

# Master Software and Service Agreement

This Master Software and Services Agreement ("**Agreement**" or "**MSSA**") is by and between the contracting party identified on the Order ("**Customer**") and Aviatrix Systems, Inc. ("**Aviatrix**"). **BY ENTERING INTO AN ORDER (EITHER BY EXECUTION OR ELECTRONIC ACCEPTANCE) THAT REFERENCES OR INCORPORATES THIS AGREEMENT, THE CUSTOMER AGREES THE TERMS AND CONDITIONS OF THIS AGREEMENT GOVERN CUSTOMER'S ACCESS TO AND USE OF THE AVIATRIX PRODUCT(S). THIS AGREEMENT IS EFFECTIVE AS OF THE DATE OF SUCH ACCEPTANCE OR EXECUTION ("Effective Date").** Each Agreement is comprised of the following documents, as applicable:

the Order or Statement of Work,

any attachments, addenda, and/or appendix(ices) to this MSSA,

any applicable Product Specific Schedule(s); and

this MSSA.

The applicable attachment(s), addenda, appendix(ices), and schedule(s) are determined by the Aviatrix Product(s) purchased on the Order. Each Order is governed by and incorporates the foregoing and in the event of a conflict, the order of precedence is as set out above in descending order of control.

## 1. CUSTOMER RIGHTS, RESTRICTIONS AND RESPONSIBILITIES.

**1.1. License; Right to Access and Use.** Subject to the terms in this Agreement and the applicable Order, Aviatrix grants Customer for the applicable Subscription Term: (a) if Customer licenses the Software, a non-sublicensable, non-transferable license to install, copy and use the Software and Documentation for its own business purposes during each Subscription Term; and/or (b) if Customer purchases the Cloud Services, a non-sublicensable, non-transferable right to access and use the applicable Cloud Service for its own business purposes. Customer will only access

and use Aviatrix Products in compliance with the applicable Documentation and Section 1.3; and Customer may access and use the Software, Cloud Service and Documentation worldwide, subject to the prohibitions in Section 11.3 (Export).

## **1.2. Users; Affiliates' Usage.**

1.2.1. Users. Customer may authorize Users for Permitted Use of the Aviatrix Products on its behalf. Customer is responsible for managing its User accounts, for its Users' actions through the Aviatrix Products, and for their compliance with this Agreement.

1.2.2. Usage by Affiliates. Customer's Affiliates may be designated as Users under this Agreement. Alternatively, Customer's Affiliates may enter into their own Orders as mutually agreed with Aviatrix, which creates a separate agreement between each such Affiliate and Aviatrix incorporating this Agreement with such Affiliate designated the Customer. Neither Customer nor any Customer Affiliate has any rights under each other's separate agreement with Aviatrix, and breach or termination of any such separate agreement affects only that agreement. Customer will be responsible and liable for any breach of this Agreement by an Affiliate designated as a User.

## **1.3. Restrictions and Customer Obligations.**

1.3.1. Restrictions. Any license, access to and use of the Cloud Services and/or Software is subject to the applicable restrictions and limitations specified here, in an Order, Documentation, or the Acceptable Use Policy published as of the Term's start date. Additionally, Customer will not and will not permit anyone else to: (a) sell, sublicense, distribute or rent the Cloud Service and/or Software (in whole or part), grant non-Users access to the Cloud Service and/or Software or use the Cloud Service and/or Software to provide a hosted or managed service to others, (b) reverse engineer, decompile or seek to access the source code of the Cloud Service and/or Software, except to the extent these restrictions are prohibited by Laws and then only upon advance notice to Aviatrix, (c) copy, modify, create derivative works of or remove proprietary notices from the Cloud Service and/or Software, (d) conduct security or vulnerability tests of the Cloud Service and/or Software, interfere with its operation or circumvent its access restrictions or (e) use the Cloud Service and/or Software to develop a product that competes with the Cloud Service and/or Software.

1.3.2. Customer Obligations. Customer will: (i) maintain the security and integrity of the Cloud Services and/or Software to which you have access or which are in your possession or control and immediately report any actual or suspected security breaches of any Cloud Services or Software; (ii) provide and use Customer Data, and grant to Aviatrix the access and rights to such Customer Data as specified in this Agreement, only if Customer has all rights necessary to use such Customer Data without violating third-party intellectual property, privacy or other rights; (iii) ensure that Users keep their login credentials confidential and will promptly notify Aviatrix upon learning of any compromise of user accounts or credentials; and (iv) provide assistance as needed to correct the functionality of the Software.

## **2. OTHER OFFERINGS.**

**2.1. Professional Services.** Aviatrix and Customer may enter into an Order under the Agreement for the provision of Professional Services pursuant to the attachments incorporated by the Order. Customer may use code or other deliverables that Aviatrix furnishes as part of Professional Services only in connection with Customer's authorized use of the Aviatrix Products under this Agreement. Professional Services are separate from Software and Cloud Services even if purchased under the same Order.

### **2.2. Support Services.**

2.2.1. Support. Aviatrix will provide Support as described in the Support Addendum applicable to the Support level purchased in the Order as set forth at [https://aviatrix.com/wp-content/uploads/2024/09/SS-Service-Description-\\_July-2024.pdf/](https://aviatrix.com/wp-content/uploads/2024/09/SS-Service-Description-_July-2024.pdf/) .

2.2.2. SLA. For the Cloud Services, Aviatrix will adhere to the Service Level Agreement (SLA) at <https://aviatrix.com/legal/SLA/> .

**2.3. Trials.** Use of Trials are permitted only for Customer's internal evaluation during the period designated by Aviatrix on the Order (or if not designated, 60 days). Either Party may terminate Customer's use of Trials at any time for any reason. Trials may be inoperable and incomplete. Notwithstanding anything else in this Agreement, Aviatrix offers no warranty, indemnity, SLA or Support for Trials and its liability for Trials will not exceed US\$1,000.

**2.4. Third Party Products.** If Customer separately procures or Aviatrix resells to Customer any services, applications, platform, public or private cloud services, or hardware provided or controlled by a third party for use with the Aviatrix Products ("Third Party Products"), such use is subject to the end-user license or use agreement that Customer establishes with or accepts from the third party, and any applicable resale payment owed to Aviatrix is subject to Sections 6 (Fees; Taxes) of this Agreement. Aviatrix makes no representations or warranties regarding any Aviatrix Products' compatibility or integration with a Third Party Product, including any updates thereto. Aviatrix assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Third Party Products and the performance of public or private cloud services.

**2.5. Use of Subcontractors.** Aviatrix may engage third parties to act on Aviatrix's behalf in connection with Aviatrix provision of Aviatrix Products, on condition that: (a) such third parties are subject to applicable confidentiality and data security obligations that are substantially as protective as those set forth in this Agreement; and (b) Aviatrix is responsible for such third parties' acts and omissions in relation to Aviatrix's obligations under this Agreement.

## **3. DATA.**

**3.1. Customer Data.** Subject to this Agreement, Aviatrix will access and use Customer Data solely to provide and maintain the Aviatrix Cloud Services, Software, Support and Professional Services under this Agreement.

**3.2. Processing Personal Data.** Each Party is a data controller in respect of any Personal Data processed in connection with this Agreement and any Personal Data, including any Personal Data contained in Customer Data, shared by either Party under this Agreement shall be shared by such Party as independent data controller. Aviatrix processes Personal Data in accordance with Our Privacy Policy, which can be found at <https://aviatrix.com/privacy-policy/>.

**3.3. Personal Data Transfers.** Customer acknowledges and agrees that Personal Data Processed on its behalf by Aviatrix shall be processed in the United States. To the extent Customer is located in the EEA, the UK, Switzerland, India or China, or otherwise transfers Personal Data to Aviatrix subject to the export requirements of the Data Protection Laws of the EEA, the UK, or Switzerland, the terms of the

Personal Data Transfers Addendum, found at : <https://aviatrix.com/terms-of-use/sccs-annexes/>, will apply.

**3.4. Usage Data.** Aviatrix may collect and use Usage Data to operate, improve and support Aviatrix Products and for other lawful business purposes, including usage levels, benchmarking and reports. However, Aviatrix will not disclose Usage Data externally unless it is (a) de-identified so that it does not identify Customer, its Users or any other person and (b) aggregated with data across other customers.

**3.5. Data Security.** Aviatrix will implement and use appropriate technical and organizational measures designed to prevent unauthorized access, use, alteration or disclosure of Customer Data as identified at <https://support.aviatrix.com/trust>.

## **4. INTELLECTUAL PROPERTY.**

**4.1. Proprietary Rights.** Aviatrix and its licensors retain all right, title and interest, including all related intellectual property rights, in and to: (i) the Aviatrix Products; (ii) Documentation; (iii) its Confidential Information; (iii) any technology or insight developed or derived from any services (including Professional Services and Support Services) performed by Aviatrix or from Usage Data; and (iv) all derivative works, improvements or modifications to the Aviatrix Products. No rights are granted to Customer except those expressly set forth in this Agreement. Customer retains all right, title and interest in and to all Customer Data.

**4.2. Feedback.** If Customer gives Aviatrix feedback regarding improvement or operation of the Cloud Service, Support or Professional Services, Aviatrix may use the feedback without restriction or obligation. All feedback is provided "AS IS" and Aviatrix will not publicly identify Customer as the source of feedback without Customer's permission.

## **5. CONFIDENTIALITY.**

**5.1. Use and Protection.** As recipient, each Party will (a) use Confidential Information only to fulfill its obligations and exercise its rights under this Agreement, except that each Party may disclose the fact that Customer uses Aviatrix Products in the context of any corporate transaction, (b) not disclose Confidential Information to

third parties without the discloser's prior approval, except as permitted in this Agreement and (c) protect Confidential Information using at least the same precautions recipient uses for its own similar information and no less than a reasonable standard of care.

## **5.2. Permitted Disclosures.**

5.2.1. Personnel. The recipient may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know (including, for Aviatix, the subcontractors referenced in Section 2.5), provided it remains responsible for their compliance with this Section 5 and they are bound to confidentiality obligations no less protective than this Section 5.

5.2.2. Required by Law. The recipient may disclose Confidential Information (including Customer Data) to the extent required by Law. If permitted by Law, the recipient will give the discloser reasonable advance notice of the required disclosure and reasonably cooperate, at the discloser's expense, to obtain confidential treatment for the Confidential Information.

**5.3. Exclusions.** These confidentiality obligations do not apply to information that the recipient can document (a) is or becomes public knowledge through no fault of the recipient, (b) it rightfully knew or possessed, without confidentiality restrictions, prior to receipt from the discloser, (c) it rightfully received from a third party without confidentiality restrictions or (d) it independently developed without using or referencing Confidential Information.

5.4. Remedies. Breach of this Section 5 may cause substantial harm for which monetary damages are an insufficient remedy. Upon a breach of this Section 5, the discloser is entitled to seek appropriate equitable relief, including an injunction, in addition to other remedies.

## **6. FEES; TAXES.**

**6.1. Payment of Fees.** Unless otherwise expressly specified in the applicable Order, all amounts are due within thirty (30) days of Customer's receipt of the applicable invoice ("Payment Period"). Any late payment shall be subject to interest that accrues at a rate of the lower of one and one half per cent (1.5%) per month or the

highest rate permitted by law, plus costs of collection. Except as otherwise specified in an Order all fees must be paid in United States Dollars and are non-cancellable and non-refundable.

**6.2. Taxes.** Customer is responsible for all direct or indirect local, state, federal or foreign sales, use, GST, value-added withholding, or similar taxes or levies ("Taxes"), other than taxes based on the income of Aviatrix. Such taxes or levies shall not be considered a part of a deduction from or an offset against applicable fees due. If applicable, Customer shall provide evidence of its exemption from such taxes. Fees and expenses charged by Aviatrix are exclusive of Taxes.

**6.3. Payment Disputes.** If Customer disputes an invoice in good faith, it will notify Aviatrix within the Payment Period and the parties will seek to resolve the dispute over a 15-day discussion period. Customer is not required to pay disputed amounts during the discussion period but will timely pay all undisputed amounts. After the discussion period, either Party may pursue any available remedies.

**6.4. Marketplace and Reseller.** Certain Aviatrix Products may be available for purchase through a marketplace operated by a third party or a reseller authorized by Aviatrix (collectively "Reseller"). Any agreement between Customer and Reseller is not binding on Aviatrix and will not modify any of the terms of this Agreement.

## **7. TERM AND TERMINATION; SUSPENSION OF AVIATRIX PRODUCTS.**

**7.1. Term.** This Agreement begins on the Effective Date and continues until the end of all Subscription Terms, unless terminated earlier in accordance with this Section 7. At the end of each Subscription Term, the Subscription Term will successively renew for an additional one (1) month Subscription Term(s) unless (a) the parties agree on a different renewal Order or (b) either Party notifies the other of non-renewal at least 30 days prior to the end of the current Subscription Term. If no Subscription Term is in effect, either Party may terminate this Agreement for any or no reason with notice to the other Party.

**7.2. Termination.** Either Party may terminate this Agreement (including all Orders) if the other Party (a) fails to cure a material breach of this Agreement within 30 days after notice, (b) ceases operation without a successor or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition or

comparable proceeding, or if such a proceeding is instituted against that Party and not dismissed within 60 days.

**7.3. Effect of Termination.** Customer's right to use the Aviatrix Products will immediately cease upon termination or expiration of this Agreement. Termination or expiration of this Agreement shall not discharge Customer of any payment obligation for unpaid fees, except if Customer terminates this Agreement for Aviatrix's uncured breach per Section 7.2(b) above. If Customer terminates this Agreement for Aviatrix's uncured breach per Section 7.2(b) above, Aviatrix will issue a refund of unearned prepaid fees covering the terminated portion of the applicable Subscription Term. The following Sections shall survive any expiration or termination of the Agreement: Section 1.3 (Restrictions and Customer Obligations); 3 (Data), subject to Section 7.4; 4 (Intellectual Property); 5 (Confidentiality); 6.1 (Payment of Fees), for amounts then due; 6.2 (Taxes); 7.3 (Effect of Termination); 7.4 (Data Export and Deletion); 8.4 (Disclaimers), 9 (Limitations of Liability), 10 (Indemnification); 11 (General); and 12 (Definitions).

**7.4. Data Export and Deletion.** During a Subscription Term, Customer may export Customer Data from the Cloud Service (or Aviatrix will otherwise make the Customer Data available to Customer) as described in the Documentation. After termination or expiration of this Agreement, within 60 days of request, Aviatrix will delete Customer Data, and each Party will delete any Confidential Information of the other in its possession or control. Notwithstanding the foregoing, the recipient may retain Customer Data or Confidential Information in accordance with its standard backup or record retention policies or as required by Law, subject to Section 3.5 (Data Security) and Section 5 (Confidentiality).

**7.5. Suspension.** Aviatrix may suspend Customer's access to any Aviatrix Product immediately if: (a) Customer fails to make a payment for more than fifteen (15) days following its due date; or (b) Customer has, or Aviatrix reasonably suspects based on documented evidence that Customer has, breached Section 1.3 (Restrictions; Customer Obligations) or misappropriated or infringed Aviatrix's intellectual property or proprietary rights.

## **8. WARRANTIES.**



**8.1. Authority and Compliance Warranty.** Each Party represents and warrants (1) that it has the necessary authority to enter into this Agreement; and (2) that it will comply with all laws that apply to its performance under this Agreement.

**8.2. Cloud Services and Software Warranty and Remedy.**

8.2.1. Warranty. Aviatrix represents and warrants: (i) that the Cloud Service will operate during the applicable Subscription Term substantially as described in the applicable Documentation and (ii) that the Software will operate substantially as described in the applicable Documentation for a period of six months from the date the Software is made available to Customer.

8.2.2. Remedy. Upon receipt of Customer's written notice of an alleged failure to comply with the warranty in Section 8.2.1, Aviatrix will use commercially reasonable efforts to cure or correct the failure. If Aviatrix has not cured or corrected the failure within thirty (30) days following its receipt of such notice, then Customer may terminate use of the applicable Cloud Service or Software and Aviatrix will issue a refund of prepaid fees covering the terminated portion of such Cloud Service or Software. Notwithstanding the foregoing, this warranty will not apply to any failure due to a defect in or modification of the Cloud Service or Software that is caused or made by Customer, any User, or any person acting at Customer's direction. This Section 8.2 sets forth Customer's exclusive rights and remedies and Aviatrix's sole liability in connection with this warranty.

**8.3. Professional Services Warranty and Remedy.**

8.3.1. Warranty. Aviatrix represents and warrants that Professional Services will be provided in a competent and workmanlike manner in accordance with the applicable Order.

8.3.2. Remedy. Upon receipt of Customer's written notice of an alleged failure to comply with this warranty no later than thirty (30) days following the completion of Professional Services, Aviatrix will either: (a) use commercially reasonable efforts to cure or correct the failure; or (b) terminate such Professional Services and issue a refund of prepaid fees covering the terminated portion of the Professional Services. Section 8.3 sets forth Customer's exclusive rights and remedies and Aviatrix's sole liability in connection with this warranty.

**8.4. Disclaimers of Warranty.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES EXPRESSLY STATED IN THIS AGREEMENT, AVIATRIX MAKES NO

REPRESENTATIONS AND DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, AVIATRIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COMPLIANCE WITH LAWS, NON-INFRINGEMENT, AND ACCURACY, AND AVIATRIX DOES NOT WARRANT THAT THE SERVICES OR THIRD-PARTY APPLICATIONS AND SERVICES WILL BE ERROR-FREE OR OPERATE WITHOUT INTERRUPTIONS OR DOWNTIME.

## **9. LIMITATIONS OF LIABILITY.**

**9.1. General Cap.** Each Party's entire liability arising out of or related to this Agreement will not exceed the General Cap.

**9.2. Consequential Damages Waiver.** Neither Party will have any liability arising out of or related to this Agreement for indirect, special, incidental, reliance or consequential damages or damages for loss of use, lost profits or interruption of business, even if informed of their possibility in advance.

**9.3. Exceptions and Enhanced Cap.** Sections 9.1 (General Cap) and 9.2 (Consequential Damages Waiver) will not apply to Enhanced Claims or Uncapped Claims. For all Enhanced Claims, each Party's entire liability will not exceed the Enhanced Cap.

**9.4. Nature of Claims.** The waivers and limitations in this Section 9 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in this Agreement fails of its essential purpose.

**9.5. Liability Definitions.** The following definitions apply to this Section 9.

9.5.1. "Enhanced Cap" means three times (3x) the General Cap.

9.5.2. "Enhanced Claims" means Aviatrix's obligations under Section 3.5 (Data Security), where failure to meet those obligations results in a release of Customer Data in breach of the Agreement

9.5.3. "General Cap" means amounts paid or payable by Customer to Aviatrix under this Agreement in the 12 months immediately preceding the first incident giving rise to liability.

9.5.4. "Uncapped Claims" means (a) the indemnifying Party's obligations under Section 10 (Indemnification), (b) either Party's infringement or misappropriation of the other Party's intellectual property rights, (c) any breach of Section 5 (Confidentiality), excluding breaches related to Customer Data; (d) Customer's obligation to pay fees or taxes under this Agreement; and (e) liabilities that cannot be limited by Law.

## **10. INDEMNIFICATION.**

**10.1. Indemnification by Aviatrix.** Aviatrix, at its own cost, will defend Customer from and against any Aviatrix-Covered Claims and will indemnify and hold harmless Customer from and against any damages or costs awarded against Customer (including reasonable attorneys' fees) or agreed in settlement by Aviatrix resulting from the Aviatrix-Covered Claims.

**10.2. Indemnification by Customer.** Customer, at its own cost, will defend Aviatrix from and against any Customer-Covered Claims and will indemnify and hold harmless Aviatrix from and against any damages or costs awarded against Aviatrix (including reasonable attorneys' fees) or agreed in settlement by Customer resulting from the Customer-Covered Claims.

**10.3. Indemnification Definitions.** The following definitions apply unless modified on the Cover Page.

10.3.1. "Customer-Covered Claim" means a third-party claim arising from Customer's breach or alleged breach of Section 1.3.

10.3.2. "Aviatrix-Covered Claim" means a third-party claim that the Software or Cloud Service, when used by Customer as authorized in this Agreement, infringes or misappropriates a third party's intellectual property rights.

**10.4. Procedures.** The indemnifying Party's obligations in this Section 10 are subject to receiving from the indemnified Party: (a) prompt notice of the claim (but delayed notice will only reduce the indemnifying Party's obligations to the extent it is

prejudiced by the delay), (b) the exclusive right to control the claim's investigation, defense and settlement and (c) reasonable cooperation at the indemnifying Party's expense. The indemnifying Party may not settle a claim without the indemnified Party's prior approval if settlement would require the indemnified Party to admit fault or take or refrain from taking any action (except regarding use of the Cloud Service when Aviatrix is the indemnifying Party). The indemnified Party may participate in a claim with its own counsel at its own expense.

**10.5. Mitigation.** In response to an infringement or misappropriation claim, if required by settlement or injunction or as Aviatrix determines necessary to avoid material liability, Aviatrix may: (a) procure rights for Customer's continued use of the Cloud Service, (b) replace or modify the allegedly infringing portion of the Cloud Service to avoid infringement, without reducing the Cloud Service's overall functionality or (c) terminate the affected Order and refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

**10.6. Exceptions.** Aviatrix's obligations in this Section 10 do not apply to claims resulting from (a) modification or unauthorized use of the Cloud Service, (b) use of the Cloud Service in combination with items not provided by Aviatrix, including Third-Party Platforms or (c) Aviatrix Software other than the most recent release, if Aviatrix made available (at no additional charge) a newer release that would avoid infringement.

**10.7. Exclusive Remedy.** This Section 10 sets out the indemnified Party's exclusive remedy and the indemnifying Party's sole liability regarding third-party claims of intellectual property infringement or misappropriation covered by this Section 10.

## **11. GENERAL.**

**11.1. Notices.** Except for written notices expressly required by law or this Agreement to be sent via internationally recognized delivery service or certified United States mail ("Certified Mail"), all written notices may be sent electronically via email. Notices sent via email will be deemed given one (1) business day after being sent, and notices sent by Certified Mail will be deemed given five (5) business days after being sent. Notices must be addressed as follows: if to Aviatrix, Attn: Legal, 2901 Tasman Drive, Santa Clara, CA 95054 , and legal@aviatrix.com; and, if to Customer, Attn: Legal at the billing address on record with Aviatrix that was

provided by Customer, and Customer's then-current administrator email address as registered through the Aviatix Product.

**11.2. Assignment.** Neither Party may assign this Agreement without the prior consent of the other Party, except that either Party may assign this Agreement, with notice to the other Party, in connection with the assigning Party's merger, reorganization, acquisition or other transfer of all or substantially all of its assets or voting securities. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each Party's permitted successors and assigns.

**11.3. Export.** Pursuant to all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, "Export Controls"), Customer expressly agrees that it shall not, and its representatives shall not, export, directly or indirectly, re-export, divert, or transfer the Aviatix Products, Documentation or Aviatix Confidential Information to any destination, company or person restricted or prohibited by Export Controls.

**11.4. Government Users.** To the extent applicable, the Cloud Service is "commercial computer software" or a "commercial item" for purposes of FAR 12.212 and DFARS 227.7202. Use, reproduction, release, modification, disclosure or transfer of the Cloud Service is governed solely by the terms of this Agreement, and all other use is prohibited.

**11.5. Independent Contractors.** The parties are independent contractors, not agents, partners or joint venturers.

**11.6. Force Majeure.** Neither Party is liable for a delay or failure to perform this Agreement due to a Force Majeure. If a Force Majeure materially adversely affects the Cloud Service for 15 or more consecutive days, either Party may terminate the affected Order(s) upon notice to the other and Aviatix will refund to Customer any prepaid, unused fees for the terminated portion of the Subscription Term. However, this Section does not limit Customer's obligations to pay fees owed.

**11.7. Waivers and Severability.** Waivers must be signed by the waiving Party's authorized representative and cannot be implied from conduct. If any provision of this Agreement is held invalid, illegal or unenforceable, it will be limited to the minimum extent necessary so the rest of this Agreement remains in effect.

**11.8. Governing Law; Jurisdiction and Venue.** This Agreement shall be governed by the laws of the United States of America and the State of California, excluding its

conflict of laws rules. The United Nations Convention on the International Sale of Goods and the Uniform Computer Information Transactions Act are specifically excluded from application to this Agreement. The Parties hereby submit to the exclusive jurisdiction of, and waive any venue jurisdiction or venue objections against, the state and Federal courts located in Santa Clara County, California.

**11.9. Entire Agreement and Precedence;** Amendments. This Agreement, including each Order and any other included addendums, are the complete and exclusive statement of the mutual understanding of the Parties and supersedes all previous written and oral agreements and communications relating to the subject matter of this Agreement. Purchase orders, vendor registration forms, online portals, marketplace acceptance documents and similar documents and procedures issued by Customer are for administrative purposes only, and any additional or different terms or conditions contained in any such materials shall not apply even if the Order is accepted or performed on by Aviatrix, and such terms are hereby rejected. Any amendments to this Agreement must be in writing and signed by each Party's authorized representatives (an "Amendment").

## 12. DEFINITIONS

- **"Agreement"** has the meaning set forth in the preamble.
- **"Affiliate"** means with respect to a Party, any entity which directly or indirectly controls, is controlled by or is under common control with such Party, where "control", "controlled by" or "under common control" means the direct or indirect possession of more than fifty per cent (50%) of the equity of the particular entity type.
- **"Aviatrix Products"** means collectively and as applicable, the Software, Cloud Service, Support Service, and Professional Services that Aviatrix may make available to Customer pursuant to an applicable Order.
- **"Confidential Information"** means information disclosed by or on behalf of one Party (as discloser) to the other Party (as recipient) under this Agreement, in any form, which (a) the discloser identifies to recipient as "confidential" or "proprietary" or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Aviatrix's Confidential Information includes non-public technical or performance information about the Aviatrix Products, and Customer's Confidential Information includes Customer Data.

- **"Cloud Service"** means the online services and applications that are provisioned or controlled by Aviatrix on Aviatrix's infrastructure, including .Aviatrix Platform-as-a-Service cloud offering and other cloud-based products which may be offered by Aviatrix.
- **"Confidential Information"** means information disclosed by or on behalf of one Party (as discloser) to the other Party (as recipient) under this Agreement, in any form, which (a) the discloser identifies to recipient as "confidential" or "proprietary" or (b) should be reasonably understood as confidential or proprietary due to its nature and the circumstances of its disclosure. Aviatrix's Confidential Information includes technical or performance information about the Aviatrix Products, and Customer's Confidential Information includes Customer Data. Information on the Order is each Party's Confidential Information.
- **"Customer Data"** means any data that Customer (including its Users) submits through the Aviatrix Cloud Service or otherwise submits or makes available to Aviatrix., excluding Usage Data. Between the parties, Customer is responsible for the content and accuracy of Customer Data.
- **"Documentation"** means Aviatrix' standard usage documentation for Aviatrix Products as available on its website.
- **"Effective Date"** has the meaning set forth in the preamble.
- **"Force Majeure"** means an unforeseen event beyond a Party's reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, third-party Internet or utility failure, refusal of government license or natural disaster, where the affected Party takes reasonable and customary measures to avoid or mitigate such event's effects.
- **"Party"** or "Parties" means Customer and Aviatrix, individually or collectively, as applicable.
- **"Permitted Use"** is use consistent with the rights granted in Section 1.1 (License; Right to Access and Use) and in compliance with Section 1.3 (Restrictions; Customer Obligations).
- **"Personal Data"** means information about an identified or identifiable natural person or which otherwise constitutes "personal data", "personal information", "personally identifiable information" or similar terms as defined in data protection laws. "SCCs" means the Standard Contractual Clauses for the transfer of personal data to third countries pursuant to Regulation (EU) 2016/679 which are available [here](#).
- **"Professional Services"** means training, design, configuration, implementation, onboarding, training or other consultative services, as well as all software, code, materials, ideas, deliverables, and items that are conceived, made, written, or created by Aviatrix personnel in connection with such activities, that Aviatrix provides to Customer related to Customer's

use of the Aviatrix Products. Professional Services will be provided as set forth in an Order, Statement of Work, and any applicable appendices and schedules, including the appendices describing use of services credits and the scope of service offerings provided by Aviatrix.

- **"Software"** means applications, programs, and other computer code provided by Aviatrix for download by Customer as part of Customer's use of the Aviatrix Products.
- **"Subscription Term"** means the term of the subscription for the applicable Aviatrix Product acquired by Customer as set forth in the Order.
- **"Usage Data"** means analytics, technical logs, metrics, and data regarding Customer's use of the Aviatrix Services, but excluding Customer Data.
- **"Order"** means an order by Customer for Aviatrix Products that is entered into by the Parties electronically or by separate written agreement referencing this Agreement,
- **"Support Services"** means the support and maintenance services provided by Aviatrix as a component of certain Aviatrix Products or separately.
- **"Trials"** means access to an Aviatrix Product on a free or trial basis or to particular features designated by Aviatrix as "beta" or "early access."
- **"User"** means anyone that Customer allows to use its accounts for Aviatrix Products, who may include (a) employees, advisors, and contractors of Customer and its Affiliates; and (b) others if permitted in this Agreement, the Documentation, or the applicable Order.