

**Output DSJ Pty Ltd ACN 093 954 762**  
SaaS EULA

1. Introduction
  - 1.1. We provide on line customisable website development services ('SiteMaker').
  - 1.2. SiteMaker is provided as, software as a service ('SaaS').
  - 1.3. This licence sets out the terms on which we permit such access to you.
  
2. Interpretation
  - 2.1. In this licence:
    - 2.1.1. a reference to 'using' or 'accessing' SiteMaker means only using or accessing its software functionality through SaaS;
    - 2.1.2. a reference to "us", "we" or "our" is a reference to Output DSJ Pty Ltd ACN 093 954 762 of 246 Parramatta Road, Stanmore, NSW, Australia;
    - 2.1.3. a reference to "you" or "your" is a reference to the end user of SiteMaker.
    - 2.1.4. if we divide software functionality into designated modules, a reference to software functionality means only the module/s that you are entitled to use under this licence; and
    - 2.1.5. subject to clause 6.1, a reference to SiteMaker includes a reference to any form, letters, reports and report structures, and other content comprised in it, and any code on a SaaS server (or code which we may require you to install on your computer) that is rendered by a client interface to produce the client interface itself.
  - 2.2. We may customise, modify, enhance, adapt, update or replace SiteMaker in our absolute discretion, and a reference to SiteMaker includes such customization, modification, enhancement, adaptation, update or replacement.
  
3. Licence
  - 3.1. We will notify you when your account is ready for use, and provide you with account access details.
  - 3.2. You may then use SiteMaker for as long as you:
    - 3.2.1. have our agreement to use it;
    - 3.2.2. are required to under the minimum term of this licence;

- 3.2.3. ensure that the number of simultaneous End Users does not exceed the number licensed (unless we agree otherwise in writing);
- 3.2.4. pay all fees and charges due to us in respect of the use of SiteMaker as and when due; and
- 3.2.5. comply with this licence.
- 3.3. Any access to or use of SiteMaker by you constitutes acceptance of the terms of this licence.

#### 4. Fees

- 4.1. In order to obtain account access details and a licence to use SiteMaker in accordance with the terms of this licence you must pay an up front licence fee ('Setup Fee') in accordance with our then current price list.
- 4.2. As well as the licence fee, you must pay a monthly service fee for the up keep and maintenance of SiteMaker, in accordance with our then current price list.
- 4.3. If you fail to pay the service fee, then your licence to use SiteMaker may be terminated or suspended by us in accordance with this agreement.
- 4.4. Despite clauses 4.1, and 4.2, we may agree to alternative payment plans or payment terms in writing.

#### 5. Functionality

We will make software functionality apparent:

- 5.1. through the design of the client interface;
- 5.2. through instruction manuals and other documentation supplied to you; and / or
- 5.3. by other instructions to you.

#### 6. IP Ownership

- 6.1. Where we customise the appearance of the client interface to include copyright material owned by you ('End User branding'), you will continue to own that copyright material.
- 6.2. Subject to clause 6.1, we will be the sole and exclusive owner of SiteMaker and all customisation, modifications, enhancements, adaptations, updates or replacements of it.
- 6.3. Clause 6.2 applies even to customisation, modifications, enhancements, adaptations, updates or replacements that are made at the request of or specifically for you and / or incorporating know-how, ideas, requests or suggestions made by you.

- 6.4. Your rights under this licence are not exclusive. We may license SiteMaker to anyone else we choose.
- 6.5. You consent to:
  - 6.5.1. us using your de-identified data and that of your customers or visitors to your website, for statistical, audit, compliance and marketing purposes; and
  - 6.5.2. receiving promotional, marketing material or information updates from us, including by way of email delivery;
  - 6.5.3. disclosure by us of this information to our Related Entities (as defined by section 9 of the *Corporations Act 2001*).
- 6.6. Subject to our rights in clause 6.7, where you enter data (that does not belong to us) into SiteMaker, then the intellectual property rights (if any) of that data remain yours ('customer data').
- 6.7. If you require customer data from us, we may impose a fee for providing it.

## 7. Using SiteMaker

You must:

- 7.1. only use or attempt to use software functionality;
- 7.2. not attempt to access or control the SaaS server except through the client interface;
- 7.3. comply with the current editions of all technical and instructional manuals and documentation provided by us from time to time;
- 7.4. comply with any operational guidelines or emergency directions issued by us;
- 7.5. not copy, decompile, replicate, reverse engineer, assign or sublicense any part of SiteMaker;
- 7.6. promptly report to us any errors, defects or malfunctions you experience or observe, in as much detail as you are reasonably able to;
- 7.7. not do anything calculated to damage or impair SiteMaker or the SaaS server;
- 7.8. comply with all laws;
- 7.9. not publish any material which gives rise to, or is likely to give rise to, any civil or criminal liability, including the publication of defamatory material or the infringement of a third party's intellectual property;
- 7.10. not purport to grant any interest in, sub-licence of or derivative right to use SiteMaker except as permitted by this document;

7.11. not do anything that is detrimental to us, our business, our officers, employees, distributors or agents.

8. Access and security

You must:

- 8.1. only access SiteMaker using account access details supplied and approved by us;
- 8.2. keep your account access details secure and confidential;
- 8.3. subject to compliance with clause 12.2, only disclose your account access details to your own servants, agents or contracted consultants (your 'people') on a need-to-know-basis;
- 8.4. regularly change access passwords and keep records of all passwords used or disclosed, in accordance with good computer security practice;
- 8.5. if you become aware that account access details are in unauthorised hands:
  - 8.5.1. change any compromised access password immediately;
  - 8.5.2. take any other step reasonably necessary to ensure that no-one suffers harm as a result; and
- 8.6. keep your computer system, network and internet connectivity secure and confidential in accordance with good computer security practice; and
- 8.7. make regular backups of all data which you enter into or use with SiteMaker – unless we have agreed in writing to provide backup services for you.

9. User documentation

- 9.1. All manuals, instructions, literature and other documentation supplied in connection with SiteMaker ('user documentation') are copyright to us and provided by way of loan only.
- 9.2. You may make a reasonable number of copies of user documentation to support your use of SiteMaker in accordance with this licence, but all such copies are our property.
- 9.3. If we issue updated or replacement user documentation, you must replace all outdated user documentation with it. We are not responsible for harm that may arise from your use of non-current user documentation.
- 9.4. When this licence ends, you must return all existing user documentation (including all copies of it) to us on request.

10. Support

- 10.1. If you require technical support we may choose to provide either:

10.1.1. telephone support; or

10.1.2. on line support.

10.2. Where we provide support:

10.2.1. we only provide application support during business hours (9am to 5pm AEST) and on business days (Monday to Friday, except on public holidays in the State of NSW), unless we agree otherwise in writing;

10.2.2. we may:

10.2.2.1. impose a fee for support services that we provide; and

10.2.2.2. subcontract the support services to a third party, and ask them to collect fees on our behalf.

11. Limitation on obligations

11.1. Subject to clause 14.3, our obligations under this licence are limited to the express obligations set out in it.

11.2. To avoid doubt, unless we say otherwise nothing in this licence obliges us to provide user documentation, training or any other support in relation to SiteMaker. If such services, or other services, are to be provided, they will first be documented in writing.

12. Staff Control

You may allow your people to access or use SiteMaker, but:

12.1. their acts and omissions with respect to SiteMaker are taken to be your acts and omissions; and

12.2. you must ensure that they do not do, or fail to do, anything that would breach this licence if you did, or failed to do, that thing.

13. Technical requirements, performance and availability

13.1. We will publish minimum technical requirements for the use of SiteMaker, and may revise them from time to time:

13.1.1. on at least 28 days' notice in the case of changes that require new or different hardware, or the purchase of new software; and

13.1.2. on at least 7 days' notice in the case of changes that only involve system reconfiguration, or the installation of free software.

13.2. You must ensure, at your own cost in all respects, that your computer system and internet connectivity meet the minimum technical requirements at all times.

13.3. You acknowledge that:

13.3.1. connection to the internet poses significant security and virus threats, and that the use of regularly updated anti-virus software and a firewall is very important;

13.3.2. minimum technical requirements are designed to deliver only basic system performance, and that you may require a more powerful computer system and / or faster internet connectivity to achieve higher level performance;

13.3.3. we do not provide service levels or uptime for these services, and that scheduled maintenance, emergencies or unscheduled outages may occur from time to time which may leave the services unavailable or with limited functionality;

13.3.4. access to and use of SiteMaker may be impaired or prevented by a variety of factors that are beyond our control, for instance defects in your computer system and problems with internet connectivity between you and the SaaS server –

and we are not responsible for any such things or their effects. They do not constitute defects in SiteMaker.

13.4. Unless we agree in writing, we are not obliged to provide backups of your data that is contained in SiteMaker – and where we do agree we may charge additional fees in accordance with our price list.

14. Indemnity, warranties, liability

14.1. To the extent permitted by relevant laws, we exclude all warranties, whether express or implied, including the implied warranties of merchantability and fitness for a particular purpose.

14.2. We do not warrant that SiteMaker will operate in environments other than as specified in the minimum technical requirements or that its operation will be uninterrupted or error-free.

14.3. If any legislation implies a condition or warranty into this licence in respect of goods or services supplied, and our liability for breach of that condition or warranty may not be excluded but may be limited, clause 14.1 does not apply to that liability and instead our liability for any breach of that condition or warranty is limited to:

14.3.1. in the case of a supply of goods, we may do any one or more of the following (at our election):

14.3.1.1. replacing the goods or supplying equivalent goods;

14.3.1.2. repairing the goods;

14.3.1.3. paying the cost of replacing the goods or of acquiring equivalent goods;

- 14.3.1.4. paying the cost of having the goods repaired; or
  - 14.3.2. in the case of a supply of services, we may do either or both of the following (at our election):
    - 14.3.2.1. supplying the services again;
    - 14.3.2.2. paying the cost of having the services supplied again.
- 14.4. Subject to clause 14.3, we are not liable in respect of any misrepresentation, breach of any implied or express warranty or condition, breach of any other provision, or otherwise liable in contract, tort (including for negligence), equity or otherwise for:
  - 14.4.1. indirect or consequential loss; or
  - 14.4.2. loss of revenue, profits, goodwill, data or use –  
however caused which arises out of or in connection with SiteMaker, whether or not we have been advised of the possibility of such loss.
- 14.5. You indemnify us (on a full indemnity basis including all legal costs and expenses) against any claim, loss or damage we suffer to the extent that it arises from:
  - any act or omission;
  - any breach of any law;
  - any breach of this licence;
  - any unauthorised use of a service –  
by you or anyone using a service we provide to you.

## 15. Minimum Terms and Termination

- 15.1. Where we agree to provide you with the SaaS service for a minimum term you must acquire the services for that term, and you may not terminate this agreement during that minimum term.
- 15.2. Unless we agree otherwise in writing the minimum term of this agreement is 3 months.
- 15.3. The minimum term of your agreement with us continually and automatically renews for a further minimum term of 3 months (at the expiry of each subsequent 3 month minimum term) unless one of us gives the other written notice that they do not wish to renew it.
- 15.4. If a notice under clause 15.3 is given less than a month before the end of the then current minimum term, it takes effect at the end of the subsequent minimum term, not the end of the current minimum term.
- 15.5. If you breach clause 15.1, then you must pay us immediately upon invoice, the monthly licence fee multiplied by the number of months

remaining in the then current minimum term – this is an ‘early termination charge’<sup>1</sup>.

- 15.6. You acknowledge that the early termination charge in clause 15.5 is a reasonable pre-estimate of our loss arising from termination.
- 15.7. We may terminate the licence and this agreement:
  - 15.7.1. immediately, if you breach any term of this licence – but in the case of breach arising from non payment we may terminate in accordance with clause 15.7.3;
  - 15.7.2. on 30 days notice to you, where we no longer wish to provide the service, or for any other reason;
  - 15.7.3. on 7 days notice to you, where you fail to pay money by its due date;
  - 15.7.4. on 7 days notice to you where you:
    - 15.7.4.1. are in breach of the distribution agreement (or any other agreement) you have with us;
    - 15.7.4.2. not a distributor of ours.
- 15.8. Where we exercise our termination rights in accordance with clauses 15.7.1 or 15.7.3 or 15.7.4, then you must pay us the early termination charge determined by reference to the formula in clause 15.5.
- 15.9. If you breach any term of this license you are also deemed to be in breach of any other agreement you have with us, and vice versa.

## 16. Notice

- 16.1. Either party can give the other notice:
  - 16.1.1. by fax (and in your case, our current fax number indicated by our web site contact details page, or such other email address as we may direct from time to time);
  - 16.1.2. by email (and in your case, our email address [support@outputdsj.com.au](mailto:support@outputdsj.com.au), or such other email address as we may direct from time to time);
  - 16.1.3. by ordinary mail or hand delivery (and in your case, our current address indicated by our web site contact details page, or such other address as we may direct from time to time) –
  - 16.1.4. and in no other way.

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<sup>1</sup> e.g. if you have a licence fee of \$200 per month, and you have 5 months remaining in a minimum term (whether the first or any subsequent minimum term), you must pay \$1000 as an early termination charge.

16.2. Service of a notice is deemed to occur:

16.2.1. if it is mailed: before noon on the second business day after posting (within Australia) and on the tenth business day after posting (outside of Australia);

16.2.2. if it is emailed: at the time it leaves the sender's email server;

16.2.3. if it is faxed: upon the facsimile machine issuing a successful transmission notice.

16.3. A notice from you must be signed. We are never obliged to verify any mark that purports to be your signature. If you are a corporation, we are never obliged to verify the authority of anyone who purports to sign on your behalf.

16.4. Any notice that is sent must be in the English language.

## 17. Waiver

No right under this agreement can be waived except by notice in writing signed by the party waiving it. If a party overlooks a breach of this agreement by the other party on one or more occasions, it is not taken to have agreed to any future breach.

## 18. Variation

Except for any express rights to vary this agreement, no variation is effective unless in writing, signed by both parties, and expressed to be intended to vary this agreement.

## 19. Assignment and novation

19.1. You cannot transfer, assign, novate or sublicense any or all of its rights, duties or obligations in this agreement to, or share them with, a third party, without our prior approval.

19.2. We may transfer, assign, novate or sublicense this agreement without your consent at any time.

## 20. Inconsistency

If any term or condition of this agreement is inconsistent with the law, then the inconsistent term or condition will be read down to the extent of the inconsistency (or severed if absolutely inconsistent) without affecting the balance of the agreement.

