

StrataVote Software as a Service (SaaS) Terms



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1. Parties, legally binding agreement

These terms, when read together with the StrataVote Software as a Service (SaaS) Proposal (**Proposal**) set out the terms and conditions relating to services and access to the StrataVote online voting platform (as described in Item 4a and hereafter referred to as the '**Software**')

The parties are Stratasaurus Pty Ltd trading as StrataVote (**StrataVote**), and the Subscriber noted at Item 1a (each a '**Party**' and collectively the '**Parties**').

Acceptance by the Subscriber of these terms will usually be by the Subscriber's authorised representative electronically signing the Proposal. The Parties agree that agreement may be entered into by electronic signature and warrant that the electronic signature of their authorised representative will legally bind them to the terms recorded in this document. The Subscriber may also accept these terms by using the Software after having been provided with the Proposal and login information.

On acceptance by the Subscriber, these Terms and the Proposal form a legally binding agreement between the Parties (**Agreement**).

To the extent there is any conflict between these terms and any terms and conditions specified within the Proposal, the terms and conditions within the Proposal take precedence.

This Agreement shall be in force when it is validly accepted as above, notwithstanding this may be before services and billing commence.

2. Term

The initial term of this Agreement commences on the date given in Item 3a (**Start Date**) and ends on the date specified in Item 3c (**End Date**).

The subscription, Software services and associated billing shall commence following the substantial or deemed completion of implementation services (**Services Start Date**).

This Agreement may be renewed for the further terms set out at Item 3d.

The Parties may continue this Agreement after the End Date or conclusion of a renewed term on a month-by-month basis according to Item 3e (**Holding-over period**).

The full term of this Agreement runs from the Start Date until terminated by at least 1-month's prior notice effective at the later of the End Date, the conclusion of any renewed term or throughout the Holding-over period (**Term**).

3. Interpretation and definitions

References to an Item number are a reference to a clause or paragraph within the Proposal.

Capitalised words have a corresponding defined meaning within this document and the Proposal.

References to any statute or regulation will include references to any statute or regulation that replaces the original as applicable.

Associated Entity has the same meaning as in s50AAA of the *Corporations Act 2001* (Cth).

Competitor or **Competitor of StrataVote** means any entity wishing or attempting to produce a similar product to the Software that would or could be used to compete against StrataVote for customers or in any way deprive StrataVote of custom.

Confidential Information means the following, whether or not in material form:

- (a) the terms of the Proposal;
- (b) sales, marketing or promotional material of a Party, including (but not limited to) customer lists, supplier lists, key contacts and terms of trade;
- (c) trade secrets, ideas, know-how, methodologies, and all intellectual property used by a Party, whether or not registered, owned or licensed by a Party;
- (d) the Created Works of a Party;
- (e) financial information and records relating to a Party;
- (f) information belonging to clients, officers, employees, contractors and suppliers of a Party;
- (g) Personal Information; and
- (h) information marked as being confidential or is otherwise confidential in nature;

however, excludes any Excluded Information.

Created Works means all materials prepared by a Party, including (but not limited to) reports, advices, designs, graphics, photographs, software, plans, ideas, inventions, innovations, and improvements, in any form.

Excluded Information means any information that:

- (a) is or becomes part of the public domain (unless this information enters the public domain as a result of the failure to comply with the terms of this Agreement by a Party);
- (b) is lawfully obtained from a third-party;
- (c) a Party rightfully possessed the information before receiving the information from the other Party; or

- (d) is created by a Party without the use (direct or indirect) of Confidential Information of the other Party.

Force Majeure Event means any external event beyond the reasonable control and without fault or negligence of the relevant Party, which could not reasonably be expected to have been foreseen. Failing to plan for or implement proper controls around normal business risks shall not constitute a force majeure event.

Insolvency Event means in relation to a Party:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001* (Cth)) or similar official, appointed over any of the assets or undertaking of the Party;
- (b) the Party suspends payment of its debts generally;
- (c) the Party is, or becomes unable to, pay its debts when they are due or is, or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001* (Cth);
- (d) the Party ceases to carry on business or threatens to cease to carry on business;
- (e) a resolution is passed, or any steps are taken to appoint, or to pass a resolution to appoint, an administrator; or
- (f) an application or order is made for the winding up or dissolution of the Party, or a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of the Party, otherwise than for an internal reconstruction.

Lot means each lot in a scheme that is imported into the Software, irrespective of whether or not that lot has an email address configured and is able to vote electronically.

LUM means a lot under management and imported into the system for a scheme, whether able to vote or not and whether a domicile, car park, storage unit etc.

Subscriber Data means any data, information (including any personal information), documentation or material (electronic or otherwise) submitted or uploaded by the Subscriber or Users to the Software or otherwise provided to StrataVote in relation to the provision of services under this Agreement.

User means any user of the Software (including Invited Users, Permitted Users or otherwise) who:

- (a) the Subscriber allows to use the Software;
- (b) the Subscriber instructs StrataVote to register an account for under this Agreement; or
- (c) otherwise access the Software as a result of an act or failure to act by the Subscriber or any Invited Users.

4. StrataVote's services

StrataVote agrees to provide the following services as part of this Agreement:

- implementation of the Software for the Subscriber (clause 6);
- access to and use of the Software (clause 7);
- hosting of the Software (clause 8)
- regular updates and bug-fixes for the Software (clause 9);
- storage, retention and back-up of data loaded into the Software (clause 10);
- support for the Software (clause 11); and
- security for the Software (clause 12).

The scope of these services is set out in detail throughout this document and in the Proposal. All of these services are subject to fair use policies, the Subscriber accepting any applicable limitations of the Software or Services offered and the Subscriber paying all fees.

5. Subscriber Details

To correctly implement the Software and provide the services under this Agreement, StrataVote needs to know certain details and information about the Subscriber's business, such as the:

- LUM count for the Subscriber;
- approximate meetings to be held through the Software per month;
- external strata management systems used by the Subscriber; and
- other external system(s) the Software is to be interfaced with.

Generally, this information will be captured as part of the signoff of this Agreement or as part of the implementation process.

StrataVote may use this information for a variety of purposes, including billing the Subscriber, determining eligibility for any discounts offered, provisioning adequate resources or support for the Software etc.

The Subscriber agrees to make reasonable enquiries and provide this information accurately, as well as keeping StrataVote updated with any material changes that may occur.

Depending on the other strata management/trust accounting systems that the Software needs to be interfaced with, StrataVote may have an arrangement in place with that vendor whereby the Software is supplied through that vendor. If that is the case, and the Subscriber had not previously disclosed this information, StrataVote reserves its rights to terminate this Agreement and seek the Subscriber's approval to move onto an agreement of similar terms with that other vendor.

6. Implementation

StrataVote will commence providing the implementation services (per the implementation option selected at Item 5a) as at the Start Date. Where Custom Implementation services are required, StrataVote will provide a supplementary proposal for those services.

The estimated timeframe for completion of implementation services is at Item 3b.

The Subscriber may request additional implementation or training services according to Item 5b for the fee specified therein. If additional services are requested, StrataVote will provide the Subscriber with a timeframe for those additional services to be completed and confirm whether the Services Start Date needs to be extended as a result.

The implementation services will be deemed substantially complete when StrataVote has completed the selected services described at Item 5a and the Software can be utilised end-to-end for the purposes described in Item 4.

StrataVote is highly reliant on information and assistance from the Subscriber to complete implementation services and provision adequate hosting and support resources. The Subscriber agrees to promptly provide StrataVote with access to data, feedback, systems, sites and other resources reasonably required for implementation. If the completion of implementation services is delayed due to action or inaction of the Subscriber (i.e. changing instructions, not providing information or templates), StrataVote may deem the implementation services to be complete, and the Services Start date will be the date estimated for completion at Item 3b. Alternatively, StrataVote may require extra time to complete the implementation and push out the Services Start Date. To the extent the actions or inactions of the Subscriber creates additional work to be performed by StrataVote, StrataVote may also charge the Subscriber for any such additional work at its Casual Rate listed at Item 7c.

7. Grant of subscription

From the Start Date to Services Start Date, StrataVote grants the Subscriber a limited licence to access and use the Software for training, implementation and testing purposes. StrataVote does not warrant that the Software will be suitable for commercial purposes until implementation services are substantially complete.

From the Services Start Date, StrataVote grants the Subscriber and Users invited by the Subscriber, who are Permitted Users as described at Item 4c (**Invited Users**), a non-exclusive subscription to access and use the Software via the authorised URL to access (Item 4b), within the Permitted Region (Item 4d) for the Term. The grant of the subscription is subject to compliance with the terms of this Agreement, including fair use and reasonable usage instructions provided by StrataVote, including usage instructions in accordance with any training delivered.

As part of the implementation services, StrataVote will create some user accounts based on information provided (name, contact details, position, lot details, etc.). At least one of these user accounts will be able to create and administer further user accounts. User information must be accurate, current and complete and must be updated as soon as is reasonably practical if it becomes inaccurate, out-of-date or incomplete.

8. Software hosting, email service and uptime

StrataVote hosts the Software and provides an email service through third-party providers. The hosting provider is stated at Item 4f, and email service provider is stated at Item 4g. The hosting and email services are subject to the third-party's terms and conditions (links to which, are available at Item 4f and 4g). StrataVote may also implement an SMS messaging service as a premium feature (Item 4j); if it does, any third-party's terms will be provided on request. The Subscriber is subject to any such third-party terms.

StrataVote has a target uptime for the Software is specified at Item 4e but does not make any warranties or guarantees about the hosting services or the uptime other than it will be broadly suitable and fit for purpose (note that this does not guarantee 100% uptime).

The Subscriber shall have no claim against StrataVote if the uptime target is not always achieved and maintained. The Subscriber shall have no right to terminate this Agreement for failure to achieve and maintain the target, except where it is persistently not achieved, and the Subscriber can demonstrate that the Software and hosting provided is not suitable for their reasonable needs as a direct result of inadequate uptime. If there is any dispute about whether the target uptime has persistently not been achieved, the dispute resolution provisions must be complied with by the Subscriber before termination can occur.

9. Updates and interruptions

StrataVote will apply updates and fixes to the Software regularly. Updates will be based on market-driven factors as determined by StrataVote. Other than software fixes (i.e. identified errors with software or issues critical to legislative compliance), StrataVote is not obliged to implement any particular update at the request of the Subscriber. If the Subscriber would like the Software to be customised in any way, StrataVote may at its discretion negotiate this by way of a separate agreement for a fee. StrataVote may limit the availability of such customisations to Subscribers who take out a Priority or Custom software support plan.

If the Subscriber becomes aware of any aspect of the Software not performing appropriately, the Subscriber must promptly notify StrataVote of the issue in a support request (see clause 11 below), and StrataVote will review the issue and update the Software if required. If the issue identified is critical to outcomes or results produced by the Software, the Subscriber must mark the request urgent with a subject line 'urgent

issue with SV compliance' or similar and StrataVote will review the issue as a priority. StrataVote will endeavour to minimise disruption by scheduling non-urgent maintenance and upgrades outside of the uptime hours. StrataVote does not guarantee that this will always be possible, nor does it guarantee that the Software will have 100% uptime (as described above at clause 8).

10. Data storage

StrataVote provides data storage capabilities for the Subscriber subject to any limits specified at Item 4i. Typically, old records that have not been accessed for some time will be moved to a separate database and may be slower to retrieve. Very old or archivable records may be moved to "cold storage" – meaning that we keep them safe for you, but a support request may be needed to retrieve them.

All Subscriber Data must be owned by either the Subscriber or Users or be uploaded with the consent of the third-party owner.

The Subscriber and Users grant an irrevocable licence for StrataVote to access and use any Subscriber Data:

- for the purposes of carrying out the services under this Agreement;
- for reasonable purposes associated with improving and marketing the software and services offered by StrataVote, in a minimum and de-identified form;
- to review and improve the performance of the Software; and
- to carry out research and data analysis activities to identify statistics and insights about the demographics and outcomes of the use of the Software (or to provide data to a third-party for such purposes), provided that StrataVote only does so in accordance with its privacy policy (stratavote.com/privacy) and any personal information incorporated with any Subscriber Data is de-identified and in aggregate form.

StrataVote will use best commercial efforts to ensure retention of Subscriber Data for not less than the Term (or earlier termination of this Agreement) plus 90 days.

Loss or corruption of data is an unavoidable risk when using any computer technology. StrataVote mitigates this risk by maintaining periodic back-ups for disaster recovery purposes to enable StrataVote to recover and restore data in the event of data loss, corruption or equipment failure. The Subscriber acknowledges that periodic back-ups do not guarantee that data will be recoverable in all instances of loss, corruption or equipment failure or that data that is recovered will be completely current or without corruption.

The Subscriber is responsible for notifying StrataVote as soon as possible if they notice any Subscriber Data is missing or corrupted, so that StrataVote may take immediate steps to try and recover that data on a best endeavours only basis.

To the full extent possible, StrataVote's liability to the Subscriber arising from any loss of, or corruption of data will be limited to taking reasonable steps to try and recover that data from StrataVote's available back-ups.

To the extent the above assurances will be insufficient for data or documents that are critical to the Subscriber's or a User's business, the Subscriber or User must take steps to maintain their own back-up copies.

StrataVote is under no obligation to retain Subscriber Data for more than 90 days after the termination of this Agreement. It is the Subscriber's responsibility to export any data required on termination. If requested by the Subscriber, StrataVote can assist with this and will charge the Casual Rate described in Item 7c.

Unless the Subscriber requests that all or part of Subscriber Data is deleted by StrataVote on 30 days' written notice, StrataVote may retain Subscriber Data (subject to clauses 21 and 22). Notwithstanding such notice, StrataVote may retain Subscriber Data which:

- may be retained pursuant to a license granted under this Agreement or other written agreement between the Parties;
- is required to be retained by law;
- is retained for prudent business or tax record-keeping purposes; or
- is not readily extractable from other electronic data (i.e. data back-ups).

11. Support

StrataVote will attempt to respond to support requests properly notified to its nominated support email address listed at Item 6b, within the timeframe stated for the support plan type selected at Item 6a. Notification must include the nature of the problem to a level of detail that enables StrataVote to locate and reproduce the issue and the steps taken to attempt to rectify the issue.

StrataVote may provide direct contact details at Item 6b or in the supplementary proposal, where a Custom Support plan is selected at Item 6a and includes enhanced support.

StrataVote reserves its rights to charge its Casual Rate at Item 7c for any support requests that are in excess of the support plan chosen. StrataVote does not provide support to voting Users – this is the responsibility of the Subscriber.

12. Security

StrataVote uses reasonable efforts to keep the Software secure and protect the Software and data from misuse, loss and unauthorised access or disclosure, through the use of security methods such as firewalls, software security layers, restrictive policies and encryption. StrataVote may also from time-to-time offer optional security features, such as two-factor authentication.

While StrataVote uses reasonable efforts to keep the Software and its data secure, no method of electronic storage is entirely secure. It is impossible to guarantee the security measures will be effective against a determined attacker or malicious insider, and StrataVote does not warrant the absolute security of the Software in such circumstances.

StrataVote will notify the Subscriber if it appears there is or has been any unauthorised access or security breach that may put the Subscriber or its Invited Users at risk of loss or damage.

The Subscriber and all Users are responsible for taking steps to maintain their own security, including by appropriately utilising any security measures available, keeping usernames and passwords secure and ensuring its hardware and systems are secure and free of viruses and malware.

If the Subscriber has reason to believe the Software has been subject to a security breach (including any unauthorised use of any usernames or passwords), the Subscriber must immediately notify StrataVote by email at privacy@stratavote.com.au.

13. Fair use

StrataVote reserves the right to impose any reasonable fair use policies on the Subscriber and Users, whether explicitly contained in this Agreement or by later notification in writing by StrataVote to the Subscriber. The Subscriber is deemed to have accepted these fair use policies as part of this Agreement.

14. Subscriber's obligations

The Subscriber is responsible for ensuring that only the Permitted Users in Item 4c are invited to access to the Software and that all usernames and passwords assigned or created are secure.

The Subscriber and Users must comply with all applicable laws in connection with its access to and use of the Software and comply with any reasonable policies, directions, guidelines or requirements (including fair use policies) provided by StrataVote in writing.

The Subscriber is responsible for the conduct of any Users and any breach of the terms of this Agreement by any Users, as if it were a breach by the Subscriber.

The Subscriber must promptly notify StrataVote of any real or suspected breach of this Agreement by Users and provide StrataVote with reasonable assistance where StrataVote elects (at its discretion) to take legal action against any Users to protect or enforce its rights under this Agreement.

The Subscriber must also immediately notify StrataVote of any actual, suspected or potential access by Users who are not Invited Users, as well as any access or loss (whether actual or suspected) of personal information, or confidential information belonging to StrataVote.

The Subscriber agrees to indemnify StrataVote for all losses sustained by StrataVote as a consequence of the Subscriber failing to comply with its obligations under this Agreement.

This paragraph survives termination of this Agreement.

15. Prohibited Use

The Subscriber must not (and must take reasonable steps to ensure and require that Users will not):

- allow Users who are not Permitted Users to use or access the Software;
- copy, reverse-engineer or decompile the Software;
- license or purport to sell or commercialise the Software;
- integrate or link the Software with other software, including connecting to the Software's API or automating any user interactions (i.e. using robots/screen scraping) without StrataVote's written consent;
- create derivatives or copies of the Software;
- use the Software to compete with or aid a Competitor of StrataVote, including by:
 - inviting a Competitor of StrataVote to use the Software;
 - demonstrating the Software to a Competitor;
 - describing the Software's functions, features or attributes (whether current or proposed) to a Competitor; or
 - disclosing any pricing or contractual terms.
- obscure any information displayed on the Software, re-brand the Software, or do anything that creates, or may create, any impression that you have any ownership, control or distribution rights of or to the Software, without StrataVote's written consent;
- use the Software for any illegal or offensive purpose, or to retrieve, store, manipulate, process, transmit, display or forward any content that is illegal or offensive;
- use the Software to (or cause or allow the Software to), disrupt or to harm (or to attempt to disrupt or to harm) any computer systems, networks, person or entity;
- use the Software to store or send data in a way that is unrelated to the normal functional usage of the Software (as described in Item 4a); or
- use the Software in such a way that causes a disproportionate load on the Software infrastructure, including by excessively uploading large data files or excessively making requests to the Software.

The Subscriber agrees to indemnify StrataVote for all losses sustained by StrataVote because of the Subscriber's non-compliance with this 'prohibited use' clause, including any failure to require Users to comply.

This paragraph survives termination of this Agreement.

16. Suspension of Software or services

StrataVote may suspend access and use of whole or part of the Software or services where StrataVote reasonably suspects or becomes aware of:

- a denial of service attack or other attack or event that may cause a substantial risk to StrataVote, the Software, the Subscriber, a User or other third-party if the Software or services were not suspended;
- the Subscriber has committed a significant breach of this Agreement;
- the Subscriber is in significant breach of this Agreement because of the actions of Users (StrataVote may in its discretion limit the suspension to the relevant Users, where possible);
- any unauthorised access to the Software; or
- the Subscriber's invoiced fees being unpaid for more than 30-days past the due date.

StrataVote will use reasonable efforts to ensure that the period of suspension corresponds with the timeframe required to address the above issues or instances of non-compliance while they persist.

The Subscriber waives all claims against StrataVote for any loss or damage howsoever incurred, and indemnifies StrataVote for any costs associated with a claim for loss or damage sustained by a User or third-party, as a result of a suspension of this subscription by StrataVote acting reasonably under these terms.

17. Fees payable

StrataVote will charge, and the Subscriber agrees to pay all fees payable under Item 7 (including all applicable sub-items) for the Term. Any portion of a billing cycle that is not used for any reason (including suspension under clause 16) is non-refundable. Except where the Agreement is terminated before the end of the Term under clause 34, StrataVote may take action to recover any unpaid fees for the entire Term.

All prices are quoted as exclusive of GST unless otherwise indicated. The Subscriber must pay any applicable GST on top of any fees otherwise payable.

Where selected in Item 7d, invoices will be rendered and are payable within 14 days (or other timeframe agreed in writing). Where credit card payments are selected, these will typically be processed on the first business day of each selected billing cycle. There is a credit card processing fee as listed at Item 7e. The processing fee will be waived where the Subscriber provides a standing authority for credit card payments.

StrataVote may offer discounts to fees. Such discounts are not fundamental rights of the Subscriber and StrataVote reserves the right to suspend or cancel any offered discounts (and re-adjust any currently outstanding and future invoices accordingly) where the Subscriber has materially breached its obligations under this Agreement. Discounts offered in exchange for meeting a minimum volume of meetings held or volume

of LUM licensed or by extending the length of the Term may be recovered from the Subscriber if volumes are not met or this Agreement is terminated early. Such recovery will be by way of an invoice to the Subscriber, which the Subscriber agrees to pay.

Notwithstanding any agreement by StrataVote to temporarily extend payment terms, StrataVote may charge the Subscriber interest on any invoiced fees not paid by the due date, at the Interest Rate (listed at Item 7f) and computed from the invoice due date until payment is made in full. Interest will be recoverable in the same manner as invoiced fees. The Subscriber agrees that this is reasonable to cover StrataVote's costs of administering late payments and to provide credit.

If the Subscriber disputes any fees invoiced, the Subscriber must initiate the dispute resolution procedure for disputed fees under clause 33.1 and pay any undisputed portion of the fees invoiced within terms.

If the Subscriber persistently pays fees late, StrataVote may insist on the Subscriber providing credit card details for automatic charging. Fees will be considered to be paid persistently late if paid over seven days late on three or more occasions within a 12-month period (or less). Failure to provide credit card details upon request will be grounds for access to be suspended and/or debt recovery to begin.

18. Fee review

The Fees at Items 5, 6 and 7 will be reviewed following the fee review method on each review date as specified at Item 8.

19. Debt recovery

In the event of invoices being paid persistently late or an invoiced amount being more than 30-days overdue, StrataVote may take one or more of the following steps:

- suspend access to and use of the Software;
- refer the debt to a debt recovery agent;
- report the debt to a credit reporting agency;
- take debt recovery action, including to initiate court proceedings; or
- subject to the termination clause below, terminate this Agreement.

Under clause 33.3, StrataVote does not need to initiate or adhere to the dispute resolution procedure for fee recovery action or associated court proceedings, unless the Subscriber initiates the dispute resolution procedure for a dispute associated with the fees before the initiation of any fee recovery action. Any costs associated with fee recovery action, including any legal fees, are payable by the Subscriber on a full indemnity basis.

20. Intellectual property and relationship

All intellectual property and other propriety rights associated with the Software and StrataVote's business are owned or licenced by StrataVote.

This Agreement does not confer any intellectual property rights on the Subscriber or Users, other than as expressly stated in this Agreement.

Any ownership or intellectual property rights in the Subscriber Data remain unchanged by this Agreement but may be the subject of the licence granted under clause 10.

Documents created by the Subscriber or by Users from the Software may contain intellectual property of StrataVote including but not limited to trademarks, logos, text, graphics, reports, tables, charts, diagrams, or ideas. StrataVote retains the intellectual property rights in the above described intellectual property but grants a limited and revocable license to the Subscriber to use any such intellectual property contained in documents for:

- reasonable use associated with the Subscriber's strata management functions, and consistent with this Agreement, throughout the Term; and
- for record keeping purposes after the Term.

General feedback provided by the Subscriber or Users is not considered intellectual property for the purposes of this Agreement, and StrataVote may use such feedback for product enhancements or other purposes, without conferring any intellectual property rights on the Subscriber or Users.

This Agreement does not create any relationship of partnership or joint venture between the Parties.

21. Confidentiality

Each Party must:

- keep all Confidential Information of the other Party secret and confidential;
 - only disclose, use or copy the Confidential Information of the other Party as reasonably required:
 - in connection with this Agreement (including disclosing to the Parties' employees, contractors, service providers, Associated Entities and Permitted Users on a need to know basis);
 - as required by law, provided that the other Party is notified of a requirement to disclose and is provided with the opportunity to object or defend any such requirement and that any disclosure is only made of the minimum Confidential Information required to comply;
 - for prudent business or tax record-keeping purposes (including R&D); or
 - for obtaining professional advice;
- unless the other Party authorises an alternative use in writing;

- ensure that all persons to whom Confidential Information is disclosed (other than where disclosed by law, unless reasonably possible to do so), are bound by confidentiality obligations to the same standards as those in this Agreement;
- be responsible for any breach of the terms of this Agreement by a person to whom Confidential Information is disclosed, as if that breach was by a Party to this Agreement;
- take reasonable steps to secure the Confidential Information of the other Party and prevent unauthorised disclosure of or access to it;
- inform the other Party as soon as practicable if it becomes aware or suspects unauthorised disclosure of or access to Confidential Information;
- following termination of this Agreement, within 30 days from a request in writing by the other Party, return to the other Party or destroy all Confidential Information (including all copies, notes, documents, or electronic files incorporating Confidential Information), except to the extent that the Confidential Information:
 - may be retained pursuant to a license granted under this Agreement or other written agreement between the Parties;
 - is required to be retained by law;
 - is retained for prudent business or tax record-keeping purposes (including R&D); or
 - is not readily extractable from other electronic data (for example data back-ups);despite termination, the obligations of confidentiality under this Agreement continue to apply to a Party while they continue to retain Confidential Information of the other Party post-termination; and
- indemnify the other Party against all claims, costs, expenses, losses and liabilities (including legal costs on an indemnity basis) suffered or incurred by the other Party in connection with any breach of this confidentiality clause.

Despite the above terms, the Subscriber grants StrataVote the right to disclose Confidential Information as reasonably required (and only to the extent necessary):

- to perform credit checks or share credit performance information with credit rating agencies;
- to publish the name of the Subscriber and its logo on StrataVote's website and marketing material; and
- to collect de-identified and aggregated usage data for market research and other purposes.

This clause 21 relating to Confidential Information survives termination of this Agreement.

22. Privacy

Each Party agrees to comply with its obligations under the *Privacy Act 1998* (Cth) and with the Australian Privacy Principles (**APPs**) with respect to any personal information stored in the Software.

The Subscriber releases any claims and indemnifies StrataVote on a full indemnity basis for defence costs or third-party claims relating to a failure by the Subscriber to comply with the APPs.

StrataVote has a privacy policy, which can be found at stratavote.com/privacy.

The Subscriber understands, agrees and consents to the collection, use and disclosure of, and its obligations regarding Personal Information under that policy. To the extent of any inconsistencies between this Agreement and the privacy policy, the terms of this Agreement are to take precedence.

The Subscriber warrants that they will (and warrants that all Users will) obtain consent from the relevant third-party before storing any personal information about that third-party in the Software. Such consent must include consent for StrataVote to access and use personal information in accordance with this Agreement and StrataVote's Privacy Policy.

The Software will be primarily hosted in Australia, and data sovereignty is specified at Item 4h. StrataVote utilises third-party hosting and email provider services, which under the third-party's terms may from time-to-time temporarily host data outside Australia (including for temporary email storage and disaster recovery purposes). The Subscriber acknowledges that it has been notified of these potential cross-border data flows for the purposes of complying with the APPs.

23. Premium Features

StrataVote offers various premium features at Item 4j and as may be introduced from time-to-time, for additional fees.

Depending on the feature selected, there may be additional terms and requirements, which will supplement the terms of this Agreement. Where applicable, those terms shall be incorporated into this Agreement. To the extent of any inconsistencies between this Agreement and the additional terms and requirements for premium features, the additional terms and requirements for premium features shall take precedence.

Where premium features are selected as part of the initial implementation (rather than added on later), to ensure the features are implemented adequately according to the needs of the Subscriber, StrataVote recommends either an Enhanced Implementation package or Custom Implementation (at Item 5a) is selected to ensure an appropriate level of implementation services.

24. StrataVote Anywhere (live meeting app)

StrataVote Anywhere is a premium feature, which allows the Subscriber and Invited Users to hold a live meeting via a mobile app or web app, which utilises video-conferencing, and real-time voting features (**App**).

Where the Subscriber uses this feature (use is on an opt-in basis) the terms of this Agreement apply to the use of the App.

The App functionality is highly dependent on the Subscriber and Users having a reliable internet connection and utilising functioning and compatible hardware or devices and systems. Any issues with internet, hardware, devices or systems may result in functionality, access and connectivity problems for the App.

When using the App, the Subscriber must put in place contingencies for potential functionality, access and connectivity problems that may arise. StrataVote recommends maintaining external records of meeting results and having phone and email contact details available in the event one or more Users are unable to use the App during a meeting.

The Subscriber holds StrataVote harmless for any loss or damage, where any issues with the Subscriber's or a User's internet, hardware, devices or systems have contributed to the loss or damage and releases StrataVote from any such claims. The Subscriber also releases StrataVote from any claims where the Subscriber fails to put in place contingencies as described above, where doing so would have likely prevented or mitigated the loss or damage.

StrataVote recommends a Custom or Enhanced Implementation and Support Plan is selected to ensure an appropriate level of implementation and support is available for the use of the App.

25. Data Connector

The Software may be configured to import data from certain third-party software or databases and/or provide data or document outputs to third-party software or databases.

The Subscriber warrants that any software or database it instructs StrataVote to connect to is the property of the Subscriber or otherwise that the Subscriber has obtained any necessary permission from the applicable third-party. StrataVote may assist the Subscriber in configuring any such data connections. However, the Subscriber shall remain entirely responsible for the integrity of this connection. The Subscriber must notify StrataVote of any updates to the third-party software or database.

If the Subscriber utilises any third-party IT support provider, then the Subscriber authorises StrataVote to deal directly with that third-party IT support provider to provide support for the data connector.

The Subscriber has the option to limit the data connector to have read-only permissions to third-party software or databases. The Subscriber is responsible for visually verifying any data imported or exported before relying on it. It is also the Subscriber's responsibility to maintain proper back-ups of their third-party software or databases. As such, the Subscriber is wholly responsible for any issues that may arise due to incorrect data imports/exports, data loss or corruption if using the data connector. The Subscriber holds StrataVote harmless for any loss or damage, where the Subscriber's failure to verify data or maintain back-ups contributes to any issues and releases StrataVote from any such claims. The Subscriber indemnifies StrataVote from any third-party claims that may arise as a result of using the data connector on a full indemnity basis, where the Subscriber has failed to verify data or maintain back-ups and doing so would have mitigated the loss.

26. Special conditions

Where specified at Item 10, any special conditions shall be incorporated into this Agreement, and to the extent of any inconsistencies, the special conditions shall take precedence.

27. Free services

From time-to-time, StrataVote may offer a service at no charge, for instance to trial the Software or test new services (such as beta testing). These free services will typically be where the Subscriber wishes to evaluate the software either for the purposes of potentially using it within their business or providing feedback to StrataVote.

Because of the nature of these free services, the Subscriber uses them at their own risk. StrataVote provides no guarantee of data retention and disclaims all warranties for the free services being of merchantable quality or being fit for any particular purpose. The Subscriber warrants that it will not use such free services for any commercial purpose without other systems and processes in place as a back-up.

28. Satisfaction Guarantee

A Subscriber meeting the qualifying criteria outlined below may rely on the StrataVote Guarantee.

The Guarantee allows the Subscriber to:

- if notified to StrataVote before 3-months has elapsed from the Services Start Date, terminate the Agreement effective immediately, without paying out the remainder of the Term and receive a refund of the implementation fees (up to a maximum of the cost of the Enhanced Implementation); or

- if notified more than 3-months after the Services Start Date, terminate the Agreement early on one month's notice (or payment in lieu) without paying out the remainder of the Term.

Qualifying Criteria

In order to rely on the Guarantee, the Subscriber must have had a bona fide intent to use the Software (not merely continue evaluation). This would be evidenced by:

- Assigning one or more champion users to evaluate the Software and, if acceptable, take responsibility for implementation, change management etc.;
- The champion users fully evaluating the suitability of the Software before the Agreement was executed (i.e. attending demos, asking questions);
- Fully participating in the implementation process (provided templates, organised strata managers to receive training, promoted to staff/lot owners, avoided delays or a loss of momentum);
- Used the software for at least 10 real meetings;
- Gathered feedback from staff, lot owners etc.; and
- Worked with StrataVote on any concerns by passing them along as they were encountered, trying suggestions provided by StrataVote's support staff and allowing not less than 30-days for StrataVote to rectify any issues.

As well as a bona fide intent, the Subscriber must have experienced one or more of the following situations:

- Lot owners are dissatisfied with the Software (as evidenced by several written complaints and/or poor electronic voting participation – say less than 15% of voters invited to vote electronically actually do); and/or
- Strata managers remain dissatisfied after StrataVote's attempts to assist (and are willing to commit this to writing, citing their issues – i.e. hard to use, doesn't make their work quicker/easier, etc.); and/or
- StrataVote is not fit for purpose in a way that could not have been determined by reasonable evaluation before implementation (i.e. errors in legislative compliance, StrataVote does not do some functions advertised, the Subscriber has 3 or more documented and verifiable instances of where the Software has been unreliable, offline in excess of the uptime target or where support has not been received within the selected window in the Agreement).

Lastly, none of the following situations exists, which really are outside the reasonable bounds of when StrataVote should be expected to offer the Guarantee:

- The Subscriber has changed their mind, subsequently found a better deal or wishes to replace their core strata management system (and that new system has equivalent functionality to StrataVote or might in the future);
- The Subscriber is experiencing financial distress and is looking to cut costs (although StrataVote would work with the Subscriber in other ways to try and accommodate this situation);

- The Subscriber has not done everything reasonably possible to make the implementation/uptake of the Software successful;
- Where the Subscriber has in some other way substantially contributed to the implementation/uptake not being successful or the issues/situations experienced (lost key/champion users resulting in a loss of momentum, been unavailable or introduced delays, has not chosen recommended levels of implementation/support packages as suggested by StrataVote, users persistently use the software incorrectly despite training, not keeping lot owners informed etc.); or
- Where the Subscriber is in breach of the Agreement.

29. Statutory guarantees, warranties and obligations

This Agreement is to be read subject to any legislation that prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations.

To the extent the Subscriber is a consumer acquiring services as defined by the Australian Consumer Law, the following statement is incorporated as a term of this Agreement:

Our services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- *to cancel your service contract with us; and*
- *to a refund for the unused portion, or to compensation for its reduced value.*

You are also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure you are entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel your contract and obtain a refund for the unused portion of the contract.

The liability of StrataVote for a breach of any applicable guarantee (other than a major failure of the services) conferred by the Australian Consumer Law is limited (in StrataVote's absolute discretion) to:

- providing a full refund on the fees paid as applicable for that service or subscription (for the Term, and if the Term exceeds 12-months, for 12-months); or
- rectifying the problems leading to the guarantee claim within a reasonable timeframe and/or supplying again any services provided.

The Subscriber must notify StrataVote of any breach of guarantee or any defects or failures with the Software or services under this Agreement in writing and provide a reasonable opportunity to rectify such breach or failure.

30. Warranties

StrataVote warrants that the Software and services will be of merchantable quality and fit for the purposes specified at Item 4a, subject to any exclusions specified in clause 31.

Any warranty claim must be notified to StrataVote in writing.

The Subscriber bears all responsibility for properly evaluating the Software for its particular needs, and releases StrataVote from any claims where a proper evaluation by the Subscriber would have likely prevented or mitigated any loss.

To the full extent permitted by law, StrataVote otherwise excludes any implied warranties of non-infringement, merchantability and fitness for a purpose beyond the purposes specified at Item 4.

The Subscriber releases StrataVote from all claims associated with any such legally excludable warranty claims. The Subscriber indemnifies StrataVote for any losses or claims it may incur in defending any such claim relating to any warranties that are validly excluded or limited.

31. Exclusions

StrataVote is not a legal or professional services firm and does not give legal or professional advice. The Software implements rules and results based on StrataVote's experience dealing with the Strata industry. StrataVote may also provide configuration assistance and guidance based on its own experience, but this should not be seen as a substitute for a Subscriber obtaining its own legal or professional advice for its particular application and use of the Software.

StrataVote recommends, and the Subscriber acknowledges that a competent strata manager should manage the admin and meeting management functions of the Software. StrataVote does not warrant that any particular use of the Software will be compliant with any law or regulation. The Subscriber is solely responsible for their compliance with applicable laws and regulations. StrataVote implements guidance for some commonly used legislative conditions but these implementations should not be relied upon to prevent a User from doing any particular act in a legislatively non-compliant way. The Subscriber should ensure that its strata managers are appropriately trained and understand what the Software does and does not do before use.

The Software is cloud-based and requires a working and reliable internet connection, and also requires the use of supported devices and web-browsers. This includes the Meeting Manager module. StrataVote does not warrant that the software will perform appropriately where there is no internet connection or where the internet connection is unreliable or unsupported devices or web-browsers are used. Any support requests to address such IT infrastructure problems are chargeable. StrataVote will provide advice as to the current supported devices and web-browsers as requested.

To the full extent permitted by law, StrataVote excludes all liability in respect of loss of data, lost profits, interruption of business or any consequential or incidental damages:

- for negligence or other non-contractual cause of action for acts or omissions of StrataVote or its employees, agents and contractors;
- for third-party claims;
- arising out of events which are beyond StrataVote's reasonable knowledge or control, including extraordinary risks or non-obvious usage scenarios which the Subscriber uses or intends to use the Software;
- arising out of the Subscriber's failure to assess whether their use of the Software is compliant with any applicable law or regulation;
- arising out of an expressly excluded warranty within this Agreement;
- to the extent the Subscriber or Users contributed to the liability by:
 - failing to promptly notify StrataVote when it became aware of any aspect of the Software not performing appropriately under clause 9;
 - failing to maintain back-up copies of any data or documents following its obligations at clause 10;
 - failing to maintain their own security under clause 12;
 - breaching its obligations according to clause 14;
 - non-compliance with clause 15, which sets out prohibited uses of the Software;
 - using an unreliable internet connection or unsupported devices or web-browsers; or
 - by otherwise breaching a term or by the non-compliance with an obligation under this Agreement.

The Subscriber fully indemnifies StrataVote for any losses or costs it may incur in defending a claim legally excluded by this clause 31 on a full-indemnity basis.

32. Limitation of liability

StrataVote's total aggregate liability for all claims relating to this Agreement is limited to \$100,000 or an amount equal to 12 months of fees (whichever is greater). This cap shall apply unless the Subscriber notifies StrataVote that it requires a higher limit of liability and StrataVote accepts this higher limit in writing and it is noted in the Proposal at Item 9.

Either Party's liability for any claim relating to this Agreement will be reduced to the extent to which the other Party contributed to the damage arising from the claim. All indemnities, releases, exclusions and limitation of liability provided by this Agreement survive termination.

33. Dispute resolution

The laws of South Australia (**State**) govern this Agreement. Any dispute resolution or court process must be conducted in the State.

33.1. Fee disputes

Where the Subscriber disputes any fees invoiced by StrataVote, the Subscriber must notify StrataVote of the disputed fee in writing, and outline why the fee is disputed.

The Subscriber must pay any undisputed portion of the fee. A disputed fee does not entitle the Subscriber to withhold payment for non-disputed fees or to set off this amount against any other invoice.

The Parties must attempt to resolve the fee dispute by negotiation in good faith within 14 days of notification or other extended timeframes as agreed.

If there is a reasonable dispute about the fee and it cannot be resolved by negotiation in good faith, the fee dispute is to be dealt with as a general dispute. If there is not a reasonable dispute about the fee and it remains unpaid, StrataVote may suspend services pursuant to clause 16.

If it is determined (either by negotiation or otherwise by this clause 33) that the disputed fee or part of it is payable, the Subscriber must pay that amount together with interest at the Interest Rate (listed at Item 7f) computed from the original invoice due date until payment is made in full.

33.2. General disputes

Where a Party considers that there is dispute or claim arising out of or in connection with this Agreement, the Party must notify the other Party of that dispute or claim in writing, setting out the particulars of the issue.

Unless the Parties are able to negotiate a resolution or the Parties agree in writing to an alternative dispute resolution method, any dispute or claim arising out of or in connection with this Agreement shall be settled by binding arbitration and following the Resolution Institute Arbitration Rules.

The Parties may agree on an arbitrator, or either Party may request the President of the Resolution Institute nominate an arbitrator.

Ideally, at least 4 weeks' notice of any dispute or claim would be given to the other Party and both Parties would negotiate in good faith to resolve the dispute before referring to arbitration, however, this is not a condition precedent to arbitration.

The Parties agree to adopt a fast track arbitration process under the Resolution Institute rules. Where the quantum of the dispute is less than \$50,000 in the aggregate, the Parties agree to resolve the dispute by the submission of documents alone unless otherwise reasonably determined by the arbitrator.

This dispute resolution procedure is an arbitration agreement pursuant to section 7 of the *Commercial Arbitration Act 2011 (SA)*.

33.3. Fee recovery

Except where the Subscriber has given prior notice of a fee dispute (under clause 33.1) or general dispute (under clause 33.2) relating to any recoverable fees, the dispute resolution procedure set out above at clause 33.2 does not apply to any action by StrataVote to recover fees payable by the Subscriber under this Agreement.

Where the dispute resolution procedure does not apply, StrataVote may elect, in its sole discretion, to carry out debt recovery action as it sees fit, including by initiating court proceedings. This exemption does not extend to any other dispute or claim (including a potential counterclaim by the Subscriber), for which the Parties must comply with the dispute resolution procedure.

34. Termination

A Party may terminate this Agreement by written notice to the other if any of the following events has occurred:

- a material breach of this Agreement by the other Party, which is not remediable or if capable of remedy, where the other Party fails to remedy within 7 days of written notice;
- an Insolvency Event occurs in respect of the other party, other than an internal reconstruction with notice to the other Party;
- the Parties mutually consent; or
- a Force Majeure Event persisting on the Party for 90 days or more.

If there is any dispute as to whether a Party may validly terminate under this clause, the dispute resolution process must be complied with.

If this Agreement is terminated pursuant to this clause or otherwise expires for any reason, then, in addition, and without prejudice to any other rights and remedies available, each Party retains the accrued claims it has against the other. The Subscriber must immediately pay all outstanding fees for the use of the Software up to the date of termination.

If the Subscriber terminates or purports to terminate this Agreement before the end of the Term, other than by this clause 34, StrataVote may recover any unpaid amounts for the total contract price (being the fees calculable from the Start Date at Item 3a to the later of the End Date at Item 3c or conclusion of any renewed term at Item 3d).

If there is any dispute about whether this Agreement has been terminated under this clause 34, the Parties must comply with the dispute resolution procedure at clause 33 above.

35. Notices

All notices under this Agreement must be in writing and sent by email, software portal (if available), pre-paid post or delivered by hand.

Notice must be to the contact details specified in the Proposal or as updated from time to time.

A Party may update its contact details by providing notice to the other party of the change in accordance with this clause, and the update will be deemed to be effective on delivery of the notice.

A notice will be deemed to be delivered:

- if delivered by hand or courier, at the time of delivery;
- if sent by pre-paid post, after four Business Days after the time of posting;
- if sent by email or software portal, where sent before 5 pm within the State, at the time of completion of transmission by the sender, otherwise the next Business Day;

unless there is clear evidence that the recipient has not received the notice.

36. Other terms

Any term in this Agreement that is void, illegal or unenforceable for any reason may be severed by a court or arbitrator of competent jurisdiction, leaving the remainder of the Agreement intact and enforceable.

No failure to insist on timely or strict compliance with any term of this Agreement shall constitute a waiver that releases the offending Party from that or any subsequent breach of this Agreement unless agreed in writing by the Parties.

The Subscriber shall have no right of set-off against the fees payable under this Agreement.

StrataVote may assign its rights and obligations under this Agreement to an Associated Entity. Otherwise, the Parties may not assign or otherwise transfer their rights or obligations under this Agreement without the written consent of the other Party. Such consent shall not be unreasonably withheld.

STRATAVOTE

stratavote.com

sales@stratavote.com

