

# Stirdie® Terms and Conditions

Last modified on 15th March 2024

## 1. General

### 1.1 Application

These subscription terms and conditions detailed in this document (**Terms and Conditions**) govern your use of the Software, as well as your End User's use of the Software.

When using a Beta version or features of the Software. The following [Beta Terms and Conditions](#) apply in addition to Stirdie's standard Terms and Conditions.

### 1.2 Acceptance

You signify your acceptance and agreement to the Terms and Conditions by any of the following methods:

1. using the Software; or
2. clicking "I accept" (or equivalent) where indicated on the Website or Software.
3. In conjunction with these terms, you agree to Stirdie's Privacy Policy and Acceptable Use Policy and any other policies that form part of this agreement.

If you accept the Terms and Conditions on behalf of a company or other legal entity, you must be authorized to bind that company or other entity to the Terms and Conditions. In that case, a reference in the Terms and Conditions to "you" will also refer to that company or other entity.

### 1.3 Term

Subject to termination under clause 10, you are bound by these Terms and Conditions for as long as you maintain an Account or continue to access or use the Software.

## 2. License

### 2.1 Grant

Subject to your payment of the Subscription Fee, Stirdie grants to you a revocable, non-exclusive, non-transferable, limited license to access and use the Software for the Subscription Period strictly in accordance with the rights granted pursuant to your Subscription and the terms of these Terms and Conditions.

## 2.2 Authorized use

1. As a fundamental condition of the License, you must ensure that you and your End Users' access and use of the Software, are strictly in accordance with these Terms and Conditions.
2. You must ensure that all End User authentication details, including usernames and passwords, required to access the Software are kept secure and confidential.
3. You must immediately notify Stirdie of any unauthorized use of authentication details, and take all other action that Stirdie reasonably deems necessary to maintain or enhance the security of our computing systems and network.
4. You acknowledge and agree that:
  1. you are responsible for your own and all End Users' use of the Software; and
  2. you must only allow access to the Software by the End Users, and End User login credentials must not be shared between multiple individuals.

## 2.3 Limited License

You acknowledge, and agree, that the rights granted to you under the License are expressly limited to the rights stated in clause 2.1 (Grant). To the fullest extent permitted by Law, all implied rights in relation to the License are excluded.

## 3. Subscription Fees

### 3.1 Purchase of Subscription

1. In order to access the Software, you must first:
  1. register an Account via the Website
  2. select a Subscription via the Website; and
  3. pay the applicable Subscription Fee.
    2. The extent of your access to the Software to be provided by Stirdie is dependent on the Subscription you elect. In purchasing the Subscription, you acknowledge and agree that the Subscription you elect to purchase is suitable for your use and needs.
    3. You acknowledge and agree:
      1. the Subscription Fee is calculated in reference to:
        1. the number of End User seats;
        2. the number of messages sent by you via the Software, regardless of whether the message is ultimately delivered to or read by the Receiver;
        3. the amount of data storage per End User seat; and
      2. you will be charged additional fees if your use of the Software exceeds the limits permitted by your Subscription.
4. All Subscription Fees are to be paid in the manner stated on the Website, the Software, and/or any applicable invoices.

5. Where the Subscription Fees paid to Stirddie include fees for the purchase of prepaid credits, the prepaid credits will expire at the end of the billing period specified in your Subscription.
6. You acknowledge and agree that where a request for the payment of a Subscription Fee is returned or denied by your financial institution or is unpaid by you (for whatever reason), you are liable for any costs, including banking fees and charges, incurred as a result of the ultimate payment or recovery of the Subscription Fee.
7. Stirddie may vary the Subscription Fee at anytime, by posting the variation on the Website, or by providing by notice to you via the Software, or by providing notice to you at the contact details associated with your Account, and such variation will come into effect following the conclusion of the then current Subscription Period.

## **3.2 Account registration**

1. You warrant that any information you give to Stirddie in the course of registering your Account will be accurate and, from registration, will be kept up-to-date.
2. If you:
  1. are not of legal age or capacity to form a binding contract with Stirddie; and/or
  2. are not an authorized representative, permitted to register an account on behalf of an organization then you must not create an Account and Stirddie is entitled to disable any such Account and immediately terminate your Subscription.

## **4. Fair use**

### **4.1 Fair use**

You agree that you will not, and you will not allow, enable or facilitate any End User to:

1. share login credentials with others;
2. send a message to a Receiver via the Software without obtaining the prior consent of the Receiver;
3. use the Software to send messages or files that exceed 250Mb in size. If you require the ability to send messages or files that exceed this limit, please contact Stirddie;
4. use, or permit, the Software to be accessed or used in any way other than in a manner expressly permitted by your Subscription and these Terms and Conditions;
5. use the Software to defame, spam, abuse or harass any person or to distribute, view or create anything that may be pornographic, defamatory, offensive, obscene, illegal or unlawful;
6. use the Software in a way that may infringe the Intellectual Property Rights of Stirddie or a third party;
7. reproduce any part of the Software or incorporate the Software into any other product or service intended for sale;
8. attempt to gain unauthorized access to any materials, documents or code other than which you have been given express permission to access, or to the computer system on which our Software is hosted;
9. transmit or upload to the Software any files, code or programs that may damage or corrupt the IT infrastructure, devices, data or software of Stirddie or any third party;

10. facilitate automated use of the Website or Software;
11. permit or facilitate access to the Software by persons or End Users other than your Personnel;
12. do, or permit or omit to do, any act which infringes the Intellectual Property Rights of Stirdie (or its licensors);
13. engage in any illegal or unlawful activity, including any fraudulent use of the Software;
14. engage in any activity that is otherwise deemed by us to be contrary to the way Stirdie's Software is designed or permitted to be used;
15. engage in any activity that otherwise adversely affects other customers' or users' use of, or access to, Stirdie's Software;
16. use the Software in any way that could damage the reputation of Stirdie; or
17. engage in any activity otherwise deemed inappropriate by Stirdie on reasonable grounds.

## **5. Availability and suspension**

### **5.1 Software availability**

Subject to this clause 5, Stirdie will take reasonable steps to make the Software available 99.99% of the time as measured over any two consecutive months during your Subscription period.

### **5.2 Downtime and limitations**

You acknowledge and agree that:

1. Stirdie's ability and obligation, to provide access to the Software is subject to you complying with your obligations under these Terms and Conditions and any other limitation or exclusion set out in these Terms and Conditions;
  2. access to the Software may occasionally be limited due to Scheduled Maintenance;
  3. the Software may not be available in all countries;
  4. Stirdie will not provide any support or assistance in relation to the content of messages sent or received via the Software;
- access to the Software and performance of the Software is reliant upon various factors outside the control of Stirdie, including, without limitation, events of Exceptional Circumstance, your internet service provider, telecommunications provider, or equipment used to access the Software. While Stirdie will use all reasonable endeavours to ensure you have continuous access to the Software, Stirdie will not be liable to you or any other person for any Claim or to any other extent for Loss or damage caused by such factors.

### **5.3 Suspension**

1. Stirdie may temporarily suspend (in part or in whole), without prior notice to you, you and your End Users' access to the Software if:

1. there is a malfunction, fault or breakdown of any of Stirdie's equipment or if Stirdie is required to undertake the repair, maintenance or service of any part of the Software, including Scheduled Maintenance;
2. Stirdie is required by Law to do so;
3. an event of Exceptional Circumstance occurs, which affects or may affect Stirdie's ability to provide the Software;
4. the Subscription Fees become overdue;
5. there is Claim made that the continued provision of the Software infringes the rights of any person;
6. there is a Claim made that exposes Stirdie to Liability or prosecution for an offence or liability to a statutory prosecution; or
7. if you or an End User is, or Stirdie reasonably suspects you or an End User is, in breach of these Terms and Condition.
8. Suspension in accordance with clause 5.3.1 will not affect any right which accrue prior to, or after, suspension of Stirdie's obligations under these Terms and Conditions.

## **5.4 Private key**

You acknowledge and agree that:

1. you are solely responsible for the security and safeguarding of your own private key; and
2. if you lose your private key, Stirdie is unable to recover your Account or any messages associated with your Account.

## **5.5 Loss of access**

You shall have no Claim against Stirdie in respect of loss of access or functionality to the Software referred to in this clause.

# **6. Intellectual Property Rights**

## **6.1 Ownership – Stirdie**

1. Ownership of the Software is not modified by these Terms and Conditions.
2. The Intellectual Property Rights in the Software remains vested in Stirdie or its licensors.

## **6.2 Ownership – Your Content**

1. Ownership of Your Content is not modified by these Terms and Conditions.
2. You grant to Stirdie a non-exclusive, transferable, worldwide, royalty-free license for the Term to use, any of Your Content for the purposes of providing the Software,

performing its obligations under these Terms and Conditions, or otherwise in the course of your dealings with Stirdie.

## **6.3 Stirdie Data**

1. All Stirdie Data remains owned by Stirdie.
2. For clarity, you and Stirdie acknowledge that Stirdie Data may incorporate or be derived, at least in part, from Your Content, and accordingly, while you shall have exclusive title and ownership over Your Content, Stirdie shall retain exclusive title and ownership to the Stirdie Data.

## **7. Warranty**

### **7.1 Your warranty**

You represent and warrant that:

1. you are the owner of, or have sufficient rights to, Your Content to grant the license to Stirdie in clause 6.2(b);
2. Stirdie's use of Your Content as contemplated by these Terms and Conditions and the Subscription will not infringe any third party's Intellectual Property Rights;
3. Your Content is accurate, correct and complete ;and
4. your communication of Your Content does not violate any laws, regulations, or the rights of any third party.

## **8. Confidentiality**

### **8.1 Confidentiality**

1. The Recipient Party must keep confidential the Confidential Information and must not, without the Disclosing Party's prior written approval:
  1. disclose the Confidential Information; or
  2. use the Confidential Information other than for the purpose of these Terms and Conditions.
2. The Recipient Party must not, and must ensure that its employees, agents and any sub-contractors engaged for the purposes of the Terms and Conditions do not make public or disclose the Disclosing Party's Confidential Information.
3. The Recipient Party must use commercially reasonable efforts to ensure that all Confidential Information of the Disclosing Party in its custody is protected at all times from unauthorized access or use by a third party, and from misuse, damage or destruction.
4. The Recipient Party must on demand, return to the Disclosing Party any Confidential Information supplied by the Disclosing Party in connection with the Terms and Conditions within 5 days of a demand from the Disclosing Party.
5. The Recipient Party is not in breach of this clause 8.1 in circumstances where when dealing with the Confidential Information:
  1. it is legally required to disclose it; or

2. the Recipient Party discloses it to its Related Body Corporate, Related Entities, Personnel, solicitors, auditors, insurers or accountants for the purposes of these Terms and Conditions.

## **9. Privacy**

### **9.1 Privacy laws**

Each party agrees to comply with all Privacy Laws in relation to the Personal Information that it collects from the other party in connection with these Terms and Conditions.

You warrant that you have obtained the necessary consent required by Privacy Laws, from all individuals whose Personal Information you cause to be disclosed to Stirdie, communicated through the Software, or otherwise held in connection with the Software, to enable Stirdie(or its Personnel, Related Body Corporate, and Related Entities):

1. to collect such Personal Information via the Software; and
2. to hold and use that Personal Information for the purposes of Stirdie providing the Software and its functionality and performing its obligations under these Terms and Conditions.

## **10. Termination and expiry**

### **10.1 Termination**

1. You may terminate these Terms and Conditions at any time:
  1. via the functionality provided under the Software(if applicable), including by electing not to renew the Subscription; or
  2. otherwise, by providing not less than 10 Business Days' notice in writing to Stirdie prior to the end of the then-current Subscription Period.
2. Stirdie may terminate these Terms and Conditions immediately upon notice if:
  1. you or your End User breaches or is suspected to have engaged in conduct that breaches clause 4, or the End User Terms;
  2. where the Subscription Fee becomes overdue, including where there is insufficient credit available on your Account when the Subscription Fee becomes payable;
  3. there is no activity conducted in respect of your Account for a period of 180 days;
  4. you are subject of an Insolvency Event; or
  5. otherwise where you have breached these Terms and Conditions.
  6. Stirdie may otherwise terminate these Terms and Conditions upon 14 days' notice in writing.

### **10.2 Consequences of termination or expiry**

Upon termination or expiration of these Terms and Conditions:

- (a) the Subscription and License terminates immediately;
- (b) you will be unable to read any unread messages associated with your Account;
- (c) all monies owing under these Terms and Conditions become immediately due and payable;

- (d) subject to clause 10.3, you are not entitled to a refund for any unused prepaid Subscription Fees; and
- (e) the accrued rights and remedies of the parties are not affected.

### **10.3 Refund of Subscription Fees**

Stirdie will not provide any refund of Subscription Fees to you unless one of the following two circumstances apply:

- (a) if these Terms and Conditions are terminated by Stirdie in accordance with clause 10.1(c), you are entitled to a pro-rata refund of Subscription Fees paid in advance for the time remaining in the current Subscription Period; or
- (b) if these Terms and Conditions are terminated by you in accordance with clause 10.1(a) (1), and you or your End Users have not utilised any of the features or functionality of the Software, including but not limited to, accessing inbound messages, sending any messages, using the directory look-up, storing any data on the Software, you will be entitled to a refund of Subscription Fees paid in advance for the current Subscription Period.

### **10.4 No prejudice of rights**

Termination shall not prejudice or affect any right or action which shall have accrued or shall thereafter accrue to either party.

### **10.5 Survival**

The following clauses survive termination of these Terms and Conditions: Clause 4 (Fair Use), Clauses 6.1 and 6.3 (Intellectual Property Rights); Clause 8 (Confidentiality), Clause 9 (Privacy), Clause 11 (Liability), Clause 12 (Indemnity), and this clause 10.5.

## **11. Liability**

### **11.1 Exclusion of liability**

- (a) To the maximum extent permitted by Law, Stirdie expressly excludes and disclaims all representations and warranties in respect of this agreement, and the Software, whether express or implied, including, without limitation, any representation or warranty of acceptable quality, merchantability, fitness for purpose, or non-infringement, or every message sent via the Software will be delivered.
- (b) To the extent permitted by Law, in no event will Stirdie be liable to you or any End User for:
  - (1) consequential Loss;
  - (2) loss or corruption of data, even if Stirdie has been made aware of the possibility of the occurrence of any such event prior to your subscribing to the Software.
- (c) You acknowledge and agree that software is never error or defect-free, and that the mere presence of defects or errors in the Software will not constitute a breach of Stirdie's obligations under these Terms and Conditions.

(d) Unless otherwise specified, Stirdie is not Liable to third parties regarding, or arising out of or in connection with, these Terms and Conditions.

## **11.2 Consumer Guarantees**

To the extent that any guarantee or warranty under the Federal Trade Commission Act (USA) is read into this agreement, to the extent permitted by Law, Stirdie's Liability for failure to comply with any such guarantee is limited to one or more of the following, at the election of Stirdie:

(a) supplying the services again; or

(b) payment of the cost of having the services supplied again, up to the limit under clause 11.3(b).

## **11.3 Limitation of liability**

(a) To the extent Stirdie is found Liable in connection with these Terms and Conditions, its Liability shall be limited (at the option of Stirdie) to any one or more of the following:

(1) re-supplying the Software to which the liability relates or the supply of equivalent products and/or services; or

(2) reimbursing you (subject to clause 11.3(b)) for paying someone else to supply equivalent services to which the liability relates.

(b) If Stirdie is Liable in connection with these Terms and Conditions (whether in contract, tort, indemnity of statute), then irrespective of anything else in these Terms and Conditions, Stirdie's cumulative Liability in the aggregate (to the fullest extent permitted by Law) shall in no event exceed the sum of the Subscription Fees paid by you to Stirdie in the 12 months preceding the date the Liability arises.

## **12. Indemnity**

You indemnify Stirdie (or its Personnel, Related Body Corporate, Related Entities, or subcontractors), and will keep indemnified and hold Stirdie harmless, against any:

(a) Claims against Stirdie (or its Personnel or subcontractors); or

(b) Loss suffered by Stirdie; in connection with these Terms and Conditions due (in part or in whole) to your (including your Personnel's) or your End User's:

(1) each of these Terms and Conditions;

(2) infringement of the Intellectual Property Rights of a third party;

(3) breach or infringement of any other Law.

## **13. Taxes**

### **13.1 Tax exclusive**

Unless expressly stated to the contrary all amounts expressed in these Terms and Conditions are exclusive of any sales, use, GST, value-added, withholding, or similar taxes.

### **13.2 Recipient to pay Supplier**

(a) If a party (the Supplier) is obliged under the relevant Law to pay an amount of tax for a taxable supply made by the Supplier to another party (the Recipient) under these Terms and Conditions, the Recipient must pay the Supplier an amount equal to the tax payable on the supply by the Supplier.

(b) The Recipient must pay the amount referred to in this clause 13.2(a) (Recipient to pay Supplier) and any interests, penalties, fines or expenses relating to the taxes, in addition to and at the same time as the consideration otherwise payable by the Recipient for the supply.

### **13.3 Tax invoice**

If requested by the Recipient, the Supplier must provide the Recipient with a Tax Invoice on or before payment of the amounts required by clause 13.2.

## **14. Miscellaneous**

### **14.1 Notices**

(a) The parties may give each other notice under these Terms and Conditions:

- (1) via the functionality provided under the Software (if applicable);
- (2) by email or by post at the address details specified in clause 4.2;
- (3) as otherwise notified to the other party from time to time.

(b) If a notice is sent or delivered in the manner provided in clause 14.1(a)(2) it must be treated as given to or received by the addressee in the case of:

- (1) delivery in person, when delivered;
- (2) delivery by post:
  - (A) to a nominated postal address the fourth Business Day after posting; or
  - (B) in any other case, on the tenth Business Day after posting; or

(3) electronic mail, when the sender's computer reports that the message has been delivered to the electronic mail address of the addressee.

### **14.2 Initial details**

(a) The parties' addresses for service are initially:

(1) for Stirdie, by email at support@stirdie.com or by post at 299 S. Main Street, Suite 1300, Salt Lake City, Utah 84111, United States.

(2) for you, the email or postal contact details associated with your Account. (b) party may from time to time change its address for service by notice to each other party.

### **14.3 Governing law**

These Terms and Conditions are governed by and construed in accordance with the laws of the United States of America.

### **14.4 Jurisdiction**

Each party irrevocably:

(a) submits to the non-exclusive jurisdiction of the courts of the United States of America and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to these Terms and Conditions; and  
(b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within paragraph 14.4(a).

## **14.5 Exercise rights**

A single or partial exercise or waiver by a party of any right under or relating to this agreement will not prevent any other exercise of that right or the exercise of any other right.

## **14.6 Merger**

If the Liability of a party to pay money under this agreement becomes merged in any deed, judgment, order or other thing, the party liable must pay interest on the amount owing from time to time under that deed, judgment, order or other thing at the higher of the rate payable under this agreement and that fixed by or payable under that deed, judgment, order or other thing.

## **14.7 Moratorium legislation**

Any law which varies prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this agreement is excluded to the extent permitted by law.

## **14.8 No assignment**

A party must not assign, transfer or novate all or any part of its rights or obligations under or relating to this agreement or grant, declare, create or dispose of any right or interest in it, without the prior written consent of each other party.<sup>14</sup>.

## **14.9 Remedies cumulative**

The rights and remedies under this agreement are cumulative and not exclusive of any rights or remedies provided by law.

## **14.10 Severability**

If a provision of this agreement is illegal, invalid, unenforceable or void in a jurisdiction it is severed for that jurisdiction and the remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

## **14.11 Further assurance**

Each party must promptly at its own cost do all things (including executing and delivering all documents) necessary or desirable to give full effect to this agreement and the transactions contemplated by it.

## **14.12 Costs**

Each party is responsible for all its own costs incurred in the negotiation and performance of this agreement including legal costs.

## **14.13 Taxes**

You must:

(a) pay all Taxes which may be payable or determinable in connection with the execution, delivery, performance or enforcement of this agreement or any payment or receipt or of any transaction contemplated by this agreement; and (b) indemnify against any liabilities resulting from any delay or omission by to pay any Taxes.

## **14.14 Variation**

Stirdie may vary these Terms and Conditions at any time by notice in writing, and the Terms and Conditions as varied take effect on the later of the date of Stirdie's notice or the date specified in Stirdie's notice. By accessing or using the Software on or after that effective date, you signify your acceptance of the Terms and Conditions as varied. If you do not accept the Terms and Conditions as varied, in which case your only remedy is to terminate your Subscription in accordance with clause 10.1(a).

## **14.15 Waiver**

(a) A party's waiver of a right under or relating to this agreement, whether prospectively or retrospectively, is not effective unless it is in writing and signed by that party.

(b) No other act, omission or delay by a party will constitute a waiver of a right.

## **14.16 Whole agreement**

This agreement:

(a) is the entire agreement and understanding between the parties relating to the subject matter of this agreement; and

(b) supersedes any prior agreement, representation(written or oral) or understanding on anything connected with that subject matter.

# **15. Definitions and interpretation**

## **15.1 Definitions**

In these Terms and Conditions:

**Account** means your account created to facilitate your access to the Software.

**Business Day** means:

- (a) if determining when a notice, consent or other communication is given, a day that is not a Saturday, Sunday or public holiday in the place to which the notice, consent or other communication is sent; and
- (b) for any other purpose, a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Salt Lake City, Utah, United States.

**Claim** means, in relation to a person, any action, allegation, claim, demand, judgment, liability, proceeding, remedy, right of action or right of set-off made against the person concerned however it arises whether: (a) it is present, unascertained, immediate, future or contingent; (b) it is based in contract, tort, statute or otherwise; or (c) it involves a third party or a party to this agreement.

**Confidential Information** means, in relation to each party, all information disclosed by or on behalf of the Disclosing Party, concerning or relating to: (a) know-how, trade secrets, ideas, marketing strategies, operational information, technical information and financial information;

(b) proprietary software tools, business processes, project management methodologies and tools, software testing and verification methods, solution architecture models and solutions; (c) its business affairs (including products, services, customers and suppliers); and (d) other information, which, by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential, but excluding any such information:

- (e) which is publicly known;
- (f) which is disclosed to the other party without restriction by a third party (other than the Disclosing Party) and without any breach of confidentiality by that third party; or
- (g) which is developed independently by other party without reliance on any of the confidential information.

**Consequential Loss** means any of the following:

- (a) loss of revenue;
- (b) loss of profits;
- (c) loss of opportunity to make profits;
- (d) loss of business;
- (e) loss of business opportunity;
- (f) loss of use or amenity, or loss of anticipated savings;
- (g) special, exemplary or punitive damages; and
- (h) any loss which does not directly and naturally flow in the normal course of events from the occurrence of the event giving rise to the Liability for such loss, whether or not such loss was in the contemplation of the parties at the time of entry into this agreement, including any of the above types of loss arising from an interruption to a business or activity.

**Disclosing Party** means the party which discloses, communicates or gives access to its Confidential Information, to the Recipient Party under these Terms and Conditions, as the context requires.

**End User** means any person who accesses the Software in connection with your Account or Subscription.

**Exceptional Circumstance** means a circumstance beyond the reasonable control of the parties which results in a party being unable to observe or perform on time an obligation under this agreement. Such circumstances include:

- (a) adverse changes in government regulations;
- (b) any disaster or act of God, lightning strikes, atmospheric disturbances, earthquakes, floods, storms, explosions, fires and any natural disaster;
- (c) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution, cyberattacks, viruses or malware, data loss as a result of the actions of a third party;
- (d) strikes or industrial disputes;
- (e) materials or labour shortage; and
- (f) acts or omissions of any third party network providers (such as internet, telephony or power provider).

**Government Body** means:

- (a) any person, body or other thing exercising an executive, legislative, judicial or other governmental function of any country or political subdivision of any country;
- (b) any public authority constituted by or under a law of any country or political subdivision of any country; and
- (c) any person deriving a power directly or indirectly from any other Government Body.

**Insolvency Event** means an event of bankruptcy or insolvency, an assignment for the benefit of creditors, the appointment of a receiver, receiver and manager, provisional liquidator, liquidator and official manager or any similar person to any assets of a person, a failure to comply with a statutory demand, or anything else which occurs which is analogous or has a substantially similar effect, under the laws of any jurisdiction, or the person is otherwise insolvent or unable to pay its debts as and when they fall due.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, circuit layouts, designs, trade marks, know-how, confidential information, patents, inventions, plant breeder's rights and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Law** means any statute, rule, regulation, proclamation, order in council, ordinance, local law or by-law, whether: (a) present or future; or (b) State, federal or otherwise.

**Liability** means any liability, debt or obligation, whether actual, contingent or prospective, present or future, qualified or unqualified or incurred jointly or severally with any other person.

**License** means the license granted to you in clause 2.1. **Loss** means any loss (including Consequential Loss), claims, actions, liabilities, damages, expenses, diminution in value or deficiency of any kind whether direct, indirect, consequential or otherwise.

**Personal Information** has the meaning given in the Privacy Act 1974 (USA)), or the meaning given to equivalent or similar terms in other Privacy Law.

**Personnel** means in relation to a party, any Related Body Corporate, Related Entity, employee, officer, agent, contractor, professional adviser of that party.

**Privacy Law** means:(a) in United States of America, the Privacy Act 1974; and (b) in any other jurisdiction, any applicable law related to the processing of Personal Information.

**Receiver** means the person to whom you or your End User sends, or attempts to sends, a message to via the Software.

**Recipient Party** means the party which receives or is given access to Confidential Information from the Disclosing Party under these Terms and Conditions, as the context requires.

**Related Body Corporate** includes any corporation that is deemed to be related to a person by virtue of the provisions of the USA Model Business Corporation Act.

**Related Entity** means a person which is a related entity within the meaning of that term in section 9 of the USA Model Business Corporation Act.

**Scheduled Maintenance** means preventative or emergency maintenance in relation to any software used, or relied upon, to provide the Software.

**Software** means the Stirdie web and mobile application provided by Stirdie.

**Stirdie** means Stirdie LLC.

**Stirdie Data** means all data which:(a) is in, or used in, aggregate and de-identified form; (b) is held by, or disclosed to, Stirdie independently of these Terms and Conditions; or (c) is metadata generated by the Software, including your or your End User's use of the Software.

**Subscription** means your subscription to the Software.

**Subscription Fee** means the fees payable by you for the Subscription during the Subscription Period, as detailed on the Website or the Software or as otherwise notified to you by Stirdie.

**Subscription Period** means the duration of the Subscription as elected by you, and detailed on the Website or the Software or as otherwise notified to you by Stirdie.

**Tax** means any present or future tax, levy, deduction, impost, withholding, charge or duty that is levied or imposed by any Government Body together with any interest, penalty or fine on those amounts.

**Tax Invoice** means a “tax invoice” compliant with the requirements of the USA Law.

**VAT** means a value added tax or goods and services tax imposed under a VAT Law, and any interest, penalties, fines or expenses relating to such VAT.

**VAT Law** means:(a) in Australia, the A New Tax System (Goods and Services Tax) Act 1999(Cth) and/or associated Commonwealth legislation, regulations and publicly-available rulings; or (b) in any other jurisdiction, any applicable legislation imposing a VAT in relation to this agreement or any supply of goods or services.

**Website** means the website available at <https://stirdie.com>, or otherwise the website hosted by Stirdie through which Subscriptions to the Software may be accessed, as may change from time to time.

**Your Content** means any material, information or data that is uploaded to, or communicated via the Software by you, your End Users or on your behalf, or that is otherwise provided to Stirdie in the course of your dealings with them.

## 15.2 Interpretation

(a) Unless the contrary intention appears, a reference in this agreement to:

(1) this agreement or another document includes any variation or replacement of it despite any change in the identity of the parties;

(2) one gender includes the others;

(3) the singular includes the plural and the plural includes the singular;

(4) a person, partnership, corporation, trust, association, joint venture, unincorporated body, Government Body or other entity includes any other of them;

(5) an item, recital, clause, subclause, paragraph, schedule or attachment is to an item, recital, clause, subclause, paragraph of, or schedule or attachment to, this agreement and a reference to this agreement includes any schedule or attachment;

(6) a party includes the party’s executors, administrators, successors, substitutes (including a person who becomes a party by novation) and permitted assigns;

(7) any statute, ordinance, code or other law includes regulations and other instruments under any of them and consolidations, amendments, re-enactments or replacements of any of them;

(8) money is to US dollars, unless otherwise stated; and

(9) a time is a reference to Utah time (GMT-6) unless otherwise specified.

(b) The words include, including, such as, for example and similar expressions are not to be construed as words of limitation.

(c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

(d) Headings and any table of contents or index are for convenience only and do not affect the interpretation of this agreement.

(e) A provision of this agreement must not be construed to the disadvantage of a party merely because that party or its advisers were responsible for the preparation of this agreement or the inclusion of the provision in this agreement.

### **15.3 Business Days**

(a) If anything under this agreement must be done on a day that is not a Business Day, it must be done instead on the next Business Day.

(b) If an act is required to be done on a particular day, it must be done before 5.00pm on that day or it will be considered to have been done on the following day.

### **15.4 Parties**

(a) If a party consists of more than one person, this agreement binds each of them separately and any two or more of them jointly.

(b) An agreement, covenant, obligation, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them separately.

(c) An agreement, covenant, obligation, representation or warranty on the part of two or more persons binds them jointly and each of them separately.