

## STANDARD TERMS AND CONDITIONS

### 1. General

- 1.1. These Standard Terms and Conditions, together with the Special Conditions, the Accepted Fee Proposal and URL Terms (collectively, the **"Agreement"**) apply to your use, supply, purchase or access to the Products and/or Services.
- 1.2. The Agreement forms a legally binding contract between you and SiteSherpa. By accepting a Fee Proposal (verbally, in wet ink or electronically), clicking "I agree" (or similar act), subscribing for, accessing or receiving our Products and/or Services (including making part or full payment of our Fees), you agree to be bound by this Agreement.

### 2. Order of precedence

- 2.1. To the extent of any inconsistency between the documents forming this Agreement, and notwithstanding anything contrary in those documents, the following order of precedence will apply:
  - (a) the Accepted Fee Proposals (subject to section 2.2);
  - (b) the Commercial Schedule;
  - (c) the Special Conditions;
  - (d) the Standard Terms and Conditions; and
  - (e) the URL Terms.
- 2.2. If there is any inconsistency between more than one Accepted Fee Proposal, to the extent of inconsistency, the Accepted Fee Proposal most recently accepted or executed will prevail.
- 2.3. No other terms and conditions can be incorporated into this Agreement, other than by express written agreement of you and SiteSherpa. For the avoidance of doubt, under no circumstances shall:

- (a) any terms or conditions set out in any purchase order or other document issued by you in connection with this Agreement; or
- (b) any terms or conditions inserted, amended or varied by you without the prior written agreement of SiteSherpa, be deemed to modify, alter or expand the rights, duties or obligations of the parties under this Agreement, regardless of SiteSherpa's failure to object to such terms or conditions.

### **3. Scope of agreement**

3.1. In consideration for the Fees, SiteSherpa agrees to provide the Products and/or Services set out in the Accepted Fee Proposal in accordance with the terms of this Agreement.

3.2. In the event you request in writing or request via the Platform to (**"Change Service"**):

- (a) upgrade any Products and/or Services;
- (b) add any additional Products and/or Services; and/or
- (c) downgrade your Products and/or Services (subject to a right of downgrade set out in the Accepted Fee Proposal), and we accept your request and provide the Change Services to you, these Standard Terms and Conditions and Special Conditions will apply to the Change Services.

3.3. Further to section 3.2, you acknowledge and agree that:

- (a) you shall be bound by any written confirmation (whether or not signed) for the Change Services on these Standard Terms and Conditions and the Special Conditions. If there are any specific terms in our acceptance of the Change Service, those specific terms in our written confirmation shall take precedence in the event of any inconsistency with the Standard Terms and Conditions and Special Conditions; and
- (b) you shall be bound by any act or omission of any officer, director, employee, contractor or agent in respect to the request and our acceptance of a Change

Service.

#### **4. Term**

4.1. **(Application and support based Subscriptions):** If any Product and/or Service in the Accepted Fee Proposal

(a) is for a Subscription, the Subscription commences on the Effective Date and continues in full force and effect for the Initial Term unless terminated earlier under sections 4.4, 6.4, or 24 or extended under section 4.4; or

(b) is a Package, the Package commences on the Effective Date and continues in full force and effect for the Initial Term unless terminated earlier under sections 4.4, 6.4, or 24 or extended under section 4.4.

4.2. **(Enterprise Offering):** If any Product and/or Service in the Accepted Fee Proposal is for an Enterprise Offering, then the term of that Product and/or Service is the duration of delivery of that Product and/or Service to be performed on a date or at a time agreed between you and SiteSherpa, unless terminated earlier under section 24.

4.3. **(Capped Deliverables):** If any Product and/or Service in the Accepted Fee Proposal is for Products and/or Services that have Capped Deliverables, then:

(a) the term in which the Capped Deliverables must be utilised by you is the term specified in the Accepted Fee Proposal and Commercial Schedule and where no term is stated, shall be monthly; and

(b) where you have exhausted your allocation of the Capped Deliverables prior to the expiry of the period set out in section 4.3(a), you shall need to purchase additional Capped Deliverables where required.

4.4. If sections 4.1(a) or 4.1(b) apply, then unless you provide SiteSherpa with written notice not less than 30 days prior to the expiry of the Initial Term or the then current Extension Term (as applicable), the Products and/or Services set out in an Accepted Fee Proposal shall automatically renew for a further Extension Term.

4.5. If section 4.4 applies, you expressly acknowledge and authorise SiteSherpa to charge the Fees for each successive Extension Term.

## 5. Account Registration

- 5.1. This section 5 only applies to any Products and/or Services that require you to have an Account or a Subscription with SiteSherpa.
- 5.2. To access the Products and/or Services set out in the Accepted Fee Proposal, you may be required to register an account with us ("**Account**") and/or maintain a subscription to the Platform, the Product and/or Service (as the context applies) ("**Subscription**").
- 5.3. You determine which of your Personnel may be invited to use the Platform, the Product and/or Service (as the context applies) ("**Invitee**") and the relevant level of access that the Invitee will have as an Authorised User.
- 5.4. To create an Account and/or maintain a Subscription, you must, and procure each Authorised User undertakes to:
  - (a) provide true, accurate, complete and up-to-date information on registration ("**Account Information**");
  - (b) comply with all reasonable requests by SiteSherpa to verify identity so that SiteSherpa can provide the Products and/or Services and ensure compliance with this Agreement;
  - (c) not provide the login ID and password ("**Credentials**") to any other person; and
  - (d) immediately change the Credentials if any computer, electronic device, email account or network used to access the Platform, Product and/or Services (as the context applies) is compromised, or suspected of being compromised, by security breach and promptly notify us of the same.
- 5.5. You must promptly update your account information if, at any time, it is or becomes outdated, incorrect or incomplete (including billing details).
- 5.6. You may revoke access of an Authorised User at any time and for any reason or amend their level of access (as applicable). If you revoke access of an Authorised User and seek to downgrade the number of Authorised Users for the Product and/or Service, section 6.7 will apply.

- 5.7. You are responsible for all acts or omissions that occur through the Account or Subscription and accept all risks of unauthorised access to the Account Information, which are caused or contributed by you, an Authorised User, or your other Personnel, including where the computer, electronic device, email account or network or device has been compromised.
- 5.8. In addition to any rights we may have in respect of the conduct, we reserve the right to suspend, restrict or disable:
- (a) your Account or Subscription at any time if, in our reasonable opinion, you have failed to comply with our Agreement (including a failure to pay); or
  - (b) the access rights of an Authorised User at any time if, in our reasonable opinion, the Authorised User has failed to comply with our Agreement or the End User Licence Agreement.
- 5.9. Each Subscription requires a minimum of **five (5) Authorised Users** (the *Minimum User Requirement*) for each billing cycle.
- (a) You must maintain at least the Minimum User Requirement for the duration of the Term. If the number of active Authorised Users falls below the Minimum User Requirement at any time during a billing cycle:
    - (i) you will remain liable for the Fees calculated on the Minimum User Requirement, regardless of the lower number of active Authorised Users; and
    - (ii) SiteSherpa may, at its discretion, adjust the Fees to reflect the Minimum User Requirement in the next Fee Cycle.
  - (b) Any increase in the number of Authorised Users above the Minimum User Requirement will be subject to the Upgrade provisions in section 6.6, and Fees will be adjusted accordingly from the date of change.
  - (c) SiteSherpa may waive the Minimum User Requirement in writing for a specific Accepted Fee Proposal or for a specified period

## 6. Fees and payment

- 6.1. You must pay SiteSherpa the Fees in accordance with this Agreement and any payment terms set out in the applicable Accepted Fee Proposal or URL Terms (as the context applies).
- 6.2. Unless set out in the applicable Accepted Fee Proposal, the URL Terms or otherwise agreed to in writing with us, all Fees are payable on the Fee Cycle in advance before the Product and/or Service is provided by us and:
- (a) in the event of an annual Subscription and/or Package, shall be payable in full on or before the first date of the Initial Term and the Extension Term (as the context applies);
  - (b) in the event of a month-to-month Subscription and/or Package, shall be payable in full on or before the start date of the Subscription and/or Package, and thereafter on or before the anniversary of that start date; and
  - (c) in the event of a Enterprise Offering, fifty percent (50%) must be paid upfront, on or prior to delivery of the Product and/or Service and fifty percent (50%) on finalisation of the Enterprise Offering.
- 6.3. Except as set out in this Agreement or as required by law, the Fees are non-refundable.
- 6.4. If sections 4.1(a) or 4.1(b) apply, we may adjust or modify the Fees after the expiry of the Initial Term and/or any Extension Term ("**Expiry Date**") in the following circumstances:
- (a) by our then current Fees as set out in the URL Terms; or
  - (b) where our Fees are not set out in the URL Terms, on at least 7 days prior written notice to you before the Expiry Date ("**Fee Change Notice**")

Without limiting your rights in sections 4.4 and 24, you may terminate the Accepted Fee Proposal up to the Expiry Date by written notice to us if your Fees will increase on an Extension Term. If no notice is received, you are deemed to have agreed to our then current Fees or the Fee Change Notice and such Fees are to take effect on the first day of the Extension Term.

- 6.5. **(Changes to Fees):** Except as provided in section 6.6 or the Special Terms and Conditions, Fees for the Products and/or Services will be fixed for the Term as set out in the Accepted Fee Proposal or the Fee Change Notice.
- 6.6. **(Upgrades):** If, at any time, during the Term, you increase the quantity of the Deliverables, the number of Authorised Users and/or the number of employees/headcount of your organisation relevant to a Subscription or Package, the Fees shall be adjusted accordingly and will apply with effect from the date of change ("**Upgrade Fee**"). SiteSherpa are under no obligation to upgrade your Products and/or Services if the Fees, or the difference in the then current Fees and the Upgrade Fees are not paid. The adjustment in Fees shall be calculated in accordance with:
- (a) if a standard Subscription or Package, the then standard Fees set out in our URL Terms; (b) if a Enterprise Offering, the Accepted Fee Proposal; or
- (c) any modification to the Fees under section 6.4 (as the context applies).
- 6.7. **(Downgrades):** If, at any time, during the Term, you wish to downgrade any Product and/or Service under a Subscription or Package (including number of Sites, number of Site visits, number of Service hours or number of Authorised Users and/or number of employees/headcount), you acknowledge that the Fee will remain fixed as per the Accepted Fee Proposal, the Fee Change Notice or section 6.6 (as the context applies), for the Term. Subject to section 6.4 or otherwise agreed by us, the Fees for any downgrade shall be adjusted on the Expiry Date and shall take effect on the first day of the Extension Term.
- 6.8. We may offer a number of acceptable payment methods to procure, acquire or Subscribe to the Products and/or Services set out in the Accepted Fee Proposal, including direct deposit and direct debit (by third party payment providers) ("**Payment Method**"). You authorise us to charge any Payment Method registered to your Account for the Fees through our third party payment providers. It is your responsibility to ensure that your Payment Method is valid. We shall charge your Payment Method not more than 24 hours prior to the Fee Cycle. We will not be responsible for any interest, overdrawn charges or other fees that may result in you exceeding your credit limit or entering into overdraft by your Payment Method.
- 6.9. We reserve the right to suspend or cancel your access to the Products and/or Services if we (including our third party payment providers) are unable to successfully process

payment on the date your Fees are due.

- 6.10. All payments are processed by a third-party payment provider in compliance with the PCI Standard and related obligations. Our third party payment provider(s) are named in our Privacy Policy. You may be required to accept their standard terms of service to process your payment. Any disputes are to be handled in accordance with their terms.
- 6.11. **No set-off**: You must not set-off, deduct or withhold payment of the Fees or any other monies due and payable to SiteSherpa under this Agreement.
- 6.12. **(Surcharge and transaction fees)**:
- (a) You acknowledge that certain card payments or bank transactions may attract a surcharge, transaction fee or other similar charge. You agree that SiteSherpa may charge you an amount equal to the cost imposed on us by the third party payment provider.
  - (b) If any card payment or bank transfer is rejected or reversed for any reason, you acknowledge that you are responsible for all fees and charges associated with the rejection or reversal. You agree that SiteSherpa may charge you an amount equal to the cost imposed on us by the third party payment provider for any rejection or reversal.
- 6.13. **(Late Payment)**: If you default in payment of any undisputed amount, SiteSherpa may charge interest on that outstanding amount at a monthly rate equal to 2% above the Reserve Bank of Australia's official cash rate, with interest commencing on the day following the date the payment was due until the day such amount (including interest) is paid in full. Our right to require payment of interest does not affect any other rights and remedies we may have in relation to a default in payment under this Agreement.
- 6.14. **(Credits)**: If you purchase any credits in advance to be applied to any applicable, Products and/or Services, you acknowledge:
- (a) credits may only be used to pay for specific Products and/or Services specified by SiteSherpa (and not for any other purpose);
  - (b) unused credits cannot be refunded; and

(c) unless set out in your Accepted Fee Proposal or otherwise agreed by SiteSherpa, credits will expire within 12 months from purchase.

6.15. **(Discount):** Discounts may be offered for volume purchases, long-term contracts, promotional campaigns, or client loyalty as specified in the annual sales strategy.

(a) Customers committing to multi-site or multi-year agreements may receive **up to 10 – 20 % off** the standard subscription rate, depending on plan size and contract length.

(b) Starter and Professional plans: routine discounts generally capped at **10 %** without senior approval.

(c) Enterprise plans: **up to 20 %** can be considered for large-scale, multi-year contracts.

## **7. GST**

7.1. Capitalised terms in this section 7 have the same meaning as given to them in the GST Act.

7.2. Except where expressly provided, the consideration specified in the Agreement excludes GST.

7.3. Where the Fees (or other consideration payable in relation to the taxable supply) is not expressed to be GST inclusive, the recipient of a taxable supply must, subject to the issue of a valid Tax Invoice by the supplier to the recipient or creation of a valid Recipient Created Tax Invoice by the recipient (as the case may be), pay to the supplier in addition to the Fees or other consideration payable an additional amount on account of any GST payable.

7.4. In circumstances where there is an adjustment event under the GST Act, the party which issued the Tax Invoice or the Recipient Created Tax Invoice (as the case may be) must promptly create an adjustment note for any overpayment or underpayment and, where applicable, the supplier must apply to the Commissioner of Taxation for a refund of any overpayment by the supplier for GST. The supplier must refund to the recipient any such overpayment except that the supplier need not refund to the recipient any amount for GST paid to the Commissioner of Taxation unless the supplier has received a refund or credit for that amount. The recipient must pay the supplier an

amount equal to any underpayment of GST.

- 7.5. A claim is for the cost plus all GST (except any GST for which a party can obtain an input tax credit), if:
- (a) a payment to satisfy a claim under or in connection with this Agreement (for example, under an indemnity) gives rise to a liability to pay GST then the payer must pay, and indemnify the payee on demand against, the amount of that GST; and
  - (b) a party has such a claim for a cost or expense on which that party must pay GST.

## 8. Use of the Platform, Products, Services and Documentation

- 8.1. **(Usage Rights):** Subject to your compliance with our Agreement, SiteSherpa grants you, as the context applies to your specific Products and/or Services set out in the Accepted Fee Proposal only, a limited, non-exclusive, non-transferable, non-sublicensable, revocable and personal licence for the Term to access and use:

- (a) the Platform;
- (b) the Product;
- (c) the Services; and/or
- (d) the Documentation,

for the sole purpose of your internal business purposes related to workplace safety and compliance systems ("**Permitted Purpose**") and in accordance with the rights and restrictions set out in this Agreement.

(each a "**Licence**").

- 8.2. You acknowledge that you and your Authorised Users have no right, title or interest in the Platform, Product, Services or Documentation, other than the Licence.
- 8.3. A Licence shall terminate automatically on expiration or termination of the Products and/or Services under your Accepted Fee Proposal.
- 8.4. **(Restrictions on use):** You must not, and ensure that your Authorised Users do not, directly or indirectly:

- (a) record, copy, reproduce, lease, licence, sub-licence, rent, sell or otherwise make available or transfer all or any part of the Platform, Product, Services or Documentation to any other person;
- (b) except as required by law (including under a workplace inspection by the relevant authority), make available to any third party the results of the operation and application of all or any part of the Platform, Product, Services or Documentation;
- (c) attempt to disassemble, decompile or otherwise reverse engineer the Platform, Product, Services or Documentation;
- (d) other than for the Permitted Purpose, create, download, alter, customise, modify or create derivative works from the Documentation;
- (e) access or use the Platform, Product, Services or Documentation in any way that is improper or breaches any applicable laws, or gives rise to any civil or criminal liability;
- (f) encumber or allow the creation of any security interest in respect of the Platform or Product;
- (g) remove, obliterate or alter any proprietary notice on the Platform, Product, Services or Documentation;
- (h) in respect of the Platform, access, store, distribute or transmit:
  - (i) viruses, worm, trojan or other malicious code that corrupts, degrades or disruptions the operation of the Platform or Products;
  - (ii) material that is unlawful, unethical, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethically offensive or a contravention of the rights of a third party;
  - (iii) material that facilitates illegal activity; or
  - (iv) material that abuses or causes damage or injury to any person or property;

- (i) frame, reformat, replicate or mirror any part of our Site, or use data mining robots or other extraction tools in relation to the Platform or any Products;
- (j) infringe any third party's rights, including as to confidentiality, Intellectual Property Rights or other proprietary rights;
- (k) use the Platform or any Products to access any data, other than the Customer Data;
- (l) use the Platform, Product, Services or Documentation to build or support products or services competitive or substantially similar to SiteSherpa;
- (m) circumvent user authentication or security of any of our networks, accounts or hosts or those of any third party;
- (n) interfere with, or interrupt the supply of, our Platform, Products and Services, or any other person's access to or use of the Platform, Products and Services;
- (o) take any action that imposes an unreasonable or disproportionately large load on the infrastructure of the Platform;
- (p) use any robot, spider, other automatic device or manual process to monitor, copy or extract any web pages on the Platform, or any of the content contained within;
- (q) subscribe to the Platform, Product or Services using automated means or under false or fraudulent pretences;
- (r) impersonate any person or entity or misrepresent your affiliation with a person or entity;
- (s) disparage SiteSherpa, any Group Member or any of its Personnel, or make any statement or publication, whether oral, in writing or otherwise, which does, or is likely to bring SiteSherpa, any Group Member or any of its Personnel into disrepute or ridicule or otherwise adversely affect their reputations; and
- (t) interfere with, circumvent, attempt to circumvent, avoid, alienate or bypass any contracts, agreements or arrangements with SiteSherpa or any Group Member,

or obviate or interfere with our relationships, contracts, agreements or arrangements with others, to gain a benefit for yourself or for any other person.

- 8.5. **(Open Source Software):** Where open source software is used in respect of the Platform, any Products or Services, your use of the open source component is subject to the relevant open source terms and conditions.
- 8.6. **(AI):** You acknowledge and agree that:
- (a) the Platform and/or any Integrations may incorporate or utilise certain AI features;
  - (b) AI features may be used to improve the delivery of the Platform, Product or Services or otherwise improve your use of the Platform, Product or Services; and
  - (c) to the extent AI Features utilise Customer Data, this is held and utilised in accordance with this Agreement or the Privacy Policy as the case may be
- 8.7. **(Equipment):** You are responsible for all equipment, operating systems, networks, internet services, software and other project management platforms that you use to access the Platform, Products or Services, including the maintenance, upkeep, repair and performance of that equipment and systems ("**Equipment**"). To the maximum extent permitted by law, we are not liable for, and you waive and release us from and against, any Liability in respect of your inability to use or access (including loss of functionality in part or in whole) any of the Platform, Products or Services due to your Equipment.
- 8.8. **(Availability):** From time to time, we may perform such reasonable scheduled and emergency maintenance and updates in relation to the Platform, Products or Services in order to continue to supply the Platform, Products or Services to you ("**Scheduled or Emergency Maintenance**"). You agree that access to, or the functionality of all or part of the Platform, Products or Services may need to be suspended for a time for us to perform Scheduled or Emergency Maintenance, and to the maximum extent permitted by law, we will not be liable to you for any interruptions or downtime to the Platform, Products or Services as a result of any Scheduled or Emergency Maintenance caused or contributed to by events or circumstances occurring outside of our reasonable control (including but not limited to Scheduled or Emergency Maintenance to any Third Party Inputs). Any Scheduled or Emergency Maintenance

will be notified by in-app publication on our Platform and/or by notification in writing to you to your last known contact details stored in our records.

- 8.9. **(Access):** You agree to provide us with access to your relevant Sites and systems as is reasonably required to enable us to provide you with the Platform, Product, Services and/or Documentation set out in your Accepted Fee Proposal.

## **9. Your obligations**

- 9.1. Without limiting any other obligations under this Agreement, you agree:

- (a) to comply with the terms and conditions of this Agreement;
- (b) to comply with all applicable laws in respect of your use and access to the Platform, Product, Services and/or Documentation;
- (c) to provide all assistance, information, documentation, access, facilities and other things reasonably necessary to enable us to comply with our obligations under this Agreement or at law;
- (d) to comply with the reasonable directions of SiteSherpa;
- (e) where access to your premises or Personnel is required for us to provide the Products or perform the Services, you shall provide us with safe and reasonable access on mutually agreed times;
- (f) to provide the Customer Data in a format compatible with the Platform, Products and/or Services and consent to us using, processing, storing, disclosing and transferring that Customer Data in accordance with our Privacy Policy;
- (g) to ensure that the Customer Data does not contain any harmful or deleterious software, viruses or other programming routines or codes designed to interrupt, destroy or limit the functionality of any computer software, hardware or other telecommunication equipment;
- (h) to hold and maintain the insurances specified below:

- (i) \$10 million professional indemnity insurance, per claim and in aggregate;
- (ii) \$20 million public liability insurance, per occurrence and in aggregate;
- (iii) if requested by SiteSherpa, \$3million cyber insurance, per occurrence;
- (iv) workers compensation insurance as required by law or if you are unable to take out workers' compensation insurance (for example, because you are a sole trader), then evidence of cover under a personal accident or income protection policy; and
- (v) any other insurances as required by law, with a reputable insurer for the Term or the duration of use of the Products or Services, and for any claims-made policy for at least 7 years after termination or expiry of this Agreement, or the last Accepted Fee Proposal made under this Agreement, whichever is later

## **10. Our obligations**

10.1. Without limiting any other obligations under this Agreement, SiteSherpa agree:

- (a) to comply with the terms and conditions of this Agreement;
- (b) to comply with all applicable laws in respect of the provision of the Platform, Product, Services and/or Documentation specified in the Accepted Fee Proposal;
- (c) to provide the Products and/or Services described in the Accepted Fee Proposal with due care and skill;
- (d) that it has the requisite technology, skill, Personnel and expertise to provide the Products and/or Services; and
- (e) where access to your Site is required, to comply with your reasonable and lawful policy to access your Site (subject to being notified of the policy prior to accessing the Site).

## **11. Third Party Inputs**

11.1. You acknowledge and agree that the Platform, Products and/or Services may interact

with, or be reliant on, certain Third-Party Inputs, including your Equipment.

11.2. You acknowledge and agree that, unless we have expressly agreed to provide the Third-Party Inputs in the Accepted Fee Proposal:

- (a) you are responsible for obtaining and managing all licences for the relevant Third-Party Inputs;
- (b) you are responsible for paying all fees related to the Third-Party Inputs; and
- (c) you agree to comply with terms and conditions applicable to the relevant Third-Party Inputs at all times

11.3 We do not make any representation, statement or warranty, either expressly or implicitly, in respect of any Third-Party Inputs, including as to the accuracy, completeness, suitability, performance or timeliness of the Third-Party Inputs.

11.4 Despite anything to the contrary, to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third-Party Inputs.

11.5 Should any unavailability, error or change to a Third-Party Input have a substantial and adverse impact on your use and enjoyment of the Platform, Product or Services:

- (a) you agree to notify us in writing within 5 Business Days of the change coming into effect; and
- (b) following receipt of such notice by us, you and SiteSherpa will use all reasonable endeavours to work together to resolve the matter

## **12. Third Party Content**

12.1. We may provide access to Material that is owned or developed by a third party (other than SiteSherpa or a Group member) (**Third Party Content**).

12.2. You acknowledge that we are not responsible for the creation, maintenance, accuracy or completeness of any Third Party Content.

- 12.3. We make no representation, statement or warranty, either expressly or implicitly, in relation to the accuracy, completeness, suitability, performance or timeliness of any Third Party Content on or linked to our Platform, Product and/or Services.
- 12.4. If you rely on Third Party Content, you do so solely at your own risk and subject to the terms and conditions that may apply to the Third Party Content as notified by that third party or displayed on their website. To the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by, arising from or connected with any Third Party Content.
- 12.5. We do not endorse any commercial product or service mentioned or advertised on any Third Party Content.

### **13. Intellectual Property**

- 13.1. SiteSherpa owns and shall retain ownership of all Intellectual Property Rights in and to the Platform, Product, Services and Documentation ("**SiteSherpa IP**"). We reserve all rights in any Intellectual Property Rights owned or licenced by SiteSherpa IP not expressly granted to you.
- 13.2. SiteSherpa shall own all Intellectual Property Rights created, produced or acquired in connection with this Agreement ("**Developed IP**"), excluding:
  - (a) any Intellectual Property Rights owned or licenced to you which existed prior to the Effective Date and if you have entered into multiple Accepted Fee Proposal, the date of your earliest Accepted Fee Proposal; and
  - (b) any Customer Data.("Customer IP").
- 13.3. You hereby assign all right, title and interest (including future copyright) in all Developed IP or any materials that are based upon or derived from the Developed IP to SiteSherpa free from any encumbrance or other third party right or interest.
- 13.4. You agree that you will:
  - (a) not represent yourself as the owner of or having an interest in the SiteSherpa IP

or Developed IP;

- (b) not use or allow the use of SiteSherpa IP in a manner that is contrary to, or conflicts with, or in any way damages the title or interest of SiteSherpa IP;
- (c) not use any brand name, trade name, trade mark, logo or design of SiteSherpa IP, unless authorised in writing by SiteSherpa;
- (d) not challenge or call into question in any way the right, title, interest and good will of SiteSherpa in respect of the SiteSherpa IP or Developed IP;
- (e) not register or attempt to register any SiteSherpa IP or Developed IP;
- (f) not infringe, or encourage or permit any infringement of, any of the rights in SiteSherpa IP and Developed IP;
- (g) not assign, sub-licence, rent, timeshare, loan, lease or otherwise transfer SiteSherpa IP or Developed IP;
- (h) not produce, modify, transmit, post, use, licence, distribute, reverse engineer or make a copy of the SiteSherpa IP and Developed IP;
- (i) not deface, obscure or remove any proprietary notice of SiteSherpa IP and Developed IP; and
- (j) do all acts and things as may reasonably be required by SiteSherpa to ensure the protection of SiteSherpa IP and Developed IP

13.5. Subject to section 13.6, you give us a perpetual, irrevocable and royalty-free licence (including the right to sub-licence) to reproduce, use, modify or adapt the Customer IP to enable us:

- (a) to perform our obligations under this Agreement;
- (b) enhance, modify or improve our Platform, Products, Services and Documentation;

- (c) diagnose errors with the Platform, Products and Services;
  - (d) monitor, analyse and compile statistical and performance information in an aggregated and anonymised format;
  - (e) to use any Developed IP or other Materials or things brought into existence by the performance of this Agreement; and
  - (f) to copy, transmit, store, backup, operate, repair, modify and maintain the Platform, Products, Services and Documentation.
- 13.6. Unless it has been de-identified, anonymised or aggregated by SiteSherpa or we are otherwise required to retain that Customer Data by law or under the terms of our Privacy Policy, section 13.5 excludes Customer Data from the expiration or termination of this Agreement.
- 13.7. You agree to grant us a royalty-free, non-exclusive, world-wide, perpetual, irrevocable and transferable licence to reproduce, modify, distribute, exploit and incorporate into our Platform, Products, Services and Documentation (without attribution of any kind) any suggestions, enhancements, requests, improvements, recommendations, corrections, or other feedback provided by you, and unconditionally waive all moral rights as defined in the *Copyright Act 1968* (Cth).
- 13.8. By uploading, transmitting, posting or otherwise making available any material on our Platform or associated platforms (including social media), you grant us a non-exclusive world-wide, perpetual, irrevocable and transferable licence to reproduce, modify, distribute and exploit any material in any form and for any purpose, and unconditionally waive all moral rights as defined in the *Copyright Act 1968* (Cth).
- 13.9. You own and shall retain ownership of all Intellectual Property Rights in and to the Customer IP.
- 13.10. You warrant that your Customer IP does not and will not violate any laws (including those relating to export control and electronic communications) or the rights of third parties, including any Intellectual Property Rights, rights of privacy or rights of publicity.

- 13.11 . You represent, warrant, acknowledge and agree that you have obtained all necessary rights, releases and permissions to provide, or have Customer IP provided to us, and to grant us the rights set out in the Agreement.

#### **14. Customer Data**

- 14.1. You are responsible for the accuracy, completeness, integrity and fitness for purpose of any Customer Data.
- 14.2. You acknowledge that we may access and use the Customer Data:
- (a) in accordance with our Privacy Policy;
  - (b) to conduct data analysis and collect analytics or use the Customer Data as part of an anonymised aggregate data set; and
  - (c) to monitor user activity as part of the provision, development, maintenance and support of our Platform, Products and Services.
- 14.3. You acknowledge and agree that:
- (a) SiteSherpa will not be responsible for the integrity or existence of Customer Data on your Equipment, including equipment, operating systems, networks, internet services, software and other project management platforms controlled or used by your Authorised Users or Personnel; and
  - (b) SiteSherpa assume no responsibility or Liability for the Customer Data. It is your responsibility to back up the Customer Data.
- 14.4. To the maximum extent permitted by law, we are not liable for, and you waive and release us from and against, any Liability in respect to any incomplete advice, output or operation of the Platform, Products, Services and/or Documentation provided that rely on your inaccurate or incomplete Customer Data.

#### **15. AI**

- 15.1. If the Products and/or Services include an AI system, you acknowledge that

SiteSherpa has used all reasonable endeavours to ensure:

- (a) the AI system is trained and tested in conditions that reflect the environment of its intended use; and
- (b) the methods to ensure AI Outputs could not reasonably be considered to be unethical or harmful in accordance with industry best practice

15.2 If you are aware of any issue with any AI Output, you must report that issue to SiteSherpa.

15.3 If SiteSherpa become aware of any issue with any AI Output which will materially affect your use of the AI system, SiteSherpa will notify you by in-app publication on our Platform and/or by notification in writing to you to your last known contact details stored in our records.

15.4 You permit SiteSherpa to review AI Outputs arising from Customer Data to monitor and validate the veracity of the AI Outputs. Notwithstanding, you acknowledge that the AI Inputs are not trained, tested or validated using Customer Data.

15.5 SiteSherpa shall implement and maintain a monitoring framework for its AI systems that is proportionate to the nature and risk of the AI Outputs. Notwithstanding, you acknowledge and agree that reliance on AI Outputs is solely at your own risk and human intervention is required to review all AI Outputs to ensure they are appropriate to your requirements.

15.6 To the maximum extent permitted by law, we are not liable for, and you waive and release us from and against, any Liability in respect to incorrect, incomplete or bias AI Outputs.

## **16. Privacy**

16.1. Each party must comply with the Privacy Laws.

16.2. Our Privacy Policy applies to your use of and access to our Platform, Products, Services and Documentation and sets out the terms of how we collect, use, process, disclose, store and transmit Personal Information.

16.3. You must ensure that the collection, use, processing, disclosure, storage and transmission of Personal Information conforms, to the extent relevant to this

Agreement, with the requirements of our Privacy Policy.

16.4. Without limiting this section 16, you must ensure that:

- (a) you have collected, used, stored, processed, disclosed, and transmitted Customer Data in accordance with the Privacy Laws;
- (b) SiteSherpa are capable of collecting, using, storing, processing, disclosing and transmitting Customer Data in the manner contemplated by this Agreement, without infringing any third party rights or violating any Privacy Laws;
- (c) you have informed the individual to whom the Personal Information relates, that it might be necessary to disclose the Personal Information to third parties;
- (d) you obtain the specific consent to disclose Personal Information from the individual, if the Personal Information is Sensitive Information; and
- (e) if you are aware of any actual or potential breach of the Privacy Act, you shall immediately notify us and cooperate with our reasonable requests for information and assistance about the breach.

16.5. Where the Customer Data includes any information or opinion about an identified individual, or an individual who is reasonably identifiable in the European Economic Area or the United Kingdom, you must notify us immediately and, where required, enter into a data processing agreement with us.

## 17. Confidential Information

17.1. **(Obligation to maintain confidence):** Each party acknowledges and agrees that:

- (a) the Disclosing Party's Confidential Information:
  - (i) is valuable, confidential and commercially sensitive to the Disclosing Party;
  - (ii) is disclosed to the Receiving Party as reasonably necessary in connection with this Agreement and for no other reason; and

(iii) shall at all times remain the sole property of the Disclosing Party;

- (b) the Disclosing Party shall take all reasonable steps to secure and keep secure the Confidential Information;
- (c) except as set out in this Agreement, it will not disclose the Confidential Information to any other person not party to this Agreement;
- (d) it will not use the Confidential Information for any purpose other than performing its obligations or exercising rights under this Agreement; and
- (e) it must not make or assist any person to make any use of the Confidential Information, other than in accordance with this Agreement

17.2. **(Exceptions):** Section 17.1 does not apply to:

- (a) any information that the Receiving Party can prove by contemporaneous written documentation was in the Receiving Party's lawful possession before the Receiving Party had dealings with the Disclosing Party;
- (b) any information in the public domain, other than as a result of a breach of section 17.1; and (c) any information that was legally and properly obtained by the Receiving Party from any other source without restriction on further disclosure.

17.3. **(Permitted Disclosure):** Notwithstanding anything contained in this Agreement, a Receiving Party may disclose Confidential Information of the Disclosing Party:

- (a) to one or more of its Personnel who needs to know that information for the purposes of this Agreement, provided that such disclosure is under conditions of confidentiality substantially similar to this section 17;
- (b) as required by law, provided that to the extent practicable, if the Disclosing Party is SiteSherpa, we are consulted about the disclosure prior to the Confidential Information being disclosed and are afforded the opportunity to object to the disclosure to the Court or Government Agency compelling disclosure; and
- (c) if the Disclosing Party has given its written consent to the disclosure, provided that the disclosure is under conditions of confidentiality substantially similar to this

section 17.

**17.4. (Return of Confidential Information):**

- (a) On the written demand by the Disclosing Party, the Receiving Party must deliver to the Disclosing Party (or with the Disclosing Party's prior consent, destroy or erase) any Confidential Information of the Disclosing Party in the possession, power or control of the Receiving Party or any of its Personnel. Without limiting SiteSherpa's rights under this clause, where the Disclosing Party is SiteSherpa, you must return all Confidential Information on expiry and termination of this Agreement.
- (b) The obligations in section 17.4(a) do not apply to the extent that the Confidential Information is required by SiteSherpa:
  - (i) to perform its obligations under this Agreement; or
  - (ii) to comply with any law or its internal governance policies.

**17.5. (Rights preserved):** This section 17 will be in addition to and not in derogation of any of the common law or equitable rights of a party.

**18. Audit**

**18.1.** You must:

- (a) maintain complete, accurate and up-to-date records of:
  - (i) your use of the Platform, Products, Services and/or Documentation as set out in the Accepted Fee Proposal, including the operational application of the Platform, Products, Services and/or Documentation;
  - (ii) where applicable, each Authorised User;
  - (iii) where applicable, each Site or each Site Inspection;
  - (iv) where applicable, each site visit conducted; and

- (i) all Materials you generated from the Platform, Products, Services and/or Documentation; and
  - (b) permit, under reasonable conditions, SiteSherpa, its Personnel and/or third party auditors to audit your compliance with this Agreement and to examine your records during the Term and for a period 7 year following the Term, provided that such audit is conducted not more than every 12 months and on at least 30 days prior written notice. Despite the forgoing, we may conduct an audit more than once every 12 months if an audit reveals a breach of this Agreement by you.
- 18.2. You agree to provide us with all reasonable assistance to enable us and our third-party auditors to conduct an audit pursuant to this section 18.

### 18.3 Travel and Out-of-Pocket Expenses

- (a) where our Personnel are required to travel to any location outside their ordinary place of work in order to perform the Services, reasonable travel and related expenses will be chargeable to you in addition to the Fees.
- (b) Travel and related expenses include, but are not limited to:
  - (i) economy-class airfares (or equivalent rail travel) unless otherwise agreed in writing;
  - (ii) accommodation at a standard not exceeding a four-star business hotel or equivalent;
  - (iii) local ground transport, parking and tolls; and
  - (iv) mileage for use of a private vehicle, charged at the prevailing Australian Taxation Office rate per kilometre
- (c) All travel and related expenses are subject to the following conditions:
  - (i) we will obtain your prior written approval for any individual trip where the estimated total expenses exceed AUD [insert amount, e.g. 500] (exclusive of GST);
  - (ii) we will provide reasonable evidence (such as receipts or invoices) to support

any expense claimed; and

- (iii) travel time may be billed at our standard hourly or day rates where the time spent in transit materially reduces the hours available for delivering the Services, unless otherwise agreed in writing.

- (d) You must reimburse us for all approved travel and related expenses within the payment terms set out in section 6 of this Agreement.

## **19. Disclaimers**

- 19.1. **(Template documents):** Any template document, form or information provided on the Platform, as part of a Product or the Services, is provided for general informational purposes only and on an “as is” basis. Whilst we use all reasonable endeavours to keep the information up-to-date, we make no representations, statement or warranty that any template document, form or information is accurate, complete, suitable, up-to-date or fit for purpose. It is your sole responsibility to determine the suitability, reliability and usefulness of any template document, form or information. Any reliance on such template document, form or information is strictly at your own risk.
- 19.2. **(Change in information):** Any information provided on the Platform, as part of a Product or the Services is subject to change without notice. It is your sole responsibility to review the information on the Platform or provided with the Product and/or Service periodically.
- 19.3. **(Third Party Input and Third Party Content):** Without limiting sections 11 and 12, we do not independently verify Third Party Inputs and Third Party Content. Where such Third Party Inputs and Third Party Content are passed on to you, we do so without any representation, statement or warranty as to the accuracy, truthfulness, usefulness, reliability or integrity of any Third Party Inputs and Third Party Content.
- 19.4. **(Specific Advice):** If you seek to rely on any template document, form or information provided on the Platform, as part of (or in any way related to) a Product or the Services, you should consider the need to obtain appropriate specific advice on how and whether the template document, form or information is relevant to your circumstances, needs or requirements. To the fullest extent permitted by law, we make no representation, statement or warranty as to the accuracy, usefulness,

reliability or fitness for purpose of any template document, form or information to your specific circumstances, needs and requirements.

- 19.5. **(Legal Advice):** Any information provided on the Platform, as part of a Product or the Services is not, and should not be construed as, legal advice. You are responsible for making your own inquiries and obtaining independent legal advice before acting on, relying on or using any Documentation, information or templates made available to you.
- 19.6. **(Opinions):** Where any information provided on the Platform, as part of a Product or the Services (including Third Party Content) contains opinions or judgments of third parties (**Third Party Opinions**), you acknowledge that we:
- (a) have not (and are not required to) verify the truthfulness, reliability or accuracy of such Third Party Opinions;
  - (b) not purport to endorse any Third Party Opinions; and
  - (c) do not warrant the accuracy or reliability of any Third Party Opinions.
- 19.7. **(Situations or events outside our reasonable control):** There are certain situations or events that may occur which are not within our reasonable control. Where this occurs, we will notify you of these circumstances and attempt to provide the Platform, Products and/or Services set out in the Accepted Fee Proposal as soon as we are able. In such circumstances, there may be a delay (sometimes a substantial delay) before we can start or resume providing the Platform, Products and/or Services and you agree that you shall not be entitled to any compensation. Notwithstanding the forgoing, all Fees (or part thereof) to the extent the Platform, Products and/or Services cannot be provided to you at all will be suspended for that period in which no Platform, Products and/or Services were provided.
- 19.8. **(AI Outputs):** Whilst all reasonable endeavours are used to ensure data we use to train, test or validate the AI system is representative, complete and free of bias in accordance with industry best practice, SiteSherpa give no make no representation, statement or warranty, either expressly or implicitly, in relation to the accuracy, completeness, suitability, performance or timeliness of the AI systems or any AI Outputs. Given the early-stage nature of the use of AI systems and the accuracy concerns in respect of even the most prominent, large language models on the

market, any use of AI is for expediency purposes only. Reliance on AI systems and/or AI Outputs is solely at your own risk and human intervention is required to review all AI Outputs to ensure they are appropriate to your requirements.

- 19.9. **(Your Information):** We provide our Products and/or Services based on the information you provide us. You are responsible for ensuring all information is accurate, complete and up-to-date. If your information is not accurate, complete and up-to-date, this may result in errors within the Products and/or Services. It is your responsibility to ensure the Products and/or Services, and the information derived from the Products and/or Services is suitable and applicable to your situation.
- 19.10. For each of the matters set out in 19.1 to 19.9 (inclusive), to the maximum extent permitted by law, we will not be liable for, and you waive and release us from and against, any Liability.

## **20. Assumption of Risk**

- 20.1. Your use of our Platform, Products, Services and Documentation is solely at your own risk.
- 20.2. Whilst we do use all reasonable endeavours and safeguards to implement and provide you with access to our Platform, Products, Services and Documentation, we do not make any representations, statements, warranties, or guarantees that your use and access shall be timely, secure, free from interruption (whether due to any temporary and/or partial breakdown, repair, upgrade or maintenance) or free from error. Your use of the Platform, Products, Services and Documentation may be suspended or unavailable for any reason whatsoever, including due to technical difficulties with network connection, the host provider, system failure, maintenance and repair works.
- 20.3. Whilst we do endeavour to provide accurate and timely information, the information available on the Platform, or as part of the Products, Services and Documentation may include inaccuracies, be incomplete or contain errors. We reserve the right to make modifications to that information at any time, for any reason, without notice to you.
- 20.4. You assume sole risk of making use of, and/or relying on the information available on our platform or provided as part of our products, services and documentation. We make no representations about the suitability, completeness, timeliness, reliability,

legality, in your jurisdiction or accuracy of the information available on our platform or provided as part of our products, services and documentation for any purpose..

- 20.5. We assume no liability or responsibility for any errors or omissions on the platform or provided as part of our products, services and documentation, any failures, delays or interruptions in the platform or product, service and documentation accessibility, any loss or damage arising from your use of the platform or product, service and documentation, any conduct by other users of the platform, or unauthorised access to or use of the platform, product, services and documentation.
- 20.6. To the maximum extent permitted by law, our platform, products, services and documentation are provided on an “as is” and “as available” basis and sitesherpa disclaims any and all representations and warranties with respect of our platform, products, services and documentation, whether express or implied, arising by law, custom, prior oral or written statement or otherwise, including (without limitation), any warranties and conditions of reasonable care and skill, merchantability, fitness for a particular purpose, statements regarding capacity, or non-infringement of intellectual property.

## **21. Indemnity**

- 21.1. To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless SiteSherpa, its Group Members and Personnel, from and against any and all claims and Liabilities arising from or in connection with:
- (a) a breach of this Agreement;
  - (b) any act or omission of you or your Personnel resulting or contributing to any death or personal injury (including disease or illness), or any loss or damage to real and tangible property;
  - (c) your use of and access to our Platform, the Products, Services and Documentation; (d) your violation of any third party right, including (without limitation) any third party Intellectual Property Rights, and privacy and data protection;
  - (e) any claim by a third party that they sustained or incurred loss and damage caused

or contributed by your acts or omissions;

- (f) any breach of any applicable law; and
- (g) any fraudulent, negligence to unlawful act or omission of you or your Personnel in the performance of your obligations under this Agreement.

21.2. The indemnity in section 21.1 is reduced to the extent that SiteSherpa's breach of contract, law, negligence or wilful misconduct caused or contributed to the claim or Liability.

21.3. SiteSherpa must take reasonable steps to mitigate its Liability.

21.4. SiteSherpa will be entitled to recover all Liability suffered or incurred by a Group Member in connection with this Agreement, as though the Liability was suffered or incurred by SiteSherpa, where SiteSherpa would have been entitled to recover that Liability from you under this Agreement had SiteSherpa suffered or incurred that Liability itself.

## 22. Limitation of Liability

22.1. No party to this Agreement is liable for Consequential Loss.

22.2. Nothing in this Agreement excludes, restricts or modify any right or remedy, or any guarantee, warranty or other term or condition, implied or imposed by any legislation which cannot lawfully be excluded or limited, such as the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) ("**ACL**").

22.3. If any guarantee, warranty, term or condition is implied or imposed in relation to this Agreement under any applicable law (such as the ACL) and cannot be excluded (**Non Excludable Provision**), then the liability of SiteSherpa for breach of any Non-Excluded Provision is limited to one or more of the following, at SiteSherpa option:

- (a) In the case of goods, to:
  - (i) the replacement of the goods or the supply of equivalent goods;
  - (ii) the repair of the goods;

(iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or

(iv) the payment of the cost of having the goods repaired.

(b) In the case of services, to:

(i) the supplying of the services again; or

(ii) the payment of the cost of having the services supplied again.

22.4. To the maximum extent permitted by law, SiteSherpa's maximum aggregate liability in respect of any claims arising out of or in any way related to this Agreement (and/or the relationship between SiteSherpa and you) is limited to:

- (a) for a Subscription or Package, the Fees paid to us in the six (6) month period prior any claim, action or demand made against SiteSherpa or \$1000 (whichever is greater); and
- (b) for all other Products and/or Services that are not captured by 22.4(a) (including the Enterprise Offerings), the Fees paid to us in the twelve (12) month period prior any claim, action or demand made against SiteSherpa or \$1000 (whichever is greater)

## **23. Suspension**

23.1. We may suspend the provision of the whole or part of the Platform, Products or Services ("**Affected Services**"), if we are of the reasonable opinion that it is necessary for the following reasons ("**Suspension Reasons**"):

- (a) because you or an Authorised User is in breach of its obligations under this Agreement, or we reasonably anticipates that you or an Authorised User will be in breach of its obligations under this Agreement if we does not exercise its rights under this section 23;
- (b) for the protection or safety of the environment or of any person or property; or
- (c) to comply with any law, court order or direction of any Government Agency.

- 23.2. We may suspend the Affected Services to the extent that and for as long as the Affected Services are subject to the Suspension Reasons.
- 23.3. If the Affected Services are suspended, we will immediately cease providing the Affected Services and cease to have any entitlement to charge for the Affected Services under sections 23.1(b) and 23.1(c) only or otherwise to the extent agreed in this agreement.
- 23.4. If a suspension pursuant to section 23.1 continues for more than 120 Business Days, either party may terminate the Accepted Fee Proposal and this Agreement immediately by giving written notice to the other party.
- 23.5. In the event of termination under section 23.4:
- (a) you must pay SiteSherpa any outstanding Fees for any Products and/or Services set out in accordance with the Accepted Fee Proposal up to the date of termination;
  - (b) unless the Suspension Reasons was due to section 23.1(a), SiteSherpa must refund any Fees previously paid by you pursuant to this Agreement for any Products and/or Services set out in accordance with the Accepted Fee Proposal that were not provided prior to termination; and
  - (c) neither party is otherwise liable to the other, except to the extent of the rights and obligations which accrued before the termination

## 24. Termination

- 24.1. **(Insolvency):** Unless prohibited by law, either party may immediately terminate all Accepted Fee Proposal and this Agreement by notice in writing to the other party if the other party becomes Insolvent.
- 24.2. **(Termination for Cause):** Either party may terminate this Agreement (and/or any Accepted Fee Proposal) by notice in writing to the other party **(Breaching Party)**, if the Breaching Party commits a material breach of this Agreement (or any Accepted Fee Proposal) and:
- (a) the breach is not capable of being cured; or

- (b) the breach is capable of being cured, but the Breaching Party fails to cure the breach within 20 Business Days of receiving written notice of the breach under this section 24.2.

24.3. **(Termination for Force Majeure Event):** If a Force Majeure Event continues for more than 45 Business Days, either party may terminate this Agreement and/or the affected Accepted Fee Proposal by giving at least 5 Business Days written notice to the other party.

24.4. **(Termination by SiteSherpa):** Except as provided in sections 24.1 to 24.3 (inclusive), if SiteSherpa wish to terminate any Accepted Proposal or this Agreement for any reason related to the SiteSherpa's decision to cease any Product and/or Service, it may do so on 30 days written notice to you.

## **25. Consequence of Termination**

25.1. On termination or expiry of this agreement (and/or any Accepted Fee Proposal):

- (a) you must cease to access the Platform, Services, Products and/or Documentation;
- (b) except for termination under section 24.4, you must pay SiteSherpa any outstanding Fees provided up to the date of expiration of the Term in accordance with this Agreement and the Accepted Fee Proposal. If SiteSherpa terminate under section 24.4, you must pay SiteSherpa any outstanding Fees provided up to the date of termination in accordance with this Agreement and the Accepted Fee Proposal;
- (c) SiteSherpa must refund you on a proportionate basis for any pre-paid fees for terminated Products or Services under section 24 covering the period after the effective date of termination, excluding where SiteSherpa terminate the Accepted Fee Proposal or Agreement under sections 24.1 and 24.2; and
- (d) section 17.4 shall apply.

- 25.2. Termination is without prejudice to any rights or liabilities accruing up to that date.
- 25.3. All provisions of our Agreement which by their nature should survive expiration, cancellation or termination shall survive, including (without limitation), ownership provisions, Intellectual Property Rights, warranties, disclaimers, indemnities, limitation of liabilities, dispute resolution, definitions and rules of interpretation.

## **26. Dispute Resolution**

- 26.1. You agree to notify us should you have concerns relating to our performance of the Agreement. A party may not commence court proceedings relating to any dispute, controversy, or claim arising from, or in connection with, this Agreement (including any question regarding its existence, validity, or termination) ("**Dispute**") without first meeting with a senior representative of the other party to seek (in good faith) to resolve the Dispute. If the Parties cannot agree on how to resolve the Dispute at that initial meeting:
- (a) where both parties are incorporated or habitually reside in Australia, the Dispute is to be referred to mediation. If the parties cannot agree on who the mediator should be, either Party may ask the Law Institute of Victoria to appoint a mediator. The mediator will decide the time, place, and rules for mediation. The parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the parties; or
  - (b) where one Party is incorporated or habitually resides outside Australia, the Dispute is to be referred to arbitration administered by the Australian Centre for International Commercial Arbitration (ACICA), in accordance with the ACICA Arbitration Rules. The number of arbitrators will be one. The seat of arbitration will be Melbourne, Australia. The costs of arbitration will be shared equally between the parties and the determination of the arbitrator will be final and binding.
- 26.2. Nothing in this section 26 will operate to prevent a party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

## **27. Notices**

27.1. **(Form of notices):** Any notice, approval, consent or other communication in relation to this agreement must:

(a) be in writing;

(b) be:

(i) left at the address set out in the Accepted Fee Proposal;

(ii) sent by prepaid ordinary post to the address set out in the Accepted Fee Proposal; or

(iii) sent by email to the contact as set out in the Accepted Fee Proposal

27.2. **(Effect of notices):** A notice, approval, consent or other communication takes effect from the time it is received, unless a later time is specified in it.

27.3. **(Effective time of receipt):** A notice, approval, consent or other communication is deemed to be received:

(a) if by delivery, when it is delivered;

(b) if posted in Australia, on the third day after posting;

(c) if posted overseas, on the seventh day after posting; and

(d) if by email, at the time shown in a delivery confirmation report generated by the sender's email system

## **28. Modification**

28.1. We reserve the right to modify or vary these Standard Terms and Conditions (including the URL Terms) at any time without liability to you (including to reflect any changes in the law, technology, our operations, our Products or Services). It is your responsibility

to periodically review these Standard Terms and Conditions for any changes (which shall be reflected by the date appearing at the top of these Standard Terms and Conditions). If you have a Subscription or Package with us, we shall notify you of any changes to our Standard Terms and Conditions. Subject to section 28.3, your continued use of our Platform, Products and/or Services constitutes your acceptance of any modified Standard Terms and Conditions.

- 28.2. If you do not agree with our modifications, your sole remedy is to cease using the Platform, Products and/or Services.
- 28.3. You are entitled to terminate an Accepted Fee Proposal within 10 days of changes to these Standard Terms and Conditions (excluding if the change relates to the URL Terms or otherwise do not adversely affect your interests).

## **29. General**

- 29.1. This Agreement is governed by the law applying in Victoria, Australia.
- 29.2. Each party irrevocably submits to the exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
- 29.3. No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- 29.4. Any term of this Agreement which is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity and enforceability of the remainder of this Agreement is not limited or otherwise affected.
- 29.5. An obligation or a liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.
- 29.6. You cannot assign, novate or otherwise transfer any of its rights or obligations under the Agreement. However, we may assign, novate or otherwise transfer our rights and

obligations under the Agreement to any other person.

- 29.7. This Agreement embodies the entire agreement between the parties and supersedes any prior negotiation, conduct, arrangement, understanding or agreement, express or implied, in relation to the subject matter of this agreement.
- 29.8. The communications between you and SiteSherpa are undertaken by electronic means, whether you visit the Platform, access the Product or Services, or send SiteSherpa e-mails or other written notifications, or whether SiteSherpa posts notices on the Platform, Products or Services or communicates with you via e-mail or other written notification. For contractual purposes, you:
- (a) consent to receive communications from SiteSherpa in an electronic form;
  - (b) agree that all terms, conditions, agreements, notices, disclosure and other communications that SiteSherpa provides to you electronically shall satisfy any legal requirements that such communications would satisfy if it were to be in writing; and
  - (c) if posted overseas, on the seventh day after posting; and
  - (d) agree that the foregoing does not affect your statutory rights.
- 29.9 You warrant that any person that accepts a Fee Proposal has the authority to bind the party named in the Fee Proposal to the Accepted Fee Proposal and these Standard Terms and Conditions and Special Conditions.

### **30. Definitions and Interpretation**

#### **30.1. Definitions**

In this Agreement:

**Accepted Fee Proposal** means, as the context applies:

- (i) the Products and/or Services advertised on our website and available through direct registration on the SiteSherpa website; and/or

- (ii) the Products and/or Services set out in a Fee Proposal accepted by you.
- (a) **AI** means artificial intelligence which includes any form of statistical analysis or machine learning algorithms based upon information and/or data contained in a database with or without human intervention or interaction including assigning or training of such algorithm.
- (b) **AI Inputs** means any data, information or other material that is processed using the AI systems employed by Site Sherpa, including any data, information or other materials used to train, test and validate those AI systems.
- (c) **AI Outputs** means any outputs generated and returned by AI Inputs.
- (d) **Authorised User** means a user permitted to access and use any applicable Platform, Service or Product under your Account as set out in the Accepted Fee Proposal.
- (e) **Business Day** means any day (other than a Saturday, Sunday or public holiday) on which trading banks are open for business in Victoria, Australia.
- (f) **Confidential Information** means:
  - (i) any information (regardless of form) that is disclosed by one party ("**Disclosing Party**") to the other party ("**Receiving Party**") and is expressly designated at the time of disclosure by the Disclosing Party as confidential, sensitive or private (or similar description); or
  - (ii) any information (regardless of form) that is disclosed to the Receiving Party by the Disclosing Party that a reasonable person would (given the nature of the information) consider to be confidential, sensitive or private; and
  - (iii) if you are unsure if the information provided to you by SiteSherpa is "confidential information" within the meaning of this definition, you must treat such information as confidential until such time as SiteSherpa advise you in writing otherwise.

- (g) **Capped Deliverables** means the maximum amount, volume or number of Deliverables agreed to be provided by SiteSherpa in a set period as set out in the Commercial Schedule.
- (h) **Commercial Schedule** sets out the Capped Deliverables for the Subscription and/or Package and shall be set out in the Accepted Fee Proposal, and may be set out in our URL Terms from time to time.
- (i) **Consequential Loss** means any Liability which does not arise naturally from the usual course of a breach of contract, under statute, in equity, in tort or otherwise, and includes loss of profits, business, revenue, goodwill, opportunity or anticipated savings.
- (j) **Contractor Pre-Qualification & Management Services (enterprise offering)** means consultancy Services provided by us to you in relation to the verification and management of contractors and potential contractors.
- (k) **Contractor Management (app)** means the self-service verification functionality facilitated by our Platform pursuant to which you may manage processes related to contractors, with the features and functionality set out in the Accepted Fee Proposal (if applicable).
- (l) **Customer Data** means any Material, Personal Information, Sensitive Information or Confidential Information provided or made available by you to SiteSherpa in connection with an Accepted Fee Proposal and this Agreement.
- (m) **Deliverables** means the specific outputs or quantifiable measures attributed to any Product and/or Services, including the number of hours provided for a Product and/or Service, the number of Site visits or inspections included in a Product and/or Service, the number of Authorised Users for the Platform or any other defined parameter within the Accepted Fee Proposal.
- (n) **Documentation** means all documentation relating to the Platform, Products and/or Services (including user manuals, operating manuals, SWMS, template documentation, reports, policies and procedures) applicable to you and the Authorised Users in respect of an Accepted Fee Proposal.

- (o) **Effective Date** means the date you accept a Fee Proposal, which automatically converts into an Accepted Fee Proposal.
- (p) **Employee Limits** is defined in the Special Terms and Conditions.
- (q) **Enterprise Offering** means the bespoke project-based consultancy Services and specifically includes the provision of Contractor Pre-Qualification & Management Services (enterprise offering) as well as development of bespoke software/technology solutions.
- (r) **Extension Term** means each period, excluding the Initial Term, in which the Products and/or Services in an Accepted Fee Proposal are renewed and shall be for a period equal to the Initial Term.
- (s) **End User Licence Agreement** means the end user licence agreement that each Authorised User must accept upon creating an Account, and at each time when the end user licence agreement is updated by SiteSherpa.
- (t) **Fees** means the fees set out in the Fee Proposal (including the Accepted Fee Proposal) and as adjusted under this Agreement.
- (u) **Fee Cycle** means the frequency or intervals of payment of the Fees set out in the Fee Proposal (including the Accepted Fee Proposal), including monthly, quarterly, bi-annually and annually.
- (v) **Fee Proposal** means a written proposal submitted by SiteSherpa in response to a request by you for Products and/or Services.
- (w) **Force Majeure Event** means:
  - (i) industrial disputes of general application which are not particular to the affected party or its Personnel and which are not limited to the premises or site at which the Services are to be performed;
  - (ii) cyclone, hurricane, flood, fire or earthquake;
  - (iii) an epidemic or pandemic that is declared as such by the World Health

Organisation (but excluding COVID-19);

(iv) war, revolution, embargo, riot, act of terrorism, or civil disturbance; or

(v) interruption of networks or third-party services (including 5G or web services), provided that the event or circumstance:

(vi) does not include a lack of funds;

(vii) prevents the performance by the affected party of any of its obligations under this Agreement;

(viii) is beyond the reasonable control of the party affected by that event or circumstance; and

(ix) cannot be prevented, overcome or remedied by the affected party with a reasonable standard of care and diligence or the expenditure of a reasonable sum of money.

(x) **Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

(y) **GST** has the same meaning as in the GST Act and includes goods and services tax and value added tax outside Australia

(z) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

(aa) **Group Member** means any Related Bodies Corporate of SiteSherpa.

(bb) **Implementation Standard Services** means the following:

(i) deployment of the Product and/or Service for a specified number of Authorised Users or the Employee Limits;

(ii) initial training sessions to educate the Authorised Users on using the Product

and/or Services;

(iii) limited troubleshoots and support during the initial onboarding period; and

(iv) minor software configuration to ensure the Products and/or Services are fit for your operational requirements

(cc) **Implementation Customised Services** may include:

(i) customised software development or configuration requests;

(ii) additional on-Site visits or prolonged remote support;

(iii) extended training sessions beyond the initial planned scope;

(iv) high-volume troubleshooting or support requests related to Employee Limits or Authorised Users onboarding; and

(v) any other services with respect to implementation which are not covered by Implementation Standard Services

(dd) **Initial Term** means:

(i) the period set out in the relevant Accepted Fee Proposal; and

(ii) if no period is set out in the relevant Accepted Fee Proposal, twelve (12) months.

(ee) **Insolvent** means in respect of a party, where:

(i) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the *Corporations Act 2001* (Cth));

(ii) it has had a Controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a Receiver appointed to any part of its property (where Controller and Receiver have the meanings given to them in the *Corporations Act 2001* (Cth));

- (iii) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this Agreement);
  - (iv) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (i), (ii) or (iii) above;
  - (v) it is taken (under section 459F(1) of the *Corporations Act 2001* (Cth)) to have failed to comply with a statutory demand;
  - (vi) it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001* (Cth) (or it makes a statement from which another party to this agreement reasonably deduces it is so subject);
  - (vii) it is otherwise unable to pay its debts when they fall due; or
  - (viii) something having a substantially similar effect to (i) to (vii) happens in connection with that person under the law of any jurisdiction
- (ff) **Integrations** means any additional functionality of the Platform, which may constitute add-ons, features, integrations or similar..
- (gg) **Intellectual Property Rights** means any intellectual or industrial property protected by law, including any patent, invention, copyright, design (whether or not registrable), trade secret, circuit layout design or right in relation to circuit layouts, right to confidential information, technical information, processes, techniques and know-how, patterns, designs, specifications, drawings, artwork, transparencies, proofs, documents, samples, dies, tools, jigs, equipment and other materials, regardless of where in the world it is created and includes:
- (i) all rights to own, use and exploit the intellectual property;
  - (ii) all applications or rights to apply for registration;

- (iii) all renewal or extensions of registration; and
- (iv) all licences and rights granted to use or exploit the intellectual property.
- (hh) **Liability** means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding, or judgment (whether under statute, contract, equity, tort (including negligence), indemnity, or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party or a party to this Agreement.
- (ii) **Material** means material in whatever form, including documents, reports, products, equipment, information, data and software.
- (jj) **PCI Standard** means the Payment Card Industry Data Security Standard;
- (kk) **Personal Information** has the meaning given to that term in the Privacy Act.
- (ll) **Platform** means, as the context applies:
  - (i) the Workplace App;
  - (ii) the SWMS App;
  - (iii) the SiteCo-Pilot Add On;
  - (iv) Contractor Management (app); or
  - (v) Site Support.
- (mm) **Personnel** means the officers, employees, contractors or agents of a party.
- (nn) **Privacy Act** means the *Privacy Act 1988* (Cth)
- (nn) **Privacy Laws** means the Privacy Act, the *Spam Act 2003* (Cth) and any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, handling, storage of or granting of access rights to Personal Information

- (oo) **Privacy Policy** means the privacy policy made available on our website and accessible at: <https://www.sitesherpa.co/privacy-and-cookie-policy>
- (pp) **Package** means a bundle of Products and/or Services (which may include a set of Capped Deliverables or a combination of Workplace App and Site Support).
- (qq) **Pricing Plan** means the pricing plans set out on the SiteSherpa website for the specified Products and/or Services (as may be amended for time to time) and accessible at: <https://www.sitesherpa.co/pricing-plans-subscriptions> or accessible by other means as notified us from time to time.
- (rr) **Products** means any goods or products to be provided by SiteSherpa in accordance with this Agreement, as specified in the Accepted Fee Proposal.
- (ss) **Recipient Created Tax Invoice** has the same meaning as in the GST Act.
- (tt) **Related Body Corporate** has the same meaning as in the *Corporations Act* 2001 (Cth).
- (uu) **Sensitive Information** has the same meaning as in Privacy Act.
- (vv) **Services** means any services to be provided by SiteSherpa in accordance with this Agreement, as specified in the Accepted Fee Proposal (including, but not limited to any project based consulting, any support services contemplated by the Accepted Fee Proposal and/or any Enterprise Offering).
- (ww) **Site** means a premises nominated by you.
- (xx) **Site Support** means the site safety support services available as a Subscription or part of a Package with Capped Deliverables (but excludes Enterprise Offerings).
- (yy) **Site Co-Pilot Add On** means the Ai driven chatbot known as "Site Co-Pilot".
- (zz) **Special Conditions** means the special conditions (if any) that apply to the Products and/or Services to be supplied to you as set out in the Accepted Fee Proposal
- (aaa) **Standard Terms and Conditions** means this document.

(bbb) **Subscription** has the meaning given to it in section 5.2 and may include, as the context provides a subscription to a Workplace App, SWMS App or Site Support as set out in the Accepted Fee Proposal.

(ccc) **SMWS** means safe work method statement.

(ddd) **SWMS App** means risk assessment application used to create Site-specific safe work method statements

(eee) **Tax Invoice** has the same meaning in the GST Act.

(fff) **Term** means, as the context applies, the Initial Term and any Extension Term

(ggg) **Third Party Inputs** means third parties or any goods and services provided by third parties, including customers, end users, suppliers, transportation or logistics providers, or other subcontractors for which the provision of the Platform, Products and/or Services may be contingent, or impacted.

(hhh) **URL Terms** means, as the context applies:

(i) all terms, conditions, notices and disclaimers that are hyperlinked or referenced by URL address in this Agreement and are incorporated into this Agreement by that reference, including our Privacy Policy; and

(ii) the Pricing Plan where expressly stated to apply in your Accepted Fee Proposal

(iii) **Workplace App** means the cloud-based and mobile workplace health and safety (“WHS”) software solution known as “Workplace App”, with the features and functionality set out in the Accepted Fee Proposal (if applicable).

## 30.2. Interpretation

Unless the contrary intention appears, a reference in this Agreement to:

(a) “SiteSherpa”, “We”, “Us” or “Our” refers to SFZ Safety Pty Ltd (ABN 72 667 065)

518);

- (b) "You" or "Your" includes the person or group of persons that is set out in the Accepted Fee Proposal;
- (c) **(singular and plural)** words in the singular includes the plural (and vice versa);
- (d) **(gender)** words indicating a gender includes the corresponding words of any other gender;
- (e) **(defined terms)** if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (f) **(person)** a reference to "person" or "you" includes an individual, the estate of an individual, a corporation, an authority, an association, consortium or joint venture (whether incorporated or unincorporated), a partnership, a trust and any other entity;
- (g) **(reference to a group of persons):** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (h) **(party)** a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (i) **(this Agreement)** a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure is a reference to a party, clause, paragraph, schedule, exhibit, attachment or annexure to or of this Agreement, and a reference to this agreement includes all schedules, exhibits, attachments and annexures to it;
- (j) **(document)** a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (k) **(references to statutes):** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of them;

- (l) **(dollars)**: an amount of money in reference to the lawful currency of Australia;
- (m) **(calculation of time)**: a period of time that dates from a given date or the day of an act or event is to be calculated exclusive of that day;
- (n) **(reference to a day)**: a day is a calendar day and is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (o) **(next day)**: if an act under this Agreement to be done by a party on or by a given day is done after 5:00 pm on that day, it is taken to be done on the next day;
- (p) **(next Business Day)**: if an event under this Agreement must occur on a stipulated day which is not a Business Day, the stipulated day will be taken to be the next Business Day;
- (q) **(headings)** headings and words in bold type are for convenience only and do not affect interpretation;
- (r) **(includes)** the word "includes" and similar words in any form is not a word of limitation; and
- (s) **(adverse interpretation)** no provision of this agreement will be interpreted adversely to a party because that party was responsible for the preparation of this agreement or that provision.

## Revision History

| Rev No | Date       | Prepared by | Approved by | Next Review Date | Revision History |
|--------|------------|-------------|-------------|------------------|------------------|
| 01     | 15/04/2025 | PVB         | JY          | 15/04/2026       | Initial Release  |
|        |            |             |             |                  |                  |