



## SiteBook Terms and Conditions

### 1 Our Disclosures

Our complete terms and conditions are contained below, but some important points for you to know before you become a customer are set out below:

- We may amend these Terms, the features of the Platform or your Subscription at any time, by providing written notice to you;
- Unless your Subscription is suspended or terminated in accordance with these Terms, your Subscription will roll over on an ongoing basis;
- We will handle your personal information in accordance with our privacy policy, available at [www.sitebook.com.au/downloads/SiteBook\\_Privacy\\_Policy.pdf](http://www.sitebook.com.au/downloads/SiteBook_Privacy_Policy.pdf);
- To the maximum extent permitted by law, the Fees are non-refundable;
- You are responsible and liable for the actions of your Authorised Users and Secondary Users;
- Our liability under these Terms is limited to us resupplying the Platform to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us during the term of your Subscription, and we will not be liable for Consequential Loss, any loss that is a result of a Third Party Service, or any loss or corruption of data;
- We may terminate your Subscription at any time by giving 30 days' written notice to you; and
- We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform or for featuring certain products or services on the Platform.

Nothing in these terms limit your rights under the Australian Consumer Law.

### 2 Introduction

- 2.1 These terms and conditions (**Terms**) are entered into between Pelsys Pty Ltd ABN 63 145 123 682 (**we, us or our**) and you, together the **Parties** and each a **Party**.
- 2.2 We provide a cloud-based, software as a service platform where business owners can manage the construction process, from tender applications, to project management and on-site safety.
- 2.3 In these Terms, **you** means the person or entity registered with us as an Account holder.
- 2.4 If you are using the Platform on behalf of your employer or a business entity, you, in your individual capacity, represent and warrant that you are authorised to act on behalf of your employer or the business entity and to bind the entity and the entity's personnel to these Terms.

### 3 Acceptance and Platform Licence

- 3.1 You accept these Terms by signing your subscription quote or checking the box "I agree", on your company subscription page.
- 3.2 You and each Authorised User or Secondary User must be at least 18 years old to use the Platform.
- 3.3 We may amend these Terms at any time, by providing written notice to you. By continuing to use the Platform after the notice or 30 days after notification (whichever date is earlier), you agree to the amended Terms. If you do not agree to the amendment, you may terminate your Subscription in accordance with the "Cancellation of Subscriptions" clause.
- 3.4 If you access or download our mobile application from (1) the Apple App Store, you agree to any Usage Rules set forth in the App Store Terms of Service or (2) the Google Play Store, you agree to the Android, Google Inc. Terms and Conditions including the Google Apps Terms of Service.
- 3.5 Subject to your compliance with these Terms, we grant you and your Authorised Users and their Secondary Users a personal, non-exclusive, royalty-free, revocable, worldwide, non-transferable licence to download and use our Platform in accordance with these Terms. All other uses are prohibited without our prior written consent.
- 3.6 When using the Platform, you and your Authorised Users and their Secondary Users must not do or attempt to do anything that is unlawful or inappropriate, including:
  - (a) anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;

- (b) using the Platform to defame, harass, threaten, menace or offend any person, including using the Platform to send unsolicited electronic messages;
- (c) tampering with or modifying the Platform (including by transmitting viruses and using trojan horses);
- (d) using data mining, robots, screen scraping or similar data gathering and extraction tools on the Platform; or
- (e) facilitating or assisting a third party to do any of the above acts.

#### 4 SiteBook Services

- 4.1 In consideration for your payment of the Fees, we agree to provide you and your Authorised Users and their Secondary Users with access to the Platform, the support services as detailed in this section, and any other services we agree to provide as set out in your Account.
- 4.2 We agree to use our best endeavours to make the Platform available at all times. However, from time to time we may perform reasonable scheduled and emergency maintenance, and the Platform may be unavailable during the times we are performing such maintenance.
- 4.3 Should you be unable to access the Platform, or should you have any other questions or issues impacting on your use and enjoyment of the Platform, you, your Authorised Users and their Secondary Users must place a request via the help desk, over the phone, or via email etc. We will endeavour to respond to any support requests in a reasonable period.
- 4.4 You acknowledge and agree that the Platform may be reliant on, or interface with third party systems that are not provided by us (for example, servers, cloud storage providers, email clients, CRM systems, our Geofencing Module and internet providers) (**Third Party Services**). To the maximum extent permitted by law, we shall have no Liability for any Third Party Services, or any unavailability of the Platform due to a failure of the Third Party Services or an incompatibility with your devices (such as our Geofencing Module, which will not work with devices more than 3 years old).
- 4.5 You acknowledge and agree that data loss is an unavoidable risk when using any software. To the extent you input any data into the Platform, you agree to maintain a backup copy of any data you input into the Platform.
- 4.6 You acknowledge and agree that all templates provided by us including the workplace health and safety (WHS) plans & safe work method statement (SWMS) are a template only and we take no responsibility for changes to state legislation that may affect the accuracy or completeness of these templates.
- 4.7 To the maximum extent permitted by law, we shall have no Liability to you for any loss or corruption of data, or any scheduled or emergency maintenance that causes the Platform to be unavailable.

#### 5 Accounts

- 5.1 You must register on the Platform and create an account (**Account**) to access the Platform's features. Each Authorised User will require a login that is linked to your Account in order to access the Platform. Secondary Users may require a login to access the Account or may be able to access the Platform without an Account. This will be outlined in your Account.
- 5.2 You must provide basic information when registering for an Account including your business name, contact name and email address and you must choose a password.
- 5.3 All personal information you and your Authorised Users and their Secondary Users provide to us will be treated in accordance with our Privacy Policy.
- 5.4 You agree to provide and maintain up to date information in your Account and to not share your Account password with any other person. Your Account is personal and you must not transfer or provide it to others with the exception of your Authorised Users.
- 5.5 You are responsible for keeping your Account details and your username and password confidential and you will be liable for all activity on your Account, including purchases made using your Account details, and any activity from one of your Authorised Users and their Secondary Users. Each Authorised User is responsible for keeping their login details confidential. You agree to immediately notify us of any unauthorised use of your Account.
- 5.6 When you create an Account, you must also select a Subscription (**Subscription**). You may choose between different tiers of Subscription with different services and different Subscription periods as set out on our Platform.

#### 6 Authorised Users and Secondary Users

- 6.1 If set out in your Account, you may be permitted to invite a number of users to the Platform, who will be permitted to access and use the Platform under your Account (**Authorised Users**). These Authorised Users may also register their workers on the Platform (**Secondary User**). We agree to provide you with the number of Authorised Users or Secondary Users as set out in your Account.
- 6.2 The Authorised Users and Secondary Users will have permission to access certain features of the Platform and your Account, as detailed in your Account and you may adjust these permission settings in your Account.
- 6.3 You will ensure that each Authorised User and their Secondary Users comply with these Terms. You are responsible and liable for the acts or omissions of your Authorised Users and the Secondary Users as though they were your own acts and omissions.

#### 7 Subscriptions

- 7.1 Your Subscription may begin with a free trial. The free trial period of your Subscription will last for the period specified on the Platform. The set-up cost associated with your subscription will be priced and agreed to prior to or during the trial period. We determine free trial eligibility in our sole discretion and we may limit eligibility to prevent free trial abuse. We reserve the right to revoke the free trial and suspend your Account at any time in the event that we determine that you are not eligible. Free trials are only available for new Account holders. If you do not cancel during the free trial period, we will charge your chosen payment method for the Subscription you have chosen and its corresponding Subscription fee (**Fees**) within 7 days of your free trial ending (**Payment Date**).
- 7.2 Unless your Subscription is suspended or terminated in accordance with these Terms, your Subscription will roll over on an ongoing basis, monthly, every 6 months, or annually depending the option chosen in your account. You will be charged the same Fees on an ongoing monthly, every 6 months or annual basis from the Payment Date. Without limiting your rights under the Australian Consumer Law, you can cancel your Subscription at any time in accordance with the "Cancellation of Subscriptions" clause of these Terms but the cancellation will only have effect from expiry of the monthly, every 6 months or annual period for which you have paid the Fees.
- 7.3 The payment methods we offer for the Fees are set out on the Platform, and include but are not limited to credit card payments and invoice. We may offer payment through a third-party provider (for example, eWay or PayPal). You acknowledge and agree that we have no control over the actions of the third-party provider, and your use of the third-party payment method may be subject to additional terms and conditions.
- 7.4 You must not pay, or attempt to pay, the Fees by fraudulent or unlawful means. If you make a payment by debit card or credit card, you warrant that you are authorised to use the debit card or credit card to make the payment.
- 7.5 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).
- 7.6 If you fail to pay your Subscription 14 days after the debt falls due, your Account will go "on-hold", which means you will not be able to access the Platform or use the Services. If you have not paid the Fees due for a further 14 days, it will be considered a breach of a material term of these Terms and your Subscription will be cancelled in accordance with the "Cancellation of Subscriptions" clause.
- 7.7 **Changes to your Subscription:** If you wish to suspend or change your Subscription (for example, by upgrading to a different Subscription tier, or varying the number of Authorised Users or Secondary Users associated with your Account), you must provide notice to us through your Account that you wish to suspend or vary your Subscription at least 24 hours before the next Payment Date. If you vary your Subscription and the Fees increase, we will charge you for the increase in the Fees on a pro-rata basis for the remainder of the period until your next Payment Date, and you will have access to the additional Subscription features from the date you make such payment.
- 7.8 To the extent permitted by law, the Fees are non-refundable and non-cancellable once paid.
- 7.9 We may need to change what is available as part of your Subscription (for example, the inclusions, exclusions, updated features) from time to time. If we change what is available as part of your Subscription, we will provide you with 30 days' notice of the change. After 30 days, we will apply the changes to your Subscription. If the changes substantially and adversely affect your enjoyment of the Subscription, you may cancel your Subscription in accordance with the 'Cancellation of Subscriptions' clause.
- 7.10 We may need to change the Fees from time to time. If we change the Fees, we will provide you with 30 days' notice of the change. After 30 days, we will apply the updated Fee to your Subscription. If the updated Fee is not acceptable to you, you may cancel your Subscription in accordance with the 'Cancellation of Subscriptions' clause.

## **8 Our Intellectual Property**

- 8.1 You acknowledge and agree that any Intellectual Property or content (including copyright and trademarks) available on the Platform, the Platform itself, and any algorithms or machine learning models used on the Platform (**Our Intellectual Property**) will at all times vest, or remain vested, in us.
- 8.2 We authorise you to use Our Intellectual Property solely for your limited commercial use. You must not exploit Our Intellectual Property for any other purpose, nor allow, aid or facilitate such use by any third party. Use must be limited to Authorised Users or their Secondary Users on devices that are controlled or approved by you.
- 8.3 You must not, without our prior written consent:
- (a) copy, in whole or in part, any of Our Intellectual Property;
  - (b) reproduce, retransmit, distribute, disseminate, sell, publish, broadcast or circulate any of Our Intellectual Property to any third party; or
  - (c) breach any intellectual property rights connected with the Platform, including (without limitation) altering or modifying any of Our Intellectual Property, causing any of Our Intellectual Property to be framed or embedded in another website, or creating derivative works from any of Our Intellectual Property.
- 8.4 This clause will survive the termination or expiry of your Subscription.

## **9 Your Data**

- 9.1 You own all data, information or content you and your Authorised Users or their Secondary Users upload into the Platform (**Your Data**), as well as any data or information output from the Platform using Your Data as input (**Output Data**). Note that Output Data does not include the Analytics (as described below).
- 9.2 You grant us a limited licence to copy, transmit, store, backup and/or otherwise access or use Your Data and the Output Data to:
- (a) communicate with you (including to send you information we believe may be of interest to you);
  - (b) supply the Platform to you and otherwise perform our obligations under these Terms;
  - (c) diagnose problems with the Platform;
  - (d) enhance and otherwise modify the Platform;
  - (e) perform Analytics;
  - (f) develop other services, provided we de-identify Your Data; and
  - (g) as reasonably required to perform our obligations under these Terms.
- 9.3 You agree that you are solely responsible for all of Your Data that you and your Authorised Users and their Secondary Users make available on or through the Platform. You represent and warrant that:
- (a) you are either the sole and exclusive owner of Your Data or you have all rights, licences, consents and releases that are necessary to grant to us the rights in Your Data (as contemplated by these Terms); and
  - (b) neither Your Data nor the posting, uploading, publication, submission or transmission of Your Data or our use of Your Data on, through or by means of our Platform will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.
- 9.4 You acknowledge and agree that we may monitor, analyse and compile statistical and performance information based on and/or related to your use of the Platform, in an aggregated and anonymised format (**Analytics**). You acknowledge and agree that we own all rights in the Analytics, and that we may use the Analytics for our own internal business purposes, provided that the Analytics do not contain any identifying information.
- 9.5 We do not endorse or approve, and are not responsible for, any of Your Data.
- 9.6 You acknowledge and agree that the Platform and the integrity and accuracy of the Output Data is reliant on the accuracy and completeness of Your Data, and the provision by you of Your Data that is inaccurate or incomplete may affect the use, output and operation of the Platform.
- 9.7 This clause will survive the termination or expiry of your Subscription.

## 10 Warranties

- 10.1 You represent, warrant and agree that:
- (a) you will not use our Platform, including Our Intellectual Property, in any way that competes with our business;
  - (b) there are no legal restrictions preventing you from entering into these Terms;
  - (c) all information and documentation that you provide to us in connection with these Terms is true, correct and complete; and
  - (d) you have not relied on any representations or warranties made by us in relation to the Platform (including as to whether the Platform is or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms.

## 11 Australian Consumer Law

- 11.1 Certain legislation, including the Australian Consumer Law (**ACL**) in the *Competition and Consumer Act 2010 (Cth)*, and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the provision of the Platform by us to you which cannot be excluded, restricted or modified (**Consumer Law Rights**).
- 11.2 If the ACL applies to you as a consumer, nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL. You agree that our Liability for the Platform provided to an entity defined as a consumer under the ACL is governed solely by the ACL and these Terms.
- 11.3 Subject to your Consumer Law Rights, we exclude all express and implied warranties, and all material, work and services (including the Platform) are provided to you without warranties of any kind, either express or implied, whether in statute, at law or on any other basis.
- 11.4 This clause will survive the termination or expiry of your Subscription.

## 12 Liability

- 12.1 Despite anything to the contrary, to the maximum extent permitted by law:

- (a) you agree to indemnify us for any Liability we incur due to your breach of the Acceptance and Platform Licence clause and the Intellectual Property clause of these Terms;
- (b) neither Party will be liable for Consequential Loss;
- (c) each Party's liability for any Liability under these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party or any of that Party's personnel (including a Party's Authorised Users or Secondary Users), including any failure by that Party to mitigate its losses; and
- (d) our aggregate liability for any Liability arising from or in connection with these Terms will be limited to us resupplying the Platform to you or, in our sole discretion, to us repaying you the amount of the Fees paid by you to us during the term of your Subscription.

12.2 This clause will survive the termination or expiry of your Subscription.

### 13 Suspension and Termination

13.1 **Cancellation of Subscriptions:** You may request to cancel your Subscription at any time by notifying us via email or via phone to our Sales Manager. Your cancellation will take effect from the next Payment Date. If you cancel your Subscription because we have changed the Subscription inclusions and the change has a substantial and adverse impact on you, or we have changed the Fees, then the termination of the Subscription will be immediate, and we will refund you for any Fees that you have paid upfront but have not been used on a pro-rata basis.

13.2 We may terminate your Subscription at any time by giving 30 days' written notice to you (**Termination for Convenience**).

13.3 A Subscription will terminate immediately upon written notice by a Party (**Non-Defaulting Party**) if:

- (a) the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach has not been remedied within 10 Business Days of the Defaulting Party being notified of the breach by the Non-Defaulting Party; or
- (b) the Defaulting Party is unable to pay its debts as they fall due.

13.4 We may terminate your Subscription at any time where something threatens SiteBook if:

- (a) in our opinion, a change to any Third Party arrangement necessary for SiteBook renders the ongoing operation of SiteBook substantially unworkable or non-functional;
- (b) in our opinion, the actions of a regulator or a change in law or regulation makes the ongoing operation of SiteBook substantially unworkable or non-functional; or
- (c) we believe this is necessary either to protect the security, integrity or reputation of SiteBook or any SiteBook function, service or facility, or to otherwise protect our interests;

13.5 **Suspension of Subscriptions:** Should we suspect that you are in breach of these Terms, we may suspend your access to the Platform while we investigate the suspected breach. Your account will also be suspended in the event your account is seen by us as at risk of hacking or security breaches and while suspected hacking is investigated.

13.6 Upon expiry or termination of your Subscription:

- (a) we will remove your access to the Platform and your Account will be deleted;
- (b) you agree that other than where termination is due to our Termination for Convenience or our breach of these Terms, and to the maximum extent permitted by law, any payments made by you to us (including any Fees) are not refundable to you;
- (c) where we terminate your Subscription for any reason other than a Termination for Convenience, you also agree to pay us our reasonable additional costs directly arising from such termination.

13.7 Where termination is due to our Termination for Convenience or our breach of these Terms, we agree to refund you for any prepaid unused Fees on a pro-rata basis.

13.8 Termination of a Subscription will not affect any rights or liabilities that a Party has accrued under these Terms.

13.9 This clause will survive the termination or expiry of your Subscription.

### 14 Notice Regarding Apple

14.1 To the extent that you are using or accessing our Platform on an iOS device, you further acknowledge and agree to the terms of this clause. You acknowledge that these Terms are between you and us only, not with Apple Inc. (**Apple**), and Apple is not responsible for the Platform and any content available on the Platform.

14.2 Apple has no obligation to furnish you with any maintenance and support services with respect to our Platform.

14.3 If our mobile application fails to conform to any applicable warranty, you may notify Apple and Apple will refund the purchase price of the mobile application to you. To the maximum extent permitted by applicable law, Apple will have no other warranty obligation whatsoever with respect to the mobile application and any other claims, losses, liabilities, damages, costs or expenses attributable to any failure to conform to any warranty will be our responsibility.

- 14.4 Apple is not responsible for addressing any claims by you or any third party relating to our mobile application or your use of our mobile application, including but not limited to: (1) product liability claims; (2) any claim that our mobile application fails to conform to any applicable legal or regulatory requirement; and (3) claims arising under consumer protection or similar legislation.
- 14.5 Apple is not responsible for the investigation, defence, settlement and discharge of any third-party claim that our mobile application infringes that third party's intellectual property rights.
- 14.6 You agree to comply with any applicable third-party terms when using our mobile application.
- 14.7 Apple and Apple subsidiaries are third-party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third-party beneficiary of these Terms.
- 14.8 You hereby represent and warrant that: (1) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (2) you are not listed on any U.S. Government list of prohibited or restricted parties.

## 15 General

- 15.1 **Assignment:** Subject to the below clause, a Party must not assign or deal with the whole or any part of its rights or obligations under these Terms without the prior written consent of the other Party (such consent is not to be unreasonably withheld).
- 15.2 **Assignment of Debt:** You agree that we may assign or transfer any debt owed by you to us, arising under or in connection with these Terms, to a debt collector, debt collection agency, or other third party.
- 15.3 **Disputes:** A Party may not commence court proceedings relating to a dispute without first meeting with the other Party to seek (in good faith) to resolve the dispute, failing which the Parties agree to engage a mediator to attempt to resolve the dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.
- 15.4 **Entire Terms:** Subject to your Consumer Law Rights, these Terms contains the entire understanding between the Parties and the Parties agree that no representation or statement has been made to, or relied upon by, either of the Parties, except as expressly stipulated in these Terms, and these Terms supersedes all previous discussions, communications, negotiations, understandings, representations, warranties, commitments and agreements, in respect of its subject matter.
- 15.5 **Force Majeure:** To the maximum extent permitted by law, we shall have no Liability for any event or circumstance outside of our reasonable control.
- 15.6 **Governing law:** These Terms are governed by the laws of South Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in South Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.
- 15.7 **Notices:** Any notice given under these Terms must be in writing addressed to us at the details set out below or to you at the details provided in your Account. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.
- 15.8 **Publicity:** You agree that we may advertise or publicise the fact that you are a user of our Platform, including on our website or in our promotional material.
- 15.9 **Severance:** If a provision of these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.
- 15.10 **Third party sites:** The Platform may contain links to websites operated by third parties. Unless we tell you otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites. We recommend that you make your own investigations with respect to the suitability of those websites. If you purchase goods or services from a third party website linked from the Platform, such third party provides the goods and services to you, not us. We may receive a benefit (which may include a referral fee or a commission) should you visit certain third-party websites via a link on the Platform (**Affiliate Link**) or for featuring certain products or services on the Platform. We will make it clear by notice to you which (if any) products or services we receive a benefit to feature on the Platform, or which (if any) third party links are Affiliate Links.
- 15.11 **Work Health and Safety (WHS) Disclaimer.** SiteBook service is provided on 'as is' basis and does not guarantee that the service will be suitable for your specific WHS requirements. We strongly recommend that you engage a Work Health and Safety consultant to advise on the documents, processes and procedures required to suit your individual business situation.

## 16 Definitions

- 16.1 **Consequential Loss** includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise.

- 16.2 **Intellectual Property** means any domain names, know-how, inventions, processes, trade secrets or confidential information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.
- 16.3 **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 these Terms or otherwise.

**For any questions or notices, please contact us at:**

Pelsys Pty Ltd ABN 63 145 123 682

**Email:** [support@sitebook.com.au](mailto:support@sitebook.com.au)

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