

PIM App

TERMS & CONDITIONS

Terms of Use for PIM App website and mobile application.

APPLICATION

In this Agreement "Application" refers to the computer and mobile software applications developed by us entitled "PIM App". Unless the context requires otherwise, a reference to the "Application" includes all modifications, enhancements or updates, and includes all associated printed, online or electronic documentation and instructions relating to it.

PURPOSE OF APPLICATION

The Application has several purposes but its primary purpose is to enhance work health and safety for smaller to medium sized enterprises by providing a simplified, user friendly solution to assist in the investigation process following a Serious Near Miss Event¹ can be more instructive than what went wrong ("**Purpose**").

The development of this Application arose out of an Enforceable Undertaking agreed between Growthbuilt Pty Limited (ACN 115 132 020) ("**Growthbuilt**") with SafeWork NSW in March 2020.

ACCEPTANCE OF TERMS MANDATORY

Permission to use the Application is conditional upon the user ("**you**") agreeing to the terms and conditions set out below. If you do not wish to accept these terms and conditions, you must not use the Application. Notwithstanding the foregoing, any use by you will be considered to be in accordance with the terms and conditions of this Agreement.

By downloading and using the Application, you confirm your agreement with Growthbuilt which is funding this app and the app developer TIKS Solutions Pty Limited (ACN 150 418 983) ("**us**" or "**we**") to the terms of this Agreement. [TIKS to confirm details. Growthbuilt to confirm whether the AIHS is to be included in the terms and conditions as custodian of the App]

LICENCE

We grant to you, and you accept, a non-exclusive, non-transferable limited licence to use the Application strictly in accordance with this Agreement on devices as may be approved by us under these terms and conditions. The term of the licence shall be unlimited (but subject to termination in accordance with the terms of this Agreement) ("**Term**").

You agree that you may not use the Application in any way that is or for purposes that are prohibited under this Agreement or any law in force in your jurisdiction. You also agree not to engage in any activity that interferes with or disrupts the servers and networks relating to the Application. You must not work around any technical limitations in the Application or attempt to run the Application on an unsupported platform. You must not use the Application on commercial software hosting services.

The licence provided under this Agreement is personal to you and you must not re-sell, sub-license, rent, lease or otherwise distribute the Application. All other rights in respect of the Application are reserved to us.

The Application is currently made available to you free of charge. We reserve the right to amend or withdraw the Application, cease support or charge for the Application or service provided to you at any time and for any reason.

You acknowledge that the terms of agreement with your respective mobile network provider ("**Mobile Provider**") will continue to apply when using the Application. As a result, you may be charged by the Mobile Provider for access to network connection services for the duration of the connection while accessing the Application or any such third party charges as may arise. You accept responsibility for any such charges that arise.

¹ A notifiable incident to the regulator which did not result in death or serious injury to a person.

If you are not the bill payer for the mobile telephone or device being used to access the Application, you will be assumed to have received permission from the bill payer for using the Application.

ACCOUNTS

Each account which you register with us in order to use the Application ("**Account**") must be registered in the name of a natural person or entity, and only one natural person or entity can use each Account and the associated User ID. Accounts are non-transferable.

Where you access the Application on behalf of another person or entity, you confirm that you are authorised to, and agree to these terms and conditions on that person's or entity's behalf. By agreeing to these terms and conditions on that person or entity's behalf, that person is bound by these terms and conditions.

ACCESS

All users are given access to the standard features and services available through the Application from time to time.

USER SUPPLIED INFORMATION

You are permitted to post, upload, publish, submit or transmit information, data or image(s), including the address, message content and any image(s) provided or modified by you ("**User Content**") on the Application.

You agree that you are solely responsible for all User Content that you make available on or through the Application.

You represent and warrant that:

- you are neither the sole and exclusive owner of all User Content or you have all rights, licences, consents and releases that are necessary to grant to us the rights in such User Content (as contemplated by these terms and conditions); and
- neither the User Content nor the posting, uploading, publication, submission or transmission of the User Content or our use of the User Content on, through or by means of our Site will infringe, misappropriate or violate a third party's intellectual property rights, or rights of publicity or privacy, or result in the violation of any applicable law or regulation.

We do not endorse or approve, and are not responsible for, any User Content. We may, at any time (at our sole direction), remove any User Content. **[TIKS to confirm if there is the ability to remotely reject/remove user material]**

[Growthbuilt and AIHS to confirm use of aggregate data (if any) and whether data will be anonymised. Once determined, the terms and conditions need to be updated to reflect this]

REGISTRATION AND INSTALLATION

You must ensure that registration details are and remain during the term of this Agreement true and correct. Upon installation of the Application, you shall be responsible for ensuring that the Application is used in accordance with this Agreement and any instructions we provide in relation to the Application. We are not liable to install the Application or to provide any services or support in respect of the installation of the Application, except as expressly stated in this Agreement or as otherwise agreed between us in writing. You must ensure that your access to and use of the Application is not prohibited by laws or employer policies that apply to you.

You shall be responsible for providing your own equipment necessary for using and accessing the Application.

PASSWORDS AND ACCOUNT SECURITY

You are responsible for maintaining the confidentiality of your password for all accounts used by you to access the Application. You acknowledge and agree that you are solely responsible to us for all activities that occur under all such accounts.

You must notify us immediately upon becoming aware of any unauthorised use of any of your passwords or accounts.

INTELLECTUAL PROPERTY

The Application is the subject of existing copyright, trade marks and pending patents. All intellectual property rights (including but not limited to copyright, trade marks and rights in respect of patents and patentable inventions) in and to the Application (including but not limited to all software coding, graphic designs, characters, text, music, and other materials) are owned by us or our exclusive licensors. You may not use any of our trade marks without our prior written consent.

You must not during or at any time after the expiry of termination of this Agreement do or permit anyone else to do any act which infringes our copyright or any patent rights and must not copy, reproduce, translate, adapt, vary, modify, reverse engineer, decompile, disassemble or create derivative works of the Application or any of its components, without our express written consent or as expressly authorised by this Agreement or as permitted under Pt III Div 4A of the *Copyright Act 1968* (Cth).

You must supervise and control the use of the Application in accordance with the terms of this Agreement and must ensure that your employees, sub-contractors and other personnel who have access to the Application are made aware of the terms and conditions of this Agreement.

RESTRICTIONS ON USE

You agree to be fully responsible for your own conduct and content while using the Application, and for any consequences arising from that conduct. You agree to use the Application only for purposes that are legal, proper and in accordance with these terms and conditions and any applicable policies or guidelines. By way of example and not as a limitation, you agree that when using the Application, you will not:

- do anything that would constitute a breach of an individual's privacy (including uploading private or personal information without an individual's consent) or any other legal rights;
- use our website to defame, harass, threaten, menace or offend any person;
- interfere with any user using our website;
- use, upload, post, email or transmit or otherwise make available any content that infringes any patent, trade mark, copyright, trade secret or other proprietary right of any party, unless you are the owner of the rights or have the permission of the owner to post such content;
- in using the Application to 'frame' or 'deep link' to or otherwise incorporate the content of any third party website or other online content unless you have the permission of the owner of that website / content to do so (and you will indemnify us from any loss or damage arising if you do not have that permission);
- use the Application for any illegal or unauthorised purposes;
- remove or alter any copyright trade mark or other proprietary right notices contained in the Application;
- submit content that falsely expresses or implies that such content is sponsored or endorsed by us or a third party (unless you have the legal authorisation to do so by that third party);
- submit content that expresses or implies that such content is sponsored, endorsed, or is liable to give the impression that such content is sponsored or endorsed by any person or entity unless you have the legal authority to do so;
- reverse engineer, modify, copy, transfer, sell, disseminate, distribute, decompile, or disassemble any of the data, software, code, information or material made available or accessible;
- transmit any viruses, worms, defects, Trojan horses or any items of a destructive nature;
- in the event that you are located outside of Australia, you agree to comply with any laws, rules or regulations in your locale regarding conduct and acceptable content, including laws regulating the export of data to Australia or your country of residence;
- you agree that you will:

- only use the Application for purposes that are not illegal, derogatory or otherwise objectionable or that brings us or any third party into disrepute;
- not infringe any third party's intellectual property rights nor remove, obscure or alter any of our copyright notices, trade marks or other notices (including terms of these terms and conditions) included in the Application;
- facilitate or assist a third party to do any of the above acts.

LOCATION-BASED SERVICES

If you are using any of the Application's location-based services or functionality ("**Location Services**") then, in addition to the remainder of this Agreement, then this section will also apply in respect of the use of the Location Services.

The Location Services are offered by collecting, storing, transmitting or processing your location data and/or your device.

By using such Location Services, you are deemed to consent to us using the location data for the purpose of providing the Location Services to you in accordance with our privacy policy here.

TIKS Solutions Pty Ltd - <https://www.tiks.com.au/privacy-policy>

[TIKS and Growthbuilt to confirm applicable privacy policy]

You agree that such Location Services may be erroneous, inaccurate, incomplete or time-delayed and shall not be used for emergency or life saving purposes. We do not warrant, and you agree that the Location Services may contain inaccuracies, be incomplete and/or suffer from time-delays.

In particular, we do not represent or warrant that:

- your use of the Location Services will meet your requirements; or
- any information obtained by you as a result of your use of the Location Services will be accurate or reliable.

Without limiting the above, you acknowledge that some Location Services may not be available for use at all times and in certain circumstances.

NO ENDORSEMENT

You agree that nothing in these terms and conditions shall be construed by you as an endorsement of you, or your organisation by us and you agree not to directly or indirectly infer in or from your work or use of the Application any such endorsement or support by us.

PRIVACY

You agree that we may collect and use personal information about you (including, but not limited to, your device's IP address, operating system and your email addresses). Where you provide the personal information of other individuals, you warrant that you have

The main way in which we collect personal information is through your registration of an Account and the completion of forms provided in the Application. Personal information provided to us in connection with your use of the Application is principally used to allow you to access and utilise all features of the Application, for example, by allowing you to create an Account and completing forms as required by the Application. We may also use your personal information to provide you with customer support and notify you about any changes to our services, terms or policies. If all or some of the information is not collected, the Application's functionality and your ability to use it for its main purpose will be diminished.

We will disclose personal information to third parties in the circumstances and for the purposes described above. We share personal information with the following companies:

[TIKS to insert details, if applicable. In particular, please outline:

- any other entity, body or person, or the types of any other APP entities, bodies or persons, to which the APP entity usually discloses personal information of the kind collected by the entity
- whether the entity is likely to disclose the personal information to overseas recipients
- if the entity is likely to disclose the personal information to overseas recipients — the countries in which such recipients are likely to be located if it is practicable to specify those countries in the notification or to otherwise make the individual aware of them

If you want to access your personal information held by us, please put your request in writing and clearly identify the personal information you seek access to. This is important to ensure that the information can be retrieved quickly and cost effectively. All requests for access must be addressed to [TIKS to insert] support@tiks.com.au (see contact details below).

We will take reasonable steps to correct personal information that is inaccurate. You should contact us if your personal information changes. If we believe it is inappropriate to delete or alter the original information, we will discuss with you alternative ways of correcting the information that satisfies the needs of both parties.

If you wish to make a complaint to us about a possible breach of privacy, please provide full details of your complaint in writing and send it to support@tiks.com.au (see contact details below). If you make a complaint, we will acknowledge any complaint within seven (7) days of receiving it, and aim to investigate and resolve complaints within thirty (30) days. If that is not possible, we will seek to agree a longer period with you. We will notify you of the outcome of our investigation in writing, including details of how you make a complaint if you are not satisfied with our decision.

If you would like more information concerning our approach to privacy or how we will handle your personal information you can contact us at: [TIKS/Growthbuilt to insert]

SUPPORT SERVICES AND INTERNET BASED SERVICES

We may (though are not obligated to) perform such services in the nature of support as we deem appropriate at our discretion.

We do not warrant to you that we will be capable of receiving, processing or otherwise acting upon a request for support services.

We may provide internet based services to support the Application. The provision of these services may be changed or cancelled by us at any time.

The Application connects to our computer systems over the Internet, using internet protocols, which send to our internet-based computers various data that you agree we may use to identify you or your device running the Application, such as your internet protocol address, your operating system, the name and version of the software you are using, and details of the location of the device on which you have installed the Application. By using the Application, you consent to the transmission of computer information to our computer systems. [TIKS to confirm if this is applicable to the PIM App]

SYSTEM REQUIREMENTS

In order to use the Application, you are required to have a compatible mobile telephone or handheld device, internet access, and the necessary minimum specifications (“**Software Requirements**”).

The Software Requirements are as follows: [TIKS to insert Software Requirements]

UPDATES AND NEW RELEASES

Unless we advise you otherwise, this Agreement shall cover any updates and new releases of the Application that may be created by us during the term of this Agreement. The version of the Application software may be upgraded from time to time to add support for new functions and services. The Application may automatically download and install updates from time to time. If you do not accept any update or new release of the Application, we may decline to continue to provide any

support services to you and we may terminate this Agreement. Where you accept an update or new release, this Agreement applies in all respects to that update or new release to the extent that it is incorporated in or replaces the Application.

THIRD PARTY CONTENT

The Application may include links to other websites, content and resources. We may have no control over such websites, content or resources which are provided by third parties ("**Third Party Content**").

You acknowledge and agree that we are not responsible for the availability of any Third Party Content, and do not endorse any advertising, products, services or other materials on or available via Third Party Content.

You acknowledge and agree that we are not liable for any loss or damage that may be incurred by you as a result of the availability of any Third Party Content, or as a result of any reliance placed by you on the completeness, accuracy or existence of Third Party Content, including any advertising, products or other materials on or available via Third Party Content.

As a result of, or through using the Application, you may from time to time use a service, purchase goods, or download a piece of software, which is provided by a third party. Your use of such other services, goods or software may be subject to separate terms between you and the relevant third party. In such case, the Agreement does not affect your legal relationship with that third party.

DISCLAIMER

We expressly exclude any warranty that the Application will be available at all times or that your use of the Application will be uninterrupted or error free. We reserve the right to suspend the operation of the Application, including if required or requested to do so by our hosting service provider. To the extent permitted by law (including under the Australian Consumer Law), we shall not be liable in respect of any action or claim in relation to such unavailability or any claim for loss or damage arising therefrom.

EXCLUSION OF WARRANTIES

All content and services on or available through the Application are provided on an "as is" and "as available" basis and without warranties of any kind, expressed or implied except any which may be implied by statute and are incapable of exclusion, in respect of the Application or its content.

To the maximum extent permitted by law, we exclude, and do not make any representation, warranty or endorsement of any kind, whether express or implied, in relation to the content, accuracy, completeness, accessibility, suitability, safety, security, reliability, or any other aspect of:

- any material and/or information in the Application;
- the performance and availability of the Application;
- the loss, damage, corruption or degradation of any data or other material as a result of the use of the Application.

EXCLUSION OF LIABILITY

To the maximum extent permitted by law, we exclude all liability for any loss or damage whatsoever which is suffered, (including but not limited to direct, indirect, incidental, special, consequential or exemplary damages, loss of profits or revenue, business interruption, loss, damage or corruption of data or failure to realise anticipated savings or benefits or business opportunities) as a result of:

- the use of, reliance on, or action taken as a result of, any information or material in the Application for any decision or otherwise;
- accessing, displaying and using the Application and/or participating in any on-line activities contained therein;

- any interruption, suspension or termination of the Application in whole or in part for whatever reason including failure of or suspension of public or private telecommunications network;
- the unavailability, unsuitability and non-connectivity of third party sites;
- any loss, damage, corruption or degradation of any data or other material as a result of the use of the Application and or viruses or other technologically harmful material that may infect your mobile device due to your use of the Application.

YOUR RISK

You access the Application at your own risk and we accept no responsibility for any interference, loss, damage or disruption to your own mobile device or otherwise which arises in connection with your use of the Application. You must take your own precautions to ensure that the process which you employ to obtain access to the Application does not expose you to the risk of viruses, malicious computer code or other forms of interference which may damage your mobile device or otherwise cause you or any person loss, damage or corruption.

RELEASE FROM CLAIMS, ETC

You waive, release, forgive, discharge and relinquish any and all claims that you may have against us, its related bodies corporate, directors, officers, employees, contractors, agents and representatives, in connection with, or arising out of, or incidental to, your access to or use of the Application including but not limited to downloading any information and materials in or from the Application.

You release and indemnify us, our related bodies corporate, directors, officers, employees, contractors, agents and representatives ("**those indemnified**") from and against:

- any loss or damage or liability for any loss or damage incurred by you; and
- any loss, liability, claim, demand, damage or expense (including legal fees) made by any third party against those indemnified, howsoever caused (including through negligence) directly or indirectly arising out of or in connection with:
 - your use of the Application or any linked website, including by making or carrying out any commitments;
 - your use of or reliance on information contained in or accessed through the Application; or
 - breach by you of the Agreement.

You waive, release, forgive, discharge and relinquish any and all claims that you may have against us, our related bodies corporate, directors, officers, employees, contractors, agents and representatives, in connection with, or arising out of, or incidental to, your access to or use of the Application including but not limited to downloading any information and materials in or from the Application.

Without limiting the above, we do not warrant that the Application, information and or material available for download is free from viruses or other conditions that could damage or interfere with data, hardware or software. Accordingly, we exclude to the maximum extent possible, any liability for any loss suffered as a result of any such viruses or defects.

DOWNLOADABLE MATERIAL

We make downloadable documents, software and other materials available under the following conditions:

- Downloadable material within the Application is provided on the basis that you will conduct any necessary virus scanning and other checks so as to protect your data, mobile device and software systems and those of any other person.
- You agree that we will not be liable to you for any loss, injury or damage however caused (including by negligence) that arises in any way from the use of the downloaded material.
- If you provide the downloaded material to another party you should bring the other party's attention to these conditions.

WORK HEALTH AND SAFETY COMPLIANCE

We make no guarantees that by using the Application you will achieve compliance with all your work health and safety obligations. Information provided by the Application is made available for the benefit of the public and is not intended to provide or substitute work, health and safety advice from a qualified safety professional. We strongly recommend that you seek advice from a qualified safety professional in respect of particular circumstances or situations. We do not accept liability for any error or omission, injury, expense, loss or damage incurred by you or another party as a result of you using or relying upon any information provided by the Application.

EXCLUSION OF LIABILITY – SCOPE

The exclusion of liability applied to this agreement as set out in the sections of this Agreement titled "Disclaimer", "Exclusion of Warranties", "Exclusion of Liability", "Your Risk", "Release from Claims", "Downloadable Material" and "Work Health and Safety Compliance" applies to claims whether in contract, tort (including, without limitation, negligence) or equity and even if we have been notified of the possibility of such loss or damage.

YOUR CONTRIBUTION TO LOSS

You agree that any legal liability on the part of us will be reduced by the extent, if any, to which you contributed to the loss.

NON-EXCLUDABLE LIABILITY (IF ANY)

These Terms of Use do not attempt or purport to exclude liability arising under statute if, and to the extent, that such liability cannot be lawfully excluded.

TERMINATION

This Agreement is effective until terminated in accordance with this section. We may terminate this Agreement immediately at any time and without liability to you.

Without prejudice to any other right or remedy available to us, if we consider that you have breached this Agreement or we otherwise consider it appropriate, we may immediately, and without notice, suspend or terminate your access to the Application (or any part or feature of it).

Either party may terminate this Agreement immediately should the Application become the subject of a claim of infringement of any intellectual property right. Upon or at any time after termination for any reason, you must destroy all copies of the Application if required by us.

Those sections of this Agreement that are capable of surviving termination shall do so, and termination pursuant to this section will not affect any rights or remedies which we may have otherwise under this Agreement or at law.

UPON TERMINATION

If terminated in accordance with the Termination section above in addition to the matters set out above, we may:

- repossess any copies of the Application or other materials provided to you;

- be regarded as discharged from any further obligations under this Agreement; and
- pursue any additional or alternative remedies provided by law.

Upon any termination, the rights and licences granted to you in accordance with this Agreement shall terminate and you must cease all use of the Application.

Following expiry of the Term, and unless required by us by notice in writing to remove the Application from your device(s), you may continue to use the Application to the extent licensed hereunder in respect of which no limitation as to term (duration) of use applies, but you acknowledge that its features, functionality and operation may be significantly restricted.

ASSIGNMENT

The benefit of this Agreement may not be dealt with in any manner by you (whether by assignment, novation, sub-licence or otherwise) without our written consent. We may assign, novate, sub-license or otherwise transfer its rights in respect of this Agreement without your consent.

ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between you and us. The terms and conditions of this Agreement can only be varied in accordance with the section below or by a document in writing supplied and signed by us and accepted by you.

WAIVER, VARIATION AND SEVERANCE

No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party. A waiver by us pursuant to this section will not prejudice its rights in respect of any subsequent breach of these terms and conditions by you. The provisions of this Agreement, shall not be varied, except by agreement in writing signed by the parties.

If any provision of this Agreement is held invalid, unenforceable or illegal for any reason, the Agreement shall remain otherwise in full force apart from such provisions which shall be deemed deleted.

CHANGES TO THE LICENCE TERMS

We reserve the right to make changes to these terms and conditions from time to time. When these changes are made, we will make the new terms available at our website. You understand and agree that if you continue to use the Application after the date on which the terms and conditions have changed, your use will constitute acceptance of the updated terms and conditions.

FORCE MAJEURE

We will not be liable or responsible for any failure to perform, or delay in performance of, any of our obligations under this Agreement that is caused by events outside our reasonable control ("Force Majeure Event"). A Force Majeure Event includes any act, event, non-happening, omission or accident beyond our reasonable control and includes in particular (without limitation) strikes, lock-outs or other industrial action, civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster, impossibility of the use of public or private telecommunications networks, the acts, decrees, legislation, regulations or restrictions of any government. Our performance under the Agreement is deemed to be suspended for the period that the Force Majeure Event continues, and we will have an extension of time for performance for the duration of that period.

APPLICABLE LAW

The Applicable Law is the law for the time being in force of the State of New South Wales, Australia and the Commonwealth of Australia. This Agreement is governed by the Applicable Law without any reference to any conflict of laws and the parties agree to submit to the exclusive jurisdiction of the

Courts of the State New South Wales and the Commonwealth of Australia and the relevant Courts of Appeal.

INTERPRETATION

In these terms and conditions, unless the contrary intention appears:

- "Including" and similar words do not imply any limit;
- words in the singular number include the plural and vice versa;
- words importing a gender include any other gender;
- a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- monetary references are references to Australian currency;
- a reference to a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- the section headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.