

## Terms and Conditions of Use

The Building Materials Information System (BMIS) is owned and hosted by Entuitive Limited. The BMIS provides access to a system to facilitate a Person Conducting a Business or Undertaking (PCBU) in meeting part of their requirements under the Health and Safety (Asbestos) at Work Regulations 2016 (Regulations). While Entuitive Limited will try to ensure that the BMIS is free from error, Entuitive Limited does not warrant the accuracy, adequacy or completeness of the data used in BMIS or suitability for your intended use(s) and in particular, that it will meet the compliance requirements for a PCBU under the Regulations. Any updates or specific requests not related to errors in the system may be subject to additional fees.

The BMIS is not intended to be a substitute for commercial judgment or professional advice and you should not act in reliance upon it without first obtaining professional advice as to your particular circumstances.

Please read these Terms and Conditions carefully before using the BMIS.

Your access to and use of the BMIS is conditional on your acceptance of and compliance with these Terms and Conditions. These Terms and Conditions apply to all users of the BMIS. By accessing or using the BMIS you agree to be bound by these Terms and Conditions. If you do not accept any part of these Terms and Conditions, then you may not access the BMIS.

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context indicates the contrary:

**BMIS** means the Building Materials Information System (BMIS) owned and hosted by Entuitive Limited and includes the website at the domain [bmis.nz](http://bmis.nz), its services, documentation and any relevant sub domains.

**Support Hours** means the period between 8.00am to 5.00pm Monday – Friday and not on public holidays;

**Services** means the Implementation Services, the Hosted Service and the Support Services.

**Software** means the Base Application to carry out the function as customised by any enhancements or alterations as may be made from time to time, but excludes the source code;

**Support Services** means online ticketing system.

**Client** means any user who Entuitive Limited has given permission to access and use the BMIS in accordance with these Terms and Conditions.

**User** means Client's authorised end users including employees, agents, contractors and affiliated members.

**Client Data** means any data loaded onto the BMIS by the Client.

**Entuitive** means Entuitive Limited, a New Zealand registered Limited Liability Company.

**Fee** means the sum payable.

**GST** means the tax imposed under the GST Law.

**GST Law** means Goods and Services Tax Act 1985 (NZ) and any amendments thereof.

**Insolvency Event** in relation to a party (insolvent party) means:

1. the insolvent party ceases or takes steps to cease to conduct its business in the normal manner;
2. the insolvent party enters into or resolves to enter into any arrangement, composition or compromise with or assignment for the benefit of its creditors or any class of them;
3. the insolvent party is unable to pay its debts when they are due or is deemed under the Companies Act 1993 (NZ) to be insolvent;
4. a liquidator or provisional liquidator is appointed to the insolvent party or a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the assets or undertakings of the insolvent party; or
5. an application or order is made or a resolution is passed of the winding up of the insolvent party.

**Intellectual Property Rights** means all current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967 and includes all rights in any Software including, without limitation, in source and object codes.

**Tax Invoice** has the meaning it has in the GST Law.

**Term** means the period during which the Client has the right to access and use the BMIS pursuant to these Terms and Conditions.

**Terms and Conditions** means these Terms and Conditions as may be amended by Entuitive Limited from time to time.

**Third Party Software** means computer programs not produced by Entuitive Limited which Entuitive Limited is not authorised to sub-license to the Client or which require terms and conditions other than those applicable to Entuitive Limited's own Software but which Entuitive Limited has chosen to incorporate or integrate in the Licensed Software.

1.2 In these Terms and Conditions unless the contrary intention appears:

- a. the singular includes the plural and vice versa;
- b. a reference to these Terms and Conditions or another instrument includes any variation or replacement of them;
- c. a reference to a clause number is a reference to a clause in these Terms and Conditions;
- d. the word "person" includes a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any government agency;
- e. a reference to a statute, ordinance, code or other law includes regulations and other instruments under it, and consolidations, amendments, re-enactments and / or replacements of any of them;
- f. if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- g. a reference to a month is to a calendar month;
- h. a reference to a day is to a calendar day;
- i. a reference to a thing (including any amount) is a reference to the whole and each part;
- j. the verb "include" (in all its parts, tenses and variants) is not used as, nor is it to be
- k. interpreted as, a word of limitation;
- l. the words "including", "for example" or "such as" do not limit the meaning of the words to which the example relates or examples of a similar kind;
- m. New Zealand dollars, dollars, NZ\$, or \$ is a reference to the lawful currency of New Zealand; and
- n. headings are inserted for convenience and do not affect the interpretation of these Terms and Conditions.

## 2. ACCESS TO AND USE OF BMIS

2.1 Entuitive Limited grants to the Client a non-exclusive, non-assignable license to access and use the BMIS [and the content on the BMIS] for the Client's internal operational and statutory functions and purposes in accordance with these Terms and Conditions.

2.2 The Client agrees to use the BMIS in a manner that complies with all applicable laws and regulations and that does not infringe Entuitive Limited's rights, nor the rights of anyone else, nor restricts or inhibits their use and enjoyment of the BMIS.

2.3 The Client may not, without Entuitive Limited's prior written permission, in any form or by any means:

- a. adapt, reproduce, copy, store, distribute, print, display, perform, publish or create adaptations from any part of the BMIS (including the content of the portal), other than for the purpose of fulfilling the purposes for the services supplied;
- b. use the content of the portal to promote the Client's business
- c. commercialise, copy, or on-sell any information, or materials obtained from any part of the BMIS (including the content of the portal).

2.4 The Client may not assign or sub-contract any of its rights or obligations under these Terms and Conditions to any third party without Entuitive Limited's prior written approval, which is not to be unreasonably withheld or delayed.

2.5 The Client is responsible for ensuring that all of its agents, employees and contractors who are approved to use the BMIS in accordance with clause 2.4 above (Authorised Users) comply at all times with these Terms and Conditions as if they were bound directly to these Terms and Conditions.

2.6. The Client acknowledges and agrees that Entuitive Limited does not provide any data, including but not limited to relevant work health and safety legislation, for use with the BMIS. The Client is responsible for adding relevant information for use with the BMIS. Entuitive Limited does not have any rights to the data the Client loads into BMIS. The Client is solely responsible for deleting or retrieving data from BMIS at any time.

2.7. Entuitive Limited will host all of the Client's Data entered into the BMIS on Entuitive Limited's cloud server or a third party service. Entuitive Limited's cloud server and / or third party server is regularly backed up and Entuitive Limited will work in general accordance with commercial best practice to maintain effective security measures to safeguard Client Data from unauthorised access, use, copying or disclosure. If a security breach is made aware to either party, the other shall promptly notify the other party to take immediate remedy action.

### 3. REGISTRATION AND SECURITY OF PASSWORDS

3.1 By signing up for BMIS, the Client, as far as reasonably aware, agrees that all information provided during the registration process is true and accurate and the Client will update this information as required in order to keep it current, complete and accurate.

3.2 During the registration process, the Client will be issued with usernames and passwords for the intended administrative users of BMIS. The Client agrees to be fully responsible for activities that relate to its Client account including the actions of all Authorised Users and for maintaining the confidentiality of its password. If the Client has any reason to believe that its password has been obtained by someone else without its consent, the Client must inform Entuitive Limited immediately to disable the Client's account if required.

### 4. OWNERSHIP OF INTELLECTUAL PROPERTY

4.1 The Client acknowledges that all Intellectual Property (IP) Rights of the services provided, the website and any documentation relating to the services and website remain the property of Entuitive Limited (other than Third Party Software).

4.2 All intellectual property rights in the data remain property of the client. However, client access to the data is contingent on full payment of the Fee when due. The Client grants Entuitive a license to use, copy, transmit, store, and back-up client information and data for the purposes of enabling the Client to access and use the services and for any other purpose related to provision of services to the Client.

4.3 The Client must maintain copies of all data entered into or uploaded to the service. Entuitive Limited adheres to best practice to prevent data loss, including a daily system data back-up, but does not make any guarantees that there will be no loss of data. Entuitive Limited expressly excludes liability for any loss of data no matter how caused.

### 5. SUPPORT & MAINTENANCE

5.1 Entuitive Limited shall provide bug fixes, corrections, modifications, and new releases to the Services. The Supplier will ensure the functionality of the Services remains compliant with New Zealand law and is available to Authorised Users.

5.2 For emergency maintenance, Entuitive Limited shall provide as much prior notice as commercially practicable to the Client.

5.3 Entuitive Limited shall provide the Support Services during the Support Hours, on receipt of a request for support from the Client.

5.4 When scheduled or unscheduled suspensions of access to BMIS are necessary, Entuitive will use the email accounts associated with the system to inform users of a system shut down.

5.5 Any additional upgrades or back up recovery requests from the client may be subject to a development fee, which will be approved prior to commencing the work.

### 6. CONTINUITY OF SERVICE

6.1 Entuitive Limited will use reasonable endeavours to provide access to the BMIS [on a continuous basis], subject to any necessary downtime that may be required for system maintenance, repairs and updating, or loss of access resulting from matters beyond Entuitive Limited's control. Entuitive Limited shall restore service in line with our service level agreement (Appendix 2) or provide alternative remedy based on mutual agreement with the client.

6.2 Uptime. Entuitive Limited shall ensure that the hosted environment is regularly monitored and maintained to ensure the uptime Service Level described in Appendix 2 of the SLA is achieved.

6.3 Viruses. Entuitive Limited will use its best efforts to ensure that no computer viruses, malware or similar items are introduced into the Client's computing and network environment by the Services.

6.4 Entuitive Limited reserves the right to suspend, or otherwise alter the Client's access to the BMIS at any time and with as much notice as possible, for short periods of time as advised to the Client, in the cases of:

- a. periodic maintenance;
- b. updates; or
- c. where a threat has been identified to the security of the BMIS

Entuitive Limited will not be held liable for any loss which the Client or the Client's business suffers as a result of any loss of continuity of the BMIS.

6.5 Access to the BMIS also relies on the provision of third party services to the Client including internet access. The Client agrees that Entuitive Limited will also not be liable for any failure in the BMIS caused by failures of third parties either in part or in full.

## 7. CONFIDENTIALITY

7.1 Without limiting Entuitive Limited's obligation of confidentiality, Entuitive Limited shall be responsible for establishing and maintaining a data privacy and information security program, including physical, technical, administrative and organisational safeguards that is designed to:

- a. Ensure the security and confidentiality of the Client Data;
- b. Protect against any anticipated threats or hazards to the security or integrity of the Client Data;
- c. Protect against any unauthorised disclosure, access to or use of the Client Data;
- d. Ensure proper disposal of Client Data; and
- e. Ensure that all employees, agents and authorised subcontractors and suppliers of Entuitive Limited comply with all the foregoing.

## 8. WARRANTIES

8.1 Except as expressly provided in these Terms and Conditions, Entuitive Limited makes no express warranties or representations. Entuitive Limited warrants continued provision of the services, and that the Client data will be held by Entuitive, accessible by the Client in accordance with the terms of this Agreement, and not lost or deleted. To the extent permitted by law, Entuitive Limited excludes all implied warranties that would otherwise be implied by law into these Terms and Conditions including but not limited to, any warranties or merchantability, fitness for a particular purpose and non-infringement.

## 9. PRIVACY

9.1 Entuitive Limited collects information from and about the Client, including but not limited to the Client's name and contact details. Such information is provided by the Client voluntarily. Entuitive Limited may also collect and store information about the Client's use of the BMIS, for example, the pages accessed and how many times the Client accesses the BMIS.

9.2 Entuitive Limited will store the information referred to in clause 7.1 on its secure servers in data centers of its choice, including those provided by third parties. Any such information will only be used by Entuitive Limited for its statistical purposes. It will never be supplied to anyone without first obtaining the Client's consent, unless Entuitive Limited is obliged or required by law to disclose it.

## 10. FEES

10.1 Entuitive Limited agrees to grant the Client the right to access and use in consideration of the Client's payment of the Fee. Entuitive Limited may provide the Client with the ability to pay the Fee by credit card. All Fees paid through a third party payment services provider are subject to that third party's terms of service, and Entuitive Limited will not be responsible for anything contained therein. The Client is responsible for payment of any taxes or transaction fees associated with payment of the Fee.

10.2 The Fee is payable in advance [on the date of registration and on each anniversary thereafter] and is reviewable on a periodic basis, subject to subscription type [on the anniversary of the Client registering for the BMIS], unless otherwise agreed by the Client and Entuitive Limited. The Fee shall be paid by the Client in full without set-off, counterclaim or deduction of any kind.

10.3 In the event of the Client wishing to remove a building from the system and requiring a full downloaded pdf report summarising asbestos history associated with the building produced by BMIS, an additional \$500 per building fee will be applicable.

10.4 Entuitive Limited will provide a Tax Invoice for the agreed subscription in advance of the anniversary date for the agreed contract term.

10.5 In the event of subscription cancellation by any party, refund or partial or partial refund for the remaining subscription cannot be claimed, nor is Entuitive Limited liable for issuing any refund associated with such a claim.

10.6 All prices, fees, and other charges are inclusive of any and all taxes and duties apart from GST. The Client will pay GST at the prevailing rate on the amount of the Fee at the same time and in the same manner as the Fee is payable.

10.7 Payment terms are for the 20th of the following month from the date of invoice.

10.8 From time to time, Entuitive or our business partners on our behalf may offer trials of Paid Subscriptions for a specified period without payment or at a reduced rate (a "Trial"). Entuitive reserves the right, in its absolute discretion, to determine the Client's eligibility for a Trial, and, subject to applicable laws, to withdraw or to modify a Trial at any time without prior notice and with no liability, to the greatest extent permitted under the law.

10.9 The Client may request updates or changes to the system. If the requested update or change is part of the planned product roadmap, the development fee may be absolved. Otherwise changes to the system may be subject to a development fee. A proposal will be issued at the time of request to indicate the fees associated (if any).

10.10 On every anniversary of this contract, Entuitive Limited may change the price of a Paid Subscription, Pre-Paid Period (for periods not yet paid for), and will communicate any price changes to the client in advance and, if applicable, how to accept those changes. Price changes for Paid Subscriptions will take effect at the start of the next subscription period following the date of the price change. As permitted by local law, you accept the new price by continuing to use the BMIS Service after the price change takes effect. If you do not agree with the price changes, you have the right to reject the change by unsubscribing from the BMIS Service prior to the price change going into effect. Please therefore make sure you read any such notification of price changes carefully.

10.11 BMIS contains a number of support videos to assist the users in the use of the Software. While Entuitive Limited aims to keep training material up to date, Entuitive Limited accepts no liability due to inaccuracy of the content of such videos or other training materials due to product changes from time to time. Unless stated otherwise Entuitive will provide an introductory training program for the Client. Subsequent training and support will be charged at an additional fee set out in a proposal based on number of people, duration and location of the training.

## 11. LIMITATION OF LIABILITY AND INDEMNITY

11.1 Subject to the warranties provided at clause 6.1, the BMIS is provided on an "as is" and "as available" basis. The Client's use of the BMIS (including, without limitation, the sending or submission or storage or access of Client Data) is at the Client's own risk. Subject to any terms implied by law which cannot be excluded, Entuitive Limited will not be liable, for any damages (whether indirect, punitive, special, incidental or consequential damage (including loss of business, revenue, profits, use, privacy, data, goodwill or other economic advantage)) suffered as a result of the Client or anyone else using the BMIS or any linked website whether such liability arises in contract or in tort. This includes but is not limited to damage or injury caused by any failure or performance, error, omission, interruption, defect, delay in operation of transmission, computer virus, communication line failure, theft, destruction, unauthorised access or alteration of the BMIS or any of its contents including, without limitation, the Client Data.

11.2 Entuitive Limited does not endorse any of the data that the Client chooses to add to the BMIS, and expressly disclaims any and all liability in connection with it. Entuitive Limited does not pre-screen or monitor the data that the Client adds to the BMIS. In no event shall Entuitive Limited be liable for any claims by a third party including, but not limited, to any misleading statements made and/or incorporated into any data the Client adds to the BMIS. It is the Client's sole responsibility to ensure the accuracy of the data inputted into the BMIS.

11.3 The Client has sole responsibility for adequate security protection and backup of data and/or equipment used in connection with its usage of the BMIS and will not make a claim against Entuitive for lost data, re-run time, inaccurate instruction, work delays or lost profits resulting from the use of the BMIS.

11.4 Without limiting the foregoing, in no event will Entuitive Limited's aggregate liability to the Client exceed, in total, the amounts paid for a 12 month period by the Client to Entuitive Limited under this contract and any other contract and any other contract between the parties relating to the procurement and uploading of information into BMIS.

11.5 As a condition of the Client's access to and use of the BMIS, the Client agrees to not breach any of the terms and conditions in this agreement and if breached are liable for damages, costs, expenses and other liabilities, including but not limited to legal fees and expenses, relating to any claim arising. However, in no event will the Client's aggregate liability to the Entuitive Limited exceed, in total, the amounts set out at paragraph 9.4 above. This indemnification section survives the Term, and applies to claims arising both before and after the Term.

## 12. RESTRICTIONS AND TERMINATION OF ACCESS TO BMIS

12.1 Entuitive Limited may suspend or withdraw the Client's right to access and use the BMIS at any time without prior notice if:

- a. the Client has materially breached these Terms and Conditions or have acted fraudulently;
- b. the Client becomes bankrupt, or commits an act of bankruptcy or if a corporate, suffers and Insolvency Event;
- c. Entuitive Limited withdraws the BMIS with 30 working day notice;
- d. Entuitive Limited considers that it has other reasonable grounds to do so (in which case all reasonable efforts will be made to advise the Client of the circumstances of withdrawal or suspension); or
- e. Entuitive Limited is complying with a court order.

12.2 The Client may terminate its right to access and use the BMIS at any time by giving [10 days] written notice to Entuitive Limited.

12.3 The Client will have full access to download all information from BMIS free of charge throughout their contract. Upon the termination of contract, the Client will have thirty (30) days to download all the Client's data from the BMIS.

## 13. GENERAL

13.1 If Entuitive Limited does not exercise or enforce any right available to it under these Terms and Conditions, it does not constitute a waiver of those rights.

13.2 These Terms and Conditions constitute the entire agreement between the Client and Entuitive Limited and supersede all prior agreements, arrangements, understandings and representations (whether oral or written) given by or made between Entuitive Limited and the Client, relating to the subject matter of these Terms and Conditions.

13.3 The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights or remedies provided by these Terms and Conditions or at law.

13.4 If any provision of these Terms and Conditions becomes or is held to be illegal, invalid or unenforceable in any respect, that provision shall be read down to the extent necessary to make it legal, valid and enforceable or, if it cannot be read down, be deemed severed from these Terms and Conditions. Neither such change shall *affect* the legality, validity and enforceability of the other provisions of these Terms and Conditions.

13.5 These Terms and Conditions are governed by the laws of New Zealand. When the Client accesses the BMIS, the Client submits to the exclusive jurisdiction of the New Zealand courts.

## Appendix 1 BACK UP

Definition	Time	Description
Database	Hour	BMIS takes a database backup every hour
System	24 Hrs	A full backup of BMIS is collected every 24hrs.

## Appendix 2 SERVICE LEVEL AGREEMENT

**Maintenance Window** Scheduled maintenance will occur with a minimum of 5 working days' notice to the Client. In the event of any emergency maintenance being required the Supplier will provide as much notice to the Client ahead of its occurrence as is commercially practicable.

**Uptime** The Hosted Software will be available via a working Internet connection not less than 98% measured over a calendar year as expressed by our third party web server.

### Priority Definition, Target Response and Resolution Times

Priority	Definition	Target Response Time	Target Resolution Time
Severity One	The system is unavailable for critical business activities	1 Hour	2 Business Days
Severity Two	A part of the system is unavailable or is not operating efficiently for business activities. No viable workaround is available	1 Hour	3 Business Days
Severity Three	A part of the system is unavailable or is not operating efficiently.	1 Day	5 Business Days