

Online Customer Services Agreement

By clicking “I agree”, you acknowledge that you have read and agree to be bound by these terms, and agree that a legally binding agreement is formed between you and us on these terms (**Agreement**). You must not click “I agree” or access or use the Services if you do not agree to the terms of this Agreement.

A reference to “**you**” or “**your**” is a reference to the customer entity that enters into this Agreement, and a reference to “**we**”, “**us**” or “**our**” is a reference to Sitemate Services UK Limited (No. 14874947).

Capitalised terms used are defined in this Agreement, including clause 21.

1. Term

1.1. Subject to clause 3, this Agreement:

1.1.1. commences on the date you click “I agree” (Start Date) and continues for 12 months or such other term selected by you in the online form (Initial Term), unless terminated or renewed on its terms; and

1.1.2. automatically renews for successive periods equal to the Initial Term at the expiry of the then current term unless either party

1.2. notifies the other party in writing at least seven days before the expiry of the then current term that it does not wish to renew the term of this Agreement, provided that all renewals do not exceed 24 months in the aggregate.

2. Services

2.1. We agree to supply, and you agree to acquire, the Services on the terms of this Agreement.

2.2. You and the number of Authorised Users you have selected in the online form may access and use the Services solely for your internal business purposes and otherwise in accordance with our reasonable directions, and subject to the terms of this Agreement (Permitted Purpose).

2.3. We will supply the Support Services to you to meet the Service Levels. If we fail to meet a Service Level and such failure is not excused under this Agreement (for example, as a result of a Force Majeure Event), and a Service Rebate is specified in the Service Level Agreement for such failure, then we will provide you with the Service Rebate for such failure as a credit against our invoices for the affected Services until that Service Rebate is fully consumed. A Service Rebate is provided to reflect the reduced quality of Service as a result of the Service Level failure and is your sole remedy in relation to our failure to meet the relevant Service Level.

2.4. We may change the Services from time to time without notice to you. You acknowledge and agree that new or additional packages and/or tools made available through the Services may attract additional Fees and charges.

3. Free Trial

3.1. We do not offer free trial for the paid versions of our product.

4. Authorised Users

4.1. You:

- 4.1.1. acknowledge and agree that each Authorised User is required to have login details and a password to access the Online Service;
 - 4.1.2. must ensure that each Authorised User keeps their login details and password safe and does not disclose such information to any third party; and
 - 4.1.3. are responsible for ensuring that each Authorised User selects a secure password.
- 4.2. You may increase or decrease the number of Authorised Users by providing notice to us at any time.

5. Our obligations

- 5.1. We will provide the Services to you with due care and skill, and using suitably qualified personnel, but do not warrant that the Services will be error free, fault free, virus free, continuous, fit for any purpose (regardless of whether you have advised us of your intended use of the Services) or that they will be compatible with your equipment.

6. Your obligations

6.1. You:

- 6.1.1. are responsible for the acts and/or omissions of your Authorised Users and any use of the Online Service using the login information of your Authorised Users as if they were your own acts and/or omissions;
 - 6.1.2. are solely responsible for obtaining and maintaining your own facilities and infrastructure, including any internet and telecommunications systems required by you to access and use the Services, and for ensuring that they are compatible with the Services; and
 - 6.1.3. are responsible for the accuracy, completeness and security of any data or information, including Your Data, that you enter into the Online Service.
- 6.2. You agree to provide us with access to your relevant sites and systems as is reasonably required to enable us to perform our obligations under this Agreement. In this instance, we will comply with your reasonable standard policies and procedures that govern such access and that are provided in writing to us before such access.
- 6.3. You must not and must ensure that your Authorised Users do not:
- 6.3.1. challenge the validity of our rights in and to the Services (including the underlying software used by us to provide the Services);
 - 6.3.2. permit the access or use of the Services for any purpose other than the Permitted Purpose;
 - 6.3.3. sell or otherwise make the Services available to any person outside the terms of this Agreement;

- 6.3.4. copy or otherwise reproduce the Services (including the underlying software used by us to provide the Services);
- 6.3.5. translate, adapt, vary, tamper with, enhance or modify the Services (including the underlying software used by us to provide the Services);
- 6.3.6. disassemble, decompile, reverse engineer or create derivative works from the Services (including the underlying software used by us to provide the Services);
- 6.3.7. derive or attempt to derive the source code or any internal data file generated by the Services;
- 6.3.8. alter, conceal or remove any notices regarding our Intellectual Property Rights that may appear on or within the Services (including the underlying software used by us to provide the Services);
- 6.3.9. combine or incorporate the Services with or in any other software or services without our prior written consent;
- 6.3.10. access, or attempt to gain access to: (i) the underlying infrastructure, systems and software used by us to provide the Services (or any part of them); or (ii) parts of the Services that is not supplied to you under this Agreement;
- 6.3.11. use the Services in an unlawful manner, or otherwise to: (i) publish or disseminate any material that is defamatory, pornographic, depicts acts of violence, sexual acts, which may perpetuate hatred against any person or group or have the likely effect of causing offence or harm, or that contains any instruction which, if implemented, might cause damage or injury to any person or property; or (ii) menace or harass any person;
- 6.3.12. use the Services in a manner that infringes, or may infringe, a third party's rights (including Intellectual Property Rights) or that would result in us breaching a law;
- 6.3.13. introduce, attempt to introduce, or permit the introduction of, whether directly or indirectly, viruses, Trojan horses, disabling code or other malicious or related code into any part of the Services; and
- 6.3.14. except as expressly permitted in this Agreement, on sell, re sell or otherwise provide a Service to any person (including through an application service, bureau service or similar service).

6.4. You warrant that:

- 6.4.1. you have the right and authority to enter into this Agreement;
- 6.4.2. you have not relied on any representations or warranties by us other than those expressly set out in this Agreement; and
- 6.4.3. to the best of your knowledge, there are no actions, claims, proceedings or investigations pending or threatened against you or by you which may have a material effect on the subject matter of this Agreement or your ability to carry out your obligations under this Agreement.

7. Fees and taxes

- 7.1. You must pay us the Fees in advance. The Fees are non refundable, except as required by law. Unless expressly stated otherwise, the Fees are exclusive of all taxes, including VAT. You are responsible for all statutory charges, levies and other taxes associated with our provision of the

Services to you, excluding any statutory charges, levies or other taxes payable in respect of our income or our personnel.

- 7.2. If you fail to pay us non disputed amounts by the relevant due date, we may charge you interest at an monthly rate equal to 8% above the Bank of England base rate, calculated on the monthly balance of the unpaid amount from the period of the due date until the date payment is received in full.
- 7.3. If the number of Authorised Users is changed at your request and if an adjustment to the Fees applies, the Fees will be adjusted accordingly for any subsequent billing periods starting from the date that such change takes effect.
- 7.4. We may adjust the Fees at any time after the expiry of the Initial Term and/or the expiry of the renewal term on at least seven days' notice to you before the end of such term. If you do not wish to continue acquiring the Services after receiving such notice, you may terminate this Agreement under clause 17.1(d) of this Agreement. Otherwise, if you continue using the Services on or after such effective date, you are taken to have agreed to such adjustment on and from the effective date of such adjustment.

8. Confidentiality

- 8.1. Each party acknowledges and agrees that:
 - 8.1.1. our Confidential Information includes: (i) the provisions of this Agreement; and (ii) all information provided by us to you under this Agreement, including our technical, operational, billing, pricing or other commercially confidential information, and
 - 8.1.2. your Confidential Information includes Your Data.
- 8.2. A party must keep the other party's Confidential Information confidential and not disclose the other party's Confidential Information to any person, except:
 - 8.2.1. to its professional advisers and employees and subcontractors on a "need to know" basis, but only if those persons have been informed of the confidential nature of the Confidential Information and have agreed to keep the Confidential Information confidential in accordance with terms not less onerous than the terms set out in this clause 8;
 - 8.2.2. to the extent required by law, any regulatory authority, or a stock exchange on which the first party's shares are listed;
 - 8.2.3. to the extent required in connection with legal proceedings relating to this Agreement; or
 - 8.2.4. with the other party's prior written consent, but only to the extent that such consent is given.
- 8.3. On demand from a party, the other party must deliver to the first party all the Confidential Information of the first party in the other party's possession or control, but the foregoing does not apply to any Confidential Information of the first party that the other party requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.
- 8.4. This clause 8 survives for three years after the termination or expiry of this Agreement.

9. Privacy

- 9.1. You acknowledge and agree, and will ensure that your Authorised Users and any other person with respect to whom you make available personal information to us acknowledge and agree, that we may use and disclose personal information about you, your Authorised Users and such other persons in accordance with our privacy policy (available on the Website).
- 9.2. You must ensure that you are permitted to disclose or otherwise provide Your Data to us. Without limiting the foregoing, you warrant that you have notified or made each relevant Authorised User and person with respect to whom you have made available personal information to us aware of the matters required under the General Data Protection Regulation (GDPR) and the Data Protection Act 2018 in respect of the disclosure to and use by us of the personal information provided by or on behalf of you to us.

10. Your Data

- 10.1. The parties:
 - 10.1.1. acknowledge that you may enter Your Data into the Online Service; and
 - 10.1.2. as between the parties, agree that you own and are solely responsible for the accuracy and completeness of Your Data.
- 10.2. You acknowledge and agree that we may access and use Your Data (including to conduct analytics or use as part of an aggregate data set) and monitor user activity as part of our provision, development, maintenance and support of the Services.
- 10.3. Without limiting clause 9, acknowledge and agree that you are responsible for seeking all necessary consents, approvals and licenses required by you to disclose information (including personal information) to us, access and use the Services, and otherwise perform this Agreement.
- 10.4. You are solely responsible for extracting Your Data from the Online Service before termination or expiry of this Agreement. If you request a copy of Your Data after such time, fees and charges may apply.
- 10.5. You acknowledge that we may permanently delete Your Data after 90 days from the date of termination or expiry of this Agreement.

11. Intellectual Property Rights

- 11.1. Nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.
 - 11.1.1. We acknowledge that Your Intellectual Property Rights are contained within the Services components, such as Templates, Lists, Photos and Analytics, and therefore such components cannot be used or shared publicly by Us.
- 11.2. You grant to us a non exclusive, transferable, sub licensable, royalty free licence to use Your Pre Existing IPR and Your Data to enable us to perform our obligations and exercise our rights under this Agreement.

11.3. Without limiting clause 11.2, you agree that:

- 11.3.1. if you provide us with any feedback or suggestions in relation to the Services or Software, we may use such information for our internal planning, marketing and product development purposes without the need to reference you and without any liability to you; and
 - 11.3.2. unless you otherwise notify us in writing, we may publicly refer to you as our customer (including in our marketing material and on the Website) and may use your logo for such purposes.
- 11.4. To the extent that we supply you with any software as part of the Services, such software (and any updates to such software) is taken to be part of the Services for this Agreement (Software). Subject to clause 12, and your compliance with the terms of this Agreement, we grant you and your Authorised Users a personal, non transferable and non exclusive licence to install and use the Software during the term of this Agreement in connection with the Customer's use of the Services. For clarity, clauses 6.1 and 6.3 apply equally to the Software.

12. Third Party Material

- 12.1. We may provide you with access to data and components that are sourced from third parties (Third Party Material) as part of the Services. In this instance, you must, and must ensure that your Authorised Users comply with any additional terms that may apply to the use of such Third Party Material (Third Party Terms) (as updated from time to time). If the Services do not include access to Third Party Material at the Start Date, you agree to comply with the Third Party Terms if such material is made available to you at a later date.
- 12.2. We will make a copy of the Third Party Terms available on the Website. You acknowledge and agree that the Third Party Materials and Third Party Terms may change without notice, and it is your responsibility to monitor the Website to see whether there have been any changes to the Third Party Terms.
- 12.3. You are solely responsible for evaluating the accuracy and suitability of the Third Party Material and for your and your Authorised User's compliance with the applicable Third Party Terms. You release us from all liability arising out of or in connection with the provision and use of such Third Party Material.

13. Audit

- 13.1. You must:
 - 13.1.1. maintain accurate and up to date records as required to document the number of Authorised Users; and
 - 13.1.2. permit, under reasonable conditions, us and our third party auditors to audit your compliance with this Agreement and examine your records, provided that such audit is conducted no more than once every 12 months and on at least 30 days' prior notice. Despite the foregoing, we may conduct an audit more than once every 12 months if an audit reveals a breach of this Agreement by you.
- 13.2. You agree to provide us with all reasonable assistance to enable us and our third party auditors to conduct an audit pursuant to clause 13.1.2.

- 13.3. In the event that the parties do not agree with the other's determination of the number of Authorised Users of the Services or another matter, they agree to seek to resolve the dispute pursuant to clause 18.
- 13.4. Your Confidential Information under this Agreement includes Confidential Information provided by you to us pursuant to this clause 13.
- 13.5. This clause survives for three years after the termination or expiry of this Agreement.

14. Limitation of liability

- 14.1. Subject to the remainder of this clause and to the maximum extent permitted by law, we exclude all warranties and liabilities arising under or in respect of this Agreement, whether in contract, tort (including negligence), statute or any other cause of action, except liability arising from our negligence or breach of contract for:
 - 14.1.1. personal injury or death to you resulting from our supply of the Services; and
 - 14.1.2. any damage to your real or tangible property resulting from the supply of the Services, limited to our choice of repairing or replacing the property or paying the cost of repairing or replacing it.
- 14.2. We are not liable for any indirect or consequential loss arising from or in connection with this Agreement, including a loss of opportunity or goodwill, loss of revenue or profits, loss of business, or a loss of or corruption to data.
- 14.3. Nothing in this Agreement excludes or restricts any obligation arising under Schedule 2 to the Competition and Consumer Act 2010 (Cth).
- 14.4. To the extent that any liability may not lawfully be excluded but may be limited, our sole liability is limited to (at our discretion) supplying or paying the cost of supplying the relevant service again.
- 14.5. Notwithstanding any other provision of this Agreement, our liability will be reduced to the extent the loss or damage is caused by you and your Authorised Users.
- 14.6. For any liability that is not otherwise excluded or limited under clauses 14.1 and 14.2 above, but subject to clause 14.4, our aggregate liability to you under or in respect of this Agreement whether in contract (including under an indemnity), tort (including negligence), statute or any other cause of action is limited to the greater of
 - 14.6.1. the Fees paid to us in the first six months after the Start Date; and
 - 14.6.2. \$10,000.

15. Third party IP infringement claims

- 15.1. Subject to clause 14, where a claim is made by a third party against you that the supply of the Services under this Agreement infringes the Intellectual Property Rights of that third party, we will pay any amounts finally awarded by a court to that third party or that is otherwise settled by us with that third party, provided that you allow us or our nominees to have complete and sole authority in directing any defence, compromise or settlement of the claim.
- 15.2. Clause 15.1 does not apply to any claims that arise out of:

- 15.2.1. your use of the relevant Service in breach of this Agreement;
 - 15.2.2. the combination of the relevant Service with services, software or hardware that were not provided by us (including Your Pre Existing IPR);
 - 15.2.3. your failure to use the most up to date version of the relevant Service and/or Software made available to you by us;
 - 15.2.4. any modification of the relevant Service by a third party that has not been authorised by Dash Pivot;
 - 15.2.5. the Third Party Material; and/or
 - 15.2.6. Your Data.
- 15.3. If a claim referred to in clause 15.1 is made, or we consider that such a claim is likely, then we may (without any liability to you), at our option and expense:
- 15.3.1. procure for you the right to continue using the relevant Service;
 - 15.3.2. replace or modify the relevant Service so that it becomes non infringing; and/or
 - 15.3.3. terminate this Agreement and/or the infringing item and reimburse you for any pre paid Fees for the relevant Services that have not yet been supplied or delivered to you.
 - 15.3.4. This clause 15 sets out our entire liability, and your sole remedy, with respect to a third party claim referred to in clause 15.1.

16. Suspension or termination of the Services

- 16.1. Without limiting clause 15, at any time and without notice to you, we may limit, suspend or terminate the Services (or any part of them) if, in our reasonable opinion:
- 16.1.1. you are in breach of clause 6.3;
 - 16.1.2. there is an emergency;
 - 16.1.3. the supply by us or use by you of the Services (or any part of them) is, or will be, unlawful; or
 - 16.1.4. the Services or their provision (in whole or in part) may cause personal injury, death or damage to property.
- 16.2. By notice to you, we may (without any liability) immediately limit, suspend or terminate the Services (or any part of them) if you:
- 16.2.1. fail to pay us the Fees on time; or
 - 16.2.2. are, or we reasonably believe that you are or will become, insolvent or otherwise unable to pay your debts as and when they fall due.
- 16.3. You may suspend the Services on notice to us for a minimum period of one month and a maximum period of six months.

17. Termination

- 17.1. A party may terminate this Agreement immediately on notice to the other party if:
 - 17.1.1. the other party breaches a material term of this Agreement and that breach is incapable of remedy;
 - 17.1.2. the other party breaches a material term of this Agreement and fails to rectify such breach within 15 days' of the first party's notice to the other party specifying the breach;
 - 17.1.3. the other party is insolvent or otherwise unable to pay its debts as and when they fall due; or
 - 17.1.4. the first party has an express right to do so under this Agreement.
- 17.2. If a Service or this Agreement is terminated for any reason, then:
 - 17.2.1. you must immediately cease use of the relevant Service and/or Software;
 - 17.2.2. you must pay us all outstanding Fees by the due date;
 - 17.2.3. unless the Agreement was terminated for our material breach, we will not refund any pre paid Fees for Services that have not yet been delivered; and
 - 17.2.4. any rights accrued by a party prior to termination will survive termination.
- 17.3. Clauses 8, 9, 11, 13, 14, 17, 18, 19, 20 and 21, each indemnity and any other clause that, by its nature is intended to survive termination or expiry, survives the termination (for any reason) or any expiry of this Agreement.

18. Disputes

- 18.1. Each party agrees to:
 - 18.1.1. follow the process set out in clause 18.2 before commencing proceedings against the other party (except for urgent injunctive or declaratory relief); and
 - 18.1.2. continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.
- 18.2. If a dispute arises between the parties that cannot be resolved promptly, then:
 - 18.2.1. either party may notify the other party of a formal dispute by providing written notice (Dispute Notice); and
 - 18.2.2. each party will nominate a senior executive to meet within seven days of the Dispute Notice (or another agreed period) to try and resolve the dispute.

19. Notices

- 19.1. All notices and consents:
 - 19.1.1. from us to you must be sent to the address or email address specified by you on the online form or as updated by you on notice to us from time to time; and
 - 19.1.2. from you to us must be sent to the contact details provided on the Website for this purpose.

19.2. Notices sent:

- 19.2.1. by email are taken to be received when the email is capable of being retrieved by the addressee at its nominated email address;
- 19.2.2. by hand are taken to be received when delivered; and
- 19.2.3. by post are taken to be received three Business Days after posting (or seven Business Days after posting if sent to or from a place outside the United Kingdom).

20. General

- 20.1. This Agreement constitutes the entire agreement between the parties about its subject matter. The laws applicable in New South Wales govern this Agreement. Despite the foregoing, the parties expressly exclude the operation of the Sales of Goods Act (Vienna Convention) Act 1986 (NSW). The parties submit to the non exclusive jurisdiction of the courts of that state and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.
- 20.2. We may vary the terms of this Agreement from time to time on reasonable notice to you. If you do not agree to the changes, you may terminate this Agreement. By continuing to use the Services after such variations take effect, you are taken to have accepted the variations.
- 20.3. We may assign or novate this Agreement, in whole or part, to a Related Body Corporate without notice to you. Other than as set out in this clause, no party may assign or novate this Agreement without the other party's prior written consent, with such consent not to be unreasonably withheld or delayed.
- 20.4. If an event beyond a party's reasonable control (Force Majeure Event) causes that party to be unable to perform or be delayed in performing an obligation under this Agreement (other than, in your case, an obligation to pay the Fees), that obligation is suspended for so long as it is prevented or delayed by the Force Majeure Event.
- 20.5. A right created by this Agreement may only be waived in writing by the party giving the waiver. Any failure to exercise or any delay in exercising a right or remedy provided by this Agreement or by law does not waive the right or remedy. A waiver of a breach of this Agreement does not waive any other breach.
- 20.6. If any provision of this Agreement is held by a court to be invalid or unenforceable, the remainder of this Agreement will otherwise remain in full force, apart from such provision which will be regarded as having been deleted.
- 20.7. Neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

21. Definitions and interpretation

- 21.1. In this Agreement:

Authorised User means the employees you have authorised to use the Services. For clarity, you must not authorise any person other than a person who is your employee to access or use the Services without our prior written consent.

Business Day means any day other than a Saturday, Sunday or public holiday in New South Wales.

Confidential Information means:

- (a) all confidential, non public or proprietary information, regardless of how the information is stored, delivered or exchanged between the parties or their representatives (or in our case, provided by us, our Related Bodies Corporate and any other entity controlled by us (directly or indirectly), and in your case provided by your Related Bodies Corporate) before, on or after the Start Date relating to the business, technology or other affairs of the person disclosing the Confidential Information (Discloser); and
- (b) in our case, includes all information disclosed by a third party which we are required to keep confidential, but does not include information:
 - (i) that is or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Discloser;
 - (ii) which the person receiving the Confidential Information (Recipient) can prove by contemporaneous written documentation was: (i) already known to it at the time of disclosure by the Discloser (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or (ii) independently developed by the Recipient without reference to the Confidential Information of the Discloser; or
 - (iii) which the Recipient acquires from a source other than the Discloser or any of its representatives, where such source is entitled to disclose it on a non confidential basis.

Fees means the fees and charges for the Services set out on the Website or as otherwise provided by us to you, as reviewed or amended from time to time in accordance with clause 7. **Intellectual Property Rights** means all current and future registered rights in respect of copyright, designs, circuit layouts, trademarks, trade secrets, domain names, database rights, know how and Confidential Information and any other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967, excluding patents.

Online Service means our cloud based construction project and document management software service, as further described in our services description available on the Website. Related Body Corporate has the meaning given to it in the Corporations Act 2001 (Cth).

Service Level Agreement means our service level agreement available on the Website. **Service Levels** mean, in respect of the Services, the service levels set out in the Service Level Agreement.

Service Rebates mean, in respect of the Service Levels, the service rebates set out in the Service Level Agreement.

Services means the Online Services and Support Services.

Support Services means the support services described in our Service Level Agreement, which may include access to live chat and access to training webinars through the Website, and access to tutorials through the Online Service.

Website means our website located at <https://sitemate.com/> .

Your Data means all information and data that you input into the Online Service, and all information and data that is processed or generated by the Online Service solely in respect of you. Your Pre Existing IPR means any material you provide or otherwise make available to us that contains any Intellectual Property Rights which were developed independently of this Agreement by you or a third party.

21.2. In this Agreement:

21.2.1. a reference to a person includes a natural person, corporation, statutory corporation, partnership, government agency, the Crown and any other organisation or legal entity and their permitted novates, permitted assignees, personal representatives, executors, administrators and successors;

21.2.2. the singular includes the plural, and vice versa; and

21.2.3. "Includes", "including", "for example", "such as" and similar terms are not words of limitation.