

SiteBook Terms and Conditions

1 About these terms

These are the terms and conditions for our supply of the SiteBook Service to you, including our obligations to each other (**Terms**).

These Terms do not exclude, restrict or modify:

- (i) the application of any provision of the Australian Consumer Law (whether applied as a law of the Commonwealth or any State or Territory of Australia) (**ACL**);
- (ii) the exercise of any right or remedy conferred by the ACL; or
- (iii) the liability of SiteBook for a failure to comply with any applicable consumer guarantees where to do so would:
 - (iv) contravene the ACL; or
 - (v) cause any part of these Terms to be void.

1.1 Definitions

Some words in these Terms have particular meanings:

Business Day means a week day, except for:

- a national public holiday;
- a day on which banks in South Australia are generally closed; or
- a public holiday in South Australia.

Business means the business for which the application is made and accepted for SiteBook. This would include, but is not limited to, sole traders, partnerships, companies and trusts.

Fees means fees and charges relating to the provision of the SiteBook Service.

Loss or Claim means any loss, liability, action, proceeding, damage, cost or expense (including all reasonable legal costs and expenses), including liability in tort and consequential and economic losses.

SiteBook Service means any of the services, facilities or functionality which form part of SiteBook and which we make available to you from time to time.

Personal Information means that term as defined in the Privacy Act. Basically, this is information about an identifiable individual.

Privacy Act means the *Privacy Act 1988 (Cth)*.

Principal Contractor means a person who represents the company nominated as the principal contractor for a work site.

Subcontractor means a person who represents the company nominated as a subcontractor for a work site.

Professional Partner means a person who provides Work Health and Safety or legal or similar services to you, and who you appoint as a User.

Work Site means a record in SiteBook that represents a project or place of work.

Third Party means any person we have contracted with to help us provide the SiteBook Service. This includes all service providers engaged by us for the delivery, maintenance and administration of SiteBook.

User means a person authorised by you to use SiteBook (including a Professional Partner). SiteBook is a multi-user system.

we, us and **our** means PELSYS Pty Ltd trading as SiteBook ACN 145 123 682.

you means the Business, including each User.

2 General terms

2.1 Protecting your username and password

(a) Unless you take adequate security precautions, it could be possible for an unauthorised person to gain access to your SiteBook Service. It is important to take all reasonable precautions to ensure your username and password are not misused, and remain secure and confidential. In particular:

- (1) you must not tell anyone your username or password, including any member of your family;
- (2) you must not let anyone else, whether acting as your agent or not, access SiteBook using your username and password; and
- (3) you must be extra careful when accessing SiteBook from public computers.

(b) If you think anyone else might know your password you should reset your password from within SiteBook, or contact us as soon as possible to arrange a new password.

(c) You agree to be liable if your login details are used by an unauthorised person.

2.2 Other responsibilities you have as a User

(a) **No interference with SiteBook** – You will not:

- (1) interfere with the operation of SiteBook or overload the system;
- (2) reverse-engineer, reverse-assemble, decompile, or otherwise attempt to discover source code, formulas or processes in respect of the software behind SiteBook; or
- (3) copy, reproduce, alter, modify, create derivative works, or publicly display, any part of any content from SiteBook except where we have given you permission.

(b) **Cooperation and limited authority in relation to Third Parties** – You:

- (1) must do all things we consider appropriate to enable us to fulfil our obligations to Third Parties in relation to SiteBook; and
- (2) authorise us to give a Third Party or other person any authority, consent or instruction in respect of SiteBook, to enable us to provide the SiteBook Service to you.

(c) **Adding other Users** – You can add other users to SiteBook. Their use of SiteBook is subject to these Terms, so we suggest that you provide them with a copy. You are responsible for their use of SiteBook. You can stop their access by de-activating their personnel record within SiteBook or by contacting us.

(d) **Change of details** – You must let us know of any changes to your details which you have provided to us in relation to SiteBook, and provide any proof of the change we require.

2.3 Use of SiteBook and our intellectual property

(a) **What you can do** – until your use of the SiteBook Service is terminated, you have a non-exclusive and non-transferable licence to use the SiteBook Service in the way that we authorise from time to time.

(b) **We retain our intellectual property rights** – except where specifically set out in these Terms, these Terms do not give you any intellectual property or other rights in any of our:

- (1) software, documents, templates, marketing material, trademarks, business names, logos, trading styles, get-up, processes or methodologies; or
- (2) other intellectual property, and you (including your staff, agents or contractors) must not otherwise use, reproduce or modify these intellectual property rights.

(c) **Intellectual property rights deriving from your use of SiteBook** – You agree that any intellectual property rights in any systems, processes or methodologies developed by you which derive from your use of the SiteBook Service become our intellectual property.

2.5 Payment of Fees and Credit Card Authority

(a) You must pay us all Fees due to us in relation to your use of SiteBook, on the due date. Fees are documented in your SiteBook subscription offer.

(b) By giving you at least 20 Business Days' notice before the change takes effect, we may:

- (1) change the amount of any Fee and introduce a new Fee; and
 - (2) change the circumstances in which, or frequency with which, a Fee is payable.
- Section 8 tells you about the ways in which we can give you notice.

(c) You can pay by us either by a recurring monthly bank transfer, or by Credit Card, or by PayPal.

(d) When paying by **Credit Card Authority**

- (1) You authorise us to deduct monthly installments and any other Fees payable to us in respect of your use of SiteBook. You give us this authority by providing us with your credit card details.
- (2) Debiting of Fees will ordinarily occur on the 1st Business Day of each month (but may occur at other times as required or permitted under these Terms) and can be in advance or in arrears as we determine. We will provide a monthly statement/tax invoice detailing the Fees that have been debited.
- (3) We will use PayPal to collect fees.
- (4) It is your responsibility to ensure you have sufficient credit available on your nominated credit card to cover your monthly payment and that your card details are current and correct.
- (5) If the debit to your card is declined, we will attempt to re-draw 3 times. If these attempts fail, we will advise you by email of the decline and You will be allowed 14 days to respond. Where the fees remain unpaid, we may suspend or terminate your use of SiteBook.
- (6) If you believe there has been an error in debiting your credit card, you should notify us immediately at sales@sitebook.com.au so that we can resolve your query promptly. If we conclude that your credit card has been incorrectly debited, we will arrange a refund of the incorrect debit.

(e) Late or missed payments may result in an administration fee of \$30 per payment due.

2.6 Goods and services tax (GST) and duties

(a) All payments due to us (eg. Fees, reimbursement by you to us of any amounts or payments under indemnities), unless already stated to be GST inclusive, are to be increased by the amount of any GST liability we have in relation to supplies we make to which those payments relate.

(b) You must pay all duties (eg. stamp duty, other government charges or financial institution account fees) payable in relation to your participation in SiteBook. If we have paid them, they must be reimbursed by you on our request.

3 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.

4 Availability of the SiteBook Service

The SiteBook Service could be disrupted if systems failure occurs due to technology used by either us or Third Parties involved in providing the SiteBook Service.

The SiteBook Service may also be unavailable for short periods because of necessary or desirable system maintenance or upgrades. If this is needed, we will try to inform you beforehand.

Subject to the terms of section 6 below, we are not responsible or liable to you or the Business for any Loss or Claim arising from the SiteBook Service or any part of it being delayed, disrupted or unavailable.

5 Termination

5.1 How can you end your participation in SiteBook?

You can cancel your participation in SiteBook by giving us at least 1 month written notice before the end of the current month of your subscription. The effective date of termination will be the last day of the current month of your subscription.

Your participation in SiteBook will cease on the effective date of termination. However, during the notice period, you are still liable for any Fees in relation to your use of SiteBook up to the effective date of termination. Refer also to section 5.3 below for other important content about what happens on the effective date of termination.

5.2 When we can terminate your participation in SiteBook without prior notice

(a) Circumstances

These are the situations in which we can terminate your participation in SiteBook without prior notice.

We will notify you of your suspension or termination as soon as possible.

The situations are:

A breach occurs:

- you fail to remedy a material breach of these terms and conditions within 5 Business Days after we notify you of the breach;

Something threatens SiteBook:

- in our opinion, a change to any Third Party arrangement necessary for SiteBook renders the ongoing operation of SiteBook substantially unworkable or non-functional;
- 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
- 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;

We have concerns about your Business:

- we receive notification of a dispute from one or more of the directors or principals of your Business;
- you go into liquidation, administration, insolvency, bankruptcy or such other similar arrangement with creditors, or in our opinion, it is reasonably likely you will do so; or
- there is a change in who owns or controls your Business.

(b) Notification

(1) We will make reasonable attempts to notify you in writing (which includes by email) of the termination.

(2) We can reinstate a termination in our absolute discretion by written notice to you, and this takes effect on receipt or any later time specified in the notice, subject to you meeting any conditions set out in the notice.

(3) If you become aware that a circumstance which would permit us to terminate your participation or use under section 5.2(a) has arisen or may arise, you must advise us in writing as soon as possible.

5.3 What happens on the effective date of termination?

(a) **Limited period for data extraction:** you will have 30 days from the effective date of termination to extract your data from the SiteBook system, after which time you and other Users (including your Professional Partner) will have no further access to SiteBook or your data. The data will be deleted from our servers. We strongly recommend that you extract your data for archive purposes.

(b) **Continuation of limitations on liability:** any limitations on liability which you have given under the Terms continue after termination in relation to your use of SiteBook.

6 Liability, warranties, representations and indemnities

Subject to section 1 and to the extent permitted by law:

(a) No warranty that SiteBook is suitable for your needs

SiteBook is a generic service and its capabilities are likely to change over time. This means that SiteBook may not be, or may not remain, suitable for your needs.

You must assess the ongoing suitability of SiteBook for you and your Business. We are not aware of your individual business needs and cannot provide any specific recommendations regarding your use of SiteBook.

(b) Liability for other guarantees, conditions or warranties

(i) Our maximum aggregate liability to you:

- (1) for failure to comply with a consumer guarantee in respect of the supply, failure to supply or unavailability of SiteBook or the service; and
 - (2) for loss or damage suffered by you as a result of any misrepresentation, negligence, default or breach of these Terms by SiteBook is limited, at SiteBook's option in its sole discretion to:
 - (3) the resupply of SiteBook or the service (as applicable); or
 - (4) the payment of the cost of resupply of SiteBook or the service (as applicable); and
- (ii) all representations, conditions, warranties and terms (including claims in relation to our performance, the performance of SiteBook or any service associated with SiteBook) that would otherwise be expressed or implied in these Terms by general law, statute or custom are expressly excluded.

(c) When we and Third Parties will not be liable to you

We and Third Parties are not responsible or liable to you or the Business for:

- (1) any Loss or Claim relating to the provision of information or system data made available through SiteBook, including delays, disruptions, inaccuracies or the loss of data;
- (2) any Loss or Claim relating to your use of, or reliance upon, information or system data provided to you through SiteBook;
- (3) the actions or inaction of Third Parties or other persons (including those which may be negligent or unauthorised) relating to SiteBook;
- (4) any Loss or Claim arising from a failure by us to comply with the Terms for any cause which could not reasonably be controlled or prevented by us; or
- (5) any Loss or Claim arising from a failure by you or the Business to maintain archive records of your data.

(d) Indemnity to us and Third Parties

You indemnify us, our staff and Third Parties (**Indemnified Parties**) against any Loss or Claim suffered or incurred by the Indemnified Parties or any of them arising from your action including negligence, misrepresentation, fraud, breach of law or breach of the Terms. You indemnify the Indemnified Parties for any Loss or Claim suffered or incurred from the unauthorised use of your Username or a Password.

7 Changes to Terms

- (a) **What can we do?** We may change any of the Terms (including the Fees, which are specifically dealt with in section 2.5(b) above).
- (b) **Prior notice-** We'll give you at least 10 days' prior notice (longer if required by legislation or any other code of conduct we subscribe to) of any change that is likely to materially affect or disrupt the manner in which you use SiteBook.
- (c) **Urgent changes-** However if we need to restore or maintain the security of SiteBook immediately, we may change your use and access to SiteBook without advance notice.

8 Notices

You will agree that all communications between you and us in relation to SiteBook will be by email or by us posting a notification on the SiteBook web site, unless another method is agreed to by the addressee.

Any notice or other communication to or by a party by email is regarded as being given by the sender and received by the addressee when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee). If the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

We may provide a notice or other communication to you by a posting to the SiteBook web site. That notice or other communication is regarded as being given by us and received by you when the posting is made to the SiteBook web site. We recommend that you bookmark and regularly check the SiteBook web site for notices or other communications.

9 Legal

You should note a few things about the Terms:

- (a) **This is our complete agreement** – The Terms and the documents incorporated by reference, including your application, contain the whole of the agreement between us and you in relation to SiteBook. Any representations or warranties made by our staff before you are accepted for participation in SiteBook are not effective unless expressly set out in the Terms. Any waiver of our rights or powers under these Terms may only be given in writing signed by our authorised officer.
- (b) **What happens if some of the Terms can't operate?** If any part or provision of these Terms are void, unenforceable or illegal in a jurisdiction, that part or provision does not apply in that jurisdiction. However, the remainder of the Terms continue in operation in that jurisdiction unless this would alter the basic agreement between you and us, in which case we can terminate your use of SiteBook at our election.
- (c) **No waiver by us** – If we do not insist upon strict performance of any part or provision of these Terms, that waiver will not be deemed to be a waiver of a subsequent breach or default of these Terms.
- (d) **Assignment** – You cannot assign or otherwise transfer the benefit of the agreement between us and you without our prior written consent. We can assign or otherwise transfer the benefit of the agreement between us and you.
- (e) **Which laws apply to the Terms?** The Terms are governed by the laws of South Australia and the courts of South Australia have jurisdiction over the parties to the Terms (being you and us).

10 Your privacy

The collection of limited Personal Information is essential to our ability to provide SiteBook. The collection, use and disclosure of your Personal Information by us is regulated by the Privacy Act and other laws which protect your privacy. For more about our policy on the management of your Personal Information, see our Privacy Policy which is available on our web site www.sitebook.com.au.

You consent to the sharing of information including your Personal Information between us and Principal Contractor, and/or the Subcontractor that you represent on a work site.

Notwithstanding the Group Privacy Statement, we may observe your use of SiteBook and access all information you input or can access through SiteBook. This will enable us to assist you with problems and make improvements for future versions of SiteBook and other products and services.

You must ensure that all Users read this 'Your privacy' section and the policies described above before using SiteBook or providing their Personal Information to us.

If you provide any Personal Information about third party individuals to us, you must take reasonable steps to ensure that those individuals are aware of the matters in this 'Your Privacy' section and that we may collect, use and disclose their information to provide you with the SiteBook Service.

SiteBook is a registered trade mark of Pelsys Pty Ltd.

Dated: 01 July 2013