

SiteSee Demonstration Terms & Conditions

1. Agreement

1.1 Definitions

In this Agreement the following definitions apply:

Access means a grant of access to the User for it to use the Platform for the Demonstration Services.

Agreement means the agreement between the User and SiteSee for use of the Platform under and in accordance with these Terms and Conditions.

Agreement Date means the date the User agrees to the Terms and Conditions.

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Business Day means a day that is not a Saturday, Sunday or public holiday in Queensland, Australia.

Capture Specifications means SiteSee's requirements as to the standard of the User Data (including as to the quality, integrity and format of data) required to Upload to the Platform, as determined (and revised and amended) by SiteSee from time to time.

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature whether present or future, fixed or unascertained, actual or contingent, at law, in equity, under statute or otherwise.

Confidential Information of a party means:

- (a) this Agreement and the information within this Agreement;
- (b) all information, know-how, ideas, concepts, technology, data, source or object code, designs, functions, features and performance notes, technical data and marketing information such as customer lists, financial information and business plans which is disclosed, communicated or delivered to, learnt by, or which otherwise comes to the knowledge of or into the possession of the other party under or in connection with this Agreement,

but does not include:

- (c) information which is or becomes generally available in the public domain (other than through any breach of confidence);
- (d) information received by the other party other than as a result of a breach of any duty of confidence owed to the first party; or
- (e) information which has been independently developed by the other party.

Demonstration Data means data provided by SiteSee to Users for the purpose of demonstrating SiteSee's full services and capabilities, and includes 3D models and reports.

Demonstration Services means the services to be provided by SiteSee to the User, as more particularly described in clause 5.

Intellectual Property Rights means all rights conferred under statute, common law or equity, wherever in the world subsisting, in relation to trade marks, copyright, patents, patentable inventions and designs, whether existing now or in the future and whether or not registered or registrable, and includes any rights subsisting in or relating to Confidential Information, trade secrets, know-how, inventions, discoveries, geographical indications of origin, semiconductor and circuit layouts, programming tools, object code, source code, microcode, mask works, methods, techniques, recipes, formulae, algorithms, modules, libraries and databases and further includes the right to apply for the registration or grant of any such intellectual property.

Laws means the common law (including equity), current and future Acts of the Parliament of the Commonwealth of Australia, or of the Parliament of Queensland, and related regulations or statutory instruments or similar.

Loss or Losses means loss, damage, liability, charge, expense, outgoing, payment or cost of any nature or kind, including all legal and other professional costs.

Notice means a notice given under or in connection with this Agreement that adheres to the requirements in clause 12.1.

Platform means SiteSee's cloud based software platform through which SiteSee provides the Demonstration Services.

SiteSee means SiteSee Pty Ltd ACN 615 057 844.

Term means the duration of this Agreement, pursuant to clause 4.

Terms and Conditions means these terms and conditions contained on the Website, as amended by SiteSee from time to time.

Upload means the transfer to the Platform of User Data by or at the direction of a User.

User means the user of the Platform and Demonstration Services under these Terms and Conditions.

User Data means the photographic images and other data specified by SiteSee from time to time to be collected by the User or on its behalf and Uploaded to the Platform.

Website means the website located at www.sitesee.io

1.2 Interpretation

In this Agreement:

- (a) no provision of this Agreement will be construed to the disadvantage of a party merely because that party was responsible for preparing this Agreement or including the provision in this Agreement; and
- (b) the parties must perform their obligations on the dates and times fixed by reference to Queensland, Australia.

2. Legally binding Agreement

- (a) These Terms and Conditions apply to the User's use of the Platform.
- (f) **By clicking the tick-box "accept" when the User registers for the Platform, the User is deemed to have read and accepted these Terms and Conditions and enters into a binding agreement with SiteSee. For this reason, the User should read these Terms and Conditions carefully and in full to ensure it understands their effect.**
- (g) SiteSee may amend these Terms and Conditions from time to time, by publishing amended terms and conditions on the Website, effective from the date of publication on the Website. It is the User's responsibility to ensure it has a copy of the current terms and conditions.
- (h) If the User does not agree to these Terms and Conditions, as amended from time to time, in whole or in part, SiteSee will be under no obligation to allow the User Access to the Platform.

3. Background

- (a) The Platform is an online web portal for visualising 3D models of large infrastructure assets.
- (b) SiteSee is offering, at its sole and absolute discretion, limited Access to the Platform for certain users to demonstrate SiteSee's paid services and the Platform's capabilities.
- (c) SiteSee agrees to provide, and the User agrees to use, the Demonstration Services free-of-charge for demonstration purposes only.

4. Term

- (a) This Agreement commences on the Agreement Date and will continue until it is terminated under clause 11.

5. Demonstration Services

5.1 Subject to clause 6.1(b), SiteSee agrees to provide the User:

- (a) access to the Demonstration Data; and
- (b) access to the Platform to Upload User Data.

(collectively, the **Demonstration Services**)

5.2 To access the Demonstration Services, the User must register for the Platform in accordance with clause 6.1.

5.3 If the User Uploads any User Data, SiteSee may, in its absolute discretion, process and display the User Data on the Platform.

5.4 The parties acknowledge and agree that the Demonstration Services are provided to the User free-of-charge.

6. Access and user accounts

6.1 Access

- (a) The User must register for the Platform through the Website by:
 - (i) providing certain information, including the User's name and email address;
 - (ii) completing to SiteSee's satisfaction an account activation process; and
 - (iii) agreeing to these Terms and Conditions.
- (b) Once the User has registered for the Platform, SiteSee will provide Access to the User on a revokable, non-exclusive and non-transferable basis on the following conditions:
 - (i) the User must:
 - (A) only use the Platform in accordance with these Terms and Conditions;
 - (B) comply with all reasonable and lawful directions that SiteSee may give from time to time with respect to the User's use of the Platform;
 - (C) only use the Platform in the ordinary operation of its business and must not grant or purport to grant, or convey, any right to any third party, to use or commercialise it;

- (D) cooperate with SiteSee in any remediation of any security, unauthorised use or misuse of the Platform and promptly report to SiteSee all such matters of which the User becomes aware; and
- (E) comply with all Laws;
- (ii) the User must not:
 - (A) allow or engage any third party to work on the Platform without first obtaining SiteSee's written consent which SiteSee may withhold in its sole and absolute discretion;
 - (B) interfere or disrupt the operation of the Platform nor attempt to do the same;
 - (C) grant access to the Platform to, unless SiteSee has provided the User with SiteSee's prior, express written consent;
 - (D) access or use any data other than Demonstration Data, User Data or any other data which it has a right to access and use;
 - (E) subject to any right under, sections 47B(3), 47C, 47D, 47E or 47F of the *Copyright Act 1968* (Cth), either directly or indirectly, modify, attempt to decompile, cross compile, disassemble, reverse engineer, or use any other means to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Platform or the Demonstration Services.

6.2 Equipment

The User is responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Platform.

6.3 User Data

- (a) The User is solely responsible for User Data it Uploads to the Platform or obtains through accessing the Platform.
- (b) User Data created, generated or transmitted by the User in its use and access of the Platform must:
 - (i) be accurate and complete;
 - (ii) not infringe any third party Intellectual Property Rights or any other contractual or proprietary rights of a third party; and
 - (iii) not infringe any Law.

6.4 User Warranties

The User represents, warrants and undertakes that:

- (a) the User owns or has an unrestricted right to use all User Data that is Uploaded by the User or on the User's behalf, including the right to authorise SiteSee to store and use the data in the provision of the Demonstration Services;
- (b) SiteSee is authorised to use and store the User Data that has been Uploaded for the purpose of delivering the Demonstration Services;
- (c) only User Data that is specified in the Capture Specification will be Uploaded;
- (d) the User Data before Upload will be free from virus, worm, Trojan horse, malware or any other type of malicious code;
- (e) the User has the capacity and authority to enter into and to perform this Agreement; and
- (f) this Agreement is executed by a duly authorised representative of the User and accordingly legally binds the User.

6.5 User Acknowledgements

- (a) The User acknowledges and agrees that:
 - (i) computer and telecommunications services are not fault free and occasional periods of downtime may occur; and
 - (ii) SiteSee may publish the User's details on the SiteSee website or any other advertising medium for the purpose of representing that the User is a SiteSee client, provided SiteSee complies with its confidentiality obligations contained in clause 9.
- (b) In addition to any other rights or remedies SiteSee may have, SiteSee may suspend or terminate the User's access to the Platform at any time and without any liability to the User in the event the User breaches any provision of the Agreement.

7. Obligations of SiteSee

SiteSee will:

- (a) comply with the *Privacy Act 1988* (Cth) and any other applicable privacy Laws;
- (b) provide reasonable notice of scheduled maintenance to the Platform;

- (c) use adequate security systems and procedures to safeguard and to prevent 3rd party access to the User Data; and
- (d) ensure that the Platform will be provided in accordance with the Agreement and applicable Laws.

8. Intellectual property rights

- (a) Each party retains all right, title and interest in and to its pre-existing Intellectual Property Rights.
- (b) SiteSee owns all Intellectual Property Rights to the Platform and the Demonstration Data including all improvements to the Platform that are suggested by the User.
- (c) To the maximum extent permitted by Law, SiteSee owns any User Data Uploaded to the Platform by the User under this Agreement.
- (d) If the User is not the owner of any User Data Uploaded to the Platform, the User grants SiteSee a royalty free, worldwide, perpetual, irrevocable, non-exclusive, transferable, assignable, sub-licensable licence to use, reproduce, modify, copy, store and exploit the User Data for business or commercial purposes.
- (e) For the avoidance of doubt nothing in these Terms and Conditions prohibits SiteSee from using SiteSee's pre-existing Intellectual Property Rights to provide the Demonstration Services to third parties, even if such services are the same or substantially the same as those provided to the User or use the User Data.

9. Confidentiality and restrictions

9.1 Protection of Confidential Information

Each party must keep confidential any Confidential Information disclosed to it or made available to it by the other party.

9.2 Disclosure exceptions

The obligations in clause 9.1 do not apply:

- (a) to the extent necessary to enable a party to make any disclosure required by law;
- (b) to the extent necessary to enable a party to perform its obligations under this Agreement;
- (c) to any disclosure agreed in writing between the parties; or
- (d) in respect of any portion of the Confidential Information which has entered the public domain other than as a result of a breach of this Agreement.

9.3 Restrictions

The parties undertake to one another to not during this Agreement or for a period of 12 months after it is terminated or expires:

- (a) solicit, canvass, induce or encourage any person who was at any time during the term of this Agreement an employee, a director, employee or agent of the other party to leave the other party's employment or agency; or
- (b) do anything that would or would be likely to interfere with the relationship between the other party's clients, customers, employees, partners or suppliers.

10. Indemnity

10.1 User indemnity

The User indemnifies SiteSee and keeps SiteSee indemnified against any Loss that may be incurred by SiteSee arising from or in connection with:

- (a) any breach or default by the User of this Agreement (including any breach of warranty);
- (b) a negligent act or omission by the User or by a party the User are responsible for;
- (c) the User's failure to comply with any Law;
- (d) the failure of a party the User is responsible for in complying with any Law; or
- (e) any Claim made against SiteSee by any third party who hosts the Platform or the User Data, or who provides software or services to SiteSee in connection with the provision of the Services, as a result of an act or omission by the User or resulting in any way from the Upload of User Data.

10.2 Exclusion of Liability

To the maximum extent permitted by Law, SiteSee will not be liable for any ordinary, incidental, consequential or special loss or damage (including but not limited to loss of profits, loss of data and loss of personnel) arising out of this Agreement or the use of the Platform even if SiteSee were appraised of the likelihood of such loss or damage occurring.

10.3 Limit of Liability

- (a) Except as expressly provided by this Agreement, the Platform is provided on an "as is" basis without any representation, warranty or guarantee as to quality, condition or fitness for purpose and SiteSee does not warrant that the Platform will be free of defect, uninterrupted, accurate,

complete, current, stable, bug free, error free or available at any time in respect of its operation.

- (b) SiteSee has no responsibility or liability whatsoever as a consequence of any Loss suffered by the User as result of:
- (i) any of the User Data being lost, destroyed or damaged by the Platform or a third-party provider of cloud based storage or hosting; or
 - (ii) any third-party software malfunctions or for malfunctions in the Platform caused as a result of interference with third party software.

10.4 Exclusion of Consequential Losses

Neither party is liable to the other for any kind of indirect or Consequential Loss or damage, including loss or corruption of the Confidential Information, copies or backups, arising out of or in connection with this Agreement.

10.5 Australian Consumer Law

Nothing in this Agreement is intended to limit or exclude the User's consumer guarantees under the Australian Consumer Law.

11. Termination

11.1 SiteSee reserves the right to cease providing the Demonstration Services, and terminate the User's Access to the Platform, without notice and for any reason.

11.2 SiteSee may terminate this Agreement without notice and with immediate effect if the User, in any way, breaches these Terms and Conditions.

11.3 The User may cease using the Demonstration Services at any time without notice.

11.4 Effect of termination

Upon termination of this Agreement:

- (a) the User will be given 30 days to download the User Data;
- (b) each party must destroy the other parties Confidential Information received under the Agreement and certify such destruction in writing; and
- (c) any accrued rights or liabilities of either party or any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination will not be affected.

11.5 SiteSee is not liable for any Losses, including Consequential Losses, arising as a result of terminating the User's access to the Platform.

12. General

12.1 Notice

- (a) A notice, consent, approval, waiver or other communication provided in connection with this Agreement must be in writing (**Notice**).
- (b) A Notice may be given by hand delivery, post or by email and is effective upon receipt.

12.2 Entire agreement

The Agreement represents the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings and agreements in relation to the subject matter of this Agreement.

12.3 Changes to the Terms and Conditions

- (a) SiteSee may, from time to time, amend these Terms and Conditions in whole or part, in its sole discretion and without notice to you except as provided in this clause 12.3.
- (b) Any changes to the Terms and Conditions will be effective immediately upon the posting of the revised Terms and Conditions on the Website.

12.4 Rights, powers and remedies cumulative

The rights, powers and remedies given in the Agreement are in addition to other rights, powers and remedies given by law independently of the Agreement.

12.5 Severability

If any provision of this Agreement is unenforceable or invalid, it will be ineffective to the extent it is unenforceable or invalid, without affecting the validity or enforceability of the remaining provisions of the Agreement.

12.6 Survival

Termination or expiration in whole or in part of the Agreement does not affect those provisions and those obligations of a party which by their very nature survive termination, including clause 9 (Confidential information), clause 8 (Intellectual property), clause 10 (Indemnity), clause 11.4 (Consequences of termination), clauses 10.2 and 10.3 (Liability and exclusion) and clause 12.7 (Governing law and jurisdiction).

12.7 Governing law and jurisdiction

- (a) This Agreement is governed by the laws in force in Queensland, Australia.
- (b) The parties submit to the exclusive jurisdiction of the courts of Queensland, Australia