

# SITETRACKER

## MASTER SUBSCRIPTION AGREEMENT

Customer Full Legal Name:	
Customer Address:	

This Master Subscription Agreement (this “**Agreement**”) governs your access to and use of services provided by Sitetracker, Inc. (“**Sitracker**”), with offices at 491 Bloomfield Avenue, Suite 301, Montclair, New Jersey, USA and the party named above and shall be effective as of the later date of execution between the Parties as shown on the signature page below (“**Effective Date**”).

### 1. DEFINITIONS

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Agreement**” means this Master Subscription Agreement and any exhibits, schedules and addenda hereto.

“**Beta Services**” means Sitetracker services that are not generally available to customers.

“**Customer**” or “**you**” means the customer named above and its Affiliates.

“**Customer Data**” means (a) all information, data and materials owned or controlled by Customer that are furnished to Sitetracker in connection with the Subscription Services, uploaded to the Subscription Services, or otherwise made available to Sitetracker pursuant to this Agreement, and (b) any results, data, and reports generated via the Subscription Services incorporating or based on the above.

“**Documentation**” means Sitetracker’s then-current technical and functional documentation for the Subscription Services as made available by Sitetracker to Customer.

“**Intellectual Property Rights**” means all intellectual and industrial property rights in any jurisdiction worldwide, including copyrights, patents, trademarks, trade names, trade secrets, mask work rights, moral and contract rights, and all registrations, applications, renewals, extensions, continuations, divisions or reissues thereof.

“**Malicious Code**” means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses.

“**Non-Sitracker Applications**” means Web-based, mobile, offline or other software functionality that interoperates with a Subscription Service, that is provided by Customer or a third party.

“**Order Form**” means an ordering document specifying Customer’s purchase of subscription(s) that is entered into between Customer and Sitetracker or any of its Affiliates, including any addenda and supplements thereto. By entering into an Order Form hereunder, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“**Professional Services**” means certain professional services offered by Sitetracker, including services related to configuration and optimization of the Subscription Services, change management and business practice optimization, and education and training.

“**Salesforce Platform**” means the hosted platform-as-a-service made available by Salesforce, inc. (“**Salesforce**”).

“**Salesforce TOUs**” or “**TOUs**” means the pass-through terms found in the “SFDC Terms of Use (\*Applies to OEM Partners)” link located at <https://www.salesforce.com/company/legal/agreements>, or such successor URL as may be published by Salesforce from time to time. Any reference to “Reseller” in the Salesforce TOUs is

deemed to be a reference to Sitetracker and any reference to “SFDC” is deemed to be a reference to Salesforce.

“**Sitracker Property**” means the Subscription Services, Professional Services, Services Integrations, and all other software applications, software code, software tools, platforms, architecture, technology, work products, know-how, trade secrets, processes, methodologies, designs, templates, content, files and other intellectual property developed by Sitetracker, and any improvements, updates, changes, modifications, or enhancements thereto.

“**Services Integrations**” means any applications, integrations, APIs, or other software or systems used or developed by Sitetracker to integrate the Subscription Services with Customer systems or Non-Sitracker Applications.

“**Statement of Work**” or “**SOW**” means the Statement of Work entered into between Sitetracker and Customer that outlines business parameters and other matters regarding the Professional Services that Customer has engaged Sitetracker to provide.

“**Subscription Services**” means: (i) the Sitetracker software application or applications ordered by Customer under an Order Form, and (ii) all new versions, updates, revisions, enhancements, improvements, derivatives and modifications of the foregoing.

“**Updates**” are any modifications, improvements, bug fixes, or other new versions of the Subscription Services made available as part of the Subscription. Sitetracker will make all Updates available to Customer as and when they are available to other Subscription Service users.

“**User**” means an individual who is authorized by Customer to use the Subscription Service, for whom Customer has ordered the Subscription Service, and to whom Customer (or Sitetracker at Customer’s request) has supplied a user identification and password. Users may include, for example, employees, consultants, contractors and agents of Customer, and third parties with which Customer transacts business.

## **2. SUBSCRIPTION ACCESS AND USE OF SUBSCRIPTION SERVICES**

**2.1. Subscription Access Grant.** Sitetracker grants Customer a limited, non-transferable, non-exclusive right during the Term (as defined in the “Term and Termination” section below) for Users to use and access the Subscription Services (such access, the “**Subscription**”).

**2.2. Users.** Customer will immediately notify Sitetracker if (a) a credential issued to a User (i.e. user ID and password) is compromised or improperly disclosed, or (b) the User assigned to a credential no longer requires access to the Subscription Services. Any suspected use of the Subscription Services by Customer or Users that in Sitetracker’s reasonable judgment threatens the security, integrity or availability of Subscription Services and(or) breaches this Agreement may result in Sitetracker’s immediate suspension of the Subscription Services, however Sitetracker will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such violation or threat prior to any such suspension.

**2.3.** Unless otherwise specified, (a) the Subscription Services may not be accessed by more than that number of Users as specified on the Order Form, (b) a User’s credential may not be shared with any other individual, and (c) a User’s credential may be reassigned to a new individual replacing one who no longer requires ongoing use of the Subscription Services.

**2.4. Usage Restrictions.** Customer will not (a) make the Subscription Services available to, or use any Subscription Services for the benefit of, anyone other than the Users, or for any purpose other than Customer’s internal business purposes as permitted hereunder, (b) sell, resell, license, sublicense, distribute, rent or lease the Subscription Services, or include Subscription Services in a service bureau or outsourcing offering, (c) use the Subscription Services or Non-Sitracker Applications to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Subscription Services or Non-Sitracker Applications to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Subscription Services or third-party data contained therein, (f) attempt to gain unauthorized access to the Subscription Services or their related systems or networks, (g) permit direct or indirect access to Subscription Services (including

without limitation via connection/integration with any of its internal and/or third-party applications, programs, or technology), or use of Subscription Services, in contravention or absence of any necessary permissions, consents or use rights, or use the Subscription Services to access or use any of Sitetracker's intellectual property except as expressly permitted under this Agreement, an Order Form, or the Documentation, (h) modify or create derivative works based on the Subscription Services or any part, feature, function or user interface thereof, (i) copy the Subscription Services or any part, feature, function or user interface thereof except as expressly permitted by the Documentation, (j) frame or mirror any part of the Subscription Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes as permitted hereunder or as permitted in the Documentation, and (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Subscription Services, or access it to (1) build a competitive product or service or to benchmark with a non-Sitracker product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Subscription Services, (3) copy any ideas, features, functions or graphics of the Subscription Services, or (4) determine whether the Subscription Services are within the scope of any patent.

**2.5. Usage Limits Review.** Subscription Services are subject to usage limits specified in Order Forms and Documentation. Sitetracker may remotely review Customer's use of Subscription Services, and on Sitetracker's written request, Customer will provide reasonable assistance to verify Customer's compliance with such usage limits. If Customer's use of Subscription Services exceeds a contractual usage limit, Sitetracker will notify Customer, and Customer will reduce its usage so that it conforms to that applicable limit. If Customer is unable or unwilling to abide by such contractual usage limit after ten (10) business days from Sitetracker's initial notice on the issue of usage limit, Customer agrees to execute an Order Form for additional quantities of the applicable Subscription Services promptly upon Sitetracker's request or pay any invoice for excess usage in accordance with the "Invoices" section below.

**2.6. Order Forms.** Subscriptions ordered by Customer shall be listed in the Order Form. Each Order Form will specify the specific subscriptions ordered, and the fees and payment terms for use of the subscriptions. Each Order Form during the Term is governed by the terms of this Agreement and in the event of a conflict or discrepancy between the terms of an Order Form and the terms of this Agreement, this Agreement shall govern except as to which specific subscriptions were ordered, the subscription term for the order, and the fees, currency and payment terms for the order, for which the Order Form shall govern. Except as otherwise specified in an Order Form, fees are based on services purchased and not actual usage, payment obligations set forth in an Order Form are non-cancelable, fees paid are non-refundable, and the number of Users cannot be decreased during the relevant subscription term stated on the Order Form.

### **3. MAINTENANCE AND SUPPORT**

**3.1. General.** The following are included in the Subscription:

**3.1.1. Customer Support, Upgrades, and Updates.** Sitetracker will, at no additional charge, provide Customer Support, Upgrades, and Updates for the Subscription Services as detailed in the Customer Support Addendum (the "CSA") at <https://www.sitracker.com/legal/>.

**3.1.2.** Sitetracker will use commercially reasonable efforts to make the Subscription Services continuously available to Customer (subject to Salesforce Platform availability and as otherwise set forth herein).

### **4. PROFESSIONAL SERVICES AND SITETRACKER'S OTHER RESPONSIBILITIES**

**4.1. Professional Services.** Unless otherwise set forth in an Order Form, Professional Services are purchased via a mutually executed SOW. Each SOW during the Term is governed by the terms of this Agreement and in the event of any conflict or discrepancy between an SOW and the terms of this Agreement, this Agreement shall govern except as to the scope of work, fees, currency, expenses and other payment terms for the Professional Services, for which the SOW will govern.

**4.2. Subcontractors.** Sitetracker may subcontract its obligations under this Agreement, provided that (a) subcontractors are bound to confidentiality terms materially similar to the “Confidentiality” section of this Agreement, and (b) Sitetracker is responsible for subcontractors to the same extent as if it had performed the subcontracted functions ourselves.

**4.3. Security.** Sitetracker will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). Where Customer’s use of Subscription Services includes the processing of Personal Data (as defined in the DPA) from the European Economic Area (EEA), the United Kingdom, and(or) Switzerland by Sitetracker, the terms of the data processing addendum at <https://www.sitracker.com/legal/> (“DPA”) shall apply to such processing and shall be incorporated into this Agreement, provided and from the date that a copy of the DPA is signed by the Customer and sent to Sitetracker at [privacy@sitracker.com](mailto:privacy@sitracker.com) in accordance with the instructions therein.

**4.4. Beta Services.** From time to time, Customer may be invited to try services or functionality that may be made available to Customer to try at its option at no additional charge. Customer may accept or decline any such trial in its sole discretion. Beta Services are for evaluation purposes and not for production use, are not considered Services under this Agreement, are not supported, and may be subject to additional terms. Unless otherwise stated, any Beta Services trial period will expire upon the earlier of one year from the trial start date or the date that a version of the Beta Services becomes generally available. Sitetracker may discontinue Beta Services at any time in its sole discretion and may never make them generally available. Sitetracker will have no liability for any harm or damage arising out of or in connection with a Beta Service.

## **5. NON-SITETRACKER PROVIDERS**

**5.1. Salesforce Platform.** The following applies to Customer’s access and use of the Salesforce Platform via the Subscription Services:

**5.1.1. General.** The Subscription Services are developed and operate on the Salesforce Platform and are hosted by Salesforce. This Agreement entitles Customer to use the Salesforce Platform as part of the Subscription Services, and does not entitle Customer to use any other Salesforce product or service except as expressly provided in this Agreement.

**5.2. Salesforce Terms of Use.** Customer’s use of the Subscription Services and the Salesforce Platform provided as part thereof, is also governed by the terms and conditions of the Salesforce TOUs (as defined above). Unless otherwise specified herein or in an Order Form, Customer may not use Salesforce Platform subscriptions acquired under this Agreement (a) in a manner or for a purpose other than as needed to use the Subscription Services in the form provided to Customer by Sitetracker, (b) to develop new applications, (c) to create custom objects, (d) to utilize custom objects other than those delivered by Sitetracker as part of the Subscription Services or implementation of the Subscription Services, or (e) to access the Salesforce Campaigns, Leads, Opportunities, Cases, Solutions or Forecasts objects. If Customer’s access to the Subscription Services provides Customer with access to any functionality of the Salesforce Platform that is in excess of the functionality described in the applicable Documentation, Customer agrees to not access or use such functionality. Customer agrees that noncompliance with the terms set forth in this paragraph would be a material breach of this Agreement and the Salesforce TOUs.

**5.3. Acquisition of Third Party Products and(or) Services.** Sitetracker or third parties may make available third-party products or services to Customer, including, for example, Non-Sitracker Applications and other consulting services. Except as expressly provided herein regarding the Salesforce Platform, any acquisition by Customer of such non-Sitracker products or services, and any exchange of data between Customer and such non-Sitracker provider, is solely between Customer and the non-Sitracker provider, and Sitetracker does not warrant or support such non-Sitracker products or services, whether or not they are recommended by Sitetracker or designated by Sitetracker as preferred, certified or otherwise.

**5.4. Integration with Non-Sitetracker Applications.** The Subscription Services may contain features designed to interoperate with Non-Sitetracker Applications, which may be used by Customer at its own discretion. To use such features, Customer may be required to obtain access to Non-Sitetracker Applications from the providers of such Non-Sitetracker Applications, and may be required to grant Sitetracker access to Customer's account(s) on the Non-Sitetracker Applications. Sitetracker will not be deemed to be in breach of this Agreement to the extent any such Subscription Service features cease to function because the provider of the corresponding Non-Sitetracker Application, other than the Salesforce Platform, ceased to make their Non-Sitetracker Application available for interoperation with such Subscription Service features on reasonable terms.

**5.5. Non-Sitetracker Applications and Customer Data.** If Customer installs or enables a Non-Sitetracker Application for use with the Subscription Services, Customer hereby grants Sitetracker permission to allow the provider of that Non-Sitetracker Application to access Customer Data as necessarily required for the interoperation of that Non-Sitetracker Application with the Subscription Services. Sitetracker is not responsible for any processing, disclosure, modification or deletion of Customer Data resulting from access by a Non-Sitetracker Application. The Subscription Services will allow Customer to restrict Users from installing or enabling Non-Sitetracker Applications (other than the Salesforce platform) for use with the Subscription Services.

## **6. CUSTOMER RESPONSIBILITIES**

**6.1. Customer Data.** Customer is solely responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data. Sitetracker expressly disclaims any liability arising from the accuracy, quality, or legality of, or the means of acquiring, such Customer Data.

**6.2. Use and Access.** Only Users may access the Subscription Services. Customer will ensure that each User uses the Subscription Services in accordance with applicable laws and this Agreement and maintains the security of their credentials. Customer shall, and ensure that each User, use the Subscription Services in accordance with the Sitetracker Acceptable Use Policy at <https://www.sitetracker.com/legal/>.

**6.3. Internet Access.** Customer is responsible for any network or internet connectivity required to access or use the Subscription Services.

**6.4. General.** In addition to obligations identified elsewhere in this Agreement, Customer will provide access to such information, personnel and systems Sitetracker reasonably requires to support the Subscription and Subscription Services, and respond to inquiries and provide approvals promptly.

## **7. INTELLECTUAL PROPERTY OWNERSHIP**

**7.1. Customer Data.** Customer retains all right, title, and interest in the Customer Data, except as explicitly set forth herein. Customer grants Sitetracker a worldwide, royalty-free, sublicensable (solely to subcontractors in order to fulfill the purposes of this Agreement), nonexclusive license during the Term to use Customer Data solely for the purpose of providing the Subscription Services.

**7.2. Subscription Services and Services Integrations.** Except for the limited access rights granted herein, all right, title and interest in and to all Sitetracker Property is retained by Sitetracker. Notwithstanding any other term of this Agreement, Sitetracker may access and use, and shall retain all right, title and interest in aggregated, anonymized performance data analyzing Users' usage of the Subscription Services to maintain the security of and improve the Subscription Services. Sitetracker reserves to itself all rights that are not expressly granted pursuant to this Agreement.

**7.3. License by Customer to Use Feedback.** Customer grants to Sitetracker and its Affiliates a worldwide, perpetual, irrevocable, royalty free license to use and incorporate into its services any

suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Users relating to the operation of Sitetracker or its Affiliates' services.

## 8. FEES AND PAYMENT

**8.1. Invoices.** Customer will pay Sitetracker the fees as set forth in each Order Form and SOW (the "**Fees**"). Unless otherwise set forth in an Order Form, (a) Subscription Services and Customer Support Fees will be invoiced annually in advance and (b) Professional Services Fees will be invoiced in accordance with the applicable SOW. Unless otherwise set forth in an Order Form, undisputed Fees are due thirty (30) days after Customer's receipt of the applicable invoice.

**8.2. Subscription Changes.** Additional Users (in groups of five (5)) may be added to a Subscription at any time and will be invoiced upon receipt of the request, pro-rated based on the number of months before the next annual Subscription Services Fee is due.

**8.3. Late Payment.** If Customer does not pay Fees when due, Sitetracker may take any or all of the following actions: (a) charge interest on the outstanding balance at the rate of one and one half percent (1½%) per month, or the maximum amount permitted by applicable law, if less; (b) recover all costs of collection, including reasonable attorneys' fees; or (c) terminate this Agreement or suspend Customer's access to the Subscription Services following at least ten (10) days' prior written notice to Customer with opportunity to cure (notwithstanding any longer cure period for material breaches generally set forth in "Term and Termination" section below). Customer may withhold payment for portions of an invoice that it disputes in good faith, provided that it (i) informs Sitetracker of the grounds for the dispute in writing, prior to the due date, (ii) works in good faith to promptly resolve the dispute, and (iii) timely pays all undisputed Fees.

**8.4. Taxes.** The Fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If Sitetracker has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, Sitetracker will invoice Customer and Customer will pay that amount unless Customer provides Sitetracker with a valid tax exemption certificate authorized by the appropriate taxing authority. Sitetracker will calculate applicable Taxes based on the address where Customer primarily uses the Subscription Services as specified in the relevant Order Form. Customer will be responsible for self-assessing and paying any additional Taxes arising from its use of Subscription Services and Professional Services at a different address. Customer will promptly notify Sitetracker of any changes to a Customer address specified in an Order Form. Should any payment for Subscription Services and(or) Professional Services be subject to withholding tax by any government, Customer will reimburse Sitetracker for such withholding tax. For clarity, Sitetracker is solely responsible for taxes assessable against it based on its income (other than such withholding taxes), property and employees.

**8.5. Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Sitetracker regarding future functionality or features.

## 9. CONFIDENTIALITY

**9.1. "Confidential Information"** means non-public or proprietary information in any form disclosed by or on behalf of either party that (a) is marked or identified as "confidential" or with a similar designation, or (b) by its nature or the circumstances of its disclosure ought reasonably to be treated as confidential. Without limiting the foregoing, Confidential Information includes any information regarding a party's strategic plans, product roadmap, business development strategies, and technical information such as the Subscription Services/Professional Services source code and security configurations.

**9.2. Ownership and Use.** Each party (the "**Receiving Party**") may have access to the other party's (the "**Disclosing Party**") Confidential Information as a result of this Agreement.

Confidential Information is and will remain the sole property of the disclosing Party. This Agreement's terms are Confidential Information of the parties, but its existence is not. Each Receiving Party will (a) only use Confidential Information to fulfill its obligations hereunder, (b) only provide access to the Disclosing Party's Confidential Information on an "as-needed" basis to its personnel, agents, and/or consultants who are bound by obligations materially similar to this section, and (c) maintain such Confidential Information using methods at least as protective as it uses to protect its own information of a similar nature, but in no event using less than a reasonable degree of care. Subject to the "Customer Data Portability and Deletion" section below, each party will promptly return or destroy the other party's Confidential Information upon termination or expiration of this Agreement.

**9.3. Exceptions.** Confidential Information does not include, and the "Ownership and Use" section does not apply to, information that is (a) publicly available when disclosed or becomes publicly available without fault of the Receiving Party after disclosure, (b) rightfully communicated to the Receiving Party by entities not bound to keep such information confidential, whether prior to or following disclosure, (c) independently developed by the Receiving Party, or (d) approved for unrestricted disclosure by the Disclosing Party.

**9.4. Mandated Disclosure.** The Receiving Party may disclose the Disclosing Party's Confidential Information as required (a) by court order or applicable law (provided that, to the extent legally permissible, the Receiving Party promptly notifies the Disclosing Party of such requirement and cooperates with the Disclosing Party's reasonable and lawful efforts to prevent or limit the scope of such disclosure, at the Disclosing Party's expense), or (b) to establish its rights under this Agreement.

## **10. REPRESENTATIONS AND WARRANTIES**

**10.1. Representations.** Each party represents that (a) it has validly entered into this Agreement, and (b) the execution, delivery and performance of this Agreement will not conflict with any material contract with any third party.

**10.2. Sitetracker Warranties.** Sitetracker warrants that (a) the Subscription Services will perform materially in accordance with the Documentation, (b) subject to the "Integration with Non-Sitetracker Applications" section above, Sitetracker will not materially decrease the functionality or the overall security of the Subscription Services during the Term, and (c) the Professional Services will be performed in a competent and workmanlike manner in accordance with the generally accepted standards of Sitetracker's industry and material requirements as set forth in the applicable SOW.

**10.3. Customer Remedies.**

**10.3.1. Subscription Services.** For any breach of the Subscription Services warranty above, Customer's exclusive remedies are those described in the "Termination" and "Rights on Termination" sections below

**10.3.2. Professional Services.** If Customer notifies Sitetracker in writing of any Professional Services failing to conform to the material requirements of the applicable SOW within thirty (30) days after Sitetracker's performance of such Professional Services, Sitetracker will use commercially reasonable efforts to re-perform such Professional Services. If, after forty-five (45) days of reperformance, such reperfomed Professional Services do not conform to the material requirements as set forth in the applicable SOW, Customer may terminate the portion(s) of the applicable SOW regarding the nonconforming Professional Services, and Sitetracker will refund to Customer amount(s) paid for such nonconforming Professional Services. This "Professional Services" section sets forth Customer's exclusive remedies in connection with any warranty regarding Professional Services.

**10.4. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A

PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SUBSCRIPTION SERVICES, PROFESSIONAL SERVICES, AND BETA SERVICES ARE PROVIDED "AS IS," AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

## 11. LIMITATION OF LIABILITY

**11.1. Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY LAW AND EXCEPT WITH RESPECT TO (i) EACH PARTY'S INDEMNIFICATION OBLIGATIONS IN THE "INDEMNIFICATION SECTION" BELOW OR (ii) RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SUBSCRIPTION SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS (12) PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE. SITETRACKER DISCLAIMS ALL LIABILITY FOR ANY HARM OR DAMAGES CAUSED BY THE SALESFORCE PLATFORM.

**11.2. Exclusion of Consequential and Related Damages.** IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, ANTICIPATED SAVINGS OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

## 12. INDEMNIFICATION

**12.1. By Customer.** Customer will (i) defend Sitetracker, its officers, directors and employees against any third party claim, demand, suit or proceeding to the extent alleging that (a) Customer Data, (b) a modification to any Sitetracker Property made in accordance to Customer's specifications, or otherwise made, by or on behalf of Customer by any third party other than Sitetracker's contractors, (c) Non-Sitetracker Applications not supported by Sitetracker, or (d) the use of the Subscription Services in combination with any Non-Sitetracker Applications not supported by Sitetracker, infringes any third party patent, copyright or trademark, or misappropriates any third party trade secret, or violates any third party privacy rights (each, a "**Claim Against Sitetracker**"), and (ii) indemnify Sitetracker from any court-ordered award of damages or settlement amount to the extent arising from such Claim Against Sitetracker.

**12.2. By Sitetracker.** Subject to the exclusions set forth below, Sitetracker will (i) defend Customer, its officers, directors and employees against any third party claim, demand, suit or proceeding to the extent alleging that the Subscription Services infringes any third party United States patent existing as of the Effective Date, copyright or trademark, or misappropriates any third party trade secret (a "**Claim Against Customer**") and will (ii) indemnify Customer from any court-ordered award of damages or settlement amount to the extent arising from a Claim Against Customer. Notwithstanding the above, Sitetracker's defense and indemnification obligations do not apply if any Claim Against Customer arises from (a) modification of the Subscription Services other than by Sitetracker or its contractors, (b) use of the Subscription Services in a manner not contemplated by this Agreement or in combination with any Non-Sitetracker Applications not supported by Sitetracker, (c) Customer's failure to use Upgrades and Updates in conformance with the CSA, or (d) Customer Data or other information, materials, instructions, specifications, or

requirements provided by or on behalf of Customer.

**12.3. Infringement Remedy.** If Customer's use of the Subscription Services is or (in Sitetracker's sole discretion) is likely to be enjoined, Sitetracker may (a) procure for Customer the continued use of the Subscription Services, (b) replace the Subscription Services with a non-infringing equivalent, or (c) modify the Subscription Services so it becomes non-infringing, provided that, in the case of (b) or (c), the replacement or modified Subscription Services has materially similar functionality to the original. If Sitetracker cannot so reasonably procure, replace, or modify the Subscription Services, Sitetracker may terminate this Agreement and refund Customer any pre-paid Subscription Services Fees attributable to the terminated portion of the Term.

**12.4. Indemnification Procedures.** The indemnified party will provide prompt written notice of any indemnifiable claim and will reasonably cooperate with the indemnifying party in connection with any such claim, at the indemnifying party's cost. The indemnifying party will control, and may defend or settle, any such claim, provided that it may not enter into any settlement that imposes any liability or obligation on the indemnified party without the indemnified party's written consent.

**12.5. Exclusive Remedy.** This "Indemnification" section states the indemnifying party's sole responsibility, and the indemnified party's exclusive remedy, for any third-party indemnifiable claim described in this "Indemnification" section.

### **13. TERM AND TERMINATION**

**13.1. Term of this Agreement.** This Agreement commences on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated (the "**Term**").

**13.2. Terms of Order Forms and SOWs.** The term of each Order Form or SOW will be as set forth in the Order Form or SOW. Except as otherwise specified in an Order Form, all subscriptions will automatically renew for additional periods equal to the expiring subscription term specified on the applicable Order Form, unless either party gives the other written notice (email acceptable) at least 30 days before the end of the relevant subscription term. Except as expressly provided in the applicable Order Form, renewal of promotional or one-time priced subscriptions will be at Sitetracker's applicable list price in effect at the time of the applicable renewal. Notwithstanding anything to the contrary, any renewal in which subscription volume or subscription length for any subscription has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing.

**13.3. Termination.** Either party may terminate this Agreement for cause (a) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (b) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed within thirty (30) days.

**13.4. Rights on Termination.** If this Agreement is terminated by Customer in accordance with the "Termination" section above, Sitetracker will refund Customer any prepaid fees covering the remainder of the term of all Order Forms after the effective date of termination. If this Agreement is terminated by Sitetracker in accordance with the "Termination" section above, Customer will pay any unpaid fees covering the remainder of the term of all Order Forms to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to Sitetracker for the period prior to the effective date of termination. Upon termination of this Agreement, Sitetracker will terminate Customer's access to the Subscription Services.

**13.5. Customer Data Portability and Deletion.** Upon request by Customer made within thirty (30) days of the effective date of termination or expiration of this Agreement (the "**Transition Period**"), Sitetracker will make the Customer Data available to Customer for export or download in a standard format to be agreed upon by the parties. After the Transition Period, Sitetracker will have no obligation to maintain or provide any Customer Data, and will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

**13.6. Surviving Provisions.** The sections titled "Fees and Payment," "Intellectual Property

Ownership,” “Confidentiality,” “Disclaimers,” “Indemnification,” “Limitation of Liability,” “Rights on Termination,” “Customer Data Portability and Deletion,” “Surviving Provisions” and “General Provisions” will survive any termination or expiration of this Agreement.

## **14. TERMS FOR AUSTRALIAN CUSTOMERS**

**14.1. Terms Applicable to all Australian Customers.** We will protect Customer Data in accordance with the Privacy Act 1988 (Cth).

**14.2. Terms Applicable to Australian Customers with Contracted Fees of AUD 100,000 or Less.** If Customer domiciled in Australia and the total fees payable by Customer are AUD 100,000 or less, then our products and services come with guarantees that cannot be excluded under the Australian Consumer Law, and the following terms apply:

**14.2.1.** To the extent we are liable under a statutory guarantee that cannot be excluded under the Australian Consumer Law with respect to our products and services, our liability is limited to, at our election, any one or more of the following:

**14.2.1.1.** in the case of our products, (A) replacement of the goods or the supply of equivalent goods, (B) repair of the goods; (C) payment of the cost of replacing the goods or of acquiring equivalent goods; or (D) payment of the cost of having the goods repaired; and

**14.2.1.2.** in the case of our services, (A) supplying of the services again; or (B) payment of the cost of having the services supplied again.

**14.2.2.** The following provisions apply only to the extent permitted by applicable law, and are subject to Customer’s rights under applicable guarantees that cannot be excluded under the Australian Consumer Law: the “Order Form” section, the Non-Sitetracker Applications and Customer Data” section, the “Customer Remedies” section, the “Disclaimers” section, the “Terms of Order Forms and SOWs” section, the “Rights on Termination” section, and the “Governing Law; Jurisdiction and Venue” section.

## **15. GENERAL PROVISIONS**

**15.1. Compliance with Laws.** Each party will comply with all applicable laws in connection with this Agreement. The Subscription Services and other technology Sitetracker makes available may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any United States government denied-party list. Customer will not permit Users to access or use the Subscription Services in a United States-embargoed country or in violation of any United States export law or regulation.

**15.2. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

**15.3. Attribution.** Sitetracker may identify Customer in standard marketing materials.

**15.4. Entire Agreement; Amendment; Precedence.** This Agreement together with any exhibits, Order Forms, and SOWs constitutes the entire agreement between the parties regarding the Subscription Services and Professional Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. This Agreement may not be modified except in writing signed by both parties. If there is a conflict between this Agreement and an Order Form or SOW, this Agreement will control unless the Order Form or SOW specifically references the provision of this Agreement to be superseded. The Parties agree that any term or condition stated in a Customer’s purchase order or in any other Customer order documentation (excluding Order Forms) is void and of no force and effect on the Parties.

**15.5. Injunctive Relief.** The parties agree that a breach of the “Confidentiality” section above or misappropriation by a party of the other party’s intellectual property would cause immediate and irreparable harm not remediable by monetary damages. In such a circumstance, the harmed party may seek immediate injunctive relief, without the requirement to post bond or other security,

without prejudicing any other remedies available to it at law or equity.

**15.6. Notices.** A communication intended to have legal effect under this Agreement must be written and delivered to (a) Sitetracker at the address set forth in the preamble, or (b) Customer at the address provided on the applicable Order Form, by personal delivery, certified mail (postage pre-paid, return receipt requested), or a commercial courier requiring signature for delivery, and will be effective on receipt or when delivery is refused. Operational communications, including changing a party's notice address, may be delivered via email.

**15.7. Assignment.** Neither party may assign its rights or obligations hereunder without the other party's prior express written consent (not to be unreasonably withheld) except if there is a merger, acquisition, corporate reorganization, or sale of all or substantially all of such party's assets (where the acquiring or surviving entity is not a direct competitor of the other party). Subject to the foregoing, this Agreement will bind and inure the parties, their respective successors and permitted assigns.

**15.8. Non-Solicitation.** During and for one (1) year after the Term, Customer will not (a) induce or attempt to induce any current Sitetracker employee or independent contractor to cease their relationships with Sitetracker, or (b) recruit any former Sitetracker employee or independent contractor to perform services for Customer.

**15.9. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**15.10. Third-Party Beneficiaries.** Salesforce is a third-party beneficiary hereunder in relation to the Salesforce TOUs and the "Salesforce Platform" section. There are no other third-party beneficiaries under this Agreement.

**15.11. Waiver; Severability.** A party's waiver of a breach of this Agreement will not waive any other or subsequent breach. If any provision of this Agreement is invalidated by a court of competent jurisdiction, the provision will be deemed modified to the extent required while preserving the parties' intent as closely as possible, and the remaining provisions of this Agreement will remain in effect.

**15.12. Interpretation.** Section headings are for reference only and will not affect the meaning or interpretation of this Agreement. As used herein, "may" means "has the right, but not the obligation, to"; "includes" and its variations means "includes, but is not limited to"; and "days" means calendar days, provided that obligations that would be due on a weekend or holiday will be due on the next business day following such weekend or holiday.

**15.13. Governing Law; Jurisdiction and Venue.** Depending on where the Customer is domiciled, this Agreement is governed by the laws of the jurisdiction as specified below, without regard to its conflict of law principles that would require a different result, and each party irrevocably consents to the exclusive jurisdiction of the applicable courts as specified below for any action arising out of this Agreement and waives, to the fullest extent permitted by law, any objection to such venue.

If Customer is domiciled in:	The governing law is:	Courts with exclusive jurisdiction are:
The United States of America, Canada, Mexico or a country in Central or South America or the Caribbean	Delaware and controlling United States federal law	Delaware, United States
United Kingdom, or a country located in Europe, the Middle	England	London, England

East or Africa		
A country located in Asia or the Pacific region	New South Wales, Australia	New South Wales, Australia

**15.14. Force Majeure.** Neither Party will be liable for a failure to fulfill its obligations due to causes beyond its reasonable control that cannot be mitigated through the exercise of due care.

*[signature page follows]*

**IN WITNESS WHEREOF**, intending to be legally bound hereby, the Parties have caused this Agreement to be executed by duly authorized representatives.

**SITETRACKER, INC.**

**CUSTOMER**

By:

By:

Name:

Name:

Title:

Title:

Date:

Date: