



## Sitemate Customer Services Agreement

Last updated: 4 December 2024

**PLEASE REVIEW THIS AGREEMENT CAREFULLY. BY ACCEPTING THIS AGREEMENT OR USING ANY OF THE SERVICES, YOU AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS.**

**BY ACCEPTING THIS AGREEMENT, BY (1) CLICKING A BOX INDICATING ACCEPTANCE, (2) EXECUTING AN SOW THAT REFERENCES THIS AGREEMENT, OR (3) USING FREE SERVICES, YOU AGREES TO THE TERMS OF THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH AN ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.**

A reference to "you" or "your" is a reference to the Customer individual or entity that enters into this Agreement, and a reference to "Sitemate", "we", "us" or "our" is a reference to Sitemate Services Pty Ltd (ABN 78 606 972 007) and/or Sitemate Services UK Ltd (Company number: 14874947) and/or their subsidiaries, group companies and other affiliates.

The Services may not be accessed for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purposes.

### **1. Term and Renewal**

Subject to clause 3, this Agreement:

- (a) 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
- (b) automatically renews for successive periods equal to the Initial Term at the expiry of the then current term unless either party notifies the other party in writing at least (7) 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 provided**

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, but we will not materially reduce the level of availability, functionality or security of the Services during the term of this Agreement. 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**

(a) You:

(i) acknowledges and agree that each Authorised User is required to have login details and a password to access the Online Service;

(ii) must ensure that each Authorised User keeps their login details and password safe and does not disclose such information to any third party; and

(iii) are responsible for ensuring that each Authorised User selects a secure password.

(b) You may:

(i) increase the number of Authorised Users and such change (including additional Fees) will be effective immediately; and

(ii) decrease the number of Authorised Users to the base of the applicable volume tier, by providing notice to us, and such change will be effective at the next billing renewal date.

### **5. Software**

#### **5.1 Software forms part of the Services**

This clause 5 applies to any Software that we may supply to you as part of the Services. In this instance, the Software is taken to be part of the Services for the purposes of this Agreement. For clarity, clause 6.1 and clause 6.2 apply equally to the Software.

#### **5.2 Grant of licence**

Subject to 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 your use of the Services.

#### **5.5 Updates**

We may provide you with updates to the Software from time to time ("Updates"). If so, any Updates provided form part of the Software.

#### **5.6 No other rights**

You agree that:

(a) you must not licence, sub-licence, assign, transfer or dispose of, the Software, in whole or in part, to any person without our prior written consent, unless otherwise provided in this Agreement;

(b) you have no rights to the Software (including Updates) except as expressly granted and set out in this Agreement; and

(c) as between the parties, all rights (including Intellectual Property Rights), title and interest in and to the Software and the Services and accompanying documentation and other materials, including Updates and modifications to the Software, belong to us.

### **6. General commitments**

#### **6.1 Our obligations**

(a) We will:

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- (i) provide the Services to you with due care, skill and attention, but do not warrant that the Services will be 100% error-free, fault-free or continuous, virus-free, 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. We will not intentionally introduce viruses into the Service;
- (ii) ensure that all work we perform in connection with the Services is carried out by competent and suitably qualified personnel; and
- (iii) implement and maintain commercially reasonable and industry-standard administrative, physical, organisational and technical safeguards designed to prevent unauthorised use, access, processing, destruction, loss, alteration, or disclosure of Customer Data.

## **6.2 Your obligations**

(a) You:

- (i) 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;
- (ii) 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
- (iii) are responsible for the accuracy, completeness and security of any data or information, including Your Data, that you enter into the Online Service.

(b) You must not and must ensure that your Authorised Users do not:

- (a) challenge the validity of our rights in and to the Services (including the underlying software used by us to provide the Services);
- (b) permit the access or use of the Services for any purpose other than the intended use of the Software;
- (c) sell or otherwise make the Services available to any person outside the terms of this Agreement;
- (d) copy or otherwise reproduce the Services (including the underlying software used by us to provide the Services);
- (e) translate, adapt, vary, tamper with, enhance or modify the Services (including the underlying software used by us to provide the Services);
- (f) disassemble, decompile, reverse engineer or create derivative works from the Services (including the underlying software used by us to provide the Services);
- (g) derive or attempt to derive the source code or any internal data file generated by the Services;
- (h) 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);
- (i) combine or incorporate the Services with or in any other software or service without our prior written consent;
- (j) access, or attempt to gain access to the underlying infrastructure, systems and software used by us to provide the Services (or any part of them) or parts of the Services that are not supplied by us under this Agreement;
- (k) use the Services in an unlawful manner, or otherwise to 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 menace or harass any person;
- (l) 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;
- (m) intentionally 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

(n) 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).

### **6.3 Customer warranty**

You warrant that:

- (a) you have the right and authority to enter into this Agreement;
- (b) you have not relied on any representations or warranties by us other than those expressly set out in this Agreement; and
- (c) 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.

### **6.4 Access to Customer sites and systems**

You agree to provide us with access to the 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 and shall prevent unauthorised access to your sites and systems through our own networks or systems.

### **6.5 Disclaimer**

We will provide the Services with due care, skill and attention. We hereby disclaim any and all warranties, express or implied, including but not limited to the warranties of merchantability, accuracy and fitness for a particular purpose in relation to the Services. Without limiting the above, we do not warrant that the Services will be error-free nor that they will meet any specified Service Level, nor that they will operate without interruptions or downtime. No advice or information, whether oral or written, obtained by you will create any warranty. We do not warrant, endorse, guarantee or assume responsibility for any third-party product or any Distribution Channel. To the extent this disclaimer conflicts with applicable law, the scope and duration of any applicable warranty will be the minimum permitted under that law.

its obligations under it.

## **7. Fees and Taxes**

### **7.1 Fees**

You agree to pay us the Fees in advance. All Fees paid by you are non-refundable, except as required by law.

### **7.2 Overdue payments**

If you fail to pay the Fees by the due date, we reserve the right to charge interest that shall accrue at a rate of one and a half percent (1.5%) per month, but in no event greater than the highest rate of interest allowed by law, of the unpaid amount from the period of the due date until the date payment is received in full. You acknowledge and agrees that we may report non-payment, past-due receivables, and other trade information to corporate credit reporting and risk assessment agencies.

### **7.3 Disputed Fees**

(a) Disputes in relation to Fees must be dealt with in accordance with this clause 7.3. You must notify us in writing within five (5) days if you dispute any portion of any Fees paid or payable by you under this Agreement ("Disputed Fee Notice"), and we will work together with you to resolve the applicable dispute promptly.

(b) You are not obliged to pay any amount that is the subject of a genuine dispute set out in a written Disputed Fee Notice until the dispute is resolved and a new invoice is issued for the resolved amount, but is required to pay all other non-disputed amounts by the due date.

(c) If you do not provide us with a Disputed Fee Notice within this five (5) day period, you will not be entitled to dispute any fees paid or payable by you.

### **7.4 Taxes**

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(a) Except where applicable law requires otherwise, all Fees or other amounts are exclusive of taxes, duties, levies, tariffs and other governmental charges (and any penalties, interest, and other additions thereto) ("Taxes"). You must pay all Taxes and any related interest and/or penalties resulting from any payments made in connection with this Agreement.

## **7.5 Adjustments to the Fees**

(a) 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 (7) 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 18 of this Agreement. Otherwise, if you continue using the Services on or after receiving such notice, you are taken to have agreed to the adjustment on and from the effective date of such adjustment.

(b) 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.

## **8. Confidentiality**

### **8.1 Value and ownership**

The Recipient acknowledges that the Confidential Information of the Discloser which it may receive or otherwise be exposed to in the course of exercising its rights or performing its obligations hereunder has commercial value and is the property of the Discloser.

### **8.2 General obligations**

The Recipient must keep the Confidential Information confidential and take all reasonable steps necessary to safeguard the confidentiality of the Confidential Information from unauthorised use, access, or disclosure using at least the degree of care it uses to protect its own Confidential Information, but in no event less than a reasonable degree of care.

### **8.3 Particular obligations**

The Recipient may use the Confidential Information only for the purposes of performing the Recipient's obligations or exercising and enforcing the Recipient's rights under this Agreement.

### **8.4 Disclosure**

The Recipient must not disclose the Discloser's Confidential Information to any person without the Discloser's prior written consent, except:

(a) to its employees, subcontractors, personnel and consultants who are required to have access to such Confidential Information in connection with the exercise of the Recipient's rights or the performance of the Recipient's obligations under and in accordance with this Agreement, 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 no less onerous than the terms set out in this clause 8;

(b) to its professional advisers (e.g. lawyers, accountants, financial advisors and financing sources), provided however that any and all such professional advisers are bound by agreements or ethical, professional or fiduciary duties to treat, hold and maintain such Confidential Information in a manner that is consistent with this Agreement;

(c) to the extent required by law, any regulatory authority, or a stock exchange on which the Discloser's shares are listed; or

(d) in the good-faith belief that such disclosure is reasonably necessary to:

(i) comply with legal processes, applicable laws or governmental requests;

(ii) enforce or exercise rights under this Agreement;

(iii) respond to claims that any content violates the rights of third parties; or

(iv) act on any instructions or directions the Discloser provides to the Recipient.

### **8.6 Return of Confidential Information**

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On demand by the Discloser, the Recipient must deliver to the Discloser all the Confidential Information of the Discloser in the Recipient's possession or control, but the foregoing does not apply to Confidential Information of the Discloser that the Recipient requires in order to perform its obligations under this Agreement or is otherwise entitled to retain.

## **8.7 Survival**

This clause 8 survives after the termination or expiry of this Agreement, or for as long as the Confidential Information is retained by the Recipient pursuant to clause 8.6, whichever is longer.

## **9. Privacy**

(a) You acknowledge and agree, and must 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 process, use and disclose personal information about you, your Authorised Users and such other persons in accordance with our Privacy Policy (available on the Website); and

(b) 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 (including but not limited to those in Australian Privacy Principle 5.1 and/or Article 5(1)(d) of the GDPR), in respect of the disclosure to and use by us of the personal information provided by or on behalf of you to us.

## **10. Customer Data**

(a) The parties:

(i) acknowledged that you may enter Customer Data into the Online Service;

(ii) as between the Parties, agree that you own and are solely responsible for the accuracy and completeness of the Customer Data; and

(iii) acknowledge that Customer Data includes the original records, as well as metadata, control records and backup duplicates.

(b) Without limiting clause 8, the Parties 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.

(c) You are solely responsible for extracting the Customer Data from the Online Service before termination or expiry of this Agreement. If you request a copy of the Customer Data after such time, will facilitate the easiest possible extraction of the Customer Data. Fees and charges may apply.

(d) You acknowledge that we may permanently delete the Customer Data after ninety (90) days from the date of termination or expiry of this Agreement. A right to erasure request can be made by you at any time and we will permanently delete all Customer Data.

## **11. Intellectual Property Rights**

### **11.1 Ownership**

Nothing in this Agreement transfers ownership in, or otherwise grants any rights in, any Intellectual Property Rights of a party.

### **11.2 Customer materials**

You grant to us a non-exclusive, non-transferrable, sub-licensable and royalty-free licence to use the Customer Pre-Existing Material and the Customer Data to enable us to perform our obligations and exercise our rights under this Agreement.

### **11.3 Feedback and Marketing**

(a) Without limiting clause 11.2, you agree that:

(i) if you provide us with any suggestions or comments for enhancements, improvements, new features or functionality or any other feedback 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

(ii) 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.

(b) 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.

## **12. Third Party Material**

We may provide you with access to data and components that are sourced from third parties as part of the Services which may integrate with, link to, be embedded within, or otherwise contain information from or about third-party products, services, activities or events ("Third Party Material"). We have no responsibility to evaluate, verify, maintain, control or take any action with respect to Third Party Material and make no representations and warranties with respect to the accuracy, title, completeness, fitness, reliability, quality, nature or any other attributes of Third Party Material. How you interact with Third Party Material and their providers is solely between you and such third party, is at your own risk, and may be subject to agreements, understandings, privacy policies, and other terms and conditions applicable to you by the providers of any accessed or used Third Party Material.

## **13. Third-party Distribution Channels**

We offer Software applications that may be made available through the App Store, Google Play or other distribution channels ("Distribution Channels"). If you obtain such Software through a Distribution Channel, you may be subject to additional terms of the Distribution Channel. This Agreement is between you and us only, and not with the Distribution Channel. To the extent that you may utilise any other third-party products and services in connection with use of the Services, you agree to comply with all applicable terms of any agreement for such third-party products and services.

## **14. Audit**

14.1. You must:

(a) maintain accurate and up-to-date records as required to document the number of Authorised Users; and

(b) 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 twelve (12) months and on at least thirty (30) days prior notice. Despite the foregoing, we may conduct an audit more than once every twelve (12) months if an audit reveals a breach of this Agreement by you.

14.2. You agree to provide us with all reasonable assistance to enable us and our third party auditors to conduct an audit pursuant to clause 14.1.

14.3. 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 20.

14.4. Your Confidential Information under this Agreement includes Confidential Information provided by you to us pursuant to this clause 14.

14.5. This clause survives for three (3) years after the termination or expiry of this Agreement.

## **15. Liability and Indemnification**

THE PARTIES ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS CLAUSE 15 IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE FEES, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF SITEMATE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET OUT HEREIN. SITEMATE HAS RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER

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TO PROVIDE THE CUSTOMER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES PROVIDED FOR IN THIS AGREEMENT.

## **15.1 Limitation of Liability**

Subject to the remainder of this clause 15 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:

- (a) personal injury or death to you resulting from our supply of the Services; and
- (b) any damage to your real or tangible property resulting from the supply of the Services.

15.2. 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.

15.3. Nothing in this Agreement operates to limit or exclude liability that cannot be limited or excluded by law, but for any such liability that cannot be excluded but can be limited, except for any breach of clause 8, our liability is limited to our choice of:

- (i) if the breach relates to goods: repairing, replacing or paying the cost of repairing or replacing goods; and
- (ii) if the breach related to services: re-supplying or paying the cost of re-supplying services.

15.4. 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.

15.5. For any liability that is not otherwise excluded or limited under clauses 15.1 and 15.2 above, but subject to clause 15.3, 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:

- (a) the Fees paid to us in the first six (6) months after the Start Date; and
- (b) \$10,000.

## **16. Third Party IP infringement claims**

### **16.1. Our Liability**

Subject to clause 15, 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. You must give us prompt written notice of any such claim, allow us the right to assume the exclusive defence and control, and cooperate with any reasonable requests assisting our defence and settlement of such a claim.

### **16.2 Rectification**

If a claim referred to in clause 16.1 is made, or if we believe that such a claim is likely, then we may, at our option and at our expense:

- (a) procure for you the right to continue using the relevant Service;
- (b) replace or modify the relevant Service so that it becomes non-infringing; and/or
- (c) 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.

### **16.3 Exclusions**

Clauses 16.1 and 16.2 do not apply to any claims that arise out of:

- (a) your use of the relevant Service in breach of this Agreement;
  - (b) the combination of the relevant Service with services, software or hardware that were not provided by us (including the Customer Pre-Existing Material);
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- (c) your failure to use the most up-to-date version of the relevant Service and/or Software made available to you by us;
- (d) any modification of the relevant Service by a third party that has been authorised by you but that has not been authorised by us;
- (e) your or any of your Authorised User's misuse of the Third Party Material; and/or
- (f) use of Customer Data.

## **16.6 Exclusive remedy**

To the extent permitted by law, this clause 16 states our entire liability and your sole and exclusive remedy with respect to infringement of third-party Intellectual Property Rights under this Agreement.

## **17. Indemnity to Sitemate**

(a) You will indemnify, defend and hold us harmless against any and all claims, actions, demands, direct loss, damage, liability, costs or expenses (including legal fees) arising out of or in connection with:

- (i) the Customer Data which you provide or otherwise makes available to us;
- (ii) your or your Authorised User's misuse of the Third Party Material;
- (iii) your Pre-Existing Material which you provide or otherwise make available to us;
- (iv) your violation of any law (not caused by our acts or omissions) including the unlawful, negligence or wilful action or inaction of you, your agent, or any other person employed by, associated with, or working for you; or
- (v) any breach by you of this Agreement including any of your obligations or representations and warranties hereunder.

(b) Your obligation to indemnify us under this Agreement shall be reduced proportionally to the extent that we or any third party caused or contributed to the loss, damage, liability, costs or expenses and have failed to mitigate their loss.

## **18. Termination**

### **18.1. Termination for cause**

Either party may terminate this Agreement, in whole or in part, immediately on notice in writing to the other party if the other party:

- (a) commits a breach of a material term of this Agreement and that breach is incapable of remedy;
- (b) breaches a material term of this Agreement that is capable of remedy, but fails to rectify that breach within fifteen (15) days of a written notice specifying the breach;
- (c) is Insolvent or becomes the subject of a petition in bankruptcy, receivership, liquidation, or assignment for the benefit of creditors, provided however that such termination shall not affect the party's obligation to pay any outstanding fees due; or
- (d) has an express right to do so under this Agreement.

### **18.2. Consequences of Termination**

(a) If either party terminates this Agreement you must (to the extent applicable to the terminated part):

- (i) immediately cease use of the relevant Service and/or Software;
- (ii) pay us all outstanding Fees by the due date;
- (iii) unless the Agreement was terminated for Sitemate's material breach of the Agreement, we will not refund any pre-paid Fees for Services that have not yet been delivered;
- (iv) at your own expense, and subject to any document retention requirements you have at law, return to us, within five (5) Business Days of the date of termination or expiry, all copies of:
  - (A) the relevant Software and documentation provided to you; and
  - (B) our Confidential Informationthat are in your possession or control.

(b) Clauses 8, 9, 11, 14, 15, 17, 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), any suspension or any expiry of this Agreement.

## **19. Force Majeure**

### **19.1 Effects of Event**

Neither Party will be deemed in breach hereunder for any cessation, interruption, or delay in the performance of its obligations due to causes beyond its reasonable control, including but not limited to earthquake, flood, or other natural disasters, an act of God, labour controversy, civil disturbance, terrorism, war (whether or not officially declared) or the inability to obtain sufficient supplies, transportation, or other essential commodity or service required in the conduct of its business, or any change in or the adoption of any law, regulation, judgement, or decree ("Force Majeure Event"). That obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event.

### **19.2 Obligation of affected party**

The party affected by the Force Majeure Event must notify the other party of the Force Majeure Event as soon as reasonably practicable and must take all reasonable steps to limit the effects of the Force Majeure Event.

## **20. Disputes**

20.1. Each party agrees to:

- (a) follow the process set out in clause 20.2 before commencing proceedings against the other party (except for urgent injunctive or declaratory relief); and
- (b) continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

20.2. If a dispute arises between the parties that cannot be resolved promptly, then:

- (a) either party may notify the other party of a formal dispute by providing written notice ("Dispute Notice"); and
- (b) each party will nominate a senior executive to meet within seven (7) days of the Dispute Notice (or another agreed period) to try and resolve the dispute.

## **21. Miscellaneous**

### **21.1 Governing Law, Venue, Jurisdiction**

This Agreement and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), is governed by the law in force in New South Wales, Australia, including its statutes of limitations, without regard to any borrowing statute that would result in the application of the statute of limitations of any other jurisdiction. Each party submits to the exclusive jurisdiction and venue of the State and Federal courts of New South Wales, Australia and the parties hereby consent to the personal jurisdiction of these courts.

### **21.2 Entire Agreement**

The parties acknowledge that this Agreement constitutes the entire agreement between the Parties about its subject matter and supersedes all previous and contemporaneous agreements, understandings and negotiations on that subject matter. The terms of this Agreement will govern relations between the Parties to the exclusion of any other terms, conditions, warranties or representations written or oral, express or implied, even if contained in any of your documents which purport to provide that your terms will prevail.

### **21.3 Variation and Waiver**

A provision of this Agreement or a right created under it, may not be waived or varied unless assented to in writing by both parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given, and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or

delay by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

## **21.4 Assignment**

We may assign or novate this Agreement to a Related Body Corporate on notice to you. Other than as set out in the foregoing, neither party may assign nor novate this Agreement without the other party's prior written consent (such consent not to be unreasonably withheld or delayed).

## **21.5 Notices**

All notices, consents and forms of communication in connection with this Agreement must be in writing and delivered by hand or:

- (a) from us to you sent to the address or email address specified by you on the online form or as updated by you on notice in writing to us from time to time; and
- (b) from you to us sent to the contact details provided on the Website for this purpose.

## **20.6 When Effective – Notices**

A notice will take effect from the time it is received unless a later time is specified. Notices sent by:

- (a) hand, are taken to be received when delivered;
- (b) post, are taken to be received three (3) days after posting if sent via domestic postage, or seven (7) days after posting if sent via international postage; and
- (c) email, are taken to be received at the time when the email is capable of being retrieved by the addressee at its nominated email address.

## **21.7 No Agency Relationship**

Nothing in this Agreement will be taken to constitute either party as an employee, agent, partner or joint venturer of the other party, nor is either party authorised to represent itself as acting, or to incur any obligation, on behalf of the other party.

## **21.8 Variation**

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.

## **21.9 Invalidity and Severability**

(a) A word or provision must be read down if:

- (i) this Agreement is void, voidable, or unenforceable if it is not read down;
- (ii) this Agreement will not be void, voidable or unenforceable if it is read down; and
- (iii) the provision is capable of being read down.

(b) A word or provision must be severed if:

- (i) despite the operation of clause 21.9(a), the provision is void, voidable or unenforceable if it is not severed; and
- (ii) this Agreement will be void, voidable or unenforceable if it is not severed.

The remainder of this Agreement has full effect even if clauses 21.9(b)(i) or 21.9(b)(ii) apply.

## 22. Definitions and Interpretation

### 22.1 Definitions

In this Agreement:

**Affiliate** means, regarding you, any entity over which you have direct or indirect control.

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

**Business Day** means any day except a Saturday, a Sunday or a public holiday.

**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 Discloser; and

(b) in our case, includes all information disclosed by a third party that we are required to keep confidential.

But Confidential Information does not include information:

(a) 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;

(b) which the 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

(e) 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.

**Consequential Loss** means:

(a) indirect, special, incidental, consequential, punitive or other indirect loss or damage;

(b) a loss of opportunity or goodwill;

(c) a loss of revenues;

(d) a loss of profits;

(e) a loss of anticipated savings or business; and

(f) a loss of, or corruption to, data,

and any costs or expenses incurred in connection with the foregoing.

**Customer 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.

**Customer Group** means you and your Related Bodies Corporate and you, your Affiliates and any other entity owned by you.

**Customer Pre-Existing Material** means any material you provide or otherwise makes available to us that contains any Intellectual Property Rights which were developed independently of this Agreement by you or a third party.

**Discloser** means the party disclosing Confidential Information.

**Emergency** means any actual or imminent occurrence of an unforeseen circumstance, event or change beyond either party's control that presents a real, immediate threat to the proper performance of essential functions or normal activities, or will likely result in material loss or damage to property, bodily injury or loss of life, and that necessitates immediate action to remedy harm.

**Fee** means the fees and charges for the Services and/or Software, in each case.

**Force Majeure Event** is defined in clause 19.

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

**Online Service** means our cloud-based construction project and document management software services, as further described in our services, systems and platform descriptions available on the Website.

**Receiver** includes a receiver or receiver and manager.

**Recipient** means the party receiving Confidential Information.

**Related Body Corporate** means a body corporate that is a holding company of another body corporate, or that is a subsidiary of another body corporate; or that is related to another body corporate by virtue of one body corporate being a subsidiary of the other or both being subsidiaries of the same body corporate.

**Service Level Agreement** means our service level agreement (SLA) available on the Website.

**Service Levels** means, in respect of the Support Services set out in the Service Level Agreement.

**Service Rebates** means the service rebates set out in the Service Level Agreement.

**Software** means the software identified as such in the relevant SOW.

**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.

**Third Party Material** is defined in clause 12.

**Website** means our website located at [www.sitemate.com](http://www.sitemate.com) or any other web domain owned by us.

## 22.2 Interpretation

In this Agreement, unless the context indicates a contrary intention:

- (a) (documents) a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;
- (b) (references) a reference to a party, clause or paragraph is to a party, clause or paragraph to or of this Agreement;
- (c) (headings) clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this Agreement;
- (d) (person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (e) (including) including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (f) (corresponding meanings) a word that is derived from a defined word has a corresponding meaning;
- (g) (singular and plural) the singular includes the plural and the plural includes the singular;
- (h) (time and date) a reference to a time or date is to the time and date in Sydney, New South Wales;

(i) (joint and several) an agreement, representation, covenant, warranty, right or obligation:

(i) in favour of two or more persons is for the benefit of them jointly and severally; and

(ii) on the part of two or more persons binds them jointly and severally;

(j) (replacement bodies) a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and

(k) (Australian currency) a reference to dollars or \$ is to Australian currency.

## **22.3 Construction**

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.

## **22.4 Timing of acts or things**

(a) If the time for doing any act or thing required to be done under this Agreement or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing done under this Agreement is done after 5 pm on a day, it is taken to have been done on the following Business Day.

## **Territory-Specific Terms**

The following provisions apply only with respect to Customers domiciled in the specific territory (or territories) identified. To the extent of a conflict among any territory-specific provision below and the provisions of the Agreement Terms and Conditions set out above, the territory-specific provision(s) will control to the extent of such conflict. In all other respects, the Agreement Terms and Conditions remain as written unless expressly modified by a territory-specific provision below.

### **United Kingdom**

1. This provision shall replace clause 21.1 (Governing Law, Venue, Jurisdiction):

This Agreement and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), is governed by the law in force in England and Wales, including its statutes of limitations, without regard to any borrowing statute that would result in the application of the statute of limitations of any other jurisdiction. Each party submits to the exclusive jurisdiction and venue of the courts of England located in London and the parties hereby consent to the personal jurisdiction of these courts.