



HASMATE LIMITED

TERMS AND CONDITIONS OF USE

1. SCOPE

- 1.1 Hasmate is an online cloud based program designed for businesses to effectively manage, store and to retrieve their compliance management and systems records.
- 1.2 Hasmate has agreed to license the Program to the Client and to provide support for the Program in accordance with the terms and conditions set out in this agreement.

2. DEFINITIONS

- 2.1 Unless the context otherwise requires, the following expressions shall have the following meanings:

Agreement means these terms and conditions of use;

Back up means, the automatic daily, back up and security of the Client's information stored on by the contracted security company, by Code Blue and backed up on Maxnet;

Client means the business, registered company, (private or other) entity, trust, organisation or person who purchases the Program;

Cloud means the software medium where the Program is hosted by GoGlobal;

Confidential Information means information which is or has been disclosed by one party to the other, but does not include any information that is:

- 2.1.1 on receipt, in the public domain or that subsequently enters the public domain without any breach of this agreement;
- 2.1.2 on receipt, already known by the party receiving it;
- 2.1.3 at any time after the date of receipt, received in good faith from a third party; or
- 2.1.4 required by law to be disclosed;

Concurrent Users means the number of Users of the Client at a time that can access and use the Program;

Data means the data or information entered by or on behalf of the Client into the Program;

Documentation means the management systems, procedures, forms, safe operating procedures or any other documentation offered for purchase by Hasmate;

Force Majeure Event means any war, riot, strike, natural or man-made disaster, or other circumstance of a similar nature;

GST means goods and service tax imposed under the Goods and Services Tax Act 1985;

Hasmate means Hasmate Limited, a New Zealand registered limited liability company;

Intellectual Property means copyright, patents, designs, trademarks, trade names, goodwill rights, trade secrets, confidential information and any other intellectual proprietary right or form of intellectual property;

Initial Payment means the initial purchase fee that required to be paid prior to the Program being set up and activated in the host server for the Client;

Licence means the Client's licence to use the Program with up to four Concurrent Users;

Monthly Fee means the monthly fee as set out in schedule 1 of this agreement payable by the Client to Hasmate payable by the 20th of each month by Automatic Payment or direct payment;

Online Purchasing means the ability of a User or any other person to purchase and to pay by direct credit any of the Documentation;

Program means the registered software program known as Hasmate;

Secure Access means the Client's right to access the Program as long as internet access is available to it;

Support Hours means the hours during which Hasmate will be available to provide Support Services to the Client, as specified in schedule 2;

Support Services means the support services to be provided by Hasmate to the Client, described in schedule 2;

Templates means the templates as supplied by Hasmate to allow the Client to enter its Data, including personnel, hazard registers, contractors and suppliers data, into the Program through the Hasmate nominated software provider;

Termination Date means the date of the end of this agreement as notified by the Client to Hasmate pursuant to this agreement;

User means the authorised person or persons who have been given permission by the Client to access and use the Program on its behalf for the purpose of the Client's business;

Website means the Internet site at the domain www.hasmate.co.nz.

3. LICENCE

- 3.1 Hasmate grants to the Client a non-exclusive, non-assignable licence to access and use Program via the Website.

3.2 If there is any dispute between Hasmate and the Client due to late or non-payment of agreed subscriptions or for any other reason that cannot be amicably resolved, Hasmate reserves the right to limit the Client's access right to the Program.

4. **SECURITY**

4.1 The Client is responsible for all passwords and Client names required to access and manage its Data in the Program and to ensure the Data is kept secure and confidential. The Client is responsible for notifying Hasmate by email of any breach of security of their Program and Hasmate will reset their password.

4.2 The Client must take all other necessary actions that it deems necessary to maintain the security of the Program and its Secure Access to the Program.

4.3 As a condition of these terms when accessing and using the Program, the Client or its Users must not attempt to undermine the security or integrity of the Program or the security of any associated hosting third parties security arrangements computing or security systems.

5. **CHARGES AND PAYMENT**

5.1 The Client must pay to Hasmate the amounts specified in schedule 1 in accordance with the timing specified in schedule 1.

5.2 All sums payable by the Client under this agreement shall be made in full, without set-off or counterclaim and, except to the extent required by law, free and clear of any deduction on account of tax or otherwise.

5.3 If the Client fails to pay any amount due under this agreement, Hasmate may without prejudice to its other rights require the Client to pay interest on the amount due from the due date until the date of payment, at a rate equal to 10% above the current overdraft rate that Hasmate has with its principal banker (in addition to the Client remaining liable for the full amount outstanding).

6. **DEFAULT OF MONTHLY FEE**

6.1 Where the Client fails to deposit the Monthly Fee by automatic payment by the due date, Hasmate reserves the right to limit, suspend, or terminate the Client's access to the Program for all of their organisations to use or view or retrieve any Data until the monies owing are paid.

6.2 In the event of a debit collection agency being engaged to recover any debt owing to Hasmate, the Client will be responsible for any costs incurred in the debt collection process and for any associated legal expenses incurred in relation to recovering the monies owing to Hasmate.

7. **FEE REVIEWS**

7.1 Hasmate reserves the right to review and increase the Monthly Fee.

7.2 The Client will be notified by email or by letter to their last known address one (1) calendar month prior to any Monthly Fee increase and the instructions for the change of payments will be included in this notification.

8. **CONCURRENT USERS**

8.1 The initial instalment of Hasmate includes one (1) Client Licence. This will allow the Client access to the Program and permits access by a number of Concurrent Users of the Client. This one Client Licence will limit the number of Concurrent Users to the Program at any one time.

8.2 Hasmate will monitor the number of Concurrent Users and will notify the Client when a new Client Licence is necessary to accelerate the access to the Program.

8.3 The Client can purchase additional Client licences at any time.

9. **SUPPORT SERVICES**

9.1 In the case of technical problems the Client is responsible to take all reasonable efforts to investigate and to diagnose the problem before contacting Hasmate, including checking the user manual held on the Website or failing that email admin@hasmate.co.nz with a specific question regarding the issue.

9.2 Hasmate will endeavour to respond as soon as possible or within 24 hours of receiving the question from the Client.

9.3 Hasmate shall provide Support Services to the Client during the Support Hours, on receipt of a request for support from the Client. Requests for Support Services shall be made by emailing admin@hasmate.co.nz.

9.4 The Support Services to be provided by Hasmate exclude the following:

9.4.1 the correction of errors or defects in the Program caused by operation of the Program in a manner other than that specified or intended by Hasmate;

9.4.2 the correction of errors or defects in the Program caused by any modification, revision, variation, translation or alteration of the Software not authorised by the Hasmate;

9.4.3 the correction of errors or defects in the Program caused by the use of computer programs not approved by Hasmate;

9.4.4 the correction of errors or defects in the Program caused by the failure of the Client to provide suitably qualified and adequately trained staff for the operation of the Program;

9.4.5 the rectification of defects or errors in the Program caused by a fault in the equipment on which the Program operates;

9.4.6 the correction of defects or errors in the Program arising directly or indirectly out of the Client's failure to comply with this agreement or any other agreement between the parties relating to the Program; and

9.4.7 on-site support at the Client's premises.

9.5 Where the Client requests Hasmate to provide support services in relation to clause 9.4 above, Hasmate may in its absolute discretion decide to provide such services. Any such work undertaken by Hasmate shall be charged on a time and materials basis at Hasmate's then current rates. The Client shall pay all Hasmate's reasonable additional costs, including without limitation travel and accommodation expenses.

10. **ONLINE SERVICES**

10.1 Whilst Hasmate intends that its service should be available within twenty four hours, from time of contact, it is possible that on occasions the services or Website may be unavailable due to maintenance or other development activity to take place.

10.2 If for some reason Hasmate has to interrupt the service for longer periods than Hasmate would normally expect, Hasmate will use reasonable endeavours to notify its Clients in advance on the website or by email.

11. PROTECTION OF INTELLECTUAL PROPERTY

11.1 Hasmate is the sole owner of all rights (including Intellectual Property rights) in the Program supplied under this agreement.

11.2 The Client must not, nor may it permit any other person to:

11.2.1 copy, alter, modify, reproduce, reverse assemble, reverse compile or enhance the Program;

11.2.2 alter, remove or tamper with any trademarks, any patent or copyright notices, or any confidentiality, proprietary or trade secret, legend or notice, or any numbers, or other means of identification used on or in relation to the Program;

11.2.3 make any of the Program available to any person other than its Users without the prior written consent of Hasmate; or

11.2.4 do any act that would or might invalidate or be inconsistent with the Hasmate's Intellectual Property rights.

11.3 The Client acknowledges that any Intellectual Property arising directly or indirectly out of the performance of this agreement is or shall on creation be the property of Hasmate. This includes any Documentation purchased by the Client.

11.4 The Client must notify Hasmate of any actual, threatened, or suspected infringement of any Intellectual Property right and of any claim by any third party that any use of the Program or the Documentation infringes any rights of any other person, as soon as that infringement or claim comes to the Client's notice. The Client shall (at Hasmate's expense) do all such things as may reasonably be required by Hasmate to assist Hasmate in pursuing or defending any proceedings in relation to any such infringement or claim.

11.5 The Client indemnifies Hasmate against any loss, costs, expenses, demands or liability, whether direct, indirect or consequential or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third party alleging infringement of that third party's Intellectual Property rights if such claim arises from infringement, suspected infringement or alleged infringement due to:

11.5.1 use of any of the Program in combination by any means and in any form with software or equipment not specifically approved by Hasmate or in a manner or for a purpose not reasonably contemplated or authorised by Hasmate; and/or

11.5.2 a breach by the Client of clause 11.2.

12. CONFIDENTIALITY, SECURITY AND PUBLICITY

12.1 The parties recognise and acknowledge the confidential nature of the Confidential Information.

- 12.2 Neither party may use or disclose any Confidential Information other than:
- 12.2.1 to its employees to the extent necessary;
 - 12.2.2 with the express prior written consent of the other party; and
 - 12.2.3 to its professional advisers.
- 12.3 Each party agrees to implement such security arrangements as may be necessary to ensure that the secrecy of the Confidential Information is preserved.
- 12.4 Neither party may advertise or publicly announce any matter relating to the existence or the contents of this Agreement without the other party's prior written consent.
- 12.5 The Client shall indemnify Hasmate against any losses, costs (including solicitor and client costs), expenses, demands or liability, whether direct, indirect, consequential, or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, incurred as a result of any unauthorised disclosure or use of the Confidential Information by the Client or any of its employees.

13. **CONSUMER GUARANTEES ACT**

- 13.1 If the Client is acquiring or holding itself out as acquiring goods or services under this agreement for business purposes, then the Consumer Guarantees Act 1993 will not apply.

14. **INDEMNITY**

- 14.1 The Client indemnifies Hasmate against any loss, costs, expenses, demands or liability, whether direct, indirect or consequential or otherwise, and whether arising in contract, tort (including in each case negligence), or equity or otherwise, arising out of a claim by a third party due to the Client's use of the Program or the Documentation.

15. **WARRANTIES**

- 15.1 To the fullest extent permissible by law, Hasmate expressly disclaims all warranties of any kind with respect to the Program and Documentation, whether express, implied, statutory, or arising out of course of performance, course of dealing or usage of trade, including any warranties of merchantability, fitness for a particular purpose, satisfactory quality, accuracy, title or non-infringement.
- 15.2 The Client acknowledges that it is solely responsible for ensuring it meets its legal requirements and to obtain its own legal advice if required on any matters, including any legal compliance matters.

16. **LIMITATION OF LIABILITY**

- 16.1 Any system error arising out of or in connection with the performances of services, Hasmate will not in any way be held liable for such "system error" unless the error is caused by gross negligence or wilful conduct by Hasmate, its employees, agents or supporting web site providers.
- 16.2 For the purpose of this paragraph, "system error" means:
- 16.2.1 Systems or network downtime.
 - 16.2.2 Any loss or damage to the Client's IT/computer management systems or network; and/or

16.2.3 Loss of access to any information.

16.3 Hasmate, its authorised personnel, agents or its delegated persons, will not be held liable for any special, incidental, punitive, indirect or consequential loss or damages. These are defined as meaning and including, loss of data, loss of business supporting business systems and data, loss of revenue, profits, business interruption, business and anticipated savings, audit failure or legal action brought about by a regulatory body or other persons that results in prosecution or financial payment.

17. **EXTENT LIABILITY**

17.1 If it is shown that Hasmate is liable to the Client and Hasmate cannot, for any reason, rely on the exclusion of the liability as set out above, then the maximum amount Hasmate will be liable to the Client for will only be for the cost and expenses incurred in the rectification and reinstatement of the Client's Hasmate system and only to its fully functional state.

18. **TERMINATION**

18.1 Either party may terminate this agreement immediately by notice in writing, upon:

18.1.1 the Client providing Hasmate with one (1) months notification of the Termination Date;

18.1.2 the other party committing any breach of this agreement that is incapable of remedy;

18.1.3 the other party failing to remedy any breach of this agreement that is capable of remedy within 14 days of notice of that breach having been given by the non-defaulting party to the other party; or

18.1.4 the commencement of liquidation or the insolvency of the other party (except for the purposes of solvent amalgamation or reconstruction), or upon the appointment of a receiver, statutory manager or trustee of the other party's property, or upon an assignment for the benefit of the other party's creditors, or upon execution being levied against the other party, or upon the other party compounding with its creditors or being unable to pay its debts in the ordinary course of business.

18.2 In the event of the breach by the Client pursuant to clause 17.1, Hasmate may take any or all of the following actions, at its sole discretion:

18.2.1 Terminate this agreement, and the Client's use of the use of the Program will be suspended for a definite or an indefinite period of time; and/or

18.2.2 Suspend or terminate access to all or any held Data.

18.3 The Client will be responsible for settling all outstanding monies owing to Hasmate, up to the Termination Date.

19. **CONSEQUENCES OF TERMINATION**

19.1 On termination by either party in accordance with clause 17 or otherwise, the Licence granted under this agreement shall terminate immediately and the Client shall cease to use Hasmate's Intellectual Property (including the Program).

20. DATA RECOVERY

20.1 In the event that the Client discontinues with the Program for whatever reason and gives notice in writing that it requests its business information held by Hasmate to be downloaded onto hard copy, Hasmate will provide the client with a hard copy of the Data for a fee of \$500 Plus GST which is additional to the Monthly Fee. The Data will be made available to the Client following payment to Hasmate.

21. DISPUTE RESOLUTION

21.1 Where any dispute arises between the parties concerning this agreement, or the circumstances, representations or conduct giving rise to the agreement, no party may commence any court or arbitration proceedings relating to the dispute unless that party has complied with the procedures set out in this clause 20.

21.2 The party initiating the dispute ("the first party") must provide written notice of the dispute to the other party ("the other party") and nominate in that notice the first party's representative for the negotiations. The other party must within seven days of receipt of the notice, give written notice to the first party naming its representative for the negotiations. Each representative nominated shall have authority to settle or resolve the dispute.

21.3 If the parties are unable to resolve the dispute by discussion and negotiation within 14 days of receipt of the written notice from the first party, then the parties must immediately refer the dispute to an agreed independent arbitrator whose decision will be binding on both parties.

21.4 All costs involved in the appointment of the arbitrator and the arbitration process will be the responsibility of the Client.

22. FORCE MAJEURE

22.1 Either party may suspend its obligations to perform this agreement if it is unable to perform as a direct result of a Force Majeure Event. Any such suspension of performance must be limited to the period during which the Force Majeure Event continues.

22.2 Where a party's obligations have been suspended pursuant to clause 21.1 for a period of 30 days or more, the other party may immediately terminate this agreement by giving notice in writing to the other party.

23. ASSIGNMENT

23.1 The Client shall not assign its rights under this agreement without the prior written consent of Hasmate.

23.2 In the event of the Client selling or transferring their business to another party, the Client will be responsible for notifying Hasmate within one (1) calendar month the of sale, transfer or acquisition of the Client's business. Where the purchaser of the Client's business elects to continue with Hasmate and Hasmate consents to the assignment of the Client's rights under this agreement to the purchaser, these terms will still apply for making payment. This provision is to allow Hasmate to discuss the continuance of the Program with the principals of the new business entity.

23.3 It will be the Client's responsibility to inform and to communicate to the purchaser of the business these terms and conditions.

24. ENTIRE AGREEMENT

24.1 This agreement constitutes the complete and exclusive statement of the agreement between the parties, superseding all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this agreement.

25. **FURTHER ASSURANCES**

25.1 The parties must each do all such further acts (and sign any documents) as may be necessary or desirable for effecting the transactions contemplated by this agreement.

26. **AMENDMENTS**

26.1 Except as specifically provided, no amendment to this agreement will be effective unless it is in writing and signed by both parties.

27. **WAIVER**

27.1 No exercise or failure to exercise or delay in exercising any right or remedy by a party shall constitute a waiver by that party of that or any other right or remedy available to it.

28. **PARTIAL INVALIDITY**

28.1 If any provision of this agreement or its application to any party or circumstance is or becomes invalid or unenforceable to any extent, the remainder of this agreement and its application shall not be affected and shall remain enforceable to the greatest extent permitted by law.

29. **NOTICES**

29.1 Any notice or other communication in connection with this agreement shall be:

29.1.1 in writing; and

29.1.2 by email, and will be deemed to have been given on transmission.

29.2 Notices to Hasmate must be sent to admin@hasmate.co.nz or to any other email address notified by Hasmate. Notices to the Client will be sent to the email address as supplied by the Client when registering and setting up the Program.

29.3 Both Hasmate and the Client will undertake to notify promptly each other of any change of address by email or by service mail to the last known postal address.

30. **GOVERNING LAW**

30.1 This agreement shall be governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.