

Terms and Conditions

SiteManagerNow is an online booking management solution designed especially for online media owners and online advertising sales organisations. SiteManager, and its associated intellectual property, has been developed to record the details of media bookings and sales of online advertising on various websites. SiteManager produces a range of reports that will enable you to record and manage your online advertising sales and available advertising inventory.

It is our intention that these terms and conditions (**'Terms'**) explain your obligations as a customer as well as our obligations as a service provider regarding the use of SiteManager. Please ensure that you read and understand them.

These Terms are binding on any use of SiteManager by you, and apply to you from the time that you check the "I have read and accept the SiteManagerNow Terms and Conditions" box when registering for SiteManagerNow or use any of our products or services.

1. Definitions

'Confidential Information' includes all information relating to this agreement not otherwise in the public domain, including SiteManagerNow's Intellectual Property Rights.

'Data' means any data inputted by you into SiteManager.

'GST' means Goods and Services Tax, or other applicable value added tax.

'Intellectual Property Right' means any industrial and intellectual property rights of any kind including but not limited to copyright, moral right, rights in trade marks, service marks, designs, know-how, patents and company names and any right to registration of any such rights, whenever and wherever created.

'Service Fee' means the monthly fee (excluding any taxes and duties) payable by you in accordance with the fee schedule set out on the Website (which SiteManagerNow may change from time to time on notice to you).

'Site' means a collection of one or more web pages that can be accessed on the internet by entering a unique web address (domain name).

'SiteManager' means SiteManager available (as may be changed or updated from time to time by SiteManagerNow) via the Website.

'User' means a single user of SiteManager identified by a unique username and password.

'Website' means the Internet site at the domain www.sitemanagernow.com or any other site operated by SiteManagerNow.

'you' means you and includes your employees, consultants, representatives and agents.

2. Use of SiteManager

SiteManagerNow grants you the right to access and use SiteManager via the Website. This right is non-exclusive and non-transferable and limited by these Terms.

- 2.1 SiteManagerNow grants you the right to access and use SiteManager. This right is non-exclusive and non-transferable and limited by these Terms.
- 2.2 You must not access SiteManager if you are a direct competitor of SiteManagerNow, to be determined at SiteManagerNow's sole discretion, except with SiteManagerNow's prior written consent.
- 2.3 You must not access SiteManager for the purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.
- 2.4 SiteManagerNow, in its sole discretion, reserves the right to refuse any customer the right to sign up for SiteManager or for any User to access SiteManager.

3. Your obligations

3.1 Payment obligations

- a. You must pay all Service Fees or charges to your account in accordance with the fees, charges and billing terms in effect at the time the Service Fee or charge is payable. Your payments must be made using Paypal's secure online payment mechanism.
- b. You will have a 'one-off' option to register for a 14 day free trial for up to 3 Users. Should you opt to take up the 14 day free trial no Service Fee will be payable during that period.
- c. If you do not take up the 14 day free trial, or following the conclusion of your 14 day free trial, once you press the 'Sign Up' button you will be signed up to SiteManager for an initial term of one year (Initial Term).
- d. The Service Fee charged will equate to the current total number of Users and Sites accessed by you, and to any other services you choose to purchase from SiteManagerNow, including but not limited to, technical support, training, customisation or any other services that may be offered by SiteManagerNow from time to time.
- e. You will be billed monthly, and all SiteManager invoices will be sent to you via email or presented within the SiteManager system. You are responsible for payment of all taxes and duties in addition to the Service Fee, including GST (if applicable).
- f. Subject to clause 7.1 b, all payment obligations are non-cancellable and all amounts paid are non-refundable.
- g. You may add or remove Users and/or Sites by updating your profile on SiteManager, and you will be subject to the following:
 - i. Added Users and/or Sites will be coterminous with the pre-existing term; and
 - ii. The Service Fee for the added Users and/or Sites will be the then current, generally applicable Service Fee.
 - iii. If you are removing Users and/or Sites the reduction in the Service Fee will show on your account the following month.

h. If you update your profile on SiteManager, it is your responsibility to update your payment authorisation on Paypal to reflect any amended amounts you are required to pay.

i. You must at all times provide SiteManager with complete and accurate contact and billing information. This includes: your legal (company) name; street address; email address; name and address of the authorised User account person; and valid credit card details.

3.2 General obligations

You must only use SiteManager for your own lawful internal business purposes, in accordance with these Terms and any notice sent by SiteManagerNow or condition posted on the Website.

3.3 Access conditions

a. You will ensure that all usernames and passwords required to access SiteManager are kept secure and confidential. You will immediately notify SiteManagerNow of any unauthorised use of your passwords or any other breach of security. It is your responsibility to maintain the security of User access, logins, and passwords, including resetting any password(s) or deactivating any User account(s).

b. As a condition of these Terms, when accessing and using SiteManager, you must:

i. not attempt to undermine the security or integrity of SiteManagerNow's computing systems or networks or, where SiteManager is hosted by a third party, that third party's computing systems and networks;

ii. not use, or misuse, SiteManager in any way which may impair the functionality of SiteManager or the Website, or impair the ability of any other User to use SiteManager or the Website;

iii. not attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which SiteManager is hosted;

iv. not modify, adapt or hack into SiteManager, or modify another website so as to falsely imply that it is associated with SiteManager.

v. not transmit, or input into SiteManager, any files that may damage any other person's computing devices or software, content that may be offensive, or material or Data in violation of any law (including Data or other material protected by copyright or trade secrets which you do not have the right to use); and

vi. not modify, copy, adapt, reproduce, disassemble, resell, decompile or reverse engineer SiteManager or the Website except as is strictly necessary to use either of them for normal operation.

vii. take responsibility for any activity occurring under your User account, and shall at all times adhere to all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of SiteManager, including those related to data privacy, international communications and the transmission of technical or personal data.

3.4 Indemnity

You indemnify SiteManagerNow and keep SiteManagerNow indemnified against all claims, damage, loss (including consequential loss and loss of profit) and costs (including actual attorneys' fees on a solicitor own client basis) arising from

or out of your negligent acts or omissions or your breach of any of these terms or any obligation you may have to SiteManagerNow, including (but not limited to) any costs relating to the recovery of any Service Fees that have not been paid by you.

4. Warranties and acknowledgements

4.1 Acknowledgement

You acknowledge that:

- a. You are authorised to use SiteManager (subject to accepting and complying with the terms and conditions) and to access the information that you access using SiteManager (whether that information is your own or that of anyone else).
- b. If you are using SiteManager on behalf of or for the benefit of an organisation (whether a body corporate or not) then SiteManagerNow will assume that you have the right to do so and that organisation will be liable for your actions or omissions (including any breach of these Terms).
- c. The provision of, access to, and use of, SiteManager is on an 'as is, where is' basis and at your own risk.
- d. SiteManagerNow does not warrant that the use of SiteManager will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing SiteManager, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to SiteManager. SiteManagerNow is not in any way responsible for any such interference or prevention of your access or use of SiteManager.
- e. Any additional costs associated with accessing SiteManager, including hardware, other software and Internet access are your sole responsibility.
- f. It is your sole responsibility to determine that SiteManager meets the needs of your business.

4.2 No warranties

SiteManagerNow gives no warranty about SiteManager. Without limiting the foregoing, SiteManagerNow does not warrant that SiteManager will meet your requirements or that it will be suitable for your purposes. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

4.3 Consumer guarantees

You warrant and represent that you are acquiring the right to access and use SiteManager and agreeing to these Terms for the purposes of a business and that, to the maximum extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction does not apply to the supply of SiteManager, the Website or these Terms.

5. Modifications to SiteManager and to the Terms

5.1 SiteManagerNow reserves the right to modify or discontinue providing SiteManager at any time in our sole discretion.

- 5.2 SiteManagerNow reserves the right to change these Terms at any time in our sole discretion, effective upon the posting of modified terms on our Website. We will send out email alerts when we do make changes to these terms, or you can check our website from time to time to ensure you have the most up-to-date version.
- 5.3 Modifications to the Terms may include changes in the scope of SiteManager, pricing and payment procedures. It is your obligation to ensure that you have read, understood and agree to the most recent Terms available on the Website.
- 5.4 Your continued use of SiteManager following our notification of any changes will constitute your binding acceptance of the changes. If any changes are unacceptable to you, you may terminate the Terms as provided in clause 7.2.

6. Limitation of liability

- 6.1 To the maximum extent permitted by law, SiteManagerNow excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, SiteManager.
- 6.2 If you suffer loss or damage as a result of SiteManagerNow's negligence or failure to comply with these Terms, and claim by you against SiteManagerNow arising from SiteManagerNow's negligence or failure will be limited in respect of any one incident, or series of connected incidents to the Service Fees paid by you in the previous 12 months.
- 6.3 If you are not satisfied with SiteManager, your sole and exclusive remedy is to terminate these Terms in accordance with clause 7.

7. Termination

7.1 Trial Period and Ninety Day Money Back Guarantee Period

- a You may be entitled to a 14 day trial period, which will commence as soon as you are granted access to SiteManager by SiteManagerNow for the first time. You may terminate these Terms (and no Service Fee will be payable) by serving notice on SiteManagerNow within those 14 days.
- b If, before the expiry of the first 90 days of your first subscription to SiteManager, (for the avoidance of doubt, the 14 day free trial period is included in the first 90 days), you serve notice on SiteManagerNow that you wish to immediately cancel your subscription, and explain the reasons why SiteManagerNow is not suitable for your requirements, then SiteManagerNow will:
 - i refund by way of Paypal all Service Fees you have paid to SiteManagerNow up to the date of cancellation

The cancellation and refund rights detailed in this clause are only available to be exercised by you, your company and your web site once.

7.2 Termination

These Terms will continue for the Initial Period and thereafter on a rolling monthly basis. Either party may terminate these Terms by giving 30 days written notice to the other party at any time after the end of the Initial Period.

7.3 Suspension

SiteManagerNow reserves to the right to suspend your access to SiteManager if your account with SiteManagerNow is not fully paid up with no Service Fees outstanding.

7.4 Breach

If you:

- a. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied; or
- b. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any breach of clause 3.3 or any payment more than 30 days overdue); or
- c. the paying subscriber goes into liquidation or has a receiver or manager appointed of any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction; or
- d. use SiteManager for improper reasons or purposes, which will be determined at SiteManagerNow's sole discretion,

SiteManagerNow may take any or all of the following actions, at its entire discretion:

- i. Terminate these Terms and your use of SiteManager;
- ii. Suspend for any definite or indefinite period of time, your use of SiteManager.

7.5 Accrued rights

Termination of these Terms is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination. On termination of this Agreement you will:

- a. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- b. immediately cease to use SiteManager.

7.6 Expiry or termination

Clauses 3.1, 4, 5, 6, 7, 8 and 11 survive the expiry or termination of these Terms.

8. Confidentiality and privacy

8.1 Confidentiality

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

- a. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.

- b. Each party's obligations under this clause will survive termination of these Terms.
- c. The provisions of clauses 8.1a and 8.1b shall not apply to any information which:
 - i. is or becomes public knowledge other than by a breach of this clause;
 - ii. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - iii. is in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
 - iv. is independently developed without access to the Confidential Information.

8.2 Privacy

SiteManagerNow maintains a privacy policy that sets out your obligations in respect of data. You should read the policy here <http://www.sitemanagernow.com/content/about/privacy.asp> since you will be taken to have accepted it when you accept these Terms.

9. Intellectual property

9.1 General

Title to, and all Intellectual Property Rights in the Software, the Website and any documentation relating to the Software remain the property of SiteManagerNow (or its licensors).

9.2 Data

Title to, and all Intellectual Property Rights in, the Data remain your property. You must maintain copies of all Data inputted into SiteManager. SiteManagerNow adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss of Data. SiteManagerNow expressly excludes liability for any loss of Data no matter how caused.

10. Support

10.1 Technical problems

In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting SiteManagerNow. If you still need technical help, please check the support provided online by SiteManagerNow or failing that email us at customercare@sitemanagernow.com . SiteManagerNow reserves the right to charge for technical support as set out in the fee schedule on the Website.

10.2 Service availability

- a. Whilst SiteManagerNow intends that SiteManager should be available 24 hours a day, seven days a week, it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place.
- b. If for any reason SiteManagerNow have to interrupt SiteManager for longer periods than SiteManagerNow would normally expect, we will use reasonable endeavours to publish in advance details of such activity on the Website.

11. General

11.1 Notices

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission. Notices to SiteManagerNow must be sent to customercare@sitemanagernow.com or to any other email address notified by email to you by SiteManagerNow. Notices to you will be sent to the email address which you provided when setting up your access to SiteManager. Any notice received on a day which is not a day that registered banks are open for business in Auckland, New Zealand (**Business Day**) or after 5.00pm on a Business Day, shall be deemed to have been received on the next Business Day.

11.2 Entire agreement

These Terms constitute the entire understanding between the parties with respect to the subject matter of these Terms and to the use of SiteManager. These Terms supersede all prior agreements, negotiations and discussions between the parties relating to it.

11.3 Waiver

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.

11.4 Delays

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

11.5 No assignment

You may not assign or transfer any rights to any other person without SiteManagerNow's prior written consent, which may be withheld in its absolute discretion.

11.6 Rights of third parties

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms.

11.7 Severability

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties.

11.8 Governing law and jurisdiction

These Terms will be construed and take effect as a contract made in New Zealand and will be governed by New Zealand law, and the parties submit to the exclusive jurisdiction of the New Zealand courts.