



## MASTER SUBSCRIPTION AND SERVICES AGREEMENT

Updated: November 17, 2021

THIS MASTER SUBSCRIPTION AND SERVICES AGREEMENT GOVERNS CUSTOMER'S ACQUISITION AND USE OF SITETRACKER SERVICES.

CAPITALIZED TERMS HAVE THE DEFINITIONS SET FORTH HEREIN.

BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER HEREBY 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 SUCH INDIVIDUAL HAS THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES (AS APPLICABLE) TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES (AS APPLICABLE). 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 SUCH ENTITY AND ITS AFFILIATES SHALL NOT USE THE SERVICES.

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

Sitracker's direct competitors are prohibited from accessing the Services, except with Sitracker's prior written consent.

This Agreement was last updated on November 17, 2021. It is effective between Customer and Sitracker as of the date of Customer's accepting this Agreement.

### 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 and Services Agreement and any exhibits, schedules and addenda hereto.

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

**“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 Services, uploaded to the Services, or otherwise made available to Sitetracker pursuant to this Agreement, and (b) any results, data, and reports generated via the Services incorporating or based on the above.

**“Documentation”** means Sitetracker’s then-current technical and functional documentation for the 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.

**“Order Form”** means an ordering document specifying the Services to be provided hereunder 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.

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

**“Services”** means the Sitetracker Software and Professional Services provided pursuant to this Agreement.

**“Sitetracker Property”** means the 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.

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

**“Services Integrations”** means any applications, integrations, APIs, or other software or systems used or developed by Sitetracker to integrate the Services with Customer systems or Third Party 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 Services that Customer has engaged Sitetracker to provide.

**“Third Party Applications”** means any software not provided by Sitetracker that interoperates with the Services.

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

## 2. SUBSCRIPTION

**2.1. License Grant.** Sitetracker grants Customer a limited, non-transferable, non-exclusive right during the Term (as defined in “Term and Termination” section below) for Authorized Users to use and access the Sitetracker Software (such access, the **“Subscription”**). Subscriptions that are site licenses require that each Authorized User be issued a license. For the purpose of the license, the number of active Authorized Users will be evaluated on an annual basis to coincide with Customer’s subscription renewal. The Services are built on the Salesforce Platform, and the Subscription includes a limited, non-transferable, non-exclusive right for Authorized Users to use and access the Salesforce Platform solely through, and to the extent required to use, the Services. Unless otherwise set forth herein, all of Customer’s restrictions and obligations respecting the Services apply equally to the Salesforce Platform. Unless otherwise specified herein or in an Order Form or SOW, 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 Services, (b) to develop new applications, (c) to utilize custom objects delivered outside of the Services, or (d) to access the Salesforce Campaigns, Leads, Opportunities, Cases, Solutions or Forecasts objects.

**2.2. Authorized Users.** Sitetracker will issue each Authorized User a unique user ID and password combination to access the Services (**“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 Services. Sitetracker may refuse access to the Services 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.

**2.3. Usage Restrictions.** Customer will not (a) make the Services or content available to anyone other than the Authorized Users, (b) sell, resell, license, sublicense, distribute, make available, rent or lease the Services, or include Services in a service bureau or outsourcing offering, (c) use the Services or Third Party 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 Services or Third Party Applications to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, (f) attempt to gain unauthorized access to the Services or their related systems or networks, (g) permit direct or indirect access to or use of Services in a way that circumvents a contractual usage limit, or use the Services to access or use any of Sitetracker’s intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (h) modify, copy, or create derivative works based on the Services or any part, feature, function or user interface thereof, (i) copy the Services except as permitted herein or in an Order Form or the Documentation, (j) frame or mirror any part of any of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation, and (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile the Services, or access it to (1) build a competitive product or service, (2) build a product or service using similar ideas, features, functions or graphics of the Services, (3) copy any ideas, features, functions or graphics of the Services, or (4) determine whether the Services are within the scope of any patent.

**2.4. Order Forms.** The Services ordered by Customer shall be listed in the Order Form. Each Order Form will specify the specific Service(s) ordered, and the fees and payment terms for use of the Services. 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 the Agreement, the Agreement shall govern except as to which specific Services 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 Authorized 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. Support.** Sitetracker will, at no additional charge, provide applicable standard customer support for the Services as detailed on the applicable Documentation, and upgraded support, if purchased.

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

**3.2. Modules.** Sitetracker may make additional features or modules for the Services (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 Services, and will be made available to Customer when and on the same commercial terms that they are made available to other Services subscribers.

**3.3. Enhancement and Training Subscription.** Customer may prepay for a set number of hours (in multiples of five (5)) of enhancement, configuration and training services from Sitetracker on a monthly basis (a "**Enhancement and Training Subscription**" or "**ETS**"). If ordered, the number of monthly hours of support to which Customer is entitled will be listed on the Order Form. If Customer requires additional enhancement, configuration or training services in any month, they may be purchased at Sitetracker's standard rates. Unused ETS hours will not roll over to the following month.

**3.4. Training.** Sitetracker may provide training as part of a ETS or as otherwise set forth in an Order Form or SOW. 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).

### **4. PROFESSIONAL SERVICES**

**4.1. Configuration.** Sitetracker will perform configuration, implementation and related services ("**Configuration**") prior to Customer accessing the Services. Configuration is not included in the Maintenance and Support. For each Configuration, the applicable Order Form or SOW will specify, at a minimum: (a) the objective functional and technical requirements for the Configuration (together with the Services documentation, the "**Specifications**"); (b) the estimated schedule for the Configuration; (c) the Fees (as defined below) 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.

**4.2. Acceptance.** Sitetracker will perform technical quality and assurance testing of the configured Services before making it available to Customer for review. Unless otherwise set forth in the Order Form or SOW, Customer will have five (5) business days (the "**Acceptance Period**") to determine whether the configured Services substantially conforms to its Specifications.

Sitetracker will reasonably cooperate with Customer in such review and testing. If Customer accepts the configured Services, Sitetracker will begin the Go-Live described in the “Go-Live” section below; if the configured Services 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 Services 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 Services, Sitetracker will begin the Go-Live, 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 Services set forth in this Agreement.

**4.3. Go-Live.** Upon acceptance of the configured Services pursuant to the “Acceptance” section above Sitetracker will make the Services available for Customer’s use in a production environment (the “**Go-Live**”) at a time agreed to by the parties in writing. For two (2) weeks following the Go-Live, 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 ETS hours.

**4.4. Third Party Material.**

**4.4.1.** As set forth in an Order Form or SOW, 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 this Agreement, Sitetracker will maintain the integration of the Services with any Third Party Application (a) indicated as compatible with the Services in the Specifications or (b) specifically designated in an Order Form or SOW. Sitetracker is not required to provide support for the interoperability of any other Third Party Applications with the Services, 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.

**4.4.2. Third Party Content.** If Sitetracker makes content from third party licensors or subscription providers (“**Third Party Content**”) available via the Services 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.

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

**4.6. 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.

**4.7. Changes.** Customer will inform Sitetracker in writing of any requested change to Professional Services, (each, a “**Change Request**”), The parties will cooperate in good faith to assess each Change Request, and Sitetracker will notify Customer whether it 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 SOW or Order Form, including estimated Fees and schedules (the “**Change Order**”), which will be effective and incorporated into such Order Form or SOW upon execution.

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

**4.9. 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 Authorized Users). The terms of the data processing addendum at <https://www.sitracker.com/legal> ("DPA") posted as of the Effective Date are hereby incorporated by reference. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by Sitetracker, the EU-US and/or Swiss-US Privacy Shield, and/or the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices. .

**4.10. 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. We will have no liability for any harm or damage arising out of or in connection with a Beta Service.

## **5. CUSTOMER RESPONSIBILITIES**

**5.1. Customer Data.** Customer is solely responsible for Customer Data as uploaded to the Services or otherwise provided to Sitetracker. Sitetracker expressly disclaims any liability arising from such Customer Data. Customer may not use the Services 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.

**5.2. Use and Access.** Only Authorized Users may access the Services. Customer will ensure that each Authorized User uses the Services in accordance with applicable laws and this Agreement and maintains the security of their Credentials.

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

**5.4. 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.

## **6. INTELLECTUAL PROPERTY OWNERSHIP**

**6.1. 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 and Services.

**6.2. Services and Services Integrations.** Except for the limited licenses granted herein, all right, title and interest in and to the Services, Services 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.

Notwithstanding any other term of this Agreement, Sitetracker may access and use, and shall retain all right, title and interest in transactional and performance data related to use of the Services, which may include aggregated and anonymized data based upon Customer Data, so long as such data does not reveal any personally identifiable information or specific traits of any particular individual person or of Customer or a Customer Affiliate. Sitetracker reserves to itself all rights that are not expressly granted pursuant to this Agreement.

**6.3.** 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 Authorized Users relating to the operation of Sitetracker or its Affiliates' services.

## **7. FEES AND PAYMENT**

**7.1.** Invoices. Customer will pay Sitetracker the fees for the Subscription and Services set forth in each Order Form (the "**Fees**"). Unless otherwise set forth in an Order Form, (a) Subscription and ETS Fees will be invoiced annually in advance, (b) Configuration Fees will be invoiced as of the Effective Date of the applicable Order Form, 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.

**7.2.** 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.

**7.3.** 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 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.

**7.4.** 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 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 Services and Subscription 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 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.

**7.5.** 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.

## **8. AUDITS**

**8.1. Audit Right.** Sitetracker may audit Customer's use of the Services (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.

**8.2. Audit Remedies.** If an audit reveals that Customer has not fully paid for its actual use of the 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.

## **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 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 Services will perform materially in accordance with the Specifications, (b) the Professional Services will be performed in a professional manner, consistent with the generally accepted standards of Sitetracker's industry, (c) subject to the Third Party Material section above, Sitetracker will not materially decrease the functionality of the Services during the Term, and (d) the Services will not introduce Malicious Code.

**10.3. Customer Remedies.** Customer's sole and exclusive remedy in the event of any breach of the warranties set forth in the "Sitetracker Warranties" section will be for Sitetracker to re-perform the affected Service or modify the affected Services at no charge to Customer so that such Services complies with the warranties set forth in "Sitetracker Warranties" section.

**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. THE 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 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, 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 indemnify, defend, and hold harmless Sitetracker and 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 (a) any Customer Data or Customer's use of Customer Data with the Services, (b) Third Party Applications not supported by Sitetracker, or (c) the use of the Services in combination with any Third Party Applications not supported by Sitetracker, infringes or misappropriates such third party's Intellectual Property Rights, or arising from Customer's use of the Services in an unlawful manner

or in violation of the Agreement, the Documentation, or Order Form.

**12.2. 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 Services 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 Services other than by Sitetracker or its contractors, (ii) use of the Services in a manner not contemplated by this Agreement or in combination with any Third Party Applications not supported by Sitetracker, (iii) Customer's failure to use Services Updates made available by Sitetracker, or (iv) 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 Services is or (in Sitetracker's sole discretion) is likely to be enjoined, Sitetracker may (a) procure for Customer the continued use of the Services, (b) replace the Services with a non-infringing equivalent, or (c) modify the Services so it becomes non-infringing, provided that, in the case of (b) or (c), the replacement or modified Services has materially similar functionality to the original. If Sitetracker cannot so reasonably procure, replace, or modify the Services, Sitetracker may terminate this Agreement and refund Customer any pre-paid Subscription 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 indemnifiable claim.

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

**13.1. Term of Agreement and Renewal.** The initial term of this Agreement shall be for a period of one (1) year from the Effective Date ("Initial Term"). At the expiration of the Initial Term or any Renewal Term, this Agreement will automatically renew for subsequent one (1) year periods (each a "Renewal Term" and all Renewal Terms, together with the Initial Term, the "Term") unless one party provides the other party with written notice of its intent to amend or not renew the Agreement at least ninety (90) days prior to the end of the then-current term. This Agreement will automatically terminate upon the expiration of all Order Forms entered into pursuant to this Agreement.

**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, Subscriptions will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), 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 Services has decreased from the prior term will result in re-pricing at renewal without regard to the prior term's per-unit pricing. In the event the Agreement expires, Order Forms and SOWs that were effective prior to the expiration of the Agreement will continue to be governed by the terms and conditions of this Agreement and the Agreement shall be deemed extended, for the purposes of such Order Forms or SOWs only, through expiration of the then-current term of any such Order Forms or SOWs.

**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.** To provide the Services, Sitetracker enters into certain non-cancellable commitments with third parties, including for the Salesforce 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 Professional Services. Upon termination of this Agreement, Sitetracker will terminate Customer's access to the 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. GENERAL PROVISIONS**

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

**14.2. 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.

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

**14.4. Entire Agreement; Amendment; Precedence.** This Agreement together with any exhibits, Order Forms, and SOW constitutes the entire agreement between the parties regarding the 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, the Agreement will control unless the Order Form or SOW specifically references the provision of the Agreement to be superseded.

**14.5. 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.

**14.6. 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.

**14.7. 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.

**14.8. 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.

**14.9. 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.

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

**14.11. 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.

**14.12. 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.

**14.13. Governing Law; Jurisdiction and Venue.** This Agreement is governed by the laws of the state of Delaware, 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 Delaware for any action arising out of this Agreement and waives, to the fullest extent permitted by law, any objection to such venue.

**14.14. 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.