

# TRABR TERMS AND CONDITIONS OF USE

## 1. User agreement

- 1.1. All contracts, agreements, arrangements and dealings between Trabr Ltd (ACN 612 788 822) (and each of its subsidiaries, affiliates, associated companies, related entities, successors/parent company and assigns) and any person using the Application(s) or the Website ("Customer" or "You") are subject to the terms and conditions of use set out herein ("Terms").
- 1.2. These Terms shall be deemed to be incorporated into all agreements for the use of the System by the Customer. These Terms supersede all prior understandings, arrangements and agreements relating to such use. In the event that there is any inconsistency between these Terms and any other communication from Trabr, these Terms shall prevail unless specified otherwise in writing by Trabr.
- 1.3. By visiting and/or using the Website or the Application(s), You agree to be bound by these Terms. If You do not agree to any provisions of these Terms, You must not use and nor are you invited to use the Application(s) or the Website.
- 1.4. Trabr may amend these Terms at any time at its sole discretion. By continuing to use the Website or Application(s) or by placing orders for Products, the Customer will be deemed to have accepted any revised terms published from time to time on the Website.

## 2. Registration

- 2.1. In order to access the Application(s) and some of the features of the Website, You can elect to register as a customer of Trabr (**User**).
- 2.2. Trabr may require Users to create usernames, passwords or other identification or authentication information that is required for use of and access to the System (**Access Information**).
- 2.3. Any information which You provide to Trabr in registering as a User will be stored in accordance with Trabr's privacy policy which is published on the Website at [www.trabr.com/privacy](http://www.trabr.com/privacy) as amended from time to time at Trabr's sole discretion.
- 2.4. You are solely responsible for the activity that occurs on your account, and You must keep your Access Information secure and protect it from unauthorised access or use. If You suspect or become aware of any unauthorised use of your account or that your Access Information is no longer secure, You agree to notify Trabr immediately.

## 3. Use of and Access to the System

- 3.1. Trabr grants You a worldwide, non-exclusive, non-transferable, non-sublicenceable right to access and use the System in accordance with these Terms.
- 3.2. Trabr warrants and represents that it is the owner or licensee of the System and that in accessing the System in accordance with this agreement, You will not infringe the Intellectual Property Rights of Trabr or any third party.
- 3.3. You may not access or use another User's account and may not cause or allow another person to use your account, other than as expressly allowed under these Terms.

- 3.4. Trabr may in its sole discretion terminate a User's account or restrict a User's access to the System. If this occurs in respect of your account, You may be prevented from accessing all or parts of the Application(s) or the Website, including your account details or other content contained in your account. Trabr will not be liable to You or any third party for terminating a User's account or restricting User's access to the Application(s) or the Website.

## 4. Your Information

- 4.1. You own and will continue to own at all times all of the rights, title and interest in and to Your Information including personal information and you are solely responsible for the legality, reliability, integrity, accuracy and quality of Your Information.
- 4.2. You continually warrant that You are the owner or licensee of all Your Information; that You have all rights and consents required to provide Your Information to Trabr; and that Trabr's use of Your Information in accordance with these Terms will not infringe the Intellectual Property Rights or any other rights of any third party or of any of Your directors, officers, employees, contractors, agents.
- 4.3. While you remain a User, Trabr may analyse the way in which you use the System, the Application and the Website for the purposes of developing the System or assessing its business operations. You acknowledge that any Insights created by Trabr in doing this is the sole and exclusive property of Trabr.
- 4.4. You grant to Trabr a worldwide, non-exclusive, fully transferable, sub-licensable right to access and use Your Information for the purpose of providing access to the System and undertaking an analysis of the use of the System, including having access to and use of all logo or branding of your own and any Project information, project images, imagery and video and any other content for any Projects being managed in the Application(s) for the analysis of the use of the System and also generally by Trabr for communication, digital marketing and branding purposes in, on or via the Trabr website, Trabr social feeds or channels.
- 4.5. In the interests of your well-being, and of those working alongside you, given the health risks and infection transmission risks posed by the Covid19 pandemic, to comply with Australian State, Territory and Federal Workplace Health & Safety obligations and to assist our Application(s) users to maintain, and for you to work on, the safest and healthiest possible project worksites, we invite Application(s) users and worksite visitors to declare their known Covid19 status, and their vaccination status where applicable. This Covid19 declaration data will only be made available to your State's or Territory's Government's Chief Medical Officer in the event of any Covid19 infection transmission or outbreak occurring on a worksite you have checked-in at.

## 5. Maintenance

- 5.1. You agree that Trabr may conduct maintenance of the System at any time and from time to time.
- 5.2. Trabr may provide You with updates to the System from time to time to enhance or improve the quality, functionality or operation of the System from time to time (**Update**). Trabr may or may not require You to accept the Update. You acknowledge that in the event that You fail to accept an Update, Your ability to access or use the System may be adversely impacted.
- 5.3. You agree and acknowledge that:
  - (a) Your access to or use of the System may be suspended due to Force Majeure for the duration of the Force Majeure event;

- (b) the System is hosted on and supported by servers, internet connections, networks, and other software and/or hardware that are not provided or in the control of Trabr and for which Trabr is not responsible under this agreement or otherwise;
- (c) access to and use of the System may be affected by such external factors as speed of connection from your equipment to the servers supporting the System at any given time, which factors are beyond the control of Trabr; and
- (d) Trabr will not be liable to You for any Loss arising in connection with any lack of availability or use of, or access to, or failure, defect, interruption or limitation of the System whatsoever.

## **6. Prohibited Activities**

You must not:

- 6.1. use the System in any way that could damage the reputation of Trabr or the goodwill or other rights associated with the System;
- 6.2. permit any person to link to any page containing any part of the System (including via a hyperlink or RSS feed) without Trabr's written consent;
- 6.3. reproduce, make error corrections to or otherwise modify or adapt the, System, the Application or the Website or create any derivative works based upon them;
- 6.4. de-compile, disassemble or otherwise reverse engineer the System or otherwise attempt to derive the source code or directly or indirectly allow, cause or permit any third party to do so;
- 6.5. modify or remove any copyright or proprietary notices contained in the System, or published on the Application or the Website;
- 6.6. develop, support or use software, devices, scripts, robots, or any other means or processes (including crawlers, browser plugins and add-ons, or any other technology) to scrape the System or otherwise copy data from the System;
- 6.7. override any security feature or bypass or circumvent any access controls or use limits of the System;
- 6.8. upload anything to the System that contains Viruses or any other harmful code;
- 6.9. use bots or other automated methods to access the System;
- 6.10. monitor the System's availability, performance or functionality for any competitive purpose;
- 6.11. engage in "framing," "mirroring," or otherwise simulating the appearance or function of the System;
- 6.12. overlay or otherwise modify the System or its appearance or interfaces; or
- 6.13. interfere with the operation of, or place an unreasonable load on, the System.

## **7. Electronic Signing Platform**

- 7.1. We may grant you a non-exclusive, non-transferrable licence to use the Electronic Signing Platform on the System solely for Your internal business purposes. This clause 7 applies in the event that we grant you such access to and you use the Electronic Signing Platform.
- 7.2. The Electronic Signing Platform facilitates the digital execution of documents by You and by any other third party that You may nominate as a signatory of documents that You may

upload to the Electronic Signing Platform. Nothing in these Terms makes Trabr a party to any document that is uploaded to or executed through the use of the Electronic Signing Platform.

- 7.3. Trabr makes no representations or warranties as to the nature, legality, validity or enforceability of any document that You upload to the Electronic Signing Platform or that You execute or arrange execution of through the Electronic Signing Platform.
- 7.4. You are solely responsible for the content, quality, validity and enforceability of the documents that You upload to or execute through the Electronic Signing Platform. Trabr has no access to or control of the content of the documents. You are solely responsible for complying with any laws or regulations applicable to the electronic execution of documents.
- 7.5. You acknowledge that certain type of documents cannot be validly executed electronically, such as deeds, wills, affidavits, statutory declarations and other documents that may be subject to specific regulations regarding electronic signatures and documents. You agree that Trabr is not responsible for determining whether any document that You upload to or execute through the Electronic Signing Platform is permitted at law to be executed electronically.
- 7.6. You are solely responsible for determining the suitability of the Electronic Signing Platform for the documents that You upload to or execute through the Electronic Signing Platform.
- 7.7. You warrant that by using the Electronic Signing Platform to execute a document that You agree that you intend to be bound by the document. You repeat this warranty each time you use the Electronic Signing Platform to execute a document.
- 7.8. You warrant that:
  - (a) You have the necessary authorities, approvals and powers to execute any document through the use of the Electronic Signing Platform on behalf of any corporate entity on whose behalf you purport to execute a document;
  - (b) You are responsible for Your use of the Electronic Signing Platform, and the use of any third party that uses the Electronic Signing Platform to access a document that You have uploaded;
  - (c) You are responsible for maintaining the confidentiality of your Access Information as it relates to the Electronic Signing Platform;
  - (d) Trabr will not be liable for any Claim or Loss that you suffer as a result of a third party accessing your Electronic Signing Platform account or Access Information;
  - (e) You will use the Electronic Signing Platform for lawful and proper purposes only.
- 7.9. You indemnify Trabr against all Claims and Loss arising out of or in relation to the use of Electronic Signing Platform by You or by any person that you allow the access the Electronic Signing Platform.

## **8. Storage of Documents**

- 8.1. Trabr will circulate copies of the signed documents (together with forensic records of each party's confirmation and execution) accessed through the Electronic Signing Platform to the relevant parties at the addresses nominated by the relevant parties. Trabr is not responsible for storing or retaining any executed documents.
- 8.2. Trabr may store an encrypted copy of any document that You execute through the Electronic Signing Platform for a maximum period of 5 years, following which the encrypted electronic copies of these documents will be automatically deleted from Trabr's System.

- 8.3. Trabr may otherwise delete any signed documents executed through the Electronic Signing Platform from its system in its sole discretion.
- 8.4. Trabr may immediately and without notice delete any unsigned (whether wholly or partially) document from its System at such a time as the relevant access link provided to a party to the document to allow it access to the Electronic Signing Platform expires.
- 8.5. Trabr is not responsible for circulating any document uploaded to or executed through the Electronic Signing Platform to any third party whatsoever.
- 8.6. You acknowledge that certain laws may require that certain documents be stored for a certain period of time. You agree that Trabr is not responsible for determining the minimum storage period required in respect of any document executed through the Electronic Signing Platform.
- 8.7. You indemnify Trabr against all Claims and Loss arising out of or in relation to the circulation, storage or destruction of any documents uploaded to or executed through the Electronic Signing Platform.

## 9. Statutory Conditions and Warranty

- 9.1. Consumer Notice: services supplied to You by Trabr come with guarantees that cannot be excluded under the Australian Consumer Law. Nothing in these Terms purports to modify or exclude the conditions, warranties, guarantees and undertakings, and other legal rights, under the Australian Consumer Law and other laws which cannot be modified or excluded.
- 9.2. Where any law implies a warranty into this agreement which may not be lawfully excluded then to the extent allowed by law (**Warranty**), any liability imposed upon Trabr in respect of a breach of Warranty will at its option be limited to:
  - (a) the resupply of services, or
  - (b) the refund of the price paid for the services.
- 9.3. Warranties do not apply where the services are acquired for rental, hire or other commercial purpose.
- 9.4. To the extent permitted by law, the following are not covered by Warranty:
  - (a) failure or defect resulting from Your improper care or use;
  - (b) faulty or incorrect use of the System by You; and
  - (c) any modification or alteration not conducted or authorised by Trabr.
- 9.5. To the extent permitted by law, Trabr shall not be liable for any indirect or consequential damage, losses or expenses suffered or incurred by You, howsoever caused.

## 10. Limitation of Liability

- 10.1. Except as expressly set out in these Terms and the Australian Consumer Law, Trabr makes no warranties or other representations to You in relation to the System. Trabr's liability in respect of these warranties, representations, undertakings and guarantees is limited to the fullest extent permitted by law.
- 10.2. You acknowledge and agree that:
  - (a) to the maximum extent permitted by law, Trabr will not be liable to Your or any other person under any circumstances for any loss or damage suffered or incurred by You, or

for any indirect, incidental or consequential damages sustained or incurred by You whether such liability arises directly or indirectly as a result of:

- (i) any negligent act or omission or willful misconduct Trabr or its employees or agents;
  - (ii) the supply, performance or use of the System; or
  - (iii) any breach by Trabr of its obligations under these Terms.
- (b) no other term, condition, agreement, warranty, representation or understanding (whether express or implied) in any way binding upon Trabr, other than these Terms, is made or given by or on behalf of Trabr.
- (c) You are solely responsible for making an assessment that the System is reasonably fit for your intended purpose and required use, and such purpose or required use is in accordance with all applicable laws.

10.3. Trabr will endeavour to provide the System and any services to You with due care and skill but does not warrant that any services will be provided without fault or disruption. To the extent allowed by law, Trabr excludes all liability to You or anyone else for loss or damage of any kind (however caused or arising) relating in any way to the System, the Application(s) and Website including, but not limited to, loss or damage You might suffer as a result of:

- (a) errors, mistakes or inaccuracies contained in the System, the Application(s) or the Website;
- (b) You acting, or failing to act, on any information contained on or referred to in the System and/or any linked website;
- (c) any unauthorised access to or use of the System, the Application(s) and the Website and information of any kind stored on the servers that host the System, the Application(s) or the Website;
- (d) any interruption or cessation of transmission to or from the Application(s) and the Website;
- (e) any Viruses or other harmful code or communications which may be transmitted to or through the Application(s) or the Website by any third party; and
- (f) Trabr does not warrant, endorse, guarantee or assume responsibility for any product or service advertised or offered by a third party on the System or any linked website or any products or services products or services contracted or purchased through the marketplace of the Application(s) or Website or featured in any banner or other advertising. Trabr will not be a party to or in any way responsible for monitoring any transaction between You a third party provider of products and services or other User.

10.4. Trabr will not under any circumstances be liable to you for consequential, incidental or special damages arising out of or in respect of your use of the System.

10.5. To the maximum amount permitted by law, Trabr's liability to you is limited to an amount equal to the amount that you may have paid to Trabr in respect of your use of the System in the 6 months immediately preceding any Loss or Claim that you suffer.

## **11. Information on the System**

11.1. Trabr is not responsible for any typographical, technical, or descriptive errors contained in the System. If Trabr becomes aware of the existence of such an error it will do all things reasonably necessary to rectify such an error. To the extent permitted by the Australian

Consumer Law, Trabr will not be liable to You for any loss or damage arising out of your upon any typographical, technical, or descriptive errors on the System.

## **12. Links to third party websites**

12.1. The System may include links to other websites, content or resources. These linked websites, content or resources may be operated by third parties and Trabr may have no control over the operation of such websites, content or resources. The existence of these links does not imply that Trabr endorses the linked website, content or resource. You acknowledge that Trabr has not reviewed any of these third party websites, content or resources and are not responsible for the material contained therein.

## **13. Intellectual Property**

13.1. In granting You access to the System, Trabr does not confer on You any assignment of any Intellectual Property Rights that subsists in any the System or any other materials owned or supplied by Trabr. You agree that You will not assert any rights in, or challenge Trabr's title to, those Intellectual Property Rights.

13.2. The Customer acknowledges that Trabr retains ownership of all rights, title, interest and goodwill in the Intellectual Property Rights that subsists in the System or any other materials supplied by Trabr (including user guides, instruction manuals and other documents).

13.3. You are not be permitted to assign, transfer or sub-licence any of the rights granted to You by Trabr to any related party or any unrelated third party without the express consent in writing of Trabr. Trabr may withhold such consent in its absolute discretion or may grant consent on such terms as it considers fit.

13.4. You shall not re-publish, transfer, copy, reproduce or post on the internet any of Trabr's materials without Trabr's prior written consent.

13.5. In addition to any other remedies available to Trabr under these Terms or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Intellectual Property Rights will entitle Trabr to any available statutory or equitable remedy against You.

13.6. The copyright in the Website, the Application(s) and the System, copy, images, logos, indicia, text, content is owned by Trabr. The domain name [www.trabr.com](http://www.trabr.com) or any of the trademarks, logos or other material in which intellectual property rights subsist may not be used in advertising or publicity pertaining to distribution of this information without Trabr's prior written consent.

13.7. If You correspond or otherwise communicate with Trabr, You grant to Trabr an irrevocable, perpetual, non-exclusive, royalty-free, world-wide licence to use, copy, display and distribute the content of your correspondence or communication and to prepare derivative works of the content or incorporate the content into other works in order to publish and promote such content. This may include, but is not limited to, testimonials, ratings and reviews on the App, in the Apple App Store or Google Play or on Google or any search engine or on the Website and developing your ideas and suggestions for improved products or services Trabr provides.

## **14. Transfer and Assignment**

14.1. In the event that Trabr merges, sells or otherwise undergoes a change control of its business or the System to a third-party, it reserves the right, without giving notice or seeking consent, to transfer or assign the Personal Information, content and rights that it has collected from You and any agreements between You and Trabr.

## **15. Privacy and Personal Information**

- 15.1. In registering as a User, You may provide Trabr with Information including Personal Information. When Trabr does collect Information including Personal Information for the purposes of generating a User account, such information will be provided by that User and may include the User's name, postal address, telephone number and email address.
- 15.2. In using the Electronic Signing Platform you will be providing Trabr with Personal Information and sensitive commercial information. Such information will be collected, stored and destroyed in accordance with Trabr's Privacy Policy.
- 15.3. You must have all necessary consents to disclose and/or provide any Project Information and any Information including Personal Information, and you warrant that you have procured those consents.
- 15.4. Trabr's computer servers may record details about any computer which is used to access the System (such as the IP address, operating system and browser type), the date and time of access, and details of the information downloaded.
- 15.5. Trabr will comply with its Privacy Policy and with the requirements of the Privacy Act with respect to your Personal Information.
- 15.6. Trabr will not provide your Information including Personal Information to government agencies, organisations or anyone else unless:
  - (a) you have consented to Trabr providing such information;
  - (b) Trabr has notified You that it will be providing such information;
  - (c) the provision of such information is required or authorised by law;
  - (d) the provision of such information will prevent or obviate a serious and imminent threat to a person's life or health; or
  - (e) the disclosure is reasonably necessary for law enforcement.
- 15.7. You may request that Trabr remove your Personal Information from its database by emailing Trabr or using the contact form on the Website.

## 16. Geo-Location

- 16.1. As a part of the System, certain authorised Users can check-in to project sites. This functionality can be offered to another User to allow the User to be aware of when that authorised User is on a particular worksite (**Check-in Functionality**).
- 16.2. This Check-in Functionality be verified by Trabr (**Verification**). If the User opts to utilise the Verification functionality, Trabr will use geo-fencing (**Geo-Fencing**) to verify the check-in location of that authorised User and disclose such verification.
- 16.3. The Geo-Fencing will only be activated when the authorised User is located at the site nominated as the site for the relevant project.
- 16.4. Trabr will not store data about your location or track the location of a User when it is not located at the nominated project site.
- 16.5. The Geo-Fencing will be undertaken by tracking the SIM card or mobile number of the authorised User and determining when it is within a certain distance from the nominated project site.
- 16.6. If You opt in to use the Verification of the Check-in Functionality, then You agree that:
  - (a) Trabr will use Geo-Fencing to verify your check-in at a project site;



- (b) Trabr will notify the User as to whether or not your check-in has been verified;
- (c) Trabr will not be liable for any inaccuracies or errors in respect of the Geo-Fencing or the Verification.

## 17. Indemnity

17.1. You will at all times indemnify, and agree to keep indemnified, Trabr and its directors, officers, employees and agents from and against any loss (including reasonable legal costs and expenses on a full indemnity basis) or liability incurred or suffered by You or by Trabr arising from any claim, demand, suit, action or proceeding by any person against You or against Trabr where such loss or liability arose out of, in connection with or in respect of your use of the System, or breach of these Terms, including any costs of enforcement.

## 18. Waiver

18.1. If Trabr does not exercise or enforce any right or provision under this agreement, it will not constitute a waiver of such right or provision. Any waiver of any provision under this agreement will only be effective if it is in writing and signed by Trabr.

## 19. Applicable law

19.1. These Terms and any agreement between Trabr and a Customer will be governed by and interpreted in accordance with the laws of New South Wales, Australia. You irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales, Australia.

19.2. If any part of this agreement is found to be void, unlawful or unenforceable then that part will be deemed to be severable from the balance of these Terms or any agreement between Trabr and its Customers the severed part will not affect the validity and enforceability of any remaining provisions.

## 20. Definitions:

**Application** means the mobile software providing an interface into the System;

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of State fair trading legislation;

**Intellectual Property Rights** means all intellectual property rights (whether created before, on or after the date of this Agreement and whether registered or unregistered) in respect of copyright, any patents, trademarks, logos, designs, software, domain names, business or trade name, together with marketing concepts and designs, product knowledge, training systems and materials, protection of confidential information, circuit layouts, inventions, know-how, product or business concepts, details of product development, and any other identifiable result of intellectual endeavour, whether arising under statute or otherwise or any similar industrial property right or any right to, or application for registration of, any of them;

**Electronic Signing Platform** means the platform that forms a part of the System that allows Users to upload documents to and execute such documents electronically and which, among other things, forensically records the time of execution and the associated IP address of the signee.

**Force Majeure** means any act or event caused by any factor that is not within the reasonable control of Trabr, including without limitation, act of God; war; national emergency; cyber-attack; explosion; damage to telecommunications infrastructure or internet services or Trabr's failure or delay;

**Insights** means the derived results from insights and analytics of the System including your use of the Application, Website and System as compiled by Trabr or its agents or contractors;

**Personal Information** has the meaning given to it in the Privacy Act;

**Privacy Act** means Privacy Act 1988 (Cth) as amended from time to time;

**System** means the software known as Trabr and all of its associated services and/or functionality and which is accessible through the Application together with all of Trabr's Intellectual Property Rights attaching to or in respect of same and includes the Electronic Signing Platform;

**Virus** means anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices;

**Trabr** means Trabr Ltd (ACN 612 788 822);

**Website** means the website with the designated URL "www.trabr.com" and its associated services and/or functionality;

**Your Information** means all documents, data, records and information relating to You provided by You to Trabr in connection with the System, including without limitation any Personal Information.