

Terms of Use

TICBOX TERMS OF USE FOR ORGANISATIONS AND INDIVIDUAL USERS

MindAtlas Ticbox Pty Ltd (ACN 614 114 260) ('Ticbox', 'us', 'we' and 'our').

Last update: 18th February 2019

OVERVIEW AND APPLICATION

We support businesses to manage risk and compliance by providing access to important organisational documents and programs through the platform available at ticbox.com.au (**Platform**). The Platform enables organisations to develop, edit, track and maintain organisational compliance policies and procedures, and individual users to have ready access to their compliance needs.

These Terms of Use (**Terms**) apply to your use of the Platform. By accessing or using the Platform, you agree to these Terms and our [Privacy Policy](#), as updated from time to time.

Please read these Terms carefully and immediately cease using the Platform if you do not agree to them.

The application of these Terms will depend on whether you are:

- (a) an employer organisation that has subscribed to the Platform (**Organisation**) – in which case **Part A** (General Terms) and **Part B** (Special Terms for Organisations) apply to you; or
- (b) an individual employed or engaged by the Organisation and authorised by the Organisation to access and use the Platform (**User**) – in which case **Part A** (General Terms) and **Part C** (Special Terms for Users) apply to you.

Please note that the Platform is designed to assist Australian businesses. Because of the nature of the internet, the Platform may be accessed overseas. We make no representation and give no assurance that the Platform or its use complies with the laws of any country outside Australia.

PART A – General Terms

Important note: The Platform, and any Content available through the Platform, are provided for general information purposes only, are not comprehensive and do not consider your specific needs, circumstances or objectives. Importantly, they do not constitute legal or compliance advice.

We recommend you seek independent legal advice on the Content to ensure it meets your particular needs and circumstances.

Any policies and procedures obtained by you through the Platform do not substitute, and should be accompanied by, suitable training and development of personnel.

1. DEFINITIONS

Some words in these Terms are capitalised and have a specific meaning. These are explained in clause 16.

2. VARIATIONS

We may from time to time change these Terms by publishing the varied terms on the Platform.

We will endeavour to place a notification on the Platform when the Terms change. However, we recommend you check our Platform regularly to ensure you are aware of the current Terms. If you do not agree to the applicable terms at any stage then you should stop use of the Platform.

Content is subject to change without notice.

3. LICENCE

We grant you a limited, non-exclusive, non-transferable and revocable licence to access and use the Platform in accordance with these Terms (and, for Organisations, any Order). This licence lasts for the duration of the Subscription Period.

If you are an Organisation, you may authorise Users to access and use the Platform, and are responsible for each of your User's use of the Platform. Users may not authorise anyone else to access and use the Platform.

We may revoke or suspend your licence(s) if you breach these Terms or otherwise are not using the Platform in its intended manner. We may advise you of any suspension or revocation, however we are under no obligation to do so.

4. USE

Unless permitted by law or as otherwise expressly permitted by these Terms, you must not (nor may you authorise any User or other person to):

- (a) rent, lease, distribute, license, sublicense, sell, transfer, assign, distribute or otherwise provide access to the Platform to any other person;
- (b) tamper with or modify the Platform, knowingly transmit viruses or other disabling features, or damage or interfere with the Platform, including (without limitation) using trojan horses, viruses or piracy or programming routines;
- (c) remove or tamper with any disclaimers or other legal notices on the Platform;
- (d) store or use any part of data accessible through the Platform that you do not own in an archival database or other searchable database;
- (e) use the Platform for illegal purposes or engage in any conduct using the Platform that is unlawful, immoral, threatening, abusive or in a way that is deemed unreasonable or inappropriate by us in our discretion;
- (f) use the Platform in any way that might bring us or the Platform into disrepute; or
- (g) use the Platform in any way that infringes our IPR or breaches clause 10.

You are also prohibited from using the Platform, including the Content, in any way that competes with or is intended to compete with our business.

You must promptly notify us of any breach, or suspected or anticipated breach, of the above conditions.

5. YOUR CONTENT

You grant us a royalty-free, sub-licensable, transferable, irrevocable, worldwide and perpetual licence to use, reproduce, adapt and display Your Content in connection with our provision of the Platform and related services to you.

You are solely responsible for all Your Content, including its accuracy, quality and legality. You warrant that you are either the sole and exclusive owner of Your Content or you have all rights, licences, consents and releases that are necessary to upload Your Content to the Platform.

You also warrant that neither Your Content nor the posting, uploading, publication, submission or transmission of Your Content, or our use of Your Content on, through or by means of us operating the Platform, will infringe, misappropriate or violate a third party's IPR or result in the violation of any applicable law or regulation.

We do not endorse or approve, and are not responsible for, any of Your Content. We may at any time remove all or part of Your Content at our sole discretion.

After an applicable Subscription Period ends, you will not be able to access Your Content through the Platform. It is your responsibility to ensure you have necessary back-ups.

6. THE PLATFORM

You agree that the Platform is:

- (a) hosted by us and will only be installed, accessed and maintained by us using the internet or other connection to our servers and is not available 'locally' from your systems; and
- (b) managed and supported exclusively by us from our servers and that no 'server' access to the Platform is available to you.

We may upgrade, maintain, backup, amend, add or remove features and redesign, improve or otherwise alter the Platform at our sole discretion. These Terms will apply to any updates and upgrades provided by us to you for the Platform.

We may rely on our affiliates and suppliers to assist us in making the Platform available.

While we will endeavour to provide access to the Platform to the best of our abilities, you acknowledge and agree that:

- (a) access to the Platform may be prevented by issues outside of our control; and
- (b) we accept no responsibility for any interruption in your access to the Platform.

We will seek to provide you with advance notification of any scheduled maintenance or planned downtime for the Platform.

7. THIRD PARTY SITES AND SERVICES

Our Platform may contain links to websites operated by third parties. Unless expressly stated otherwise, we do not control, endorse or approve, and are not responsible for, the content on those websites.

You acknowledge that the Platform is dependent on third-party services, including but not limited to:

- (a) banks, credit card providers, BPAY;
- (b) telecommunications services;
- (c) hosting services; and

- (d) email services.

We will not be responsible or liable in any way for interruptions to the availability of the Platform due to third-party services.

8. PRIVACY

We take your privacy seriously and maintain a Privacy Policy in compliance with the Privacy Act. Please refer to our [Privacy Policy](#) for how we may collect, store, use and disclose Personal Information.

9. DATA AND SECURITY

It is your sole responsibility to ensure the confidentiality and security of any information transmitted from or stored on a device used by you to access the Platform.

You understand that use of the Platform involves transmission of your data over networks that are not owned, operated or controlled by us, and we are not responsible for any of your data that is lost, altered, intercepted or stored across such networks. We cannot guarantee that our security procedures will be error-free, that transmissions of your data will always be secure or that unauthorised third parties will not be able to defeat our security measures or those of our service providers.

We will do all things reasonable to ensure that the transmission of data occurs according to accepted industry standards. It is up to you to ensure that any transmission standards meet your requirements.

We may limit the amount of Your Content that you store in the Platform. Content that is stored within the Platform will be stored according to accepted industry standards. We will perform backups of the Content and Platform at such times and intervals as required for our purposes.

10. INTELLECTUAL PROPERTY

Your access to and use of the Platform and Content does not grant or transfer to you any rights, title or interest in relation to the Platform or the Content (other than Your Content).

IPR in the Platform and the Content (other than Your Content) is owned by us or our licensors, including any source code, analytics, insights, ideas, enhancements, feature requests, suggestions, feedback or other information provided by you. In particular, you acknowledge that any feedback provided by you in relation to the Platform or the Content may be used freely by us in order to improve our services.

You must not:

- (a) breach any IPR connected with our Platform or the Content;
- (b) copy, reproduce, modify, adapt or create derivative works of the Platform or the Content (other than Your Content);
- (c) copy, recreate, decompile, disassemble, reverse engineer, transfer, exchange, translate or otherwise seek to obtain, modify or use any source, object code, architecture, or algorithms contained in the Platform or any documentation associated with it; or
- (d) combine the whole or any part of the Platform with any other software, data or material.

11. CONFIDENTIALITY

Each party agrees to keep confidential, and not use or disclose (other than as permitted by these Terms) any Confidential Information of the other party.

Each party must take all prudent steps to protect the other party's Confidential Information from unauthorised access, use, copying or disclosure.

Each party may disclose the other party's Confidential Information to other persons (and must take reasonable steps to ensure that the information is kept confidential by the recipients):

- (a) if required by applicable law, provided that it discloses only the minimum amount of Confidential Information required to satisfy the relevant law and, where permissible, provides advance written notice to the other party;
- (b) to those of its personnel who have a need to know the Confidential Information to enable the party to exercise its rights and comply with its obligations under these Terms;
- (c) to that party's financial, legal or other professional advisors for the purpose of obtaining advice in relation to these Terms; or
- (d) with the prior written consent of the other party.

12. LIABILITY & INDEMNITY

You agree that your use of the Platform, and reliance on the Content available through the Platform, is on an 'as is' basis and at your own risk.

While we use reasonable attempts to ensure the accuracy and completeness of the Content, we do not undertake to keep our Platform up to date and we are not liable if any Content is inaccurate or out of date, or if it does not meet your requirements (including applicable legal requirements).

To the maximum extent permitted by law, we exclude all liability for any loss, damage, cost or expense suffered or incurred by you, whether directly or indirectly (including any incidental, consequential or indirect loss, loss or corruption of data, loss of profits, goodwill or opportunity, loss of anticipated savings or any other similar or analogous loss) arising from or in connection with:

- (a) your use of the Platform or Content;
- (b) any inaccessibility of or interruption to the Platform,
- (c) any loss or corruption of Content, or
- (d) Content being incorrect, incomplete or out-of-date.

We make no representations or warranties about the Platform or the Content, and specifically do not warrant or represent that:

- (a) the Platform or Content is complete, accurate, reliable, up-to-date and suitable for any particular purpose;
- (b) access will be uninterrupted, error-free or free from viruses; or
- (c) the Platform will be secure.

To the extent permitted by law, we exclude all conditions and warranties in relation to the Platform and Content, including those implied by law. Our liability for breach of any implied warranty or condition that cannot be excluded by law is limited to:

- (a) the re-supply of our services to you or payment of the cost of re-supply of services; or
- (b) the replacement or repair of goods or payment of the cost of replacement or repair.

You indemnify, hold harmless and defend us, our related entities and respective personnel

(those indemnified) from and against any loss, damage, costs or expense incurred or suffered by any of those indemnified in connection with:

- (a) any injury to or death of persons or damage to property caused by you or your personnel including Users (**indemnifying parties**);
- (b) any fraudulent or reckless act or omission, or the wilful misconduct, of an indemnifying party;
- (c) a breach of these Terms by the indemnifying parties;
- (d) any negligent act or omission of the indemnifying parties; or
- (e) any infringement of a third party's rights (including IPR) or breach of any law by the indemnifying parties.

13. TERMINATION

We may terminate your access to the Platform (and these Terms) immediately by written notice to you if:

- (a) you have committed a breach of these Terms that cannot be remedied;
- (b) you fail to remedy a breach of these Terms (that is capable of remedy) within 10 days of receiving notice from us of the breach in writing;
- (c) you breach clauses 4, 5, 10 or 11;
- (d) you are subject to an Insolvency Event; or
- (e) we are entitled to do so under any provision of these Terms.

If you are an Organisation, you may terminate these Terms immediately by notice in writing to us if we are subject to an Insolvency Event.

Removing or deleting the Platform does not constitute termination of these Terms by you, although we may terminate these Terms in the event we determine, at our discretion, that the Platform has been deleted by you with an intention to cancel your subscription. You agree that your deletion of the Platform may result in loss of Your Content and your data, for which we are in no way liable.

You may cancel your subscription at any time through your Account, in which case these Terms will terminate at the end of the then-current Subscription Period. In that case, you must still make all payments for the remainder of the applicable Subscription Period in which you cancelled, and you will not be entitled to any credits or refunds.

In the event of termination, clauses 4, 5, 9, 10, 11, 12 and any other clause intended to survive by its nature, will survive. Expiry or termination of these Terms is without prejudice to and does not affect a party's accrued rights or remedies up to the date of expiry or termination.

Following termination:

- (a) you may retain copies of Your Content but will no longer have access to the Platform;
- (b) all rights and licenses granted by us to you under these Terms will immediately cease;
- (c) you must cease use of the Platform and delete the Platform from your devices;
- (d) you must pay to us all outstanding Fees; and
- (e) you must immediately destroy or return to us (as directed by us) any of our Confidential Information in your possession.

14. DISPUTES

If there is a dispute or disagreement between you and us, the party raising the dispute must provide written notice to the other party setting out full particulars of the dispute. Within 10 days from the service of such notice, each party must participate in good faith discussions to

attempt to resolve the dispute, failing which either party may refer the dispute to final and binding arbitration in Melbourne, Victoria, to be administered by the Australian Resolution Institute.

Except where a party seeks urgent interim or interlocutory relief, a party may not commence any court, tribunal or other similar proceedings unless it has complied with this clause.

The parties must continue to perform their respective obligations under these Terms pending resolution of the Dispute.

15. GENERAL

- (a) **Assignment.** You must not assign or novate these Terms or otherwise deal with their benefit or a right under them without our prior written consent, which may be withheld at our absolute discretion. We may at any time, without notice to you, novate or assign our rights and obligations under these Terms, and to the extent necessary you hereby consent to such novation, assignment or transfer.
- (b) **Force Majeure.** We will be relieved from our obligations under these Terms to the extent that we are unable to perform due to Force Majeure, provided that we continue to perform all other unaffected obligations in accordance with these Terms.
- (c) **Relationship.** The relationship of the parties does not form a joint venture or partnership.
- (d) **Waiver.** No clause of these Terms will be deemed waived and no breach excused unless such waiver or consent is provided in writing.
- (e) **Governing Law.** These Terms are governed by the laws of Victoria, Australia. Each of the parties submits to the non-exclusive jurisdiction of courts within this jurisdiction.
- (f) **Severability.** Any clause which is invalid or unenforceable is ineffective to the extent of the invalidity or unenforceability without affecting the remaining clauses of these Terms.
- (g) **Disclaimer.** Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party, other than as expressly set out in these Terms.

16. DEFINITIONS

The following terms are used regularly throughout these Terms and have a particular meaning:

Account means an Organisation's or User's (as applicable) account on the Platform.

Confidential Information means all information (whether or not described as confidential) in any form concerning any business, operations or affairs of a party and which is made available to the other party, but excludes information that:

- (a) is known by or is in the other party's possession or control other than through a breach of these Terms; or
- (b) is in the public domain other than through a breach of these Terms or any obligations of confidence.

Content means materials, information, content and data stored on or available through the Platform, and includes Your Content.

Fees means the fees payable by an Organisation for access to, or use of, the Platform.

Force Majeure means an event beyond our reasonable control, and includes any act of God including lightning, storm, flood, fire, earthquake or explosion, cyclone, tidal wave, landslide, adverse weather conditions; act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic; the effect of any change in applicable laws, orders, rules or regulations of any government or other competent

authority; and any embargo, inability to obtain necessary materials, equipment or facilities, or power or water shortage.

Insolvency Event means a party filing a petition for bankruptcy, having a petition filed against it regarding bankruptcy, being adjudicated bankrupt, becoming insolvent, making any assignment for the benefit of its creditors, or being subject to any event that has an analogous or equivalent effect to any of the above.

IPR means all intellectual property rights at any time recognised by law, including patents, copyright, circuit layout rights, designs, trademarks, business names, trade secrets, know-how and other rights generally falling within this term, and any application or right to apply for registration of such rights;

Order means a submission by an Organisation for access to the Platform that is accepted by Ticbox. An Order will be in a form and medium prescribed by Ticbox from time to time and will detail relevant Account information, the number of Users that may use the Platform, details of the subscription type and Subscription Period, applicable Fees and the method of payment.

Organisation means an employer organisation that has subscribed to the Platform.

Personal Information has the meaning given to it in the Privacy Act.

Platform means the compliance platform available at ticbox.com.au.

Privacy Act means the *Privacy Act 1988* (Cth).

Subscription Period means the duration of an Organisation's permitted access to the Platform, as set out in the applicable Order.

User means an individual employed or engaged by the Organisation and authorised by the Organisation to access and use the Platform.

you or **your** means an Organisation or User (as applicable).

Your Content means Content that is uploaded or submitted to the Platform by you, or data that you own that is held in the Platform.

17. INTERPRETATION

The following rules apply unless the context requires otherwise:

- (a) Headings are only for convenience and do not affect interpretation.
- (b) The singular includes the plural and the opposite also applies.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) A reference to a clause refers to clauses in these Terms.
- (e) A reference to legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it.
- (f) Mentioning anything after includes, including, or similar expressions, does not limit anything else that might be included.
- (g) A reference to a party to these Terms or another agreement or document includes that party's successors and permitted substitutes and assigns (and, where applicable, the party's legal personal representatives).

- (h) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (i) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

PART B – Special Terms for Organisations

18. TERM AND RENEWAL

The Platform is made available to you on a subscription basis for the agreed Subscription Period.

Except as otherwise specified in your Order, all subscriptions will automatically renew for periods equal to your initial Subscription Period, unless you cancel your subscription in writing to us or through your Account prior to the end of the current Subscription Period.

If you cancel your subscription, these Terms will terminate at the end of the then-current Subscription Period.

If we do not want the Subscription Period to renew, then we will provide you written notice to this effect. Our notice of non-renewal will be effective upon the conclusion of the then-current Subscription Period. We will not be liable to you if we exercise this right.

19. SET UP AND INTEGRATION

If you have chosen a subscription that includes set-up and integration services, we will assist you to set-up and integrate the Platform with your payroll system.

The scope of work and Fees for these services will be as agreed in an Order.

20. TRIAL SERVICES

We may offer you access to the Platform (or trial, pre-release or beta versions of the Platform) on a trial basis at no charge (**Trial**).

Your use of a Trial is subject to any additional terms that we specify. We may terminate your right to a Trial at any time and for any reason in our sole discretion, without liability to you. To the maximum extent permitted by law, we disclaim all obligations or liabilities with respect to any Trial.

At the end of the specified period of the Trial your subscription to the Platform will end, and you will no longer be able to access the Platform or any Content.

21. ACCESS

Subject to these Terms, the Platform is made available to your Organisation for your internal business operations only.

To access the Platform you must:

- (a) establish an Account for your Organisation; and
- (b) submit a valid Order that is accepted by us.

We may set any registration requirements, from time to time, at our absolute discretion.

Any Account information that you provide to us must be accurate, current and complete and kept up-to-date by you. You must notify us if you become aware that it is not correct.

Any person who registers on behalf of your Organisation in the Platform or accesses your Account warrants that they are an authorised representative of your Organisation with the requisite authority to bind your Organisation to these Terms.

You are solely responsible for the security of your username and password for access to your Account on the Platform. You are responsible for all actions taken through your Account. You must notify us as soon as you become aware of any unauthorised access to your Account.

You are responsible for authorising User Accounts through your Account and assigning permissions and restrictions on those Accounts.

22. FEES

Fees are payable in monthly instalments, commencing on the service start date as specified in your Order (and, if applicable, at the commencement of any new Subscription Period).

If applicable Fees are determined by reference to 'tiers' of Users, your use will be assessed on a monthly basis and the applicable tier pricing applied. This is irrespective of the usage tier specified in an Order.

Your licence to use the Platform is subject to the payment of all Fees in accordance with these Terms and an Order. We may revoke or suspend your licence to access the Platform for unpaid Fees, without any liability to you. We may take such action to recover unpaid Fees (including interest) as we see fit.

You must also pay the applicable Fee for each User linked to your Account.

You will not be entitled to a pro-rata refund of, or discount in relation to, any Fees if you elect to stop using the Platform within a Subscription Period, and will be liable for the full amount of Fees for that Subscription Period irrespective of use.

We may introduce new features and functions to the Platform with corresponding Fees by giving you notice of availability and applicability, and the option to order such additional services as part of your subscription for the remainder of your Subscription Period.

All transactions are processed in Australian dollars and conversion rates may apply for foreign currencies.

GST is applicable to any Fees charged within Australia. Unless expressed otherwise, all Fees are exclusive of GST. We will provide you with a tax invoice following your monthly payment of the Fees.

No refunds of Fees are offered other than as specified in these Terms or as required by law.

23. PRIVACY

You are solely responsible for ensuring that your and your Users' use of the Platform and storage of Content and information in the Platform is compliant with laws applicable to your Organisation or its Users.

We make no warranty regarding the suitability of the Platform in relation to your privacy obligations. It is your responsibility to determine whether the Platform is appropriate for your circumstances and to meet your obligations under the Privacy Act.

You must ensure that your own privacy policy and other statements about how you handle the information of Users is accurate in respect of your use of the Platform.

PART C – Special Terms for Users

24. ACCESS

Subject to these Terms, we make the Platform available to you for your Organisation's internal business operations only.

To access the Platform you must log in to your personal Account created by your Organisation.

We may set any registration requirements, from time to time, at our absolute discretion.

Any Account information that you provide to us must be accurate, current and complete and kept up-to-date by you.

You are solely responsible for the security of your username and password for access to your Account. You are responsible for all actions taken through your Account. You must notify us as soon as you become aware of any unauthorised access to your Account.

Your access to the Platform may be created, limited and cancelled by your Organisation at your Organisation's discretion.

25. ACCOUNT INFORMATION

We may share your Account information and other Personal Information you upload to the Platform with your Organisation, which may retain such information. You acknowledge that your Organisation may have its own applicable policy governing access to this information and the use of the Platform, and we are not responsible for your Organisation's collection, use and handling of your information.

We may send you emails, text messages, push notifications and other alerts via the Platform, including on behalf of your Organisation.

Any consent or statement made by you through the Platform is valid and binding unless revoked by you, and your Organisation may rely on a consent or statement made through the Platform without any need to further verify the veracity of that consent.

For any questions and notices, please contact us at: info@ticbox.com.au