

Terms of Use

CUSTOMER TERMS OF USE

This Customer Terms of Use (“**Customer Terms of Use**” or “**Agreement**”) governs your (“**your**,” “**you**” or “**Customer**”) use of Software and Services of Aviatrix Systems, Inc. and its Affiliates (“**Aviatrix**,” “**we**,” “**us**” and “**our**”). By executing a Software Order for any Aviatrix Offerings and/or otherwise accessing, using or receiving such Aviatrix Offerings, you agree to this Customer Terms of Use. Unless already defined, all capitalized terms shall have the meaning in Section A below.

This Customer Terms of Use is structured into the following sections:

1. **DEFINITIONS** – This describes the defined terms used throughout the Agreement. Please review these defined terms carefully as they provide a roadmap to this Agreement.
2. **STANDARD SERVICES TERMS** – We offer cloud-native networking software in the form of Metered Software and Subscription Software that is deployed in your Cloud Provider’s infrastructure (i.e. not hosted by us) and limited Consulting Services related to the planning, design, and implementation of the Software. These terms frame the Aviatrix Offerings.
3. **PROCURE TO PAY TERMS** – These terms only apply when you purchase directly from Aviatrix and do not apply for Metered Software where your payment is handled by the applicable Cloud Provider under its Marketplace process. All procure to pay terms with an Approved Source are between you and that Approved Source.
4. **GENERAL LEGAL TERMS** – The remaining legal terms that make up this Customer Terms of Use are standard customary terms that one finds for the cloud-native networking software we provide.

Your use of the Aviatrix Offerings is governed exclusively by the terms in this Agreement, including when you accept a Marketplace offer that we may make available to you from time to time and when you order through an Approved Source. We may provide you with Supplemental Terms of Use from time to time for certain Aviatrix Offerings, as further set forth herein.

A. DEFINITIONS

“**Agreement**” or “**Customer Terms of Use**” means this Agreement, any applicable Supplemental Terms of Use and any Software Order.

“**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;

“**Approved Source**” means an Aviatrix authorized channel partner such as a value-added reseller or Managed Services Provider, including when such channel partner transacts with you through a Marketplace.

“Aviatrix Offerings” means the Subscription Software, Metered Software, and Consulting Services that Aviatrix may make available to you pursuant to a Software Order.

“Cloud Provider” means a virtual private cloud infrastructure provider.

“Consulting Services” means any professional services such as training, planning, design, and implementation that we provide to you in support of the deployment of the Software pursuant to a Software Order.

“Controller” means the cloud-native network orchestration software that we deploy to your Cloud Provider infrastructure and that you use to implement the features and functionality of the Software such as a Tunnel, as further set forth in the Documentation.

“Customer Data” means any electronic data, content, information or software of Customer or its licensors that Aviatrix filters, stores, accesses, transmits or otherwise processes or uses in performing the Aviatrix Offerings for Customer, including, without limitation, any other data traffic, but excluding Telemetry Data.

“Device” means a Third-Party Provider hardware device that we resell to you and you deploy on your or your Cloud Provider’s premises in order to enable certain Subscription Software functionality as set forth on a Software Order and further described in the Documentation. Device(s) are not available for purchase or use on a standalone basis without the applicable Subscription Software.

“Documentation” means Aviatrix published materials that describe the features and functionality of the Aviatrix Offerings.

“Fees” means the fees you pay for the Aviatrix Offerings a) directly to Aviatrix, b) to a Cloud Provider through its Marketplace, or c) to an Approved Source, each as set forth on a Software Order and, if applicable, by your use of the Aviatrix Offerings.

“Licensed Unit(s)” means each billable element of the Software functionality such as a Tunnel that you implement through your use of the Controller(s). The Software Order shall identify the type(s) of Licensed Units and may establish a usage limit.

“Managed Service Provider” means a Customer that is in the regular business of utilizing the Aviatrix Offerings to provide services to its end customers for a fee.

“Marketplace” means a Cloud Provider marketplace where you may be able to procure some or all of the Aviatrix Offerings through your respective Marketplace account(s), including with an Approved Source.

“Metered Software” means the software functionality that Aviatrix makes available to you through a Marketplace on a metered Licensed Unit use basis pursuant to the applicable Software Order and the Documentation, including the Controller(s). Metered Software includes Software Support Services without separate Fees.

“Party” or “Parties” means Customer and Aviatrix, individually or collectively, as applicable.

“Software” means, collectively, the Metered Software and Subscription Software.

“Software Order” means a separate document provided (a) by Aviatrix, (b) by an Approved Source or (c) through a Marketplace by Aviatrix or an Approved Source that sets forth the specific Subscription Software, Metered Software, Device(s), and/or Consulting Services ordered by Customer. Each Software Order shall be accepted by you by your signature on the Software Order or by placing a Software Order through a Marketplace, and each will be binding on us and you, subject to this Agreement (except with respect to Section C (Procure to Pay Terms) if the Software Order is with an Approved Source or through a Marketplace) and shall incorporate its terms and conditions by reference.

“Subscription Software” means the software functionality that Aviatrix makes available to you during the Subscription Term on a Licensed Unit basis pursuant to the applicable Software Order and the Documentation, including the Controller(s) and as may installed on a Device. Subscription Software includes Software Support Services without separate Fees.

“Subscription Term” means the term in effect for the Subscription Software beginning on the date we issue Software license key(s) to you pursuant to a Software Order unless otherwise specified on such Software Order. Metered Software that is not term-limited on a Software Order shall have a Subscription Term that continues as long as you continue to use such Metered Software.

“Software Support Services” means the support and maintenance services that we provide you as part of the Subscription Software and/or Metered Software during the Subscription Term.

“Supplemental Terms of Use” means terms of use that are supplemental to this Customer Terms of Use (a) specific to certain Aviatrix Offerings; (b) for matters of local jurisdiction; and/or (c) for other Customer specific considerations not addressed in this Customer Terms of Use.

“Telemetry Data” means analytics and Licensed Unit data generated by your use of the Aviatrix Offerings to enable Software features and functionality and to provide related Software Support Services to you pursuant to the Software Order and Documentation.

“Third-Party Provider(s)” means any third-party provider of products or services to which you have access to, or use of, in relation to the Aviatrix Offerings and that is subject to your agreement with such third party pursuant to Section 17(a).

“Tunnel” means a secure point-to-point connection between two environments, such as an on-premise device (or Device) and a cloud instance, two cloud environments, or a user and a cloud environment. A single Device may enable the creation of multiple Tunnels.

B. STANDARD SERVICES TERMS

1. **Aviatrix Offerings; License and Restrictions of Use.**

a. Provision of Aviatrix Offerings. We will provide you with the Subscription Software, Metered Software, and/or Consulting Services set forth on an applicable Software Order, along with any applicable Supplemental Terms of Use. We may fulfill and invoice you pursuant to Section C below for any of the Aviatrix Offerings that you order through any of our Affiliates. All Consulting Services are provided directly by us to you and are governed solely by the terms of this Agreement. Aviatrix does not act in the capacity of a subcontractor to any Approved Source for the provision of Consulting Services, and all Consulting Services you may procure through an Approved Source or a Marketplace are on a resold basis only. If applicable, Device(s) are delivered to you by the Third-Party Provider after being imaged with the requisite Subscription Software and all support or other services with respect to such Device(s) are as between you and the Third-Party Provider.

b. Cloud Providers. Cloud Providers provide the underlying infrastructure that you will access in your implementation and use of the Aviatrix Offerings. These Cloud Providers are Third-Party Providers, and the performance of their offerings is subject exclusively to your agreement with such Cloud Provider. While you may configure the Software in order to obtain a higher availability commitment from a Cloud Provider, under no circumstances shall such use be construed so as to obligate Aviatrix to any level of performance or obligation that is not expressly set forth in this Agreement. You acknowledge and agree that your use of the Controller(s) to increase Licensed Units will automatically generate additional Fees through the applicable Marketplace if you are utilizing Metered Software and may generate additional Fees if you exceed Licensed Unit limits established on a Software Order.

c. License to Software. You are granted a non-exclusive, non-sublicensable, non-transferrable, limited license to, during the applicable Subscription Term and up to the Licensed Units specified on the Software Order, if applicable, internally use (unless we authorize your use as a Managed Services Provider) the Software (in object code form only) solely as necessary to access and use the Software for the purposes for which it is provided and only in accordance the Documentation. The Software may contain third party code that is subject to its own licensing provisions.

d. Restrictions on Your Use of Aviatrix Offerings. You shall not: (i) attempt to disable or block the Licensed Unit reporting functionality of the Controller(s), (ii) use the Controller(s) to exceed the Licensed Units specified on your Software Order, or promptly pay the Fees due for any consumption in excess of such Licensed Units (including for Metered Software through a Marketplace), (iii) license, sublicense, resell, rent, lease, transfer, assign, distribute, time-share or otherwise commercially exploit or make the Aviatrix Offerings available to any third party, except in your capacity as an authorized Managed Service Provider, if applicable; (iv) alter, modify or create derivative works of the Aviatrix Offerings or Documentation; (v) reverse engineer, decompile, disassemble, or otherwise seek to obtain the source code of the Aviatrix Offerings (or any component thereof) for any purpose; (vi) send to or transmit over the Aviatrix Offerings any infringing, inappropriate, unlawful or tortious material or content or any malicious code (vii) access the Aviatrix Offerings to build a product or service, or copy any ideas, features, functions or graphics of the Aviatrix Offerings, or permit any third party to do the same; (viii)

attempt to gain unauthorized access to the Aviatrix Offerings or its related systems or networks; (ix) remove or obscure any proprietary or other notices contained in or on any Aviatrix Offerings, including any Documentation; or (x) publicly disseminate information regarding the performance of the Aviatrix Offerings such as benchmarking results.

e. Your Responsibilities. You shall: (i) provide us with Licensed Unit information through the automated functionality of the Controller, or in the event that such automated functionality is inoperable, by reasonable inspection and audit; (ii) install Software updates, patches, and fixes as we make them available to you in order to maintain the Software at its current version; (iii) promptly assist us to update your Controller(s) in the event that you switch from Metered Software to Subscription Software in order to prevent continued Marketplace billing of discontinued Metered Software for which you shall be responsible in the event you do not provide such assistance; (iv) prevent unauthorized or unlawful access to, or use of, the Aviatrix Offerings; (v) maintain the security and integrity of the Aviatrix Offerings to which you have access or which are in your possession or control and immediately report any security breaches or suspected security breaches that affect or may affect the Aviatrix Offerings by contacting us through Software Support Services; and (vi) perform your obligations in this Agreement and comply with Aviatrix' reasonable requests in connection with the Aviatrix Offerings.

f. Managed Service Providers. We may authorize you to act in the capacity of a Managed Service Provider pursuant to a Software Order or by separate agreement. Under such authorization, you remain designated as the Customer under this Agreement and your use of the Aviatrix Offerings is further conditioned by all provisions of this Agreement or a Supplemental Terms of Service that reference a Managed Service Provider. As a Managed Service Provider, you shall: (i) obligate your end customers to these Customer Terms of Use to the extent that such end customer has direct access to, or use of, the Aviatrix Offerings; (ii) remain responsible to us for your end customer's non-compliance with these Customer Terms of Use, particularly with respect to subsections (d) and (e) above; (iii) provide us with Licensed Unit reporting for each of your end customers on a regular basis as we request.

g. Proof of Concept. We may grant you a temporary license for Metered Software to evaluate the Aviatrix Offerings limited strictly to the purpose achieving the written objectives of the evaluation and for a limited period of time, with such use subject to the Fees for Metered Software. If we permit you to access and use Aviatrix Offerings for a temporary evaluation period without any Fees, then NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT, ANY SUCH EVALUATION WILL BE MADE AVAILABLE BY US TO YOU ON AN "AS IS" AND "AS AVAILABLE" BASIS, (I) WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY TO THE FULLEST EXTENT PERMITTED BY LAW AND (II) WITHOUT ANY OBLIGATION OF US TO PROVIDE TECHNICAL SUPPORT OR ANY INDEMNITY FOR YOUR ACCESS TO, AND USE OF, THE AVIATRIX OFFERINGS DURING THE EVALUATION PERIOD.

- 2. Software Support Services.** The Software Support Services description is located at aviatrix.com/support.

3. **Use of Subcontractors.** We may use subcontractors in our reasonable discretion in the performance of any Aviatrix Offerings ordered under this Agreement; provided, however, we shall remain fully responsible and liable for the performance of any such subcontractor. Under no circumstances shall any Third-Party Provider be construed to be a subcontractor of Aviatrix.
4. **Data Use and Security.** Unless specifically set forth in a Supplemental Terms of Use, the Aviatrix Offerings are licensed to you for use in your Cloud Provider infrastructure environment and, where applicable and in accordance with the Documentation, on your premises. You acknowledge and agree that through your use of the Software, Aviatrix has no access to your network data traffic, including any Customer Data contained therein. With respect to any Customer Data we may otherwise receive from you in the form of Confidential Information, we shall use commercially reasonable efforts to maintain the security and integrity of such Customer Data. To provide the basic functionality of the Software, your use of the Aviatrix Offerings may generate Telemetry Data, including as may be accessed by your Cloud Provider to establish Fees for Metered Software. We may use Telemetry Data for the purpose of providing the functionality of the Aviatrix Offerings and may also freely use Telemetry Data that does not identify you or any of your authorized users. You may have the ability within the functionality of the Controller(s) to opt out or limit the collection of certain Telemetry Data, but in some cases the only way to opt out of Telemetry Data collection is to discontinue your use of the Aviatrix Offerings.

C. PROCURE TO PAY TERMS

The terms of this Section C shall only apply to you if you are purchasing Subscription Software, Device(s) or Consulting Services directly from us. In the event that you purchase Subscription Software or Consulting Services from an Approved Source or through a Marketplace, your payment obligations shall be subject to your terms and conditions with that Approved Source or Marketplace.

5. **Fees and Payment.** Unless otherwise expressly specified in a Software Order, you shall pay all Fees set forth therein within thirty (30) days of your receipt of our invoice. We will invoice you as follows: (i) for any Subscription Software, annually in advance on the execution of the Software Order and annually in advance of each renewal term; and (ii) for any Consulting Services and/or Devices, in full in advance. 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 a Software Order or in a Supplemental Terms of Service, all Fees must be paid in United States Dollars, are based on the Aviatrix Offerings purchased and, if applicable, additionally consumed as confirmed by Licensed Unit reporting, and are non-cancellable (with the exception of Metered Software) and non-refundable. Devices are shipped by the Third-Party Provider FCA (Incoterms 2010), Irvine, California, USA.
6. **Taxes.** The Fees do not include, and you shall be solely responsible for, any and all direct or indirect local, state, federal or foreign sales, use, GST, value-added withholding, or similar taxes or levies, 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 Fees. If applicable, Customer shall provide evidence of its exemption from such taxes.

D. GENERAL LEGAL TERMS

7. Intellectual Property.

a. Proprietary Rights. Aviatrix and its licensors retain all right, title and interest, including all related intellectual property rights, in and to the Aviatrix Offerings, Documentation, its Confidential Information, any technology developed from any services, including Consulting Services and Software Support Services, performed by us for you herein, and all derivative works, improvements or modifications thereto by whomever made. No rights are granted to you hereunder other than as expressly set forth herein. For clarity, Consulting Services performed by Aviatrix will not include custom work product or other work for hire deliverables. You retain all right, title and interest in and to all Customer Data.

b. Feedback. In the event that you or any of your users provide us with any suggestions, ideas, improvements or other feedback with respect to the Aviatrix Offerings (“**Feedback**”), you hereby grant us, and our successors and assigns, a non-exclusive, perpetual, irrevocable, sub-licensable, transferable, royalty-free, fully paid-up worldwide right and license to copy, reproduce, modify, create derivatives of, display, perform, sell, offer for sale, distribute and otherwise exploit such Feedback for any purpose, including without limitation, using and incorporating such Feedback into the Aviatrix Offerings, without any obligation of accounting, or any payment of royalties or other consideration, to you. You acknowledge that Aviatrix Offerings and/or Documentation incorporating Feedback shall be the sole and exclusive property of Aviatrix.

8. Confidentiality. Each Party agrees that all code, inventions, know-how, business, technical and financial information it obtains (“**Receiving Party**”) from the disclosing Party (“**Disclosing Party**”) constitute the confidential information of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. This Agreement, the Documentation, the Aviatrix Offerings (or any component thereof), fees and pricing information and any performance information (e.g., benchmarking results) relating to the Aviatrix Offerings shall be deemed Confidential Information of Aviatrix. Except as expressly authorized herein, the Receiving Party will (a) hold in confidence (using reasonable methods of protection) the Confidential Information of Disclosing Party, (b) not use any such Confidential Information except in furtherance of this Agreement and (c) not disclose any Confidential Information of the Disclosing Party to any party, except its employees, subcontractors and agents on a need to know basis and subject to terms of confidentiality no less restrictive than the terms set forth herein. The Receiving Party’s nondisclosure obligation shall not apply to information which the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become generally available to the public through no fault of the Receiving Party; (iii)

is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. In the event that a Receiving Party is required to disclose Disclosing Party Confidential Information pursuant to a regulation, law or court order, it shall provide Disclosing Party with prior written notice thereof and reasonably assist Disclosing Party (as Disclosing Party's cost and expense) in contesting such required disclosure. The Receiving Party acknowledges that disclosure or unauthorized use of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure or unauthorized use by the Receiving Party, the Disclosing Party shall be entitled to seek appropriate equitable relief (without the posting of a bond or similar instrument) in addition to whatever other remedies it might have at law.

8. Warranties.

a. Mutual Warranties. Each Party represents and warrants to the other Party that it has the power and authority to execute, deliver, and perform its obligations under this Agreement.

b. Aviatrix Warranties. We warrant to you that the Aviatrix Offerings will operate in conformity in all material respects with the applicable Documentation and that any Consulting Services will be performed in a competent and workmanlike manner consistent with generally accepted industry standards. Your sole and exclusive remedy, and our sole liability, for any breach of this warranty shall be for us to correct or re-perform the applicable Aviatrix Offerings at our expense. The limited warranty in this Section 9(b) shall not apply unless you notify us in writing of a breach of this warranty. The limited warranty in this Section 9(b) shall not apply if the error or failure in performance was caused by misuse, unauthorized modifications, Third-Party Provider hardware, software or services, Customer Data or Force Majeure Event.

c. Customer Warranties. You represent and warrant that: (i) your use of the Aviatrix Offerings and all Customer Data is at all times compliant with your privacy policies and all applicable laws and regulations; and (ii) you have sufficient rights in the Customer Data to grant the rights granted to us herein and that the Customer Data does not infringe or otherwise violate the rights of any third party. If you export Customer Data from one jurisdiction to another jurisdiction, you will ensure that you have all legal rights to do so including, without limitation, in compliance with all applicable data protection laws. You hereby grant to Aviatrix a non-exclusive, worldwide, unrestricted and irrevocable right and license to use, copy, store, transmit and otherwise process the Customer Data to the extent necessary to provide the Aviatrix Offerings in accordance with this Agreement

d. Disclaimers of Warranty. EXCEPT FOR THE LIMITED WARRANTY IN THIS SECTION 9, WE PROVIDE THE AVIATRIX OFFERINGS ON AN "AS IS" AND "AS AVAILABLE" BASIS. NEITHER AVIATRIX NOR ITS SUPPLIERS MAKES OTHER WARRANTIES OF ANY KIND AND SPECIFICALLY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED, STATUTORY AND OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR NONINFRINGEMENT. WE DO

NOT WARRANT THAT THE AVIATRIX OFFERINGS ARE ERROR-FREE OR THAT YOU WILL BE ABLE TO ACCESS OR USE AVIATRIX OFFERINGS WITHOUT PROBLEMS OR INTERRUPTIONS.

10. Limitations of Liability. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY (I) LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY THEORY OF LIABILITY, WHETHER OR NOT SUCH PARTY OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (II) CUMULATIVE AMOUNTS IN EXCESS OF THE FEES PAID BY YOU FOR THE AVIATRIX OFFERINGS DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST EVENT OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. EXCEPT AS SET FORTH BELOW, THE FOREGOING LIMITATIONS ON LIABILITY WILL NOT APPLY TO EITHER PARTY'S INDEMNITY OBLIGATIONS, EITHER PARTY'S BREACH OF SECTION 11 (CONFIDENTIALITY), OR YOUR BREACH OF YOUR PAYMENT OBLIGATIONS OR ANY LICENSE OR USE RESPONSIBILITIES OR RESTRICTIONS. FOR THE AVOIDANCE OF ANY DOUBT, UNDER NO CIRCUMSTANCES WILL WE HAVE ANY LIABILITY TO YOU FOR COST OF PROCUREMENT OF REPLACEMENT OF SUBSTITUTE PRODUCTS OR SERVICES.

11. Indemnification.

a. Aviatrix Indemnity. We ("**Indemnifying Party**") shall defend, indemnify and hold harmless you ("**Indemnified Party**") from and against any and all third party claims asserted against an Indemnified Party and all resulting, to the extent payable to unaffiliated third parties, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorneys' fees and costs ("**Losses**") arising out of the alleged infringement or misappropriation of a copyright, trade secret, trademark or patent by the Aviatrix Offerings. If any claim which we are obligated to defend has occurred, or in our determination is likely to occur, we may, in our sole discretion and at our option and expense: (a) obtain for you the right to use the allegedly infringing item; (b) substitute a non-infringing replacement for such item; or (c) if in our opinion neither item (a) nor (b) are reasonably available, terminate the Agreement and refund to you the Fees paid by you in an amount pro-rated for the portion of the Subscription Term for the Aviatrix Offerings which was paid by you but not rendered by us. Our indemnification obligation herein shall not apply if such claim arises out of: (a) the use of the Aviatrix Offerings in combination with any software, hardware, network or system not supplied by us where the alleged infringement is caused by such combination; (b) any modification or alteration of the Aviatrix Offerings other than by us; (c) your continued allegedly infringing activity after being informed of a modification that would avoid the alleged infringement; (d) our compliance with your designs, specifications or instructions; or (e) the use of the Aviatrix Offerings other than in accordance with the terms and conditions of this Agreement including the Documentation. THIS SECTION 11(a) SETS FORTH OUR SOLE LIABILITY, AND YOUR SOLE AND EXCLUSIVE REMEDY, WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT or misappropriation.

b. Customer Indemnity. You (“**Indemnifying Party**”) shall indemnify, defend and hold harmless us (“**Indemnified Party**”) from and against any and all Losses arising out of (i) any Customer Data including, without limitation, the violation of any laws, regulations or privacy rights, (ii) your use of the Aviatrix Offerings, or (iii) any bodily injury or death to any person, or any property damage to tangible property, related to or arising from your business or operations.

c. Procedure. The Indemnifying Party’s indemnification obligation is subject to the Indemnifying Party receiving (i) prompt written notice from the Indemnified Party of such claim, but in any event, notice in sufficient time for the Indemnifying Party to respond without prejudice; (ii) the exclusive right to control and direct the investigation, defense, or settlement of such claim; and (iii) all reasonable necessary cooperation of the Indemnified Party at Indemnifying Party’s expense.

12. Term and Termination; Suspension of Aviatrix Offerings.

a. Term. This Agreement begins on the Effective Date and continues until terminated in accordance with this Section 12. Each Software Order will have an initial Subscription Term set forth therein. For Subscription Software with a Subscription Term one (1) year or less, you may continue to utilize such Subscription Software for a maximum period of three (3) months on a month-to-month basis (unless we approve a longer period in writing) as long as you pay the applicable Fees for such use. For Subscription Software with a Subscription Term greater than one (1) year, the Software Order will automatically renew for an additional Subscription Term of one (1) year, unless either Party provides written notice to the other Party of non-renewal at least sixty (60) days prior to the end of the then-current Subscription Term. If the Software Order expressly provides that such Software Order is for a proof of concept pursuant to Section 1(g), the automatic renewal provision in this Section 12(a) shall not apply.

b. Termination. Either Party may terminate this Agreement as follows: (a) upon thirty (30) days written notice if the other Party breaches any material provision of this Agreement and does not cure such breach during this cure period; (b) effective immediately and without notice if the other Party ceases to do business or otherwise terminates its operations, except as a result of a permitted assignment hereunder; or (c) if the other Party seeks protection under any bankruptcy, receivership, trust deed, creditor’s arrangement or comparable proceedings, if such proceeding is instituted against that Party and not dismissed within sixty (60) days thereafter. Any termination of this Agreement will automatically terminate all Software Orders.

c. Effect of Termination. Upon early termination or expiration of this Agreement (i) your access to, and use of, the Aviatrix Offerings shall immediately cease and (ii) upon Disclosing Party’s request, the Receiving Party shall destroy or return all Confidential Information in its possession. Upon any early termination (except for termination for our breach) or expiration of the Agreement, all payment obligations with respect to unpaid Fees for Aviatrix Offerings, including those payment obligations arising in the then-current Subscription Term, are irrevocable and you are to pay such amounts promptly to us on termination or expiration of the Agreement, and you will not be entitled to any refund of any prepaid amounts. In the event of your termination for Aviatrix’ breach, you will be entitled to a refund of any unearned prepaid Fees prorated to the

end of the payment period for such Fees. The following Sections shall survive any expiration of termination of this Agreement: Sections 1(d), 4, C, 7, 8, 9 (c), 10, 11, 12(c), 14, 15, 16 and 17.

d. Suspension. If your account is overdue (including for non-payment by your Approved Source) or if we in good faith believe that you are engaging in unauthorized conduct in your use of the Aviatrix Offerings, we reserve the right to, and in addition to any of our other rights or remedies, suspend your access thereto without liability to you until, as applicable, such amounts are paid in full or until you stop engaging in such unauthorized conduct.

13. **Press Release and Publicity.** Neither Party may issue a press release in connection with this Agreement or the transaction contemplated herein without the prior written consent of the other Party; provided, however, we may use your name and logo on our website and in our promotional materials as part of a general list of customers.

14. **Assignment.** Neither Party may assign this Agreement or any of its rights, by operation of law or otherwise, or delegate any of its duties hereunder, in whole or in part, without the other Party's prior written consent; provided, however, we may assign this Agreement without your consent, in connection with a merger, acquisition, corporate reorganization or sale of all or substantially all of Aviatrix assets. Any attempt by a Party to assign its rights or obligations under this Agreement in breach of the previous sentence shall be void and of no effect.

15. **Export.** Pursuant to all relevant export laws and regulations, including but not limited to the U.S. Export Administration Regulations (collectively, "**Export Controls**"), you expressly agree that you shall not, and shall cause your representatives to agree not to, export, directly or indirectly, re-export, divert, or transfer the Aviatrix Offerings, Documentation or Aviatrix Confidential Information to any destination, company or person restricted or prohibited by Export Controls.

16. **Government Users.** If you are a branch or agency of the United States Government, the Aviatrix Offerings, Documentation and any other services provided by us hereunder, are comprised of "commercial computer software" and "commercial computer software documentation" as such terms are used in 49 C.F.R. 12.212, and are provided to you either (i) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 212 or (ii) for acquisition by or on behalf of units of the Department of Defense, consistent with policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3.

17. **Miscellaneous.**

a. Third-Party Providers. You may need, or otherwise choose, to engage Third-Party Providers for use with the Aviatrix Offerings. We assume no responsibility for, and specifically disclaim any liability or obligation with respect to, any Third-Party Providers; and any exchange of data or other interaction between you and such Third-Party Provider is solely between you and such Third-Party Provider. You acknowledge and agree that it is your responsibility to ensure that your use of such Third-Party Providers does not cause you to breach in any way your obligations

to us with respect to the Aviatrix Offerings and that your use of the Aviatrix Offerings do not in any way cause you to breach your obligations to any third party.

b. Audit. Upon at least thirty (30) days written notice and during the other Party's normal business hours, each Party shall have the right to audit other Party's books of account, business records and systems as necessary to verify the accuracy of the Fees paid pursuant to this Agreement. You shall promptly pay us the difference plus interest if such audit reveals an underpayment and we shall promptly pay you the difference plus interest if such audit reveals an overpayment; provided however, under no circumstances will actual consumption or use of the Subscription Software by you that is less than what you ordered pursuant to a Software Order be the basis for a claim by you of overpayment. If such audit reveals an underpayment or overpayment of more than five per cent (5%), the non-auditing Party shall also promptly reimburse the auditing Party for the reasonable costs and expenses of such audit.

c. Independent Contractors. The Parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the Parties. Neither Party will have the power to bind the other or incur obligations on the other Party's behalf without the other Party's prior written consent.

d. Force Majeure. Neither Party shall be liable to the other Party for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events which occur which are beyond the reasonable control of such Party ("**Force Majeure Event**"), such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. Any Party claiming a Force Majeure Event hereunder shall provide prompt notice thereof to the other Party and make commercially reasonable efforts to overcome the effect of such Force Majeure Event. If such Force Majeure Event prevents the Party from substantially performing its obligations hereunder for a period of thirty (30) days or more, either Party may terminate this Agreement on five (5) days written notice.

e. Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.

f. 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.

g. Notice. Any notice or communication required or permitted under this Agreement shall be in writing to the Parties at the addresses set forth on the Software Order or at such other address as may be given in writing by either Party to the other and shall be deemed to have been received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier

service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

h. Modifications or Waivers. Unless otherwise set forth in this Agreement, Aviatrix may modify the terms of this Agreement at any time with or without notice. Otherwise, no modification, or amendment of this Agreement shall be effective and binding, unless in writing signed by the duly authorized representatives of both Parties. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative of the Party claimed to have waived.

i. Entire Agreement. This Agreement, including all Supplemental Terms of Use, and each Software Order are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Purchase orders and similar documents issued by you are for administrative purposes only such as setting forth the Aviatrix Offerings ordered and associated Fees, and any additional or different terms or conditions contained in any such order shall not apply even if the order is accepted or performed on by us and such terms are hereby rejected. In the event of a conflict between any Software Order and this Agreement or a Supplemental Terms of Use, the Software Order will control. Furthermore, in the event of a conflict between any Supplemental Terms of Use and this Agreement, the Supplemental Terms of Use will control.

[Supplemental Terms of Use \(Enterprise Agreement\) Feb 2020](#)