

# KARMACODE

## WEBSITE TERMS AND CONDITIONS

### 1. About the Website

1.1 Welcome to the SiteCloud website at: <https://www.sitecloud.com.au> (the '**Website**').

1.2 The Website allows you, to manage one or more of the following:

- (a) worksite information,
- (b) recording of site attendances,
- (c) safety documents,
- (d) pre-start and induction processes, and
- (e) workplace hazard identification

(collectively the '**Services**').

You acknowledge and agree that the Website is under constant development, and that not all the Services listed above may be currently available. Services may be added to, or removed from, the Website as it is further developed.

1.3 The Website is operated by KARMACODE PTY LTD (ACN 653 031 693) ('**Karmacode**', '**we**', '**us**', '**our**'). Access to and use of the Website, or any of its associated Services, is provided by Karmacode.

1.4 Please read these terms and conditions (the '**Terms**') carefully. By browsing the Website, this signifies that you have read, understood, and agree to be bound by the Terms. If you do not agree with the Terms, you must cease usage of the Website and any of the Services, immediately.

1.5 We reserve the right to review and change any of the Terms by updating this page at our sole discretion. When we update the Terms, it will use reasonable endeavours to provide you with notice of updates to the Terms. Any changes to the Terms take immediate effect from the date of their publication. Before you continue, we recommend that you keep a copy of the Terms for your records.

### 2. Acceptance of the Terms

2.1 You accept the Terms by remaining on the Website.

2.2 Where the option is available in the user interface, you may also accept the Terms by clicking to accept or agree to the Terms.

### 3. Acceptable use of the Service

3.1 The Website and its Services must only be used lawfully. We reserve the right to suspend, cancel, or otherwise deny access to users and accounts who use the service:

- (a) To engage in any act that would disrupt the access, availability, and security of the Website and the Services provided by it, including but not limited to:
  - (i) tampering with, reverse-engineering, or gaining unauthorised access to our systems on which the Website is hosted;
  - (ii) adversely influencing the performance of the Website;
  - (iii) overwhelming the Website's supporting infrastructure (such as, but not limited to, servers and internet connections) by imposing an unreasonably large load on such infrastructure causing it to consume extraordinary amount of network bandwidth or memory or processing power; or
  - (iv) compromising the authenticity, confidentiality, and integrity of the Website or the data held in our systems, such as by (but not limited to):
    - (A) probing, scanning, sending phishing emails to any of our email addresses, or exploiting any vulnerabilities of our system; or
    - (B) engaging in any social engineering involving our directors, officers, employees, contractors, agents, and representatives;unless we authorise such activities by prior written consent; or
  - (v) attempting any of the activities set out in clauses 3.1(a)(i) to (iv).
- (b) For any illegal purpose, or to violate any laws, including and without limitation to data, privacy, and export control laws;
- (c) To stalk, harass, or threaten users and any member of the public;
- (d) To misrepresent or defraud any user or member of the public through phishing, spoofing, manipulating headers or other identifiers, impersonating anyone else, or falsely implying any sponsorship or association with or any third party;
- (e) To access or search any part of the Service, or any other Service owned or operated by us, other than via the Website's interface; or
- (f) To post, upload, share, or otherwise circulate content that infringes on another person's intellectual property rights, or is defamatory, offensive, unlawful, or in breach of these Terms.

3.2. For the purposes of this clause 3, "our systems" are not limited to systems owned or operated by us. They include information systems and communication systems provided by third parties related to the hosting and operation of the Website.

#### **4. Security and Data Privacy**

- 4.1. We take your privacy seriously and information provided through your use of the Website and Services are subject to our Privacy Policy, which is available on the Website.
- 4.2. The Privacy Policy also addresses our processes, policies, and obligations in respect of security breaches.

- 4.3. You acknowledge and agree that you are solely responsible to ensuring that you retain off-line back-ups of any information you have provided to the Website, and that we do not provide any assurance of continuous availability of your data on the Website.

## 5. Subscription and Membership

- 5.1. To access the Services, you must first register an account with us via the Website, purchase a subscription through the Website (the '**Subscription**'), and pay the applicable fee for the selected Subscription (the '**Subscription Fee**').
- 5.2. In purchasing the Subscription, you acknowledge and agree that it is your responsibility to ensure that the Subscription you elect to purchase is suitable for your use.
- 5.3. Upon creating an account with us, you will become a '**Member**'.
- 5.4. As part of the registration process, or as part of your continued use of the Services, you may be required to provide personal information about yourself (such as identification or contact details), including but not limited to:
  - (a) Legal name;
  - (b) Trading or registered business name;
  - (c) Australian business number;
  - (d) Postal address;
  - (e) Email address; and
  - (f) Telephone number.
- 5.5. You warrant that any information you give to in the course of completing the registration process will always be accurate, correct, and kept up-to-date.

## 6. Payments

- 6.1. The Subscription Fee may be paid by all payment methods available on the Website, and may change from time to time.
- 6.2. Payments made during your use of the Website may be made using third-party applications and services not owned, operated, or otherwise controlled by us.
- 6.3. You acknowledge and agree that will not be liable for any losses or damage arising from the operations of third-party payment applications and services. You further acknowledge and warrant that you have read, understood, and agree to be bound by the terms and conditions of the applicable third-party payment applications and services you choose to use as a payment method for services.
- 6.4. As at the time of drafting these Terms, the payment merchant provider is Stripe, Inc. and its legal terms can be found at:
  - (a) Service agreement: <https://stripe.com/en-au/legal/ssa>
  - (b) Privacy policy: <https://stripe.com/en-au/privacy>

- 6.5. You acknowledge and agree that where a request for the payment of the Subscription Fee is returned or denied, for whatever reason, by your financial institution or is unpaid by you for any other reason, then you are liable for any costs, including banking fees and charges, associated with the delayed payment or non-payment of the Subscription Fee.
- 6.6. You agree and acknowledge that we can vary the Subscription Fee at any time and that the varied Subscription Fee will come into effect following the conclusion of the existing Subscription.
- 6.7. The Subscription Fee must be paid in advance monthly, and:
  - (a) You hereby authorise us to automatically charge the credit card or debit your bank account nominated by you at the start of each monthly Subscription Period; and
  - (b) You may withdraw your authorisation only by terminating these Terms in accordance with clause 10.2, in which case we will cancel your access to the Services on the last day of the Subscription period that you have paid for.

## **7. Refund Policy**

- 7.1. We will only provide you with a refund of the Subscription Fee if we are unable to continue to provide the Services or decide, at our absolute discretion, that it is reasonable for us to refund you under the circumstances.
- 7.2. If a refund is provided, it will be proportional to the amount of the Subscription Fee that remains unused by the Member (the '**Refund**').

## **8. Copyright and Intellectual Property**

- 8.1. The Website, the Services and all the related products of are subject to copyright. The material on the Website is protected by copyright under the laws of Australia and through international treaties.
- 8.2. Unless otherwise indicated, all rights (including copyright) in the Services and compilation of the Website (including but not limited to text, images, audio, video, scripts, source code, design features, and interactive elements) or the Services are owned or controlled by us and reserved by us and any third-party licensors.
- 8.3. All trademarks on the Website are owned, registered, or licensed by us.
- 8.4. We grant a worldwide, non-exclusive, royalty-free, revocable license to you to:
  - (a) Use the Website pursuant to these Terms;
  - (b) Copy and store the Website and the material contained on the Website in your electronic device's cache memory; and
  - (c) Print pages from the Website for your own personal and non-commercial use.
- 8.5. We do not grant you any other rights whatsoever in relation to the Website or the Services. All other rights are expressly reserved by us.
- 8.6. We retain all rights, title, and interest in and to the Website and all related Services. Nothing you do on or in relation to the Website will:

- (a) Transfer to you any title or interest in a business name, trading name, domain name, trademark, patent, registered design, or copyright;
  - (b) Grant you a right to use or exploit a business name, trading name, domain name, trademark, patent, registered design, or copyright, other than as expressly allowed by clause 8.4 of these Terms; or
  - (c) Grant you any right over a thing, system, or process that is the subject of a patent, registered design, or copyright (or an adaptation or modification of such a thing, system, or process).
- 8.7. You may not, without the prior written permission of and the permission of any other relevant rights owners: broadcast, republish, up-load to a third party, transmit, post, distribute, show or play in public, adapt or change in any way the Services or third-party Services for any purpose, unless otherwise provided by these Terms. This prohibition does not extend to materials on the Website that are public domain (i.e. free of any copyright or other intellectual property rights).
- 8.8. For avoidance of any doubt, you retain ownership of any intellectual property you provide you us while using the Website, and grant us a worldwide, non-exclusive, royalty-free, revocable licence to copy, modify, store, and transfer to other parties all such intellectual property in order to:
- (a) Provide the Services to you via the App; and
  - (b) Comply with any order of a judicial or quasi-judicial body, or law enforcement agency, or regulatory authority.

## **9. General Disclaimer**

- 9.1. Nothing in the Terms limits or excludes any term, guarantee, or warranty implied or imposed by law, including the Australian Consumer Law (or any liability under them), which by law is prohibited from being excluded or modified.
- 9.2. Subject to this clause, and to the maximum extent permitted by law:
- (a) All terms, guarantees, or warranties which are not expressly stated in the Terms are excluded;
  - (b) Our total liability arising out of or in connection with the Services or these Terms, however arising, including under contract, tort (including negligence), in equity, or statute, will not exceed the resupply of the Services to you; and
  - (c) We will not be liable for any indirect or consequential damages arising out of or in connection with the Services or these Terms, where "indirect or consequential damages" includes (but is not limited to) your costs and expenses, loss of business opportunity or goodwill, damage to reputation, and any other type of loss that ordinary businesspeople entering into this type of contract would not ordinarily anticipate.
- 9.3. Use of the Website and the Services is at your own risk. Everything on the Website and the Services is provided to you "as is" and "as available" without warranty or condition of any kind. None of our affiliates, directors, officers, employees, agents, contributors, or licensors make any express or implied representation or warranty about the Website itself, the Services provided via the Website, or any products or

services referred to or linked on the Website. This includes (but is not restricted to) loss or damage you might suffer because of any of the following:

- (a) Unavailability, interruption, or poor performance of the Website;
- (b) Infection of your electronic device by computer virus, trojan horse, worm, or other malicious computer software arising from your use of the Website;
- (c) The accuracy, suitability, or currency of any information delivered by the Services or otherwise shown on the Website (including third party material and advertisements on the Website);
- (d) Costs incurred because of you using the Website or the Services; and
- (e) The Services or operation in respect to links which are provided for your convenience.

## **10. Termination of Contract**

10.1. The Terms will continue to apply until terminated by either you or us as set out below.

10.2. If you want to terminate the Terms, you may do so by:

- (a) Not renewing the Subscription prior to the end of the Subscription period;
- (b) Providing us with 1 calendar month's written notice of your intention to terminate;  
or
- (c) Closing your accounts for all the services which you use, where has made this option available to you on the Website.

10.3. Any notices pursuant to Clause 10.2(b) above must sent to us by email or to our postal address as shown on the Website.

10.4. We may terminate the Terms with you at any time, if:

- (a) You do not renew the Subscription at the end of the Subscription period;
- (b) You have breached any provision of the Terms, or indicate an intention to breach any provision, or we have reason to suspect that you will do so;
- (c) We are required to do so by law; or
- (d) We determine, at our sole discretion, that the continued provision of the Services is not commercially viable.

10.5. Subject to any applicable law, we reserve the right to discontinue or cancel your Subscription or terminate these Terms at any time and may suspend or deny, at our sole discretion, your access to all or any portion of the Website or the Services without notice if you breach any provision of the Terms or any applicable law or if your conduct impacts 's name or reputation or violates the rights of those of another party.

10.6. Upon termination of these Terms, your data that is held by us may be permanently deleted. In this regard, you acknowledge and agree that:

- (a) It is solely your responsibility to maintain off-line records (i.e. paper or electronic copies saved outside of the Website) of your data;

- (b) You are solely liable for compliance with any data retention requirements of the jurisdiction in which you operate, including requirements as to workplace health and safety information; and
- (c) For avoidance of any doubt, the indemnities you provide in clause 11(a) include indemnity against costs, expenses, damages, penalties, and other liabilities incurred because of non-compliance with record-keeping or data retention requirements at law.

## 11. Indemnity

You agree to indemnify us and our affiliates, employees, agents, contributors, third party content providers, and licensors from and against:

- (a) All actions, suits, claims, demands, liabilities, costs, expenses, loss and damage (including legal fees on a full indemnity basis) incurred, suffered or arising out of or in connection with documents and other files you upload to the Website in the course of using the Services, and any other content you submit or post to the Website (whether in connection with the Services or otherwise);
- (b) Any direct or indirect consequences of you accessing, using, or transacting on the Website or attempts to do so; and
- (c) Any breach of the Terms.

## 12. Dispute Resolution

### 12.1. Compulsory:

If a dispute arises out of or relates to these Terms, neither party may commence any Tribunal or Court proceedings in relation to the dispute, unless the following clauses have been complied with (except where urgent interlocutory relief is sought).

### 12.2. Notice:

A party to the Terms claiming a dispute ('**Dispute**') has arisen under the Terms, must give written notice to the other party detailing the nature of the dispute, the desired outcome, and the action required to settle the Dispute.

### 12.3. Resolution:

On receipt of that notice ('**Notice**') by that other party, the parties to the Terms ('**Parties**') must:

- (a) Within 14 days of the Notice, endeavour in good faith to resolve the Dispute expeditiously by negotiation or such other means by mutual agreement;
- (b) If for any reason whatsoever, 14 days after the date of the Notice, the Dispute has not been resolved, the Parties must either agree upon selection of a mediator or request that an appropriate mediator be appointed by the President of the or his or her nominee;
- (c) The Parties are equally liable for the fees and reasonable expenses of a mediator and the cost of the venue of the mediation and without limiting the foregoing undertake to pay any amounts requested by the mediator as a pre-

condition to the mediation commencing. The Parties must each pay their own costs associated with the mediation;

(d) The mediation will be held in Perth, Western Australia.

#### 12.4. Confidential:

All communications concerning negotiations made by the Parties arising out of and in connection with this dispute resolution clause are confidential and to the extent possible, must be treated as "without prejudice" negotiations for the purpose of applicable laws of evidence.

#### 12.5. Termination of Mediation:

If have elapsed after the start of a mediation of the Dispute and the Dispute has not been resolved, either party may ask the mediator to terminate the mediation and the mediator must do so.

### **13. Venue and Jurisdiction**

13.1. The Services offered by is intended to be viewed by residents of Australia.

13.2. In the event of any dispute arising out of or in relation to the Website, the parties agree that the exclusive venue for resolving any dispute shall be in the courts and tribunals of Western Australia, and any courts that may hear appeals from those courts and tribunals.

### **14. Governing Law**

14.1. The Terms are governed by the laws of Western Australia.

14.2. Any dispute, controversy, proceeding or claim of whatever nature arising out of or in any way relating to the Terms and the rights created hereby shall be governed, interpreted, and construed by, under and pursuant to the laws of Western Australia.

14.3. The validity of this governing law clause is not contested.

### **15. Independent Legal Advice**

Both parties confirm and declare that:

- (a) The provisions of the Terms are fair and reasonable;
- (b) Both parties have had reasonable opportunity to obtain independent legal advice;
- (c) The Terms are not against public policy on the grounds of inequality or bargaining power or general grounds of restraint of trade.

### **16. Severance**

If any part of these Terms is found to be void or unenforceable by a Court of competent jurisdiction, that part shall be severed, and the rest of the Terms shall remain in force.

## **17. Successors and Assigns**

For avoidance of doubt, these Terms shall be binding on the successors and permitted assigns of the parties.