry in accordance with clause 3.5.

8. Warranties and disclaimers

- 8.1 **Mutual warranty.** Each party warrants that it has the power and authority to enter into and perform the Agreement.
- 8.2 **Services warranty.** Stratum Software warrants that the Services will be performed in accordance with clause 1.2. If the Client notifies Stratum Software within 60 days after the relevant Services are performed that they were not, Stratum Software will re-perform the affected Services at its own cost. If re-performance is not reasonably practicable or does not remedy the failure within a reasonable period, Stratum Software will refund the Fees paid for the affected Services. These are the Client's contractual remedies for breach of this warranty and do not limit the acceptance rights in clause 1.8 or a remedy that cannot be excluded by Law.
- 8.3 **No warranty of outcome.** Stratum Software does not warrant any particular commercial, financial or operational outcome from the Services, and does not warrant that a Deliverable will be free from all defects.
- 8.4 **Review of outputs.** The Client is responsible for reviewing Deliverables before use. The Client must obtain approval from a suitably qualified independent person before relying on or providing a Deliverable to a third party only where the Order Form identifies that requirement, or where Law or an applicable professional standard requires it.
- 8.5 **Third Party Vendors.** Stratum Software is not responsible for the independent acts, omissions, content, availability or functionality of a Third Party Vendor and does not warrant continued interoperability with it. This does not exclude Stratum Software's responsibility to exercise the standard of care in clause 1.2 when selecting, recommending, configuring, integrating or managing a Third Party Vendor as part of the Services.

- 8.6 **Exclusion of implied terms.** Except as expressly set out in the Agreement, and to the fullest extent permitted by Law, all warranties, representations, conditions and other terms implied by statute or common law are excluded.

9. Independence and conflicts of interest

This clause 9 applies only where the Order Form states that it applies.

- 9.1 **Disclosure.** Stratum Software must disclose to the Client, in writing and at the time the recommendation is made, where a recommendation it makes would or could result in work or revenue for Stratum Software or a related entity.
- 9.2 **Options.** Each material recommendation by Stratum Software to build or buy technology must set out a build option, a buy option and a do-nothing option, together with the reasoning for the recommended course.
- 9.3 **Own engagements disclosed at cost.** Where Stratum Software prepares or maintains a register or review of the Client's technology spend, it must include Stratum Software's own engagements at full cost, on the same basis as any other supplier.
- 9.4 **Alternatives.** Where the Client asks for one, a recommendation that would increase Stratum Software's share of the Client's work must include at least one alternative supplier or approach.
- 9.5 **Independent opinion.** Nothing in the Agreement prevents the Client from seeking an independent opinion on any recommendation at any time.

10. Liability

- 10.1 **Consequential Loss.** Neither party is liable to the other for Consequential Loss arising out of or in connection with the Agreement, whether in contract, tort (including negligence), under statute, in equity or otherwise. This exclusion does not apply to an amount finally awarded to a third party, or included in a settlement approved under clause 11.4, for which a party is liable under an indemnity in clause 11.
- 10.2 **General cap.** Subject to clauses 10.3 and 10.4, each party's total aggregate liability arising out of or in connection with the Agreement is limited to the Liability Cap.
- 10.3 **Higher cap.** The general cap in clause 10.2 does not apply to liability for a breach of clause 6 or 7, infringement or misuse of the other party's Intellectual Property Rights, or an indemnity in clause 11. Instead, each party's total aggregate liability for those matters is limited to the Higher Liability Cap. Subject to clause 10.4, the Higher Liability Cap is the maximum aggregate liability under the Agreement, and all amounts counted towards the Liability Cap also count towards it.
- 10.4 **Liability not limited.** The caps in clauses 10.2 and 10.3 do not apply to the Client's obligation to pay Fees or to liability for death or personal injury. Clauses 10.1 to 10.3 do not apply to liability arising from fraud or wilful misconduct, or to the extent that liability cannot lawfully be excluded or limited.
- 10.5 **Australian Consumer Law.** Nothing in the Agreement excludes, restricts or modifies a consumer guarantee, right or remedy that cannot lawfully be excluded, restricted or modified. Where section 64A of the Australian Consumer Law permits a limitation and it is fair and reasonable to rely on it, Stratum Software's liability is limited, at its option: for goods, to replacement, supply of equivalent goods, repair, or payment of the cost of replacement, equivalent goods or repair; and for services, to supplying the services again or paying the cost of having them supplied again.

- 10.6 **Proportionate reduction.** Each party's liability is reduced proportionally to the extent the relevant loss was caused or contributed to by the other party's act, omission, negligence, wilful misconduct or fraud, or by the other party's breach of the Agreement.
- 10.7 **Mitigation.** Each party must take reasonable steps to mitigate any loss it suffers.

11. Indemnities

- 11.1 **Stratum Software indemnity.** Stratum Software indemnifies the Client against Loss arising from a third party claim that the Client's use of a Deliverable in accordance with the Agreement infringes that third party's Intellectual Property Rights. This indemnity does not apply to the extent the claim arises from Client Materials, the Client's modification or use of a Deliverable contrary to the Agreement, or the Client's combination of a Deliverable with anything not supplied or approved by Stratum Software.
- 11.2 **Infringement response.** If a claim under clause 11.1 is made or reasonably likely, Stratum Software may, at its cost and option, obtain the right for the Client to continue using the affected Deliverable, or modify or replace it so that it is non-infringing without materially reducing its functionality. If none of those options is commercially reasonable, Stratum Software may terminate the affected part of the Services and refund the Fees paid for the affected Deliverable, less a reasonable amount for the benefit already received by the Client.
- 11.3 **Client indemnity.** The Client indemnifies Stratum Software against Loss arising from a third party claim that Stratum Software's authorised use of Client Data or Client Materials infringes that third party's rights, or that the Client collected or disclosed the relevant material unlawfully. This indemnity does not apply to the extent the claim arises from Stratum Software's modification or use of the material contrary to the Agreement.
- 11.4 **Conduct of claims.** The indemnified party must promptly notify the indemnifying party of a claim, give it control of the defence and settlement using suitably qualified advisers, and provide reasonable cooperation at its cost. Delay in notification reduces the indemnity only to the extent the delay materially prejudices the defence. The indemnifying party must not admit liability for the indemnified party or agree a settlement that imposes a non-monetary obligation on it without prior written consent, which must not be unreasonably withheld or delayed.

12. Insurance

- 12.1 **Insurance.** Stratum Software will hold the insurances stated in the Order Form for the Term, subject to the terms, conditions and exclusions of those policies, and will provide a certificate of currency within 10 Business Days of the Client's written request. If the Order Form does not state any insurance, this clause imposes no obligation. Insurance does not expand Stratum Software's liability under the Agreement or give the Client a direct right against an insurer.

13. Non-solicitation

- 13.1 **Non-solicitation.** During the Term, and for 12 months after it ends, neither party may without the other party's written consent solicit for employment or engagement any individual who was materially involved in the Services on the other party's behalf. This clause does not prevent a general advertisement that is not directed at that individual, or the engagement of a person who responds to such an advertisement.

14. Dispute resolution

- 14.1 **Precondition.** A party must not start legal proceedings about a dispute arising out of or in connection with the Agreement (Dispute) unless it has first complied with this clause 14,

except where it seeks urgent interlocutory relief, takes action to preserve a limitation period, or seeks recovery of an undisputed debt.

- 14.2 **Dispute Notice.** Either party may give the other written notice describing the Dispute and requesting resolution under this clause 14 (Dispute Notice).
- 14.3 **Escalation.** Within 10 Business Days of a Dispute Notice, the Dispute must be referred to a director or chief executive of each party, or their authorised delegate, for resolution by negotiation.
- 14.4 **Proceedings.** If the Dispute is not resolved within 30 Business Days of the Dispute Notice, or within any longer period the parties agree in writing, either party may start legal proceedings.
- 14.5 **Performance continues.** During a Dispute each party must continue to perform its obligations, including Stratum Software's obligation to provide the Services and the Client's obligation to pay Fees that are not properly disputed under clause 4.7, except where performance would be unlawful or unsafe, the Agreement has been terminated, or Stratum Software has validly suspended the Services under clause 4.6.

15. Force majeure

- 15.1 **Notice and mitigation.** If a Force Majeure Event prevents a party from performing an obligation under the Agreement, that party must notify the other as soon as reasonably practicable and no later than 5 Business Days after the event arises, and must use reasonable endeavours to minimise its impact. That party is relieved from the affected obligation while the event continues. A cyber attack or third party service interruption is a Force Majeure Event only to the extent it could not reasonably have been prevented or overcome by the safeguards, continuity measures and alternatives required by the Agreement or good industry practice.
- 15.2 **Payment.** A Force Majeure Event does not excuse a party from an obligation to pay money under the Agreement, except that the Client is not required to pay Fees for any period during which the Services are not being provided because of a Force Majeure Event affecting Stratum Software.
- 15.3 **Termination.** If a Force Majeure Event continues for more than 60 Business Days, the party not affected by it may terminate the Agreement by giving 10 Business Days' written notice.

16. GST

- 16.1 **Interpretation.** In this clause 16, unless the context indicates otherwise, a word or expression defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the meaning given to it in that Act.
- 16.2 **GST gross up.** If a party (Supplier) makes a supply under or in connection with the Agreement on which GST is payable, the recipient of the supply (Recipient) must pay the Supplier an additional amount equal to the GST payable on the supply (GST Amount), at the same time as the consideration for the supply is payable.
- 16.3 **Reimbursements.** If a party must reimburse or indemnify another party for a loss, cost or expense under the Agreement, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for that loss, cost or expense, and is then increased in accordance with clause 16.2.
- 16.4 **Calculations.** If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment is calculated by reference to that amount or revenue stream exclusive of GST.

- 16.5 **Adjustments.** If the GST payable by a Supplier on a supply varies from the GST Amount paid or payable by the Recipient under clause 16.2, the Supplier must provide a corresponding refund or credit to the Recipient, or is entitled to recover the amount of the variation from the Recipient. If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note within 14 days after becoming aware of it.
- 16.6 **Tax invoice.** A party need not make a payment for a taxable supply made under or in connection with the Agreement until it receives a tax invoice for the supply to which the payment relates.

17. General

- 17.1 **Governing law.** The Agreement is governed by the laws of Western Australia and the Commonwealth of Australia. The parties irrevocably submit to the exclusive jurisdiction of the courts of Western Australia and the courts entitled to hear appeals from them.
- 17.2 **Entire agreement.** The Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter.
- 17.3 **Variation.** Except for a commercial change agreed under clause 1.9, no variation of the Agreement is effective unless it is in writing and signed, including by electronic signature, by an Authorised Representative of each party. Stratum Software may not vary the terms applying to an existing Order Form by publishing an updated version of this Services Agreement.
- 17.4 **Waiver.** No waiver of a right or remedy under the Agreement is effective unless it is in writing and signed by the party granting it, and it is effective only in the specific instance and for the specific purpose for which it is granted. A failure to exercise, or a delay in exercising, a right or remedy does not operate as a waiver of it.
- 17.5 **Severability.** A term of the Agreement that is wholly or partly void or unenforceable is severed to the extent that it is void or unenforceable, and the validity and enforceability of the rest of the Agreement is not affected.
- 17.6 **Publicity.** Stratum Software may identify the Client by name and logo as a client of Stratum Software on its website and in its marketing materials only where the Order Form permits it, and must cease doing so within a reasonable period of receiving a written request from the Client.
- 17.7 **Cumulative rights.** The rights and remedies of a party under the Agreement, including under an indemnity, are in addition to and do not limit any other rights or remedies provided by Law.
- 17.8 **Further assurances.** Each party must do all things, and execute all further documents, necessary to give full effect to the Agreement.
- 17.9 **Assignment.** Neither party may assign or novate the Agreement without the other party's prior written consent, which must not be unreasonably withheld or delayed. Either party may, on written notice and without consent, assign or novate the Agreement to a related body corporate or to a successor in connection with a merger, acquisition, corporate restructure or sale of all or substantially all of the relevant business, provided the assignee is capable of performing and assumes that party's obligations in writing.
- 17.10 **Notices.** A notice, consent or other communication under the Agreement is effective only if it is in writing and delivered to the notices address or sent to the notices email set out in the Order Form, unless that party has notified a change in writing. A notice delivered by hand or courier is received on delivery; one sent by prepaid post within Australia is received three Business Days after posting; and one sent by email is received when the sender's system

records successful transmission without an automated failure notice. If receipt occurs after 5pm or on a day that is not a Business Day, it is taken to occur at 9am on the next Business Day.

- 17.11 **Counterparts.** The Agreement may be executed in counterparts, including by electronic signature, and all counterparts together form one instrument.
- 17.12 **Costs.** Except as expressly provided in the Agreement, each party must pay its own costs and expenses in connection with negotiating, preparing and executing the Agreement.
- 17.13 **No reliance.** Each party acknowledges that it has relied on its own enquiries and not on any representation that is not set out in the Agreement. Nothing in this clause limits liability for fraud or for misleading or deceptive conduct.

18. Interpretation and definitions

18.1 **Interpretation.** In the Agreement, unless a contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and the reverse;
- (c) where a word or phrase is given a meaning, other parts of speech and grammatical forms of it have a corresponding meaning;
- (d) the words “including”, “such as” and similar expressions are not words of limitation;
- (e) a reference to a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate, and includes that person's successors and permitted assigns;
- (f) a reference to a document includes all amendments and supplements to it;
- (g) a reference to a law includes that law as amended, consolidated or replaced;
- (h) a monetary amount is in Australian dollars;
- (i) no rule of construction applies to the disadvantage of a party because that party was responsible for preparing the Agreement or any part of it; and
- (j) if the day on which something must be done is not a Business Day, it must be done on the next Business Day.

18.2 **Definitions.** In the Agreement:

Acceptance Period means the period stated in the Order Form for the Client to test and accept a Deliverable or, if none is stated, 10 Business Days from delivery.

Agreement means an Order Form together with this Services Agreement and each document the Order Form expressly incorporates.

Authorised Representative means the individual named in the Order Form as having authority to give instructions, agree changes and accept Deliverables on behalf of a party, or any replacement notified in writing.

Background IP has the meaning given in clause 5.1(a).

Business Day means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia. Business hours are 9am to 5pm Australian Western Standard Time.

Client means the entity named as the Client in the Order Form.

Client Data means all data and information the Client or its personnel provide to Stratum Software, or that Stratum Software generates, processes, transmits or stores for the Client in performing the Services, including any database containing it and any copies of it.

Client Materials has the meaning given in clause 5.1(d).

Commencement Date means the date stated in the Order Form.

Committed Volume means the volume of Services, expressed in days, hours or another unit, that the Order Form commits to each period.

Confidential Information of a party means all information in any form that relates to or arises from the Services, that concerns that party's business operations and that a reasonable person would consider to be confidential, including trade secrets, methods, strategies, customer lists, pricing and business processes, and includes the Agreement itself. It does not include information described in clause 6.2.

Consequential Loss means:

- (a) indirect, consequential, special, incidental or punitive loss or damage; or
- (b) loss of profit, revenue, goodwill, opportunity or anticipated savings, to the extent it is indirect or consequential.

It does not include reasonable direct costs of restoring Client Data lost or corrupted by a breach of the Agreement, or an amount payable to a third party under an indemnity in clause 11.

Deliverables has the meaning given in clause 5.1(c).

Fees means the fees and charges payable by the Client for the Services, as set out in the Order Form.

Fee Base means the Fees paid by the Client, plus Fees payable for Services performed, during the 12 months ending on the date of the first event giving rise to liability. If that event occurs less than 12 months after the Commencement Date, the period begins on the Commencement Date. It includes Fees invoiced after the event for Services performed on or before that date.

Force Majeure Event means an event, circumstance or cause beyond a party's reasonable control, including industrial action, civil commotion, riot, cyber attack, terrorist attack, war, fire, explosion, storm, flood, earthquake, epidemic, pandemic or other natural disaster, interruption or failure of utility services or telecommunications networks, interruption of third party services, and the acts, decrees, legislation or restrictions of any government agency.

GST means any goods and services tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth), as amended, renamed or replaced.

Initial Term means the initial period stated in the Order Form.

Insolvency Event means, in respect of a party, that it is or becomes unable to pay its debts as and when they fall due, it ceases or threatens to cease carrying on business, a step is taken to enter into an arrangement, compromise or composition with its creditors, a step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator or other controller of the whole or any part of its assets or business, a statutory demand is served on it under section 459E of the Corporations Act 2001 (Cth) and is not set aside or complied with within the prescribed period, an application or order is made or a resolution is passed for its winding up or dissolution other than for a solvent reconstruction or amalgamation, or an analogous event occurs in any jurisdiction.

Intellectual Property Rights means all present and future intellectual and industrial property rights throughout the world conferred by statute, at common law or in equity, including patents, designs, copyright, rights in circuit layouts, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration, together with any application or right to apply for registration of them and all renewals and extensions of them.

Law means any principle of law or equity established by decisions of courts, any statute, regulation or by-law of the Commonwealth, a State, a Territory or a government agency, and any requirement or approval of a government agency that has the force of law.

Higher Liability Cap means the amount or formula stated as the Higher Liability Cap in the Order Form or, if none is stated, 200% of the Fee Base.

Liability Cap means the amount or formula stated as the Liability Cap in the Order Form or, if none is stated, 100% of the Fee Base.

Loss means actual damage, loss, liability, cost or expense reasonably incurred, including reasonable external legal costs, but excludes Consequential Loss except for an amount payable to a third party under an indemnity in clause 11. A fine or penalty is Loss only to the extent it is lawfully recoverable from the other party.

Notice Period means the notice period stated in the Order Form or, if none is stated, 30 days.

Order Form means an ordering document that identifies this Services Agreement, specifies the details of the Services, the Term and the Fees, and is signed by both parties.

Personal Information has the meaning given in the Privacy Act 1988 (Cth).

Privacy Laws means any legislation or administrative requirement imposing an obligation in relation to the collection, use, disclosure, storage or transmission of personal information that applies to a party in performing its obligations under the Agreement, including the Privacy Act 1988 (Cth) and the Australian Privacy Principles, in each case as amended from time to time.

Renewal Term means the renewal period stated in the Order Form.

Sensitive Information has the meaning given in the Privacy Act 1988 (Cth).

Services means the services described in the Order Form, including any Deliverables.

Stratum Products has the meaning given in clause 5.1(b).

Term means the Initial Term together with any Renewal Term.

Third Party Vendor means any party that provides software, software as a service, hosting or professional services to Stratum Software or to the Client and that is not a party to the Agreement.

Execution

This Services Agreement takes effect only through an Order Form that identifies this version and is signed by both parties. The signatures and engagement-specific details are carried by that Order Form; this Services Agreement is not intended to be executed as a standalone document.