

If you are a Software Tool Developer, these terms apply:

Tool Developer Program Terms

Welcome to the StratusCore Tool Developer Program (the "Developer Program") where Developers may offer their proprietary software applications to users via the StratusCore web-based marketplace platform (including all updates and enhancements thereto and Intellectual Property Rights therein, the "Platform").

1. General.

1.1 **Overview.** These Tool Developer Program Terms (these "Terms") are entered into by and between StratusCore and the entity or person agreeing to these terms ("you" or the "Developer"). These Terms, together with any Accelerator Tool Developer Program Agreement (the "Program Agreement") you may have agreed to or will agree to when you registered to become a StratusCore Tool Developer or later, govern your access to and involvement in the Developer Program.

1.2 **Effective when you click Accept.** These Terms are effective as of the date you click to accept and agree to these terms and click to create an account (the "Effective Date"). If you are an individual accepting on behalf of an entity Developer, you represent and warrant that: (i) you have full legal authority to bind Developer to these Terms; (ii) you have read and understand these Terms; and (iii) you agree on behalf of Developer to the terms of these Terms. If you do not have the legal authority to bind Developer, do not click to accept. These Terms will thereafter remain effective in accordance with Section 8 below. The effective date of the Program Agreement will be as set forth in the Program Agreement, if any.

If you do not agree to these Terms, do NOT click "I Accept" and do not access or otherwise use any of our Services.

1.3 **Modifications to these Terms.** StratusCore may make changes to these Terms from time to time as StratusCore deems reasonably necessary to address changes in applicable law and/or the StratusCore services offering. StratusCore will provide notice to you, via the email you provide when registering to be a Tool Developer of any material changes to these Terms. Unless otherwise agreed to in writing by StratusCore, changes to these Terms will become effective 30 days after they are posted and if the changes are material, 30 days after notice is emailed to you. Notwithstanding the foregoing, if the changes apply to new functionality or where the failure to make such changes will result in a violation of applicable law, the changes will be effective immediately.

1.4 **Offline Terms.** Except as set forth in this Section 1.4, your agreement with StratusCore includes these Terms, the Program Agreement plus any other terms agreed to in writing offline and executed by you and StratusCore (an "Offline Agreement"). If the provisions of this Agreement conflict with an Offline Agreement, the Offline Agreement will control.

If you signed an Offline Agreement with StratusCore that expressly excludes applicability of all or any portion of these terms to you, then these Terms or the applicable portion herein will not apply to your use and access of the Services

2. Definitions.

"Developer Application" shall mean each individual host application, plug-in, script(s), workflow or other program that Developer makes available to Users via the Platform, as listed in Schedule 1 to the Program Agreement ("Schedule 1"). For the sake of clarity, each Developer Application shall be considered Developer Software hereunder.

"Developer Intellectual Property" shall mean the Developer Software, the Developer Materials and the Developer Confidential Information.

"Developer Launch" shall be the date that the Developer Software is first made generally commercially available to Users via the Platform in accordance with these Terms and the Program Agreement.

"Developer(s) Software" shall mean any and all of Developer's and its suppliers' computer programs listed in Schedule 1 (including without limitation any third party products licensed by Developer and

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embedded in or integrated with Developer's Software) and any updates, new versions, and enhancements thereto.

"Developer TOU" shall mean Developer's written end user license agreement and privacy policy.

"Intellectual Property Rights" shall mean all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other equivalent or similar rights which may exist anywhere in the world.

"StratusCore Application Fee" shall mean the percentage of User Fees to be retained by StratusCore in accordance with the Program Agreement.

"Users" shall mean end use customers who have registered to obtain access to use the Platform and the Developer Software, and who maintain their compliance with all terms applicable thereto.

"User Fees" shall mean the fees charged a User for access to and use of a Developer Application via the Platform.

3. Participation in the StratusCore Accelerator Tool Developer Program.

3.1 Delivery; Testing; Launch. Developer shall deliver the Developer Software in accordance with the written delivery and launch instructions provided by StratusCore to Developer. Commencing no later than the Testing Start Date defined in Schedule 1, the parties shall exercise commercially reasonable efforts to test and confirm compatibility of the Developer Software with the Platform. In the event that (i) the parties are unable to mutually confirm compatibility within two weeks of the Testing Start Date, and/or (ii) the Developer Launch fails to occur within 30 days of determination of compatibility, then either party shall have the right to terminate these Terms without liability of any kind to the other party with respect to such termination.

3.2 License to Users; Satisfaction of Demand. Subject to these Terms, the Program Agreement and all terms applicable to User's access to the Platform, commencing on the Developer Launch, StratusCore shall make the Developer Software available to Users via the Platform. Developer shall make available sufficient instances of the Developer Software to satisfy User demand.

3.3 Incompatibility. If at any time after the Developer Launch, StratusCore determines that an incompatibility has arisen, or that Developer has violated these Terms or the Program Agreement, then StratusCore shall have the right to, with written notice to Developer and without liability to StratusCore, remove, disable or conceal the Developer Software from the Platform. The parties shall exercise commercially reasonable efforts to mutually resolve the issue within a reasonable period of time. If any such incompatibility remains unresolved 30 days after the date of StratusCore's notice, either party shall have the right, with 30 days' additional written notice to the other party, to terminate these Terms. Under no circumstances will StratusCore be liable, directly or indirectly, for any failure of the Developer Software to be compatible with the Platform, regardless of any action or inaction StratusCore takes in connection therewith.

3.4 Support. StratusCore shall support Developer's use of the Platform in accordance with the support services terms (if any) set forth in the Developer Business Requirements.

3.5 Other Services. If Developer requires any additional StratusCore services not expressly contemplated under these Terms then, subject to StratusCore's agreement to provide such services and to mutual agreement as to the scheduling, nature and extent of such additional services, StratusCore shall provide such additional services at its then current rates for such services.

3.6 Limitations. Except as expressly permitted by these Terms, Developer shall not make the Platform or any software or services incorporated therein available to any third parties as part of any rental, leasing, time-sharing, ASP, or service bureau arrangement, modify, publish, network, rent, lease, loan, transmit, perform, display or in any way exploit the Platform or any services offered thereon. Developer shall not interfere with the Platform or any StratusCore or third-party services offered on the Platform, or the tools incorporated by StratusCore or any third party thereon. Use of the Platform to violate, tamper with or circumvent the security of any computer network, software, passwords, encryption codes, technological protection measures or to otherwise engage in any kind of illegal activity, or to enable others to do so, is expressly prohibited. Developer shall not exploit the Platform or any products or services offered thereon in any unauthorized way, including but not limited to by trespass, burdening network capacity or using the Platform other than for purposes authorized in writing by StratusCore.

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3.7 StratusCore Data. Developer hereby grants to StratusCore a non-exclusive, worldwide, royalty free license to link to, store, reproduce, reformat, transmit, display (publicly or privately), perform, provide access to, use, distribute, and to license to third parties Developer Data for the purpose of carrying out StratusCore's rights and responsibilities under these Terms and to create, own and use, in any manner, StratusCore Data. "Developer Data" means all information, data and materials provided directly or indirectly by Developer in connection with these Terms or through its or User's access to or use of the Developer Software. "StratusCore Data" means data that (i) is created by StratusCore and (ii) incorporates Developer Data without direct or indirect reference to Developer or Users.

3.8 Reservation of Rights. Except to the extent incorporating the Developer Software, the Platform and any and all StratusCore products and services, StratusCore interfaces, the StratusCore Data (defined below) and any other data and reports generated by StratusCore in connection with these Terms and/or operation of the Platform, technical documentation, the StratusCore Confidential Information, and all Intellectual Property Rights incorporated or referenced therein (individually and collectively, the "StratusCore Intellectual Property"), are owned by StratusCore and its suppliers, partners and third party developers.

4. Developer Products and Services.

4.1 Developer Terms of Use. Developer shall require that every User who accesses the Developer Software via the Platform affirmatively clicks to accept and, throughout the Term, maintains compliance with, the Developer TOU. The Developer TOU shall comply with all applicable laws and regulations and the minimum StratusCore EULA terms set forth in the Developer Business Requirements, as may be updated by StratusCore from time to time with written notice to Developer. Developer must also have a privacy policy that is prominently displayed to Users, and it must adhere to this policy

4.2 User Relationship. Because Users will be joint customers of Developer and StratusCore, when Users access the Developer Software, Developer must make clear the nature of the relationship between the User and Developer, including that Developer's TOU, privacy policy and other legal terms govern the User's use of the Developer Software, StratusCore's legal terms govern the User's use of the Platform and StratusCore may shut down the User's access to the Platform and the Developer Software at any time.

4.3 Unauthorized Use. In the event that Developer becomes aware of any unauthorized use of the Developer Software or the Platform by any User, Developer shall immediately notify StratusCore in writing and shall cooperate with StratusCore to terminate and prevent further occurrences of such unauthorized use. Without limitation of the foregoing, StratusCore shall have the right to suspend or terminate access to the Platform to any User who fails to comply with the Developer TOU and/or StratusCore terms applicable to such User or whose access may violate applicable laws. If Developer commences any legal proceeding in connection with a User's unauthorized or noncompliant use of the Developer Software or the Platform, then StratusCore may, at StratusCore's option and expense, participate in any such proceeding. In addition, Developer and StratusCore shall each provide the other with such authority, information and assistance related to such proceeding as may be reasonably necessary to safeguard StratusCore's interests and Developer's rights under these Terms.

4.4 Computer Viruses. Developer will exercise commercially reasonable efforts to ensure that the Developer Software does not and will not contain any "computer viruses" or other malicious computer code.

4.5 Support. Developer shall provide first line technical support to Users and StratusCore in connection with availability of the Developer Software on the Platform, which shall satisfy the requirements of the Developer Minimum Support Program Requirements set forth in these Terms. Without limitation of the foregoing, such support shall, at minimum, include the same level of support that Developer provides to users who access and/or use the Developer Software outside the scope of these Terms.

4.6 StratusCore License. Developer hereby grants StratusCore a limited, royalty-free license to, during the term of these Terms, use the Developer Intellectual Property for the purpose of carrying out StratusCore's rights and responsibilities under these Terms.

4.7 Developer Materials and Cooperation. Developer shall make available all data, materials, information, technology and assistance as StratusCore may reasonably request in connection with StratusCore's performance of its rights and responsibilities under these Terms, including but not limited to the Developer Launch and ongoing availability of the Developer Software on the Platform and including but not limited to the marketing and other Developer Materials Listed (the "Developer Materials") listed on

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Schedule 1. In addition, Developer shall carry out its business in a manner that reflects positively on StratusCore and shall not engage in any action or inaction that harms StratusCore, its reputation or business.

4.8 Applicable Laws. Developer acknowledges that it is Developer's exclusive responsibility to analyze laws applicable to availability of the Tool Developer Software throughout the world. Developer shall provide in Schedule 1 a list of all countries or other geographic areas where applicable law or regulation restricts availability of the Developer Software. In addition, during the Term, Developer shall notify StratusCore in writing of any laws or regulations that limit where or to whom Developer Software may be made available. StratusCore shall have no liability in connection with Developer's failure to fulfill its responsibilities under this Section.

5. Co-Marketing.

5.1 Marketing Works. Each party hereby grants the other party the right to use the other's party's name, logo, and supporting quotes (as provided by the other party) in press releases, customer lists, website(s), white papers, case studies, and other sales and marketing materials (collectively, "Marketing Works") for public distribution. Such Marketing Works may describe non-confidential aspects of the Developer's use of the Platform such as speed to launch, effect on business performance, ease of use, and return on investment. Each party shall have the right, reasonably and with advance notice, to require the other party to modify any such Marketing Works which may be published or otherwise issued by the other party.

5.2 Trademarks. Subject to compliance with the other party's written trademark usage guidelines (as may be updated with written notice from time to time), each party shall have the right to use the other party's trademarks listed on Schedule 1, and such other trademarks as may be agreed to by a party from time to time (individually and collectively, "Trademarks"), for co-marketing purposes and in direct connection with making the Developer Software available on the Platform.

5.3 StratusCore Marketing Programs. From time to time, Developer may, in StratusCore's discretion, have the opportunity to participate in other StratusCore marketing programs. StratusCore may, in its sole discretion, discontinue Developer's involvement in any such activities at any time without liability to StratusCore.

6. Confidentiality. Each party agrees to treat the other party's information provided in the performance of this Agreement that is identified as confidential or proprietary or reasonably appears to be confidential or proprietary ("**Confidential Information**") with the same care as it uses with its own confidential information, but no less than a commercially reasonable standard of care, and restrict access to such information to those employees who need specific Confidential Information to carry out its rights and responsibilities under this Agreement. Notwithstanding the foregoing, Confidential Information shall not include information which (i) is or becomes part of the public domain, (ii) is rightfully in the recipient's possession without an obligation of confidentiality prior to receipt from the disclosing party in connection with this Agreement, or (iii) is independently developed by the receiving party.

7. Intellectual Property Restrictions. Neither party shall remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on the other party's Intellectual Property and shall ensure that every copy of all or any portion of the other party's Intellectual Property includes such notices. Neither party shall decompile, reverse engineer, disassemble or attempt to derive the source code of any software or security components of the other party's Intellectual Property (except as and only the extent any foregoing restriction is prohibited by applicable law). Except for the limited license expressly granted to the other party herein, each party retains all Intellectual Property Rights in and to its products, services and Confidential Information.

8. Term; termination.

8.1 These Terms shall commence on the Effective Date and continue for the Initial Term and any Renewal Term(s) defined in the Program Agreement, except that if Developer and StratusCore do not enter into a Program Agreement, these Terms shall be effective for (individually and collectively the "Term"), unless earlier terminated in accordance with this Section. In the event of a material breach of these Terms or the Program Agreement by either party, the non-breaching party may terminate the Program Agreement and these Terms with two weeks prior written notice in the event that such breach is not cured within the two week notice period. Upon expiration of the Initial Term and any Renewal Term(s),

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these Terms and the Program Agreement shall automatically renew for additional Renewal(s) Term unless either party terminates with 30 days written notice prior to expiration of the applicable Term. Termination of the Program Agreement shall result in termination of these Terms

8.2 Sections 6, 7, 9, 10, 11 and 12 shall survive termination of these Terms.

9. Warranties.

9.1 StratusCore Warranties. StratusCore warrants to Developer that StratusCore has all rights necessary to provide Developer access to the Platform and the StratusCore Trademarks for use in accordance with these Terms. Notwithstanding anything set forth in this Section 9.1 or otherwise, Developer acknowledges and agrees that StratusCore will not be responsible for any issues arising from or related to any Developer or third party tools, applications or other facilities, or data, materials or content used or accessed directly or indirectly in connection with the Platform, including but not limited to 3rd party tools installed by Users or other parties in connection with their use or access of the Platform.

9.2 Developer Warranties. Developer warrants to StratusCore that (i) Developer has all rights necessary to license to StratusCore the Developer Intellectual Property for use in accordance with these Terms, and (ii) the Developer Software and any corresponding Developer services will not violate third party rights or applicable laws and will be performed in a professional manner, in accordance with industry standards.

9.3 Disclaimer. EXCEPT AS SET FORTH IN SECTIONS 3.6 AND 9, AND WITHOUT LIMITATION OF A PARTY'S RESPONSIBILITIES UNDER SECTION 10 AND APPLICABLE LAW, THE PLATFORM AND ALL PRODUCTS AND SERVICES PROVIDED BY STRATUSCORE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS WITHOUT WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OF TRADE OR COURSE OF DEALING. STRATUSCORE GRANTS NO WARRANTIES TO DEVELOPER'S PARTNER, AFFILIATES OR END USERS, AND DEVELOPER SHALL NOT PASS THROUGH TO ANY THIRD PARTY ANY OF THE WARRANTIES SET FORTH IN THE AGREEMENT

10. Indemnification. Each party will defend and indemnify the other from and against any and all losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, action or proceeding (collectively "Claims") brought by any third party arising out of or relating to the other's breach of these Terms and/or the Program Agreement, gross negligence, willful misconduct or failure to comply with applicable law. Each party will give the other prompt written notice of any such Claim and provide the indemnifying party reasonable assistance, at the indemnifying party's expense, in the defense of the Claim. StratusCore shall have the right, with written notice to Developer, to assume primary control of the defense and settlement of any Claim, provided that Developer may participate at its own cost and expense.

11. Limitation of Liability. EXCEPT IN THE EVENT OF A PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIAL INFORMATION AND FULFILLMENT OF ITS INDEMNIFICATION RESPONSIBILITIES UNDER SECTION 10, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, DATA, OR USE, RELATED TO THESE TERMS, THE PROGRAM AGREEMENT, THE PERFORMANCE OF ANY SERVICES, IMPAIRMENT OF ASSETS, OR USE OF THE SERVICES, WHETHER IN AN ACTION IN CONTRACT, BREACH OF WARRANTY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, and neither party's liability arising out of these Terms shall in any event exceed Five Hundred Thousand US dollars (US \$500,000), regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

12. General.

12.1 Governing Law. These Terms shall be governed by and interpreted in accordance with the internal laws of the State of Washington. In the event of any controversy or claim arising out of or relating to these Terms, or the breach or interpretation thereof, the parties shall submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington, or the Federal District Court for the

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Western District of Washington, and appeal courts therefrom. Each party hereby waives all defenses of lack of personal jurisdiction and forum nonconveniens.

12.2 Assignment. Developer may not assign any of its rights or responsibilities under these Terms without StratusCore's prior written consent. Subject to the foregoing restriction on assignment by Developer, these Terms shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

12.3 Entire Agreement; Agency. These Terms, including all schedules and web-based terms referenced herein, is the entire agreement between the parties with respect to the subject matter set forth herein. These Terms supersedes all prior or contemporaneous agreements, whether oral or written, of the parties with respect to the subject matter of these Terms. These Terms may not be modified unless expressly agreed to in writing by both parties. Nothing in these Terms or via participation in the StratusCore Accelerator Marketplace creates a legal partnership or agency relationship with StratusCore and Developer agrees not to represent otherwise.

12.4 Waiver; Severability. No waiver of or with respect to any provision of these Terms, nor consent by a party to the breach of or departure from any provision of these Terms, shall in any event be binding on or effective against such party unless it be in writing and signed by such party, and then such waiver shall be effective only in the specific instance and for the purpose for which given. If any provision of these Terms is held to be invalid, such invalidity shall not render invalid the remainder of these Terms or the remainder of which such invalid provision is a part. If any provision of these Terms is so broad as to be held unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

12.5 Notices. Any notice or other communication under these Terms given by either party to the other party shall be deemed to be properly given if given in writing and delivered by (i) US Mail, certified or registered, return receipt requested, or (ii) nationally recognized air express courier (e.g., Federal Express), properly addressed and prepaid, to the recipient at the address identified on the signature page of these Terms. Notice periods shall run from the day following delivery. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

12.6 Legal Expenses. If any proceeding is brought by either party to enforce or interpret any term or provision of these Terms, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of these Terms, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees, costs and expenses.

12.7 Equitable Relief. Each of Developer and StratusCore acknowledges that damages will be an inadequate remedy if the other violates the terms of these Terms pertaining to protection of a party's Intellectual Property Rights or Confidential Information. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, temporary, preliminary and permanent injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce any of the obligations in these Terms.

12.8 Force Majeure. If the performance of these Terms is adversely restricted or if either party is unable to conform to any warranty by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then, except with respect to obligations to pay Fees, the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

12.9 Captions and Headings. The captions and headings are inserted in these Terms for convenience only, and shall not be deemed to limit or describe the scope or intent of any provision of these Terms.

12.10 Third Party Beneficiaries. Except as expressly set forth in these Terms, no provisions of these Terms are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. Notwithstanding the foregoing, StratusCore's third party suppliers of products and services delivered in connection with the Platform shall enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such products and services as does StratusCore.

12.11 Arm's Length Negotiation. These Terms is the product of an arm's length negotiation between the parties and no party shall be deemed to be the drafter of either all or part of it; therefore, no part of these Terms shall be construed against any party on the basis of that party's identity as a drafter. Each of the parties has signed these Terms after consulting with its counsel.



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12.12 Audit Rights. During the Term and for a period of one year after termination of this Agreement, Developer shall maintain, and StratusCore shall have the right with at least 30 days prior written notice to audit, sufficient books and records of Developer related to assessment and collection of the Additional App Fee. If any such audit reveals any under-reporting and/or under-payment related to the Additional App Fee, then Developer will pay the unpaid Additional App Fee, within ten days of StratusCore's invoice. The cost of such audit will be borne by StratusCore, unless the audit identifies an under-reporting of fees by Tool Developer of more than 5%.

If you are a Technology Partner, these terms apply (also known as “Technology Partner Program Terms”)

Technology Partner Program

Welcome to the StratusCore Technology Partner Program (the “Program”) pursuant to which StratusCore and its marketing partners work together to market and promote each other’s products and services.

1. General.

1.1 Overview. These Partner Program Terms (these “Terms”) are entered into by and between StratusCore and the entity or person agreeing to these terms (“you” or the “Partner”). These Terms, together with the Co-Marketing Agreement (the “Agreement”) you agreed to when you registered to become a StratusCore Co-Marketing Partner govern your access to and involvement in the Program.

1.2 Effective when you click Accept. These Terms are effective as of the date you click “I Accept”] (the “Effective Date”). If you are an individual accepting on behalf of an entity Partner, you represent and warrant that: (i) you have full legal authority to bind Partner to these Terms; (ii) you have read and understand these Terms; and (iii) you agree on behalf of Partner to the terms of these Terms. If you do not have the legal authority to bind Partner, do not click to accept. These Terms will thereafter remain effective in accordance with Section 8 below.

If you do not agree to these Terms, do NOT click “I Accept” and do not access or otherwise use any of our Services.

1.3 Modifications to these Terms. StratusCore may make changes to these Terms from time to time as StratusCore deems reasonably necessary to address changes in applicable law and/or the StratusCore services offering. StratusCore will provide notice to you, via the email you provide when registering to be a Tool Partner, of any material changes to these Terms. Unless otherwise agreed to in writing by StratusCore, changes to these Terms will become effective 30 days after they are posted and if the changes are material, 30 days after notice is emailed to you. Notwithstanding the foregoing, if the changes apply to new functionality or where the failure to make such changes will result in a violation of applicable law, the changes will be effective immediately.

1.4 Offline Terms. Except as set forth in this Section 1.4, your agreement with StratusCore includes these Terms, the Agreement plus any other terms agreed to in writing offline and executed by you and StratusCore (each, an “Offline Agreement”) If these Terms conflict with an Offline Agreement, the Offline Agreement will control.

If you signed an Offline Agreement with StratusCore that expressly excludes applicability of all or any portion of these terms to you, then these Terms or the applicable portion herein will not apply to your use and access of the Services

Definitions.

“Collaboration Materials” shall have the meaning ascribed to it in Section 3 below.

“Co-Marketing Plan” means the parties’ plan for marketing and promotion of each other’s products and services, as further defined in Section 4 below.

“Delivery Dates” means the dates on which each party has agreed to deliver their assigned Deliverables to the other party.

“Deliverables” means the data and materials each party is required to deliver to the other party, as referenced in the Agreement, plus the Collaboration Materials.

“Intellectual Property Rights” and “Intellectual Property” means all rights in trade secrets, patents and patent applications, trademarks (whether registered or unregistered and including any goodwill acquired in such trademarks), service marks, trade names, copyrights, moral rights, database rights, design rights, rights to data, rights in know-how, rights in confidential information, rights in inventions (whether patentable or not) and all other intellectual property and proprietary rights (whether registered or unregistered, any application for the foregoing, and all rights to enforce the foregoing), and all other

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equivalent or similar rights which may exist anywhere in the world, and all modifications, updates and enhancements thereto.

“Launch” means the date that either party’s Services are first made generally commercially available to Users of the other party in accordance with these Terms.

“Partner Data” shall have the meaning ascribed to it in Section 5.

“Partner IP” means the Partner Services and Deliverables, Trademarks, Partner Data and all Intellectual Property Rights incorporated therein.

“StratusCore IP” means the StratusCore Services and Deliverables, Trademarks, StratusCore Data, and all Intellectual Property Rights incorporated therein.

“StratusCore Services” means the Platform and other products, services, media, content, software, marketing initiatives, websites, social media accounts, and other StratusCore IP which StratusCore develops and makes available, whether independently or together with its third party partners and suppliers, including all updates, enhancements and new versions thereto.

“Trademarks” shall have the meaning ascribed to it in Section 4.

“User(s)” means StratusCore’s and Partner’s customers and partners, and the customers of each party’s partners, whether a person, company or other legal entity, who are registered to access and use StratusCore’s or Partner’s Services (as applicable).

Capitalized terms used in these Terms but not defined herein shall have the meanings given them in the Agreement.

3. Evaluation and Launch.

3.1 Delivery. On or before each Delivery Date, each party will deliver to the other its corresponding Deliverable(s). A given Delivery Date may be extended for a maximum of 30 days by mutual written agreement of the parties.

3.2 Evaluation. During any Evaluation Term defined in the Agreement, each party shall exercise commercially reasonable efforts to test and confirm compatibility of the other party’s Deliverables with the evaluating party’s Services. In the event that (a) within the Evaluation Term, either party notifies the other party that, after reasonable efforts, it is unable to confirm compatibility or otherwise reasonably determines that their co-marketing initiatives may not be mutually successful, or (b) the Launch fails to occur within 30 days of successful completion of the evaluation (or such other date as may be agreed upon in writing by authorized representatives of the parties), then either party shall have the right, with written notice to the other party, to terminate these Terms and the Agreement without liability of any kind to the other party with respect to such termination; provided that any such termination shall not relieve Partner of payment of the Evaluation Fee. If the Evaluation Term is completed and the Launch occurs without termination as provided in this section, then the evaluation shall be deemed successful.

3.3 Launch. Commencing on Launch, StratusCore shall make Partner Services available to its Users and/or Partner shall make StratusCore Services available to Partner Users, in accordance with the Co-Marketing Plan.

3.4 Incompatibility. If at any time after the Launch, either party determines that an incompatibility has arisen, or, without limitation of its rights under Section 9, that the other party has violated these Terms or the Agreement, then it shall have the right, with written notice to the other party, to, as applicable, remove, disable, conceal and/or cease integration with, operation, and/or co-marketing of the other party’s Services. The parties shall exercise commercially reasonable efforts to mutually resolve the issue within a reasonable period of time. If any such issue remains unresolved 30 days after the date of the notice of incompatibility, either party shall have the right, with additional written notice to the other party, to terminate these Terms and the Agreement. Under no circumstances will the terminating party be liable, directly or indirectly, for any failure of the other party’s Services to be compatible, regardless of any action or inaction it takes in connection therewith.

3.5 Materials and Cooperation. In addition to the Partner Deliverables, Partner shall provide such cooperation and assistance and shall make available all data, materials, information and technology as StratusCore may reasonably request in connection with the Launch and ongoing fulfillment of the Co-Marketing Plan (the “Collaboration Materials”). Partner hereby grants StratusCore a limited, nontransferable, royalty free right to use its Collaboration Materials solely for the purpose of carrying out its rights and responsibilities under these Terms and the Agreement. The Collaboration Materials shall be considered Partner’s Confidential Information.

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3.6 Limitation. Neither party shall be obligated to provide any technology or services not expressly required under these Terms and the Agreement unless otherwise agreed to by the parties in a written Statement of Work, executed by authorized representatives of the parties, detailing the services and/or technology to be provided and all applicable fees.

4. Marketing and Promotion. Each party hereby grants the other party the right to use its name, logo, and supporting quotes (as provided by the other party) in press releases, customer lists, website(s), white papers, case studies, and other sales and marketing materials (collectively, "Marketing Works") for public distribution. Such Marketing Works may describe non-confidential aspects of the its use of the other party's products and services, such as speed to launch, affect on business performance, user satisfaction, ease of use, and return on investment. Each party shall have the right, reasonably and with advance notice, to require the other party to modify any such Marketing Works which may be published or otherwise issued by the other party. A party's use of the other party's Trademarks and other names, logos, images, colors, quotations and other marketing materials and information and all Marketing Works shall be subject to the other party's written trademark and branding usage guidelines, if any, and as may be updated with written notice from time to time).

5. Mutual License Rights; Reservation of Rights.

5.1 Evaluation License. During the Evaluation Term, each party shall have a limited, non-transferable, royalty free, non-exclusive right to use the other party's Deliverables solely for the purpose of internal evaluation and testing of the compatibility of the parties' Services.

5.2 Launch. Commencing on Launch and continuing throughout the remainder of the Term:

(1) Partner shall grant StratusCore a worldwide, non-exclusive, non-transferable (except as set forth in subsection 5.2(1)(c) below), royalty free right to use, display, perform, and reproduce the Partner IP solely for (a) the purpose of linking and/or integrating it with the Platform and/or StratusCore Services, (b) to the extent necessary to carry out its rights and responsibilities under the Co-Marketing Plan, (c) making the Partner Services available for use by Users as part of the Platform and/or StratusCore Services, and (d) for production updates, and reasonable backup and archival purposes, and

(2) StratusCore shall grant Partner a limited, non-exclusive, non-transferable, royalty free right to (a) access and use the Platform for the purpose of viewing the Partner reporting page, (b) access and use any other StratusCore Services agreed to by StratusCore in writing solely for the express purpose, and subject to any additional limitations StratusCore deems applicable, and (c) use the StratusCore Deliverables to the extent necessary to carry out its rights and responsibilities under the Co-Marketing Plan..

5.3 Data. Partner hereby grants to StratusCore a non-exclusive, worldwide, royalty free license to link to, store, reproduce, reformat, transmit, display (publicly or privately), perform, provide access to, use, distribute, and to license to third parties Partner Data for the purpose of carrying out its rights and responsibilities under these Terms and the Agreement and to create, own and use, in any manner, StratusCore Data. "Partner Data" means all information, data and materials provided directly or indirectly through Partner's and/or Partner's User's access of the Platform and/or StratusCore Services in connection with these Terms and the Agreement. As between the parties, Partner Data shall be deemed Partner Confidential Information. "StratusCore Data" means data that (i) is created by StratusCore and (ii) incorporates Partner Data without direct or indirect reference to Partner or its Users. For the sake of clarity, each party shall own all rights to data it obtains through any User's direct access to and use of such party's Services regardless of whether such User also accesses or uses the other party's Services. Nothing herein shall limit the right of either party to use third party data to the extent such use is authorized by the third party.

5.4 Reservation of Rights. Except for the limited licenses expressly set forth in these Terms and the Agreement, each party retains exclusive ownership of its data, materials products, services, technology, Intellectual Property and Confidential Information, and the other party is not granted any other rights, franchises or licenses, with respect thereto.

6. Compliance with Law.

6.1 User Relationship. Each party shall require that every User who accesses its Services agrees to and throughout the Term maintains compliance with a written Terms of Use, privacy policy and other legal terms which govern the User's use of that party's Services (individually and collectively, "User Legal Terms"). A party's User Legal Terms shall require, among other things, that every User complies with all

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applicable laws and regulations in connection with such access and use. Partner acknowledges that StratusCore's User Legal Terms govern the User's use of the StratusCore Services and StratusCore may shut down the User's access to the StratusCore Services at any time for violation of those terms and/or any applicable law, regulation or other policy. Neither party will be responsible for any User issues to the extent arising from the User's access to and use of the other party's Services.

6.2 Hosted Partner Services. If Partner Services may be hosted on or linked to the Platform or other StratusCore Services:

(a) Partner acknowledges that it is Partner's exclusive responsibility to analyze laws applicable to availability of Partner Services throughout the world, even if such Partner Services are made available directly or indirectly via the Platform;

(b) Partner shall provide StratusCore a list of all countries or other geographic areas where applicable law or regulation restricts availability of the applicable Partner Services. Partner shall provide StratusCore an updated list from time to time as necessary to ensure the list accurately represents changes in applicable law;

(c) Partner shall notify StratusCore in writing of any laws or regulations that limit where or to whom Partner Services may be made available; and

(d) In the event that Partner becomes aware of any unauthorized use of any StratusCore Service, Partner shall immediately notify StratusCore in writing and shall cooperate with StratusCore to terminate and prevent further occurrences of such unauthorized use. If Partner commences any legal proceeding in connection with a User's unauthorized or noncompliant use of the Platform, StratusCore Services or, to the extent directly or indirectly impacting StratusCore, the Partner IP, then StratusCore may, at StratusCore's option and expense, participate in any such proceeding. In addition, Partner and StratusCore shall each provide the other with such authority, information and assistance related to such proceeding as may be reasonably necessary to safeguard StratusCore's interests and Partner's rights under these Terms and the Agreement

7. Confidentiality; Restrictions.

7.1 General. Each party agrees to treat the other party's information provided in the performance of these Terms and/or the Agreement that is identified as confidential or proprietary or reasonably appears to be confidential or proprietary (individually and collectively, such party's "Confidential Information") with the same care as it uses with its own confidential information, but no less than a commercially reasonable standard of care. Each party agrees to restrict access to the other party's Confidential Information to those of its employees who need specific Confidential Information to carry out such party's rights and responsibilities under these Terms and the Agreement. Notwithstanding the foregoing, Confidential Information shall not include information which (i) is or becomes part of the public domain through no fault or action of the receiving party, (ii) is rightfully in the receiving party's possession without an obligation of confidentiality prior to receipt from the disclosing party in connection with these Terms and the Agreement, or (iii) is independently developed by the receiving party.

7.2 Restrictions. Neither party shall remove, obscure or alter any notice of copyright, patent, trade secret, trademark or other proprietary right or disclaimer appearing in or on the other party's Intellectual Property and shall ensure that every copy of all or any portion of the other party's Intellectual Property includes such notices. Neither party shall, nor shall it knowingly allow a third party to, decompile, reverse engineer, disassemble or otherwise attempt to derive the source code of any software, other technology or security components of the other party's Intellectual Property (except as and only to the extent any foregoing restriction is prohibited by applicable law). Except for the limited license expressly granted to the other party herein, each party retains all Intellectual Property Rights in and to its products and services.

8. Term; Termination.

8.1 Term. These Terms shall commence on the Effective Date and continue for the Evaluation Term. Provided that the evaluation and Launch are successfully completed, these Terms and the Agreement shall continue for the Initial Term and any Renewal Term(s) defined in the Agreement. In the event of a material breach of these Terms or the Agreement by either party, the non-breaching party may terminate with 30 days prior written notice in the event that such breach is not cured within aforementioned 30 day notice period. Upon expiration of the Initial Term and any Renewal Term(s), these Terms shall automatically renew for additional Renewal Term(s) unless either party terminates with 30 days written notice prior to expiration of the then applicable Term. Following termination of these Terms and/or the

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Agreement each party shall immediately cease use of any Confidential Information and Intellectual Property of the other party and return or destroy (and upon the other party's request, provide written certification of such destruction) all copies of any Confidential Information and Intellectual Property.

8.3 Survival. Sections 5.3, 5.4, 7, 8.3, 9.2, 10, 11 and 12 shall survive termination of these Terms.

9. Warranties.]

9.1 Warranties. Each party warrants to the other that (i) it has all rights necessary to provide the other party access to and use of the Deliverables, Services, Data and other Intellectual Property it provides under, and for use in accordance with, these Terms and the Agreement and such use will not violate third party rights or applicable law, (ii) all Services will be performed in a professional manner, in accordance with industry standards for similar services, and (iii) it will exercise commercially reasonable efforts to ensure that its technology Services and Deliverables contain no computer virus, Trojan horse, worm, time bomb, lock-out device, cancelbot, or other similar malicious code. Each party agrees not to make any warranties to any third party on behalf of the other party. Without limiting the foregoing, StratusCore does not warrant that the Platform or StratusCore Services are free from all bugs, errors, or omissions.

9.2 Disclaimer. Notwithstanding anything set forth in this Section 9 or otherwise, (i) neither party will be responsible for any products, services (including but not limited to the Services), data, tools, materials or Intellectual Property provided directly or indirectly by the other party, and (ii) StratusCore shall not be responsible to Partner for third party tools, applications or other facilities, data, materials or content used or accessed directly or indirectly in connection with the Platform and/or StratusCore Services, including but not limited to third party tools installed and/or data provided by Users or other parties in connection with their use and/or access of the Platform. EXCEPT AS SET FORTH IN SECTION 9.1, AND WITHOUT LIMITATION OF A PARTY'S RESPONSIBILITIES UNDER SECTION 10, ALL DELIVERABLES, PRODUCTS, SERVICES, DATA AND OTHER INTELLECTUAL PROPERTY PROVIDED BY ONE PARTY TO ANOTHER IN CONNECTION WITH THESE TERMS AND THE AGREEMENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTY, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USAGE OF TRADE OR COURSE OF DEALING.

10. Indemnification.

10.1 Each party will defend and indemnify the other from and against any and all losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys' fees) arising from any claim, action or proceeding (collectively "Claims") brought by any third party to the extent arising out of or relating to the indemnifying party's breach of these Terms or the Agreement, actual or alleged breach of any agreement with or right of a third party, gross negligence, willful misconduct or failure to comply with applicable law.

10.2 The indemnified party must provide the other party prompt written notice of any Claim and reasonable assistance, at the indemnifying party's expense, in the defense of the Claim. The indemnifying party shall have the right to assume primary control of the defense and settlement of the Claim, provided that the indemnified party may participate at its own cost and expense.

10.3 Notwithstanding the foregoing, neither party will have any obligations for indemnification of a Claim under Section 10.1 to the extent that such Claim arises from (i) the other party's use of the providing party's Deliverables not in accordance with these Terms or the Agreement, (ii) an outdated version of any Deliverable after the providing party has made available an updated version, (iii) any modification of a Deliverable by any person other than the providing party, provided that the infringement claim derives from the modification and not from the Deliverable in the form provided, (iv) use of the providing party's Deliverable in combination services or data not supplied by that party where the Claim would not have occurred but for such combination or (v) the negligence or intentional misconduct of the other party, its employees, contractors, agents or customers.

10.4 If use of all or any part of a Deliverable is, or in the providing party's reasonable opinion is likely to become, the subject of a claim of infringement of any intellectual property or other right of any third party, then the providing party shall have the right, without limitation of its other responsibilities hereunder, to: (i) procure the continuing right for the other party to use the Deliverable; and/or (ii) replace or modify the Deliverable in a functionally equivalent manner so that they no longer infringe.

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11. **Limitation of Liability.** EXCEPT IN THE EVENT OF A PARTY'S BREACH OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS OR CONFIDENTIAL INFORMATION AND FULFILLMENT OF ITS INDEMNIFICATION RESPONSIBILITIES UNDER SECTION 10, (i) IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, REVENUE, DATA, OR USE, RELATED TO THIS THESE TERMS AND/OR THE AGREEMENT, THE PERFORMANCE OF ANY SERVICES OR OTHER DELIVERABLES, IMPAIRMENT OF ASSETS, OR USE OF SERVICES OR OTHER DELIVERABLES, WHETHER IN AN ACTION IN CONTRACT, BREACH OF WARRANTY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, and neither party's liability arising out of this these Terms and the Agreement shall in any event exceed the greater of three times fees paid and payable to the under this these Terms and the Agreement and Five Hundred Thousand US dollars (US \$500,000), regardless of whether any action or claim is based in contract, misrepresentation, warranty, indemnity, negligence, strict liability or other tort or otherwise.

12. General.

12.1 **Governing Law.** These Terms and the Agreement shall be governed by and interpreted in accordance with the internal laws of the State of Washington. In the event of any controversy or claim arising out of or relating to these Terms and the Agreement, or the breach or interpretation thereof, the parties shall submit to the exclusive jurisdiction of and venue in the Superior Court of King County, Washington, or the Federal District Court for the Western District of Washington, and appeal courts therefrom. Each party hereby waives all defenses of lack of personal jurisdiction and forum nonconveniens.

12.2 **Assignment.** Partner may not assign any of its rights or responsibilities under these Terms and the Agreement without StratusCore's prior written consent. Subject to the foregoing restriction on assignment by Partner, these Terms and the Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

12.3 **Entire Agreement.** These Terms together with the Agreement, including all schedules, is the entire agreement between the parties with respect to the subject matter set forth herein. These Terms together with the Agreement supersedes all prior or contemporaneous agreements, whether oral or written, of the parties with respect to the subject matter of these Terms and the Agreement. These Terms and the Agreement may not be modified unless expressly agreed to in writing by both parties.

12.4 **Waiver; Severability.** No waiver of or with respect to any provision of these Terms or the Agreement, nor consent by a party to the breach of or departure from any provision of these Terms or the Agreement, shall in any event be binding on or effective against such party unless it be in writing and signed by an authorized representative of such party, and then such waiver shall be effective only in the specific instance and for the purpose for which given. If any provision of these Terms or the Agreement is held to be invalid, such invalidity shall not render invalid the remainder of these Terms and the Agreement or the remainder of which such invalid provision is a part. If any provision of these Terms or the Agreement is so broad as to be held unenforceable, such provision shall be interpreted to be only so broad as is enforceable.

12.5 **Notices.** Any notice under this Agreement given by either party to the other party shall be deemed to be properly given if in writing and delivered by (i) US Mail, certified or registered, return receipt requested, or (ii) nationally recognized air express courier (e.g., Federal Express), properly addressed and prepaid, to the recipient at the address identified on the signature page of the Agreement. Notice periods shall run from the day following delivery. Either party may from time to time change its address by giving the other party notice of the change in accordance with this Section.

12.6 **Legal Expenses.** If any proceeding is brought by either party to enforce or interpret any term or provision of these Terms and the Agreement, the substantially prevailing party in such proceeding shall be entitled to recover, in addition to all other relief arising out of these Terms and the Agreement, such party's reasonable attorneys' and other experts' (including without limitation accountants) fees, costs and expenses.

12.7 **Compliance With Laws.** StratusCore and Partner shall comply with all applicable laws and regulations with respect to these Terms and the Agreement, including U.S. export control laws. Neither party shall have any liability to the other for any non-performance of their obligations under these Terms and the Agreement to the extent that the non-performance is mandated by applicable law.

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12.8 Equitable Relief. Partner and StratusCore agree that damages will be an inadequate remedy if the other violates the terms of these Terms or the Agreement pertaining to protection of a party's Intellectual Property Rights or Confidential Information. Accordingly, each of them shall have the right, in addition to any other rights each of them may have, to obtain in any court of competent jurisdiction, injunctive relief to restrain any breach, threatened breach, or otherwise to specifically enforce such terms.

12.9 Force Majeure. If the performance of these Terms or the Agreement is adversely restricted by reason of any circumstances beyond the reasonable control and without the fault or negligence of the party affected, then, the party affected, upon giving prompt written notice to the other party, shall be excused from such performance on a day-to-day basis to the extent of such restriction (and the other party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent such party's obligations relate to the performance so restricted); provided, however, that the party so affected shall use all commercially reasonable efforts to avoid or remove such causes of non-performance and both Parties shall proceed whenever such causes are removed or cease.

12.10 Captions and Headings. The captions and headings are inserted in these Terms and the Agreement for convenience only, and shall not be deemed to limit or describe the scope or intent of any provision of these Terms or the Agreement.

12.11 Third Party Beneficiaries. Except as expressly set forth in these Terms and the Agreement, no provisions of these Terms or the Agreement are intended nor shall be interpreted to provide or create any third party beneficiary rights or any other rights of any kind in any other party. Notwithstanding the foregoing, StratusCore's third party suppliers of products and services delivered in connection with the Platform shall enjoy the same disclaimers of warranty, limitations on liability and similar exculpatory provisions with respect to such products and services as does StratusCore.

12.11 Arm's Length Negotiation. These Terms and the Agreement is the product of an arm's length negotiation between the parties and no party shall be deemed to be the drafter of either all or part of it, therefore, no part of this agreement shall be construed against any party on the basis of that party's identity as a drafter. Each of the parties has signed this agreement after consulting with its counsel.