

|| TERMS AND CONDITIONS



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;

Backup means, the automatic daily backup and security of the Client's information stored by the contracted security company, UMBRELLAR Cloud Hosting Company;

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

Cloud means the software medium where the Program is hosted by UMBRELLAR Cloud Hosting Company;

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;

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;

Final payment means the final payment by the Client to Hasmate, one month following written notification to 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 activated for the Client;

Monthly Fee means the monthly fee as set out in the Client Information Form, payable by the Client to Hasmate by the 20th of each month by automatic or direct payment;

Program means the registered software program known as Hasmate;

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

Support Hours means the hours during which Hasmate will be available to provide Support Services to the Client;

Support Services means the support services to be provided by Hasmate to the Client;

Templates means the template collection forms as supplied by Hasmate to allow the Client gather and then to enter its Data, including personnel, hazard registers, contractors and supplier's data, into the Program;

Termination Date means the date of the end of this agreement as notified by the Client to Hasmate in writing pursuant to this agreement being one months' notice;

User means the authorized 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 <https://worksafety.hasmate.co.nz>

3. LICENCE

- 3.1 Hasmate grants to the Client a non-exclusive, non-assignable license to access and use the 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 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.
- 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 their authorized users must not attempt to undermine the security or integrity of the Program or the security of any associated hosting third party's security arrangements computing or security systems.

5. CHARGES AND PAYMENT

- 5.1 The Client must pay to Hasmate the amounts specified on the Client Information Form in accordance with the timing specified. This is payable by the Client to Hasmate by the 20th of each month.
- 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 compounding rate equal to 10% in addition to the Client remaining liable for the full amount outstanding, this to be paid in full by the 20th of the month following notification by Hasmate.

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 organizations to use or view or retrieve any Data until the monthly or annual fee and any additional monies owing are paid.
- 6.2 In the event of a debt 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.
- 6.3 The Client will also be responsible for all reasonable costs incurred by Hasmate for time expended for the administration and organization of the collection agency for the collection of the outstanding monies.

7. PERSONAL GUARANTEES STATEMENT

Where the purchase of access to the Hasmate program or for the provision of other Hasmate services to the client are authorized by a representative, executive, manager, business owner, or other title of a registered limited liability company, incorporated body, registered authority or trust, the persons signing Hasmate's Client Information Form acknowledge that the services to be provided by Hasmate are being authorized to be provided and accept responsibility jointly and severally with that entity and each other for the payment of all fees for services owing to Hasmate.

8. FEE REVIEWS

- 8.1 Hasmate reserves the right to review and increase the Monthly Fee and annual fee.
- 8.2 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.

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 help videos and other information held on the Website) and then emailing marketing@hasmate.co.nz with a specific question regarding the issue.
- 9.2 Hasmate will endeavor 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 marketing@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 Program not authorized by the Hasmate;
 - 9.4.3 the correction of errors or defects in the Program caused using 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. This service will be charged to the Client at a nominated fee.
 - 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; This service will be charged to the Client at a nominated fee.
 - 9.4.7 on-site support at the Client's premises. This service will be charged to the Client at a nominated fee.
- 9.5 Where the Client requests Hasmate to provide support services in relation to clause 9.1, 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 nominated fee. 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 (24) 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 must interrupt the service for longer periods than Hasmate would normally expect, Hasmate will use reasonable endeavors 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; the exception to this is by the Client to customize the program for their specific needs via the Master Files access;
 - 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 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 Hasmate 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 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 authorized 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 recognize 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, court 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 unauthorized 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 When an system error arises out of or in connection with the performance of services, Hasmate will not in any way be held liable for such "system error" unless the error is caused by gross negligence or willful conduct by Hasmate, its employees, agents or supporting website 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 authorized 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.
 - 18.1.5 Outstanding payments. Refer to clauses 18.3 and 6.
- 18.2 In the event of the breach by the Client pursuant to clause 18.1, Hasmate may take any or all the following actions, at its sole discretion:
- 18.2.1 Terminate this agreement, and the Client's use of the Program will be suspended for a definite or an indefinite period; 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 final termination or cut-off date being one month following notification to Hasmate Ltd in writing (admin@hasmate.co.nz).

19. CONSEQUENCES OF TERMINATION

- 19.1 On termination by either party in accordance with clause 18 or otherwise, the License granted under this agreement shall terminate immediately and the Client shall cease to use Hasmate's Intellectual Property (including the Program).

20. DISPUTE RESOLUTION

- 20.1 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.
- 20.2 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 (7) 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.
- 20.3 If the parties are unable to resolve the dispute by discussion and negotiation within fourteen (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.
- 20.4 All costs involved in the appointment of the arbitrator and the arbitration process will be the responsibility of the Client.

21. FORCE MAJEURE

- 21.1 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.
- 21.2 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.

22. ASSIGNMENT

- 22.1 The Client shall not assign its rights under this agreement without the prior written consent of Hasmate.
- 22.2 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 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.
- 22.3 It will be the Client's responsibility to inform and to communicate to the purchaser of the business these terms and conditions.
- 22.4 If the Client closes their business due to retirement, receivership, liquidation, bankruptcy, or is placed into administration management, it will be the Client's responsibility to inform Hasmate by email or letter, one (1) calendar month prior to the action to be taken.
- 22.5 Where the Client changes their physical or contact address, PO Box number or email address, it will be the Client's responsibility to inform Hasmate within seven (7) working days of the change.
- 22.6 Hasmate or the Client will undertake to promptly notify each other of any change of address.

23. ENTIRE AGREEMENT

- 23.1 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.

24. FURTHER ASSURANCES

24.1 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.

25. WAIVER

22.1 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.

26. PARTIAL INVALIDITY

26.1 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.

27. NOTICES

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

27.1.1 in writing; and

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

27.2 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.

27.3 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.

28. GOVERNING LAW

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

29. PRIVACY POLICY

29.1 Refer to <https://hasmate.co.nz/privacy-policy>.

