

# Stratum Track Subscription Agreement

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## 1. Agreement

This is the Stratum Track Subscription Agreement under which Stratum Software provides the Customer with access to the Software and Additional Services as set out in the Order Form (**Services**).

The Order Form together with this Stratum Track Subscription Agreement constitute the Agreement.

In the event of any conflict between the Order Form and this Stratum Track Subscription Agreement, the Order Form will take precedence.

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## 2. Services

### 2.1 Services

Stratum Software will provide the Customer with the following Services for the Term:

- (a) Software;
- (b) Additional Services,

as specified in the Order Form. Other services may be agreed between the parties from time to time in writing by entering into an additional Order Form.

### 2.2 Right to use Software

Subject to the terms of the Agreement, the Stratum Software grants the Customer and each of its Authorised Users a non-exclusive, non-transferable and non-sublicensable right to access and use the Software, including any related Materials, solely for the Customer's internal business operations during the Term.

### 2.3 Authorised Users

The Customer acknowledges and agrees that it is responsible for each Authorised User's use of the Software and compliance with the Materials and that the acts or omissions of an Authorised User will be attributed to the Customer. The Customer must ensure that each Authorised User keeps their login credentials confidential and does not share their login credentials with any other person. The Customer must promptly notify Stratum Software if it becomes aware of any unauthorised access to, or use of, the Software by its Authorised Users or any third party.

### 2.4 Restrictions on use

- (a) Customer must not, and must not allow its Authorised Users or any third party to:
  - (i) resell, sublicense, transfer, or distribute the Software;
  - (ii) directly or indirectly modify, alter, copy, reverse engineer, decompile, disassemble, or otherwise discover or derive any source code, algorithms, methods or techniques embodied in the Software; or
  - (iii) access or use the Software in violation of this Agreement, the Materials or in a manner intended to avoid incurring Fees.

- (b) The Customer must not use or permit its Authorised Users or any third party to use, the Software to upload, store, or transmit content that is unlawful, infringing, defamatory, or that contains malware or other harmful code, or use the Software for any purpose other than the purpose it is intended for, or in any manner that interferes with or disrupts the Software or connected systems. Stratum Software may suspend access or remove offending content if the Customer's use of the Software breaches this Clause 2.
- (c) The Customer is solely responsible for providing and maintaining suitable hardware, operating systems, browsers, and internet connectivity required to access the Software.
- (d) If the Software is used by the Customer with services or applications provided by Third Party Vendors the Customer does so at its own risk. The Customer's use of Third Party Vendors is governed by the relevant Third Party Terms. Stratum Software is not responsible for any Third Party Vendors and is not liable for their content, availability, or functionality. Stratum Software does not warrant continued interoperability with any service provided by any Third Party Vendor.

## 2.5 Additional Services

Stratum Software will provide the Customer with the Additional Services detailed in the Order Form. If further services are required Stratum Software may provide the further services subject to an additional Order Form being agreed by the parties.

## 2.6 Maintenance

The Customer acknowledges and agrees that Stratum Software may need to perform maintenance at its discretion and as it considers necessary from time to time which may impact the Customers access to the Software or the Additional Services from time to time. Stratum Software will make reasonable efforts to keep any disruption to the Software to a minimum when carrying out maintenance.

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## 3. Term and Termination

### 3.1 Term

The Agreement commences on the Commencement Date and continues for the Initial Term. At the end of the Initial Term, the Agreement will automatically renew for successive Renewal Terms at the Stratum Software's then-current rates, unless either party gives the other written notice of non-renewal at least 30 days before the end of the then-current Term.

### 3.2 Termination

#### (a) Termination for breach

Either party may immediately terminate the Agreement by notice in writing to the other party where the other party has committed a material breach, and such breach is not capable of remedy within 15 Business Days of it notifying the other of such breach;

#### (b) Termination for insolvency

Either party may immediately terminate the Agreement by notice in writing to the other party if the other party suffers an Insolvency Event.

#### (c) Consequences of termination

- (i) On termination of the Agreement, each party shall promptly return to the other party any documents, Materials, intellectual property of the other party (including Confidential Information) excluding any documents, Material, or intellectual property or materials that the party has a legal or regulatory right to retain.

- (ii) The Customer must cease and discontinue using or accessing the Software after the termination date;
  - (iii) Stratum Software will cease providing the Additional Services to the Customer;
  - (iv) The Customer must pay to Stratum Software all applicable Fees for the then current Term, as applicable; and
  - (v) Stratum Software will enable the Customer to export or retrieve the Customer Data in commonly used, machine-readable formats (e.g., DOCX, JPEG, or PNG), or otherwise provide the Customer Data to the Customer, for a period of 30 days after the expiry or termination of the Contract. After that period, Stratum Software may delete Customer Data.
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## **4. Fees and Payment**

### **4.1 Fees**

The Customer must pay to Stratum Software Fees in accordance with the payment terms specified in each Order Form, or otherwise within 7 days of the date of invoice.

### **4.2 Payment**

All Fees:

- (a) must be paid in cleared funds, without set-off, counterclaim or deduction, in the currency specified in the applicable Order Form (or, if not specified, Australian dollars);
- (b) where the Fees are to be paid via direct debit, the Customer irrevocably authorises Stratum Software to debit the Fees from the Customer's nominated account on or about the due date for payment;
- (c) subject to applicable Law, are non-cancellable and non-refundable; and
- (d) unless otherwise indicated, are exclusive of GST and any other applicable taxes, duties, or levies.

### **4.3 Invoicing**

Stratum Software will provide a tax invoice to the Customer's email address specified in each Order Form, or to any other email address notified the Customer by written notice to Stratum Software from time to time.

### **4.4 Change in Fees**

Stratum Software may adjust the Fees:

- (a) annually on each anniversary of the Commencement Date or at the commencement of any Renewal Term, by an amount not exceeding CPI (Perth, All Groups) for the 12 months prior to the notice of the change, plus 5% unless otherwise agreed in writing; and
- (b) with effect from the first day of the Renewal Term, provided Stratum Software has given the Customer written notice of the proposed changes at least 60 days before the end of the then current Term provided that neither the Customer or Stratum Software has given notice to terminate the Agreement in accordance with clause 3.1.
- (c) Fee increases on renewal will not exceed CPI (Perth, All Groups) for the prior twelve (12) months, plus five percent (5%), unless otherwise agreed in writing.

#### 4.5 **Overdue Fees**

Without limiting any other rights of Stratum Software under this Agreement or at law, if any amount payable by the Customer is overdue, Stratum Software may:

- (a) after giving at least 10 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 four percent (4%) per annum, accruing daily and compounding monthly until paid in full;
- (c) recover from the Customer all reasonable costs and expenses incurred in recovering the overdue amount, including reasonable legal costs.

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### 5. **Confidentiality**

#### 5.1 **Protection of Confidential Information**

Each party (**Receiving Party**) receiving Confidential Information of the other party (**Disclosing Party**) acknowledges that such information is the property of and confidential to the Disclosing Party. Subject to clause 5.2, the Receiving Party must:

- (a) keep the Disclosing Party's Confidential Information confidential and secure, and not disclose it to any person without the Disclosing Party's prior written approval;
- (b) only use, copy, or reproduce the Disclosing Party's Confidential Information to the extent necessary to perform its obligations under the Contract;
- (c) on the written request of the Disclosing Party, or on termination or expiry of the Agreement deal with the Confidential Information in accordance with clause 3.2(c).

#### 5.2 **Exceptions**

The obligations in clause 5.1 do not apply to disclosure that is:

- (a) permitted or required by this Agreement, or authorised by the Disclosing Party;
- (b) required by applicable Law; or
- (c) made to a party's legal or professional advisors who are bound by confidentiality obligations.

#### 5.3 **Customer to notify Authorised Users**

The Customer must ensure that each Authorised User is made aware of and bound by confidentiality obligations no less restrictive than those in this clause 5.

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### 6. **Risk Allocation**

#### 6.1 **Indemnity**

- (a) Each party (**Indemnifying Party**) indemnifies the other (**Indemnified Party**) and its officers, and employees, against any Loss suffered or incurred by the Indemnified Party for any injury to any person or damage to any physical property of a third party, in respect of, in relation to or in connection with a breach of this Agreement by the Indemnifying Party or any negligent act or negligent failure to act by the Indemnifying Party or its officers, or employees.

- (b) Each Indemnifying Party agrees to indemnify the other party and its officers, directors and employees from and against any Loss arising out of or in connection with:
  - (i) in the case of the Customer as Indemnifying Party: Customer Data, including any allegation that Customer Data infringes the rights of a third party or breaches Law; and
  - (ii) in the case of Stratum Software as Indemnifying Party: any third-party claim alleging that the Customer's authorised use of the Services infringes the Intellectual Property Rights of that third party.
  - (iii) The Indemnifying Party's obligations under this clause 6.1(b) are conditional on the Indemnified party:
    - (A) promptly notifying the Indemnifying Party of the claim;
    - (B) giving the Indemnifying Party sole control of the defence and settlement (provided that the Indemnifying Party may not settle any claim in a manner that imposes obligations on the indemnified party without its prior written consent); and
    - (C) providing reasonable cooperation at the Indemnifying Party's expense.
- (c) Each party's indemnity obligations under this clause 6.1 are reduced proportionally to the extent that the relevant claim or loss arises from or is contributed to by the act, omission, negligence, wilful misconduct, or fraud of the indemnified party.

## 6.2 Disclaimers

Except as expressly provided in this Agreement or required by Law:

- (a) the Services are provided by Stratum Software to the Customer on an "as is" basis;
- (b) Stratum Software does not guarantee 100% availability of the Software;
- (c) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable Law, excluded from this Agreement;
- (d) the Customer assumes sole responsibility for results obtained from the use of the Services by the Customer. Stratum Software will not be liable for any damage caused by errors or omissions in any information, instructions or scripts provided to Stratum Software by or on behalf of the Customer in connection with the Services, or any actions taken by Stratum Software at the Customer's direction;
- (e) Stratum Software expressly disclaims any liability for Loss with respect to the Customer's use of the Services, or Customer's use of the Services in breach of this Agreement.
- (f) Stratum Software will not be liable for any Loss the Customer incurs as a result of a Third Party Vendor, a Force Majeure Event, the performance of maintenance under this Agreement, loss or corruption of Customer Data, defects, errors and bugs, or interruption or cessation of transmission to or from the Services.

The Customer acknowledges and agrees that:

- (g) the Software is a reference, calculation, and reporting tool only and does not replace the Customer's independent engineering judgment, quality assurance processes, inspection procedures, or regulatory compliance obligations;

- (h) Stratum Software does not warrant that the Software's calculations, tolerance assessments, pass/fail determinations, or any outputs generated by the Software (including inspection reports) are error-free, complete, or suitable for any particular purpose;
- (i) the Customer is solely responsible for independently verifying all inspection results, tolerance calculations, report outputs, and pass/fail determinations before relying on them for any purpose; and
- (j) the Customer must ensure that all inspection reports generated by the Software are reviewed and approved by a suitably qualified person before being issued, relied upon, or provided to any third party.

### 6.3 **Limitation of liability**

To the fullest extent permitted by law:

- (a) neither party is liable to the other for any Consequential Loss arising out of or in connection with this Agreement, whether in contract, tort (including negligence), equity or otherwise;
- (b) Stratum Software is not liable for any Loss arising out of or in connection with any Services provided under any Contract for no fee, or any trial, beta, or evaluation features of the Services; and
- (c) Stratum Software's total aggregate liability to the Customer arising out of or in connection with this Agreement whether in contract, tort (including negligence) or otherwise is limited to the total fees paid or payable by the Customer to Stratum Software in the 12 months preceding the first event giving rise to the liability; and
- (d) to the extent Stratum Software's liability cannot be excluded under the Australian Consumer Law, Stratum Software's liability is limited (at its option) to the resupply of the Services or payment of the cost of having the Services resupplied.

### 6.4 **Mitigation**

The Customer must take reasonable steps to mitigate any Loss it suffers.

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## 7. **Customer Data**

### 7.1 **Ownership rights**

Stratum Software acknowledges and agrees that the Customer retains all right, title and interest in and to the Customer Data.

### 7.2 **Licence**

The Customer grants to the Stratum Software a non-exclusive, worldwide, royalty-free licence to copy, store, configure, display, transmit, translate, anonymise, create derivative works of and use the Customer Data solely to the extent necessary for the performance of the Services and the exercise of Stratum Software's rights under this Agreement.

### 7.3 **Warranties**

The Customer warrants to Stratum Software that the use of the Customer Data by the Stratum Software under clause 7.2 will not breach the provisions of any Law, statute, or regulation or infringe the Intellectual Property Rights or other legal rights of any person.

#### 7.4 **Retention of Customer Data**

Subject to clause 3.2(c)(v), the Customer acknowledges and agrees that, at the expiration of the Term, or in the event of any suspension, Stratum Software is not obligated to retain any Customer Data and may delete the Customer Data without further notice, obligation, or liability to the Customer.

#### 7.5 **Customer Data Export**

During the Term, the Customer may request export of Customer Data from the Software. Stratum Software will make available export functionality that allows the Customer to retrieve Customer Data in commonly used, machine-readable formats (e.g., DOCX, JPEG, or PNG).

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### **8. Intellectual Property**

#### 8.1 **Pre-existing intellectual property**

Each party retains ownership of all Intellectual Property Rights it owns or controls prior to the Commencement Date (**Background IP**), including any improvements, modifications or enhancements to that Background IP.

#### 8.2 **Intellectual Property Rights**

- (a) All Intellectual Property Rights created in the performance of the Services (including any modifications, enhancements, configurations or new features developed by or on behalf of Stratum Software) vest in and remain the exclusive property of Stratum Software on creation.
- (b) Subject to this Agreement, Stratum Software grants the Customer a non-exclusive, non-transferable, non-sublicensable, royalty-free licence to use the Services and any Stratum Software Background IP incorporated into the Services, solely for the Customer's internal business purposes and in connection with its authorised use of the Software during the Term.
- (c) The Customer must not disclose, provide or make the Services available to any third party, or use them for any other purpose, without Stratum Software's prior written consent.

#### 8.3 **Protection of intellectual property**

The Customer must use all reasonable endeavours to prevent unauthorised use or infringement of Stratum Software's Intellectual Property Rights.

Except as expressly set out in this Agreement, no rights, title or interest in the Services or the Software are granted to the Customer.

#### 8.4 **Reports and Outputs**

- (a) The content of reports generated through the Software (including data, images and results) is Customer Data and is owned by the Customer.
- (b) The software and processes involved in the design & generation of such reports form part of Stratum Software's Intellectual Property Rights.
- (c) Stratum Software grants the Customer a non-exclusive, non-transferable, royalty-free licence to use and share reports (including their format) for the purpose of obtaining the benefit of this Agreement.

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## 9. Privacy and Data

### 9.1 Data

- (a) Stratum Software does not warrant and cannot guarantee the security of the Customer Data transmitted to Stratum Software. The Customer acknowledges that the transmission of Customer Data occurs at the Customer's own risk.
- (b) The Stratum Software will maintain reasonable administrative, physical, and technical safeguards in relation to the Software consistent with industry standards.
- (c) If Stratum Software becomes aware of any actual or reasonably suspected unauthorised access to, or disclosure, loss, or corruption of, Customer Data (**Security Incident**), Stratum Software must notify the Customer in writing as soon as reasonably practicable (in any event within 72 hours of becoming aware of the Security Incident), provide the Customer with all available details about the nature of the Security Incident, the Customer Data affected, and the steps the Stratum Software is taking or proposes to take in response, and reasonably cooperate with the Customer in relation to its legal obligations

### 9.2 Privacy

- (a) Each party must comply with applicable Privacy Laws in relation to any Personal Information it handles under this Agreement.
- (b) The Customer warrants that all Personal Information disclosed to or accessed by Stratum Software has been collected and disclosed in compliance with Privacy Laws.
- (c) The Customer acknowledges that the Software may process Personal Information entered by the Customer or its users, including names, identifiers, photographs, digital signatures and related metadata.
- (d) The Customer is responsible for ensuring that its collection, use and disclosure of Personal Information (including via the Software) complies with Privacy Laws.
- (e) The Customer indemnifies the Stratum Software against any loss, claim or liability arising from a breach of this clause 9.2 by the Customer.
- (f) Unless expressly permitted in writing, the Customer must not upload or transmit Sensitive Information as defined in the Privacy Act to the Software, except to the extent inherently required by its functionality. The Customer must reimburse the Stratum Software for any costs incurred in removing unauthorised Sensitive Information from the Software.

### 9.3 Artificial Intelligence

- (a) The Customer acknowledges that the Software may include artificial intelligence or automated functionality (**AI Features**).
- (b) Stratum Software will operate AI Features in compliance with applicable Laws.
- (c) The Customer acknowledges and agrees that:
  - (i) AI outputs may be inaccurate or incomplete;
  - (ii) the Customer is solely responsible for reviewing and verifying all outputs before use; and
  - (iii) Stratum Software does not warrant the accuracy or reliability of AI outputs.

- (d) Stratum Software will not use Customer Data to train, improve, or develop the Stratum Software's AI models or any third-party AI models without the Customer's prior written consent. For the avoidance of doubt, Stratum Software may use aggregated, de-identified, and anonymised data derived from Customer Data for the purpose of improving the Services, provided that such data cannot reasonably be used to identify the Customer or any individual.
  - (e) The Customer is responsible for ensuring that its use of any AI Features complies with applicable Laws, including any disclosure obligations to individuals whose data is processed by AI Features.
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## 10. Audits

- 10.1 Stratum Software may audit the Customer's use of the Services on reasonable notice (being not less than 30 days). Any audit will be conducted at Stratum Software's expense, during normal business hours, and no more than once per year. Stratum Software must conduct any audit in a manner that does not unreasonably disrupt the Customer's operations. The Customer must provide reasonable cooperation in connection with any such audit at its own cost.
  - 10.2 If an audit reveals any non-compliance with this Agreement, the Customer must promptly remedy the non-compliance at its own cost and to Stratum Software's reasonable satisfaction.
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## 11. Dispute Resolution

- (a) A party must not commence legal proceedings in respect of any dispute or difference arising out of or in connection with this Agreement (**Dispute**) unless it has first complied with clause 11(b), except where a party seeks urgent interlocutory relief.
  - (b) Either party may give written notice to the other party describing the Dispute and requesting resolution under this clause 11 (**Dispute Notice**).
    - (i) Within 10 Business Days of a Dispute Notice, the Dispute must be referred to each party's Chief Executive Officer (or their authorised delegate) for resolution by negotiation.
    - (ii) The negotiations in this clause 11 must be completed within 30 Business Days of the Dispute Notice (or such longer period as agreed in writing) (**Resolution Period**). If the Dispute is not resolved within the Resolution Period, either party may commence legal proceedings.
    - (iii) During any Dispute, each party must continue to perform its obligations under this Agreement (including Stratum Software's obligation to provide the Services and the Customer's obligation to pay Fees).
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## 12. Force Majeure

- (a) If a Force Majeure Event prevents a party from performing an obligation under this Agreement, that party must:
  - (i) notify the other party as soon as reasonably practicable (and no later than 5 Business Days after the event arises); and
  - (ii) use best endeavours to minimise the impact of the Force Majeure Event.

- (b) A Force Majeure Event does not excuse a party from any obligation to pay money under this Agreement.
  - (c) If a Force Majeure Event continues for more than 60 Business Days, the non-affected party may by giving 10 Business Days' written notice terminate this Agreement.
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## **13. GST**

### **13.1 Interpretation**

In this clause 13, unless the context indicates otherwise then 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.

### **13.2 GST gross up**

If a party (**Supplier**) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (**Recipient**) must pay to the Supplier an additional amount equal to the GST payable on the supply (**GST Amount**).

### **13.3 Reimbursements**

If a party must reimburse or indemnify another party for a loss, cost or expense under this Agreement, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 13.2.

### **13.4 Exclusion of GST from calculations**

If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

### **13.5 Adjustments**

- (a) If the GST payable by a Supplier on any supply made under or in connection with this Agreement varies from the GST Amount paid or payable by the Recipient under clause 13.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (b) Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 13.2.
- (c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

### **13.6 Tax invoice**

A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

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## **14. Miscellaneous**

### **14.1 Governing Laws**

This Agreement is governed by the laws of Western Australia and the Commonwealth of Australia. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of Western Australia and the courts entitled to hear appeals from those courts.

#### 14.2 **Entire Agreement**

This 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.

#### 14.3 **Variation**

Stratum Software may update this Agreement from time to time by posting the updated version on its website and providing the Customer with 30 days notice of the update. Updates take effect at the start of the Customer's next Renewal Term, except that Stratum Software may make changes during a Term where required by Law or to reflect new or updated features of the Software. If a change during a Term has a material adverse effect on the Customer, the Customer may terminate the affected Agreement within 30 days of notice and receive a pro-rata refund of pre-paid, unused Fees as its sole remedy. For the avoidance of doubt, no variation to an Order Form is effective unless made in writing and executed by each party.

#### 14.4 **Waiver**

- (a) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. It is only effective in the specific instance and for the specific purpose for which it is granted.
- (b) A single or partial exercise of a right or remedy under this Agreement or does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or a delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or of any other right or remedy.

#### 14.5 **Severability**

Any term of this Agreement that is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of this Agreement is not affected.

#### 14.6 **Publicity**

Stratum Software may identify the Customer by name and logo as a customer of Stratum Software on Stratum Software's website and in marketing materials. Stratum Software will cease doing so within a reasonable period of receiving written request from the Customer.

#### 14.7 **Cumulative Rights**

The rights and remedies of a party under this Agreement (including under an indemnity) are in addition to and do not exclude or limit any other rights or remedies provided by Law.

#### 14.8 **Further assurances**

Each party must do all things, and execute all further documents, necessary to give full effect to the Contract.

#### 14.9 **Assignment and Novation**

The Customer may not assign or transfer the Contract or otherwise deal with the benefit of it or a right under it without Stratum Software's prior written consent. Stratum Software may assign this Agreement to a related body corporate or to a successor in connection with a merger, acquisition, or sale of all or substantially all of its assets or the business to which this Agreement relates.

#### 14.10 Notices

A notice, consent, or other communication under this Agreement (**Notice**) is only effective if it is in writing and received in full and legible form at the addressee's address or email address as set out in the **Error! Reference source not found.**, unless the party has notified a changed address.

#### 14.11 Expenses

Except as otherwise expressly provided in an Agreement, each party must pay its own costs and expenses in connection with the negotiation, preparation, and execution of this Agreement.

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## 15. Interpretation and Definitions

### 15.1 Interpretation

In this Agreement, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) the words 'such as', 'including', 'particularly' and similar expressions are not words of limitation;
- (e) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation, trust or other body corporate;
  - (ii) a thing (including but not limited to a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its agents, successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a clause, term, party, schedule or attachment is a reference to a clause or term of, or party, schedule or attachment to this Agreement;
  - (vi) this Agreement includes all schedules and attachments to it;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity and is a reference to that law as amended, consolidated or replaced;
  - (viii) an agreement other than this Agreement includes an undertaking, or legally enforceable arrangement or understanding whether or not in writing; and
  - (ix) a monetary amount is in Australian dollars and all amounts payable are payable in Australian dollars;
- (f) an agreement on the part of two or more persons binds them jointly and each of them severally;

- (g) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of the Agreement or any part of it;
- (h) when the day on which something must be done is not a Business Day, that thing must be done on the preceding Business Day;
- (i) in determining the time of day where relevant, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose, the time of day in the place where the party required to perform an obligation is located;
  - (iii) a day is the period of time commencing at midnight and ending immediately before the next midnight is to occur; and
  - (iv) if a period of time is calculated from a particular day, act or event (such as the giving of a notice) unless otherwise stated, it is to be calculated exclusive of that day, or the day of that act or event.

## 15.2 Definitions

In these terms and conditions unless the context otherwise requires, the following words and expressions shall have the following meanings:

**Additional Services** means the additional services provided by Stratum Software as further detailed in the applicable Order Form.

**AI Features** means any artificial intelligence, machine learning, or automated decision-making functionality incorporated into the Services.

**Authorised User(s)** means the Customer's personnel (including directors, officers, employees, contractors, suppliers, advisers, or agents), subcontractors or service providers that are authorised by the Customer to use the Services, or as otherwise provided for in an Order Form.

**Business Days** means Monday to Friday, 9am to 5pm, Australian Western Standard Time, excluding any Western Australian public holidays as gazetted under the Public and Bank Holidays Act 1972.

**Commencement Date** means the date specified in the Order Form.

**Confidential Information** of a party means all information (in any form):

- (a) relating to or arising from the Services (including the Customer Data for the Customer);
- (b) that concerns a party's business operations and which any reasonable person would consider to be of a confidential nature (such as trade secrets, methods, strategies, Customer lists, pricing, and other business processes); and
- (c) includes this Agreement;

but does not include information that:

- (d) is or becomes independently developed or known by the other party through no breach of this Agreement by that party; or
- (e) becomes publicly available without breach of this Agreement.

**Consequential Loss** means:

- (a) loss of profit, revenue or goodwill;
- (b) loss or denial of opportunity;
- (c) loss or damage to data;
- (d) loss of access to markets;
- (e) loss of anticipated savings;
- (f) special, incidental, or punitive Loss or damage; or
- (g) loss or damage that would not reasonably be considered to arise naturally or in the usual course of things from the breach or act or omission giving rise to the relevant liability.

**Customer Data** means all data and information generated, processed, transmitted, or stored by the Customer by using the Software and includes:

- (a) any database in which such data is contained;
- (b) the work product resulting from the use or manipulation of such data;
- (c) data entered into or generated, processed, transmitted or stored by any Customer or End User hardware or software; and
- (d) any copies of the above.

**Fees** means the fees and charges payable by the Customer for the performance of the Services, as specified in each Order Form.

**Force Majeure Event** means events, circumstances, or causes beyond a party's reasonable control including (but not limited to):

- (a) strikes, lock-outs or other industrial action;
- (b) civil commotion, riot, invasion, cyber-attack, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war;
- (c) fire, explosion, storm, flood, earthquake, subsidence, epidemic, pandemic, health emergencies, disease, or other natural disaster;
- (d) impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport;
- (e) interruption or failure of utility services (including the inability to use public or private telecommunications networks);
- (f) interruption of networks or third-party services (including telecommunication or web services); and
- (g) the acts, decrees, legislation, regulations, or restrictions of any Government Agency.

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

**Initial Term** means the initial period specified in the relevant Order Form.

**Insolvency Event** means, in respect of a party, any of the following events or circumstances:

- (a) the party is or becomes unable to pay its debts as and when they fall due;

- (b) the party ceases, or threatens to cease, carrying on business;
- (c) any step is taken for the party to enter into any arrangement, compromise, or composition with, or assignment for the benefit of, any of its creditors or any class of them;
- (d) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, or other controller (as defined in the Corporations Act 2001 (Cth)) of the whole or any part of the party's assets, operations, or business;
- (e) a statutory demand is served on the party under section 459E of the Corporations Act 2001 (Cth) and is not set aside or complied with within the prescribed period; (f) an application or order is made, or a resolution is passed, for the winding up or dissolution of the party (other than for the purpose of a solvent reconstruction or amalgamation); or (g) any 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 and wherever existing, including:

- (a) 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;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and
- (d) all renewals and extensions of these rights.

**Laws** means any principles of law or equity established by decisions of courts, statutes, regulations or by-laws of the Commonwealth, a State, a Territory, or a Government Agency; and requirements and approvals (including conditions) of the Commonwealth, a State, a Territory or a Government Agency that have the force of law.

**Loss** means any damage, loss, liability, cost, charge, expense, penalties, fees, and fines (to the extent permitted by Law), outgoing or payment (whether present, contingent, unascertained, immediate, future, indirect, incidental or otherwise) of any kind and however arising, and any damages, penalties, fines and interest.

**Materials** means all materials, documentation, and information (whether reduced to written form or otherwise) provided to the Customer by the Stratum Software (or otherwise made accessible to the Customer by the Stratum Software) at any time.

**Order Form** means an ordering document, online sign-up, or written quotation accepted by both parties that specifies the details of the Services to be provided by the Stratum Software, including the Term, and Fees.

**Personal Information** means any information or opinion about a natural person (whether or not true), as defined in the Privacy Act, which either party deals within connection with performing its obligations under an Agreement.

**Privacy Laws** means any legislation or administrative requirement (as amended from time to time) imposing an obligation in relation to the collection, use, disclosure, storage and transmission of personal information (including health information) which is applicable to a party in the performance of its obligations under this document, including without limitation any codes, principles or guidelines contained in or arising out of such legislation, and includes the *Privacy Act 1988* (Cth) (including the Australian Privacy Principles under the Privacy Act),

and any other privacy or general legislation which binds the Parties and which relates to the protection of Personal Information, as amended from time to time.

**Renewal Term** means the period as specified in an Order Form which will automatically renew at the end of each Renewal Term in accordance with the Agreement.

**Services** means, collectively, the provision of the Software and the Additional Services (if any).

**Software** means the cloud-based software platform known as Stratum Track for calculating engineering tolerances and specifications, including ISO 286 tolerance grade.

**Term** means collectively the Initial Term and Renewal Term.

**Third Party Vendors** means any party that provides certain software, software-as-a-service, hosting, or professional services to the Stratum Software or the Stratum Software's customers and is not a party to this Agreement.

**Third Party Terms** means any Third Party Vendor terms and conditions that the Customer must comply with to use the Service.