

Master Subscription and Services Agreement (MSA-091619)

Master Subscription
and Services Agreement
Updated:
Sept 16, 2019

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MASTER SUBSCRIPTION AND SERVICES AGREEMENT

1. DEFINITIONS

“Affiliate” means any entity that directly or indirectly controls, is controlled by, subject entity. **“Control,”** for purposes of this definition, means direct or indirect of the voting interests of the subject entity.

“Agreement” means this Master Subscription and Services Agreement and any amendments thereto.
“Authorized User” means an individual who is authorized by Customer to use the Service, and to whom Customer (or Sitetracker at Customer’s request) has



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“**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.

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

“**Sitracker 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.

“**Sitracker 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.

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 number of issued licenses will adjust according to the number of licenses required to cover all active Authorized Users, which may result in an increase to fee(s) for the Services. The Services are built on the Salesforce.com 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, you 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 a 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. Restrictions. Customer will not (a) permit anyone other than Authorized Users to access the Services, (b) sell, sublicense, rent, or lease access to the Services (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 Services 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 Services source code.

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questions about Services operation and use, (b) requests to add additional features to Customer's account, and (c) reporting the Service'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.

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. 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.

3.4. 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).

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 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

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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 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 Cutover described in the “Cutover” 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 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 Services set forth in this Agreement.

4.3. Cutover. 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 “**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.

4.4. Third Party Material.

4.4.1. 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 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. 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.

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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 Order, including estimated Fees and schedules (the “**Change Order**”), which will be effective and incorporated into such Order 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 employ industry-standard technical, logical, and physical security measures and practices for the Services and any Sitetracker systems on which Customer Data is stored or processed designed to preserve the security and integrity of, and prevent unauthorized access to, Customer Data. The Services has passed and is subject to ongoing security review as a condition of its availability through the Salesforce Platform. Information about this review process can be found at https://developer.salesforce.com/page/Security_Review.

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 Beta Services. 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

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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.

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 (the "**Fees**"). Unless otherwise set forth in an Order, (a) Subscription and Customer Success Subscription Fees will be invoiced annually in

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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 "Term and Termination" section below).

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 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

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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,

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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.

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

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. Sitracker 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 damaging code such as viruses, worms, time bombs and Trojan horses into Customer systems.

10.3. Customer Remedies. Customer's sole and exclusive remedy in the event of any breach of the warranties set forth in the "Sitracker 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 "Sitracker Warranties" section.

10.4. Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE 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.

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. 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

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SALESFORCE PLATFORM.

11.2. Exclusions and Applicability. The above section does not apply to (a) a party's indemnification obligations, (b) a breach of sections titled "Intellectual Property Ownership," or "Confidentiality," (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 "LIMITATION OF LIABILITY" SECTION WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR ARE INEFFECTIVE.

12. INDEMNIFICATION

12.1. 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 Services or provided to Sitetracker infringe any Intellectual Property Rights.

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. The indemnifying party will control,

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indemnified party's exclusive remedy, for any indemnifiable claim.

13. TERM AND TERMINATION

13.1. 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.

13.2. 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.

13.3. 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.

13.4. 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.

13.5. 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

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

14.3. Entire Agreement; Amendment; Precedence. This Agreement and any exhibits and Orders 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, the Agreement will control unless the Order specifically references the provision of the Agreement to be superseded.

14.4. 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.

14.5. 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.

14.5. 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.

14.6. 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.

14.7. 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.

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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.

14.10. 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.

14.11. 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.

14.12. 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: _____

EXHIBIT A

Errors and Response Times

Error Class

Description

Expected Response Time

Class 1

Complete Services failure, data corruption, or major functionality errors in which the Services is rendered inoperable, disabled and inaccessible without any work-around

within 30 minutes; with updates every 2 hours during the Business Day*

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Class 3 All other issues are Class 3 errors. In particular, where the Services By the end of the next Business
aesthetics or cosmetics are inconsistent or incorrect but do not Day*
prevent Customer utilization of product, a problem has occurred but
has not reoccurred, or an infrequently-used utility gives misleading
results.

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

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