



## Site App Pro – Terms & Conditions of Use

Last updated November 2020

The following terms and conditions, together with the Privacy Policy, (together the “**Terms**”) govern your use of the Site App Pro application (the “**Application**”). The Terms form a legal and enforceable agreement between you and Site App Pro that sets out your and Site App Pro’s rights and obligations in relation to use of the Application.

You must ensure that you have read, understood and agree to these Terms. By subscribing to and using the Application, you agree to follow and be bound by the Terms. Site App Pro will not refund any Subscription Fees paid if you later disagree with these Terms.

Site App Pro may change these Terms at any time in its absolute discretion and such changes shall take effect from the date that they are placed on Site App Pro’s website or via the Application. You agree that your continued use of the Application represents your agreement to be bound by the most recent terms.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms, unless the context requires otherwise:

“**Application**” means the Site App Pro software, accessible via [www.siteappro.co.nz](http://www.siteappro.co.nz) or another designated website, IP address or app store, or ancillary online or offline products and services provided to you by Site App Pro, to which you are being granted access under this Agreement, including the Site App Pro Technology and any subsequent versions and updates thereto.

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in Auckland, New Zealand.

“**Customer Data**” means any data, information or material provided or submitted to the Application by you or Users, or Site App Pro on Users’ behalf, in the course of using the Application.

“**Fault**” means a failure of the Application to function substantially as intended.

**“Fees”** means the fees chargeable by Site App Pro and payable by Users as set out in these Terms, and includes the Subscription Fee.

**“Login Information”** is the username and password that are unique to each User.

**“Intellectual Property Rights”** means any unpatented invention, patent application, patent, design right, copyright, trade mark, service mark, trade name, domain name right, know-how and other trade secret rights, and all other intellectual property rights, whether registered or unregistered, and forms of protection of a similar nature anywhere in the world.

**“Privacy Policy”** means Site App Pro’s privacy policy which can be accessed [here](#).

**“Site App Pro”** means SiteAppPro Limited, a New Zealand company, having its principal place of business at Level 2, 84 Mokoia Rd, Birkenhead, Auckland, New Zealand, and its successors and assignees.

**“Site App Pro Technology”** means all of Site App Pro’s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Site App Pro in providing the Application.

**“Subscription Fee”** means the subscription fee payable by you to Site App Pro for the access to and use of the Application by the Users, as notified by Site App Pro from time to time.

**“Support Hours”** means 9:00am to 5.00pm New Zealand Standard Time on each Business Day.

**“Support Services”** means:

- (a) advice on operating the Application;
- (b) other advice as may be reasonably required by you to obtain the full benefit and use of the Application;
- (c) investigation, diagnosis and repair of Faults.

**“User”** means you and any employee, representative, consultant, contractor or agent who is authorised to use the Application and has Login Information supplied by you (or by Site App Pro at your request).

**“Virus”** means any thing or device (including any software, code, file or program) which may:

- (a) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device;
- (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data

(whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or

- (c) adversely affect the user experience, including worms, trojan horses, malware, viruses and other similar things or devices

1.2 In these Terms, unless the context requires otherwise:

- (a) words importing one gender include the others;
- (b) words importing the singular or plural number include the plural and singular number respectively;
- (c) headings are inserted for the sake of convenience of reference only and do not affect the interpretation of these Terms; and
- (d) a person includes any individual, corporation, unincorporated association, government department or municipal authority.

## 2. **SUBSCRIPTION**

2.1 Site App Pro hereby grants you a non-exclusive, non-transferable to permit the Users to use the Application, solely for your own internal business purposes, subject to these Terms. All rights not expressly granted to you are reserved by Site App Pro. These terms govern any releases, revisions, or enhancements to the Application that Site App Pro may publish for your use.

2.2 Site App Pro will, at no additional cost to you, provide you with the Support Services in accordance with clause 7.

2.3 You will:

- (a) pay the Fees including those set out in clause 8;
- (b) abide by all applicable local, state, provincial, national and foreign laws, regulations and treaties in connection with your use of the Application, including those related to data privacy, internal communications and the transmission of technical or personal data;
- (c) procure that the Users keep confidential their Login Information;
- (d) procure that the Users comply with these Terms at all times in relation to the access and use of the Application;
- (e) permit Site App Pro to actively monitor and audit the use of the Application in order to establish whether the Application is being used in accordance with these Terms;
- (f) promptly disable any login account if Site App Pro discovers (through undertaking the monitoring and audits referred to in clause 2.3(d) or by any

other means) that any Login Information has been provided to a person that is not a User;

- (g) make all reasonable endeavours to prevent any unauthorised access to or use of the Application and, in the event of any such unauthorised access or use, promptly notify Site App Pro; and
  - (h) comply with your obligations set out in the Privacy Policy.
- 2.4 You are responsible for maintaining the confidentiality of your Login Information, and you will be responsible for all uses of your Login Information, whether or not authorised by you. In the event that you become aware of or reasonably suspect any breach of security, including without limitation any loss, theft, or unauthorised disclosure of your Login Information, you must immediately notify Site App Pro by emailing [privacy@complypro.co.nz](mailto:privacy@complypro.co.nz)
- 2.5 You shall not:
- (a) license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Application in any way;
  - (b) modify, make derivative works based upon, duplicate, download, reverse engineer all or any part of the Application;
  - (c) access the Application, use or copy similar ideas, features, functions or graphics of the Application in order to build a competitive product or application; or
  - (d) access, store, distribute or transmit any Viruses.

### **3. ACCOUNT INFORMATION AND DATA**

- 3.1 Site App Pro does not own any Customer Data. You and your Users shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and ownership or right to use of all Customer Data.
- 3.2 Where Site App Pro is hosting the Application, Site App Pro will make all reasonable endeavours to ensure that Customer Data is stored securely and is regularly backed up according to generally-accepted industry standards.
- 3.3 You acknowledge that, if there is any loss or damage to Customer Data, your sole and exclusive remedy will be for Site App Pro to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data maintained by Site App Pro. Site App Pro is not responsible

for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.

- 3.4 Upon termination of these Terms, you may request a copy of the Customer Data in accordance with clause 10.3.
- 3.5 Where you breach and there is termination of these Terms, your right to access or use Customer Data immediately ceases, and Site App Pro shall have no obligation to maintain or forward any Customer Data. Site App Pro reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment.
- 3.6 Site App Pro may create anonymised statistical data from your Customer Data, including through aggregation. Once anonymised, Site App Pro may use it for its own purposes, such as to provide and improve its services and the Application, to develop new services or product offerings, to identify business trends, and for other uses communicated to you.

#### 4. **USERS**

- 4.1 Subject to this clause 4, you may request that additional Users be permitted to access and use the Application and Site App Pro will grant access to the Application to such additional Users in accordance with the provisions of these Terms.
- 4.2 If you wish to add Users, you will notify Site App Pro in writing. If Site App Pro approves the request:
  - (a) you will be liable to pay any additional Fees for the additional User(s) at the current rate;
  - (b) subscriptions for additional Users that are added in the middle of a billing month will be charged in full for that month; and
  - (c) the subscription for any additional User shall be coterminous with the subscription term for you and your existing Users.
- 4.3 You may terminate any User subscriptions by giving 30 days' prior written notice to Site App Pro.
- 4.4 You will ensure that only Users will access and use the Application. User subscriptions cannot be shared or used by more than one individual user, but may be reassigned from time to time to new users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Application.

#### 5. **CONTENT UPDATES**

- 5.1 Site App Pro may, from time to time, update the Application. Any and all such updates shall become immediately available to you on your next login. Access to the Application may be temporarily suspended while updates are applied. You are responsible for updating the Application according to your internal procedures. Duplicate copies of the application are allowed for internal testing and live use.
- 5.2 The Application requires certain third party software products to be installed on your computer or device, including an operating system, internet browser, and browser plug-ins. Site App Pro sets minimum requirements in regard to these third party software products, and updates to the Application may require you to, independently and at your own expense, source and install updates to any or all of these third party software products. Site App Pro reserves the right to suspend your access to the Application until such third-party software products are installed and/or updated.

## 6. **INTELLECTUAL PROPERTY OWNERSHIP**

- 6.1 Site App Pro alone owns all right, title and interest, including all related Intellectual Property Rights, in and to the Application and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Application.
- 6.2 Except as expressly stated in these Terms, these terms do not grant you any rights to, or in, Site App Pro's Intellectual Property Rights or any other rights or licences in respect of the Application. These Terms do not constitute a sale and do not convey to you any rights of ownership in or related to the Application or the Intellectual Property Rights owned by Site App Pro.
- 6.3 The Site App Pro name, the Site App Pro logo, and the product names associated with the Application are trademarks of Site App Pro or third parties, and no right or licence is granted to use them.

## 7. **SUPPORT SERVICES**

- 7.1 Site App Pro will use its best efforts to provide the Support Services during Support Hours. Fault logging facilities via email will be provided 24 hours a day, seven days a week.
- 7.2 The Support Services do not include services being provided by Site App Pro relating to or resulting from:
  - (a) misuse of the Application or failure to use the Application in accordance with the any user instructions or these Terms;

- (b) unauthorised attempts to repair, replace, modify or maintain the Application by persons other than Site App Pro;
- (c) support provided outside Support Hours;
- (d) fluctuations in external power supplies or faults in communications networks; or
- (e) compatibility issues with the Application and your hardware, operating system or software,

together, “**Additional Support Services**”.

7.3 Site App Pro may, at its sole discretion, agree to provide such Additional Support Services, and may charge a reasonable Fee for doing so.

7.4 You will:

- (a) promptly report to Site App Pro all Faults which you discover;
- (b) ensure that suitably qualified contact person is available to be the prime point of contact with Site App Pro in the event of any Faults or queries;
- (c) make all reasonable efforts at investigation and diagnosis of Faults before contacting Site App Pro; and
- (d) maintain a list of all Application problems to assist with the diagnosis and resolution of Faults.

## 8. **CHARGES AND PAYMENT OF FEES**

8.1 You will pay to Site App Pro:

- (a) any applicable account set up and joining Fee;
- (b) the Subscription Fee for each User of the Application; and
- (c) any amounts due for Additional Support Services pursuant to clause 7.3,

in accordance with this clause 8.

8.2 You must purchase a subscription and pay the Subscription Fee for each User, regardless of where such subscriptions are actively used. Non-human resources, such as plugins, which are managed through the Application are exempt from the subscription requirement, provided they are counted within your overall resource limit set by Site App Pro and reviewed from time to time.

- 8.3 You must provide Site App Pro with valid credit card or approved purchase order information as a condition to subscribing to the Application. Where you have opted for automatic monthly or annual charging of subscriptions, these will be processed against the same credit card on the same day of the month or year, as the case may be, as the date of the original subscription.
- 8.4 Where Site App Pro issues an invoice to you for any amounts due under these Terms, you will pay each invoice by the date set out in the invoice, or if not set out, by the 20<sup>th</sup> of the month following the month of the invoice.
- 8.5 Site App Pro may vary its fees and charges and introduce new charges upon at least 30 days' prior notice to you. All pricing terms are confidential, and you agree not to disclose them to any third party.
- 8.6 All amounts and fees stated or referred to in these Terms are exclusive of GST and any other taxes, levies and duties (if any), which will be paid for by you.
- 8.7 If you fail to pay any invoice or credit card payment when due, then in addition to and without prejudice to any other rights or remedies of Site App Pro, Site App Pro may without liability to you, suspend your access to the Application if your subscription falls into arrears.

## 9. **DISCLAIMERS, WARRANTIES AND LIABILITY**

- 9.1 The Application is provided to you strictly on an "as is" basis. Except as set out in these Terms, all conditions, representations and warranties, whether express, implied, statutory or otherwise (including, without limitation, any implied warranty of merchantability, or fitness for a particular purpose) are hereby excluded by Site App Pro to the maximum extent permitted by law.
- 9.2 Site App Pro warrants that:
- (a) the Application will be made available with reasonable skill and care;
  - (b) the Application will function substantially as intended; and
  - (c) to the best of its knowledge and belief, the Application does not infringe the copyright of any third party.
- 9.3 While Site App Pro takes all reasonable care to ensure that the Application is compliant with the Health and Safety at Work Act 2015 and all other applicable laws and regulations ("**Applicable Laws**"), it does not warrant or represent that your use of the Application will meet all requirements imposed on your workplace by Applicable Laws in New Zealand or in any other country. Site App Pro recommends that you take your own legal and other advice to ensure that you comply with the

obligations that apply to you and to ensure you meet your responsibilities under and comply with all Applicable Laws.

9.4 You acknowledge that:

- (a) the Application may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. Site App Pro is not responsible for any delays, delivery failures, or other damage resulting from such problems;
- (b) Site App Pro does not warrant that the Application will function and/or communicate correctly due to third-party software installed by you; and
- (c) Site App Pro shall not be liable in any way for any inability to use the Application including, without limitation, loss of goodwill, work stoppage, computer failure or malfunction, or the loss of or damage to Customer Data.

9.5 Site App Pro expressly disclaims all liability and responsibility for any loss, damage or harm relating to or associated with the Application and its use.

9.6 Where you experience Application downtime or issues with accessing or using the Application in any way whatsoever, your sole remedy shall be to terminate your subscription in accordance with these Terms.

9.7 In no event shall Site App Pro be liable to anyone for any indirect, punitive, special, exemplary, incidental, consequential or other damages of any type or kind (including loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with the Application.

9.8 The maximum aggregate liability of Site App Pro under or in connection with these Terms, whether in contract, tort (including negligence), breach of statutory duty or otherwise, must in any calendar year not exceed the total amount of Fees paid in the immediately preceding calendar year.

9.9 You will indemnify Site App Pro against all costs, losses, expenses and damages (including reasonable legal fees and disbursements) incurred through any claims against Site App Pro resulting from the use of the Application by you and other Users, or arising from or associated with any breach of these Terms by you.

## 10. **TERMINATION**

10.1 Either party may terminate the agreement governed by these Terms:

- (a) by giving the other party at least 30 days' prior written notice;

- (b) if the other party is in material breach of these Terms and fail to remedy such breach within 10 Business Days of receiving notice from the other party specifying the breach and requiring it to be remedied, or if such breach is incapable of remedy; or
- (c) if the other party goes into liquidation or has a receiver or statutory manager appointed, becomes insolvent or makes any arrangement with creditors.

10.2 On termination of these Terms for any reason:

- (a) all licences and rights granted under these Terms will immediately terminate;
- (b) you shall not be entitled to any refund for any prepaid Subscription Fees;
- (c) you will be liable for any outstanding Subscription Fees or other amounts due under these Terms, which shall be charged in a lump sum at termination;
- (d) each party will return, and make no further use of, any equipment, property and other items belonging to the other party; and
- (e) the accrued rights of the parties as at termination will not be affected or prejudiced.

10.3 Provided you are not in breach of these Terms, for a period of 30 days following termination, you may request a single admin login to access and download your Customer Data using the features available within the software. After 30 days from termination, your Customer Data will no longer be retrievable.

11. **FORCE MAJEURE**

11.1 Site App Pro shall not be liable for any delay or failure to perform its obligations under these Terms resulting from acts, events, omission or accidents beyond its reasonable control, including without limitation acts of God, war, terrorism, riots, embargoes, acts of civil or military authorities, fire, floods, epidemic, strikes, failure of a utility service or telecommunications network or service of a third party, or shortages of transportation facilities, fuel, energy, labour or materials.

12. **DISPUTE RESOLUTION**

12.1 If a dispute arises out of or in relation to these Terms (“**Dispute**”), a party may not commence any court or arbitration proceedings relating to the Dispute unless it has complied with the provisions of this clause 12.

- 12.2 The party claiming a Dispute has arisen must give written notice specifying the nature of the Dispute and its desire to begin informal negotiations.
- 12.3 Upon receipt of that notice, the parties will use all reasonable endeavours to resolve the Dispute by discussion, consultation, negotiation or other informal means.
- 12.4 If the Dispute is not resolved within 20 Business Days of receipt of the notice in clause 12.2 (or such further period agreed in writing by the parties), either party may, by giving written notice to the other party, require the Dispute to be determined by arbitration. A single arbitrator will be appointed by the parties, or failing agreement within five Business Days of the arbitration notice, by the President of the New Zealand Law Society on application of either party. The arbitration will be conducted as soon as possible in accordance with the provisions of the Arbitration Act 1996 and shall be binding.
- 12.5 You agree and acknowledge that Site App Pro would be irreparably damaged in the event that you breached these Terms. Nothing in this clause 12 shall prevent Site App Pro to seek appropriate equitable remedies, including urgent interlocutory relief.

### 13. **ASSIGNMENT**

- 13.1 You may not assign any of your rights or interests under these Terms without the prior written approval of Site App Pro.
- 13.2 Site App Pro may at any time assign its rights or interest, or any part thereof, or transfer its obligations under these Terms to any person.

### 14. **GENERAL**

- 14.1 These Terms constitute the entire agreement of the parties, unless otherwise agreed in writing, and prevail over any previous terms, agreements or understandings, whether written or oral.
- 14.2 Clauses 6, 9, 11, 12 and 14 shall survive termination of these Terms.
- 14.3 Failure or neglect by a party to enforce at any time the provisions of these Terms will not be construed to be a waiver of that party's rights, or to in any way affect the validity of the whole or any part of these Terms or any other agreement or understanding between the parties.
- 14.4 If any provision of these Terms is invalid, void, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired and will continue to be of full force and effect.

- 14.5 Any notice to be given pursuant to these Terms are to be given in writing by email, personal delivery or by post:
- (f) in the case of Site App Pro, to SiteAppPro Limited, PO Box 34728, Birkenhead, Auckland 0746 with a copy emailed to [legal@complypro.co.nz](mailto:legal@complypro.co.nz); and
  - (g) in the case of the customer, to the billing address and email address provided to Site App Pro from time to time.
- 14.6 Nothing express or implied in these Terms will constitute either party as the partner, agent, employee or joint venturer of the other party.
- 14.7 These Terms are governed by New Zealand law, and the parties agree to submit to the non-exclusive jurisdiction of the New Zealand courts.