



## Master Subscription and Services Agreement

This Master Subscription and Services Agreement (the “**Agreement**”) governs your access to and use of software and services provided by Sitetracker, Inc. (“**Sitracker**”), with offices at 491 Bloomfield Avenue, Suite 301, Montclair, New Jersey. By executing an Order referencing this Agreement (an “**Order**”), you agree to the following terms and conditions. As used in this Agreement, “**Customer**” or “**you**” refers to the entity executing an Order, and the “**Effective Date**” is the date that the first such Order is executed.

### 1. SUBSCRIPTION

**1.1. License Grant.** Sitetracker grants Customer a limited, non-transferable, non-exclusive right during the Term (as defined in Section 12) for Authorized Users (as defined in Section 1.2) to use and access Sitetracker’s cloud-based, proprietary project management software (the “**Software**”) (such access, the “**Subscription**”). The Software is built on the Salesforce.com platform (the “**Platform**”), and the Subscription includes a limited, non-transferable, non-exclusive right for Authorized Users to use and access the Platform solely through, and to the extent required to use, the Software. Unless otherwise set forth herein, all of Customer’s restrictions and obligations respecting the Software apply equally to the Platform.

**1.2. Authorized Users.** Sitetracker will issue each Customer employee or independent contractor authorized by Customer to use the Software and who is approved by Sitetracker (each, an “**Authorized User**”) a unique user ID and password combination to access the Software (“**Credentials**”). Customer will immediately notify Sitetracker if (a) a Credential is compromised or improperly disclosed; or (b) the Authorized User assigned to a Credential no longer requires access to the Software. Sitetracker may refuse access to the Software to any individual, or terminate or suspend an Authorized User’s access without notice, if Sitetracker believes that such Authorized User has violated the terms of this Agreement, and will notify Customer in writing following any such action.

**1.3. Restrictions.** Customer will not (a) permit anyone other than Authorized Users to access the Software, (b) sell, sublicense, rent, or lease access to the Software (including on a service bureau or similar basis); or (c) except as expressly provided herein, create derivative works from, distribute, or in any way exploit the Software or portions thereof. Except as permitted by applicable law, Customer may not itself or through others reverse engineer, decompile, disassemble or attempt to derive the Software’s source code.

### 2. SOFTWARE MAINTENANCE AND SUPPORT

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

**2.1.1.** Authorized Users may submit support requests via the Software support module. Support requests may include (a) questions about Software operation and use, (b) requests to add additional features to Customer’s account, and (c) reporting the Software’s failure to operate in accordance with its documentation (an “**Error**”, as further defined in Exhibit A). Where Customer reports an Error, Sitetracker will create a support ticket and provide a receipt and tracking number for the support ticket to the Customer within fifteen (15) minutes of the submission of the support request. Sitetracker will respond to Error reports as set forth in Exhibit A and resolve such issues in a timely manner.

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

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

**2.3. Modules.** Sitetracker may make additional features or modules for the Software (i.e., industry-specific templates) available for an additional fee during the Term (each such offering, a “**Module**”). Modules are not required for the proper functioning of the Software, and will be made available to Customer when and on the same commercial terms that they are made available to other Software subscribers.

**2.4. Customer Success Subscription.** Customer may prepay for a set number of hours of enhancement, configuration and training services from Sitetracker on a monthly basis (a “**Customer Success Subscription**”). If ordered, the number of monthly hours of support to which Customer is entitled will be listed on the Order. If Customer requires additional enhancement, configuration or training services in any month, they may be purchased at Sitetracker’s standard rates. Unused Customer Success Subscription hours will not roll over to the following month.

**2.5. Training.** Sitetracker may provide training as part of a Customer Success Subscription or as otherwise set forth in an Order. Customer may cancel or reschedule scheduled training sessions without penalty by providing Sitetracker with at least forty-eight (48) hours’ notice. If there is a late cancellation or rescheduling, Customer will reimburse Sitetracker for all related, unrecoverable expenses incurred (i.e., travel, and lodging).

### **3. SERVICES**

**3.1. Configuration.** Sitetracker will perform configuration, implementation and related services (“**Configuration**”) prior to Customer accessing the Software. Configuration is not included in the Software Maintenance and Support described in Section 2. For each Configuration, the applicable Order will specify, at a minimum: (a) the objective functional and technical requirements for the Configuration (together with the Software documentation, the “**Specifications**”); (b) the estimated schedule for the Configuration; (c) the Fees (as defined in Section 6) for the Configuration; and (d) the number of Authorized Users. During the Configuration, Customer will provide (i) a single point of contact acting as project lead for Customer, and (ii) coordination of administrators and technical resources related to integrating Customer’s systems with Sitetracker.

**3.2. Acceptance.** Sitetracker will perform technical quality and assurance testing of the configured Software before making it available to Customer for review. Unless otherwise set forth in the Order, Customer will have five (5) business days (the “**Acceptance Period**”) to determine whether the configured Software substantially conforms to its Specifications. Sitetracker will reasonably cooperate with Customer in such review and testing. If Customer accepts the configured Software, Sitetracker will begin the Cutover described in Section 3.3; if the configured Software does not conform to the Specifications, Customer will provide a “**Rejection Notice**” including sufficient detail to allow Sitetracker to reproduce the non-conformities. Upon receipt of a Rejection Notice, Sitetracker will promptly correct such non-conformities and re-submit the configured Software to Customer. If Customer fails to provide a Rejection Notice before the end of the Acceptance Period, Customer will be deemed to have accepted the Software, Sitetracker will begin the Cutover, and Sitetracker will have no further obligations with respect to Configuration, provided, however, that deemed Acceptance will not excuse Sitetracker from the support obligations respecting the Software set forth in Section 2 and 3.3.

**3.3. Cutover.** Upon acceptance of the configured Software pursuant to Section 3.2, Sitetracker will make the Software available for Customer’s use in a production environment (the “**Cutover**”) at a time agreed to by the parties in writing. For two (2) weeks following the Cutover, Sitetracker will make further adjustments to the Configuration reasonably requested by Customer at no charge, provided such adjustments do not materially alter the Specifications. Such adjustments will not count against Customer Success Subscription hours.

**3.4. Third Party Material.**

**3.4.1. “Third Party Applications”** means any software not provided by Sitetracker that interoperates with the Software. As set forth in an Order, Sitetracker may integrate with Third Party Applications as part of the Configuration. Customer is solely responsible for complying with the terms of use of Third Party Applications, including providing Sitetracker with access to Third Party Applications where required for the Configuration. Sitetracker does not warrant or support Third Party Applications and is not responsible for their performance, including the disclosure, modification or deletion of Customer Data resulting from the use of a Third Party Application. As part of the support provided under Section 2, Sitetracker will maintain the integration of the Software with any Third Party Application (a) indicated as compatible with the Software in the Specifications or (b) specifically designated in an Order. Sitetracker is not required to provide support for the interoperability of any other Third Party Applications with the Software, but may perform integration or support services related to such unsupported Third Party Applications as agreed to by the parties and for its standard Services rates.

**3.4.2. Third Party Content.** If Sitetracker makes content from third party licensors or subscription providers (“**Third Party Content**”) available via the Software and is required to remove such Third Party Content, or is notified that such Third Party Content may violate applicable law or third-party rights, Sitetracker may remove such Third Party Content without notifying Customer in advance.

**3.5. Additional Services.** As mutually agreed, Sitetracker may provide consulting or other services related to the Software for Customer (“**Additional Services**” and, together with Configuration, the “**Services**”).

**3.6. Subcontractors.** Sitetracker may subcontract its obligations under this Agreement, provided that (a) subcontractors are bound to confidentiality terms materially similar to Section 8 of this Agreement, and (b) Sitetracker is responsible for subcontractors to the same extent as if it had performed the subcontracted functions ourselves.

**3.7. Changes.** Customer will inform Sitetracker in writing of any requested change to Services, (each, a “**Change Request**”), The parties will cooperate in good faith to assess each Change Request, and Sitetracker will notify Customer whether its accepts or rejects the Change Request within ten (10) days of its receipt. Failure to provide notice within such time will be deemed rejection of the Change Request. If the parties agree to a change, Sitetracker will provide Customer with a written description of the required revisions to the applicable Order, including estimated Fees and schedules (the “**Change Order**”), which will be effective and incorporated into such Order upon execution.

**3.8. Provision of Services.** Sitetracker will perform all Services remotely, unless otherwise agreed. Customer will be responsible for all travel expenses incurred by Sitetracker to perform Services on-site for Customer, which expenses Sitetracker will invoice at cost (and consistent with Customer’s expense policies, if provided).

**3.9. Security.** Sitetracker will employ industry-standard technical, logical, and physical security measures and practices for the Software and any Sitetracker systems on which Customer Data (as defined in Section 5.1.1) is stored or processed designed to preserve the security and integrity of, and prevent unauthorized access to, Customer Data. The Software has passed and is subject to ongoing security review as a condition of its availability through the Platform. Information about this review process can be found at [https://developer.salesforce.com/page/Security\\_Review](https://developer.salesforce.com/page/Security_Review).

## **4. CUSTOMER RESPONSIBILITIES**

**4.1. Customer Data.** Customer is solely responsible for Customer Data as uploaded to the Software or otherwise provided to Sitetracker. Sitetracker expressly disclaims any liability arising from such Customer Data. Customer may not use the Software to transmit, store, display, distribute or otherwise make content available that is illegal, harmful, or offensive, including content that is defamatory, obscene, abusive, invasive of privacy, or pornographic.

**4.2. Use and Access.** Only Authorized Users may access the Software. Customer will ensure

that each Authorized User uses the Software in accordance with applicable laws and this Agreement and maintains the security of their Credentials as set forth in Section 1.2.

**4.3. Internet Access.** Customer is responsible for any network or internet connectivity required to access or use the Software.

**4.4. 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 Services, and respond to inquiries and provide approvals promptly.

## **5. INTELLECTUAL PROPERTY OWNERSHIP**

### **5.1. Definitions.**

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

**5.1.2. “Feedback”** means any ideas, suggestions, comments, recommendations, enhancement requests or other input provided by Customer or Authorized Users about the Software or Services to Sitetracker in any form.

**5.1.3. “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.

**5.1.4. “Sitetracker Property”** means the Software, Software 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.

**5.1.5. “Software Integrations”** means any applications, integrations, APIs, or other software or systems used or developed by Sitetracker to integrate the Software with Customer systems or Third Party Applications.

**5.2. 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 and Services. Upon termination of this Agreement, Sitetracker will use reasonable efforts to delete or destroy all Customer Data in its possession or control, or, at Customer’s expense, return such Customer Data within thirty (30) days of termination.

**5.3. Software and Software Integrations.** Except for the limited licenses granted herein, all right, title and interest in and to the Software, Software Integrations, and all Sitetracker Property is retained by Sitetracker. To the extent that any Sitetracker Property is incorporated into Customer Data, Sitetracker hereby grants Customer a limited, worldwide, royalty-free right and license to use such Sitetracker Property solely as incorporated into the Customer Data.

**5.4. Feedback.** Customer hereby grants Sitetracker a worldwide, perpetual, irrevocable, royalty-free right and license to use any Feedback in any way whatsoever.

## **6. FEES AND PAYMENT**

**6.1. Invoices.** Customer will pay Sitetracker the fees for the Subscription and Services set forth in each Order (the “Fees”). Unless otherwise set forth in an Order, (a) Subscription and Customer Success Subscription Fees will be invoiced annually in advance, (b) Configuration Fees will be invoiced as of the Effective Date of the applicable Order, and (c) other Services Fees will be

invoiced monthly in arrears. Undisputed Fees are due thirty (30) days after Customer's receipt of the applicable invoice.

**6.2. Subscription Changes.** Additional Authorized Users (in groups of five (5)) and Modules 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 Fee is due. Customer may only reduce the number of Authorized Users in conjunction with a Renewal Term (as defined in Section 12.1 below).

**6.3. 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 Software 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 Section 12). 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.

**6.4. Taxes.** The Fees do not include any taxes, duties or similar assessments of any nature that may be imposed on the Services or Subscription ("**Taxes**"). Customer will be responsible for paying all Taxes associated with Customer's receipt of the Services and Subscription. Sitetracker will use commercially reasonable efforts to list Taxes as a separate line item on each invoice. Customer will pay that amount unless Customer provides Sitetracker with a valid tax exemption certificate authorized by the appropriate taxing authority.

## **7. AUDITS**

**7.1. Audit Right.** Sitetracker may audit Customer's use of the Software (including at Customer's location, if applicable) not more than once per calendar year (unless a prior audit revealed a material violation of this Agreement). Sitetracker will provide reasonable advance notice of any audit, which will be (a) conducted during regular business hours in a manner that does not unreasonably interfere with Customer's business, and (b) limited to reviewing Customer information that is reasonably necessary to verify compliance with this Agreement. Customer will provide Sitetracker and its agents performing the audit reasonable access to Authorized Users and to data and records relating to the Agreement.

**7.2. Audit Remedies.** If an audit reveals that Customer has not fully paid for its actual use of the Software or Services, Customer will promptly pay Sitetracker for the amount of any undercharges, as well as any documented penalties Sitetracker is obligated to pay to third parties (such as Salesforce) based on Customer's underpayment. In addition, if an audit reveals an underpayment of five percent (5%) or more of the Fees actually owed for the audit period, Customer will reimburse Sitetracker for the costs of such audit.

## **8. CONFIDENTIALITY**

**8.1. "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 Software source code and security configurations.

**8.2. 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 8.2, 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 Section 12.4, each party will promptly return or destroy the other party's Confidential Information upon termination or expiration of this Agreement.

**8.3. Exceptions.** Confidential Information does not include, and Section 8.2 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.

**8.4. 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.

**8.5. Software Information.** Sitetracker collects de-personalized information about Customer's use of Software to fulfill Sitetracker's obligations hereunder and improve the Software and Services. Such information is Confidential Information of both Parties; aggregated, de-personalized information about the use of the Software by Sitetracker customers is Sitetracker Confidential Information and maybe used without restriction by Sitetracker.

## **9. REPRESENTATIONS AND WARRANTIES**

**9.1. 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.

**9.2. Sitracker Warranties.** Sitetracker warrants that (a) the Software will perform materially in accordance with the Specifications, (b) the Services will be performed in a professional manner, consistent with the generally accepted standards of Sitetracker's industry, (c) subject to Section 3.4.2, Sitetracker will not materially decrease the functionality of the Services during the Term, and (d) the Software will not introduce damaging code such as viruses, worms, time bombs and Trojan horses into Customer systems.

**9.3. Customer Remedies.** Customer's sole and exclusive remedy in the event of any breach of the warranties set forth in Section 9.2 will be for Sitetracker to re-perform the affected Service or modify the affected Software at no charge to Customer so that such Service and/or Software complies with the warranties set forth in Section 9.2.

**9.4. Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS," WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

## **10. LIMITATION OF LIABILITY**

**10.1. Limitation.** NEITHER PARTY WILL BE LIABLE UNDER ANY THEORY OF DAMAGES FOR ANY LOST BUSINESS, LOST PROFITS, LOST SAVINGS, LOST REVENUE, OR ANY INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A BREACH OF THIS AGREEMENT, EVEN IF THE PARTY FROM WHICH SUCH DAMAGES ARE SOUGHT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

A PARTY'S MAXIMUM LIABILITY FOR DAMAGES ARISING OUT OF A BREACH OF THIS AGREEMENT WILL BE THE FEES CUSTOMER PAID FOR THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. SITETRACKER DISCLAIMS ALL LIABILITY FOR ANY HARM OR DAMAGES CAUSED BY THE PLATFORM.

**10.2. Exclusions and Applicability.** Section 10.1 does not apply to (a) a party's indemnification obligations, (b) a breach of Sections 5 or 8, (c) Fees owed by Customer under this Agreement, or (d) to damages resulting from a party's fraud, gross negligence, or willful misconduct. THE LIMITATIONS SET FORTH IN SECTION 10.1 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR ARE INEFFECTIVE.

## **11. INDEMNIFICATION**

**11.1. By Customer.** Customer will indemnify, defend, and hold harmless Sitetracker, its directors, officers, shareholders, employees, and agents against any claims, liabilities, demands, damages, judgments, awards, settlements, expenses, or losses, including costs of litigation and reasonable attorneys' fees, arising from any third party claims ("**Liabilities**") that any Customer Data as uploaded to the Software or provided to Sitetracker infringe any Intellectual Property Rights.

**11.2. By Sitetracker.** Sitetracker will indemnify, defend, and hold harmless Customer and its directors, officers, shareholders, employees, and agents from all Liabilities arising out of the Software's infringement of (a) any United States patent existing as of the Effective Date, (b) copyright, or (c) any trade secret, except to the extent that such infringement is due to (i) modification of the Software other than by Sitetracker or its contractors, (ii) use of the Software in a manner not contemplated by this Agreement or in combination with any Third Party Applications not supported by Sitetracker pursuant to Section 3.4.1, (iii) Customer's failure to use Software Updates made available by Sitetracker, or (iv) Customer Data or other information, materials, instructions, specifications, or requirements provided by or on behalf of Customer.

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

**11.4. 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. 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.

**11.5. Exclusive Remedy.** This Section 11 states the indemnifying party's sole responsibility, and the indemnified party's exclusive remedy, for any indemnifiable claim.

## **12. TERM AND TERMINATION**

**12.1. Term.** This Agreement will remain in effect from the Effective Date until Customer no longer has an active Subscription under an Order, unless earlier terminated as set forth herein. Unless otherwise set forth on the applicable Order, each Order will initially be for two (2) years (the "**Initial Term**") and will automatically renew for additional one (1) year periods (each, a "**Renewal Term**", and all Renewal Terms, together with the Initial Term, the "**Term**"), absent notice of non-renewal by either party at least 30 days before the end of the then-current Term. The Subscription Fees will be unchanged during any Renewal Term unless Sitetracker notifies Customer in writing of an increase at least sixty (60) days before the end of the prior Term.

**12.2. Termination.** Either party may terminate this Agreement for cause (a) upon 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.

**12.3. Rights on Termination.** To provide the Software, Sitetracker enters into certain non-cancellable commitments with third parties, including for the Platform. As such, except where explicitly set forth in this Agreement, all Fees are non-refundable, and upon termination, Customer will be required to pay (a) any outstanding balance for Subscription Fees for the remainder of the then-current Term and (b) all reimbursable expenses incurred by Sitetracker in connection with the Services. Upon termination of this Agreement, Sitetracker will terminate Customer's access to the Software.

**12.4. Return of Customer Data.** 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 may delete or destroy all copies of Customer Data in Sitetracker's possession or control, unless legally prohibited.

**12.5. Surviving Provisions.** Sections 5, 6.1 (to the extent Fees remain outstanding), 8, 10, 11, 12.3, 12.4, 12.5, and 13 will survive the termination or expiration of this Agreement.

### **13. GENERAL PROVISIONS**

**13.1. Compliance with Laws.** Each party will comply with all applicable laws in connection with this Agreement. The Services, Software, 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 Authorized Users to access or use the Software or Services in a United States-embargoed country or in violation of any United States export law or regulation.

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

**13.3. Entire Agreement; Amendment; Precedence.** This Agreement and any exhibits and Orders constitutes the entire agreement between the parties regarding the Software and 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, the Agreement will control unless the Order specifically references the provision of the Agreement to be superseded.

**13.4. Injunctive Relief.** The parties agree that a breach of Section 8 (confidentiality) 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.

**13.5. 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, 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.

**13.6. 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.

**13.7. 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.

**13.8. 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.

**13.9. Third-Party Beneficiaries.** Sitetracker's licensors will have the benefit of Sitetracker's rights and protections hereunder with respect to the applicable licensed content. There are no other third-party beneficiaries under this Agreement.

**13.10. 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.

**13.11. 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.

**13.12. Governing Law; Jurisdiction and Venue.** This Agreement is governed by the laws of the state of New Jersey, without regard to its conflict of law principles that would require a different result. Each party irrevocably consents to the exclusive jurisdiction of the state or federal courts located in New Jersey for any action arising out of this Agreement and waives, to the fullest extent permitted by law, any objection to such venue.

**13.13. 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: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**  
**Errors and Response Times**

Error Class	Description	Expected Response Time
Class 1	Complete Software failure, data corruption, or major functionality errors in which the Software is rendered inoperable, disabled and inaccessible without any work-around	within 30 minutes; with updates every 2 hours during the Business Day*
Class 2	Errors where the Software operation is not functionally correct with respect to specifications but the Software allows the user to complete job functions or a work-around is available	Within 4 hours
Class 3	All other issues are Class 3 errors. In particular, where the Software aesthetics or cosmetics are inconsistent or incorrect but do not prevent Customer utilization of product, a problem has occurred but has not reoccurred, or an infrequently-used utility gives misleading results.	By the end of the next Business Day*

\***“Business Day”** means 8AM to 6PM eastern time, Monday to Friday, excluding US public holidays.