

# ComplyNet



## Terms and Conditions for Certification & Assessment Services

Approver	Version	Date Enforced
William Dash	1.0	20 Aug 2020
William Dash	1.1	01 Oct 2020
Stuart Branks	1.2	29 Sept 2021
Billy Dash	1.3	Sept 2022
Billy Dash	2	July 2023
Billy Dash	2	March 2024

**To be read in conjunction with your application**

## Table of Contents

<b>1. APPLICABILITY</b> .....	3
<b>2. DEFINITIONS</b> .....	3
<b>3. CERTIFICATION AND ASSESSMENT SERVICES</b> .....	4
<b>4. FEES</b> .....	4
<b>5. ASSESSMENT</b> .....	4
<b>5.1 Access and Co-operation</b> .....	4
<b>5.2 Safety</b> .....	4
<b>5.3 Accuracy of Information Provided to ComplyNet</b> .....	4
<b>5.4 Witness audits</b> .....	4
<b>6. CERTIFICATION – Granting / Refusal</b> .....	5
<b>6.1 Renewal of Certification</b> .....	5
<b>6.2 Maintenance of Certification</b> .....	5
<b>6.3 Changes</b> .....	5
<b>6.4 Scope reduction or expansion</b> .....	5
<b>6.5 Suspension, Cancellation or Expiry of Certification</b> .....	6
<b>6.6 Use of Certificate</b> .....	7
<b>6.7 No Misrepresentation of Certification</b> .....	7
<b>7. CONFIDENTIALITY</b> .....	7
<b>8. INTELLECTUAL PROPERTY RIGHTS</b> .....	8
<b>9. LIMITATION OF LIABILITY</b> .....	8
<b>10. INSURANCE</b> .....	8
<b>11. INDEMNITY</b> .....	8
<b>12. NON-SOLICITATION OF PERSONNEL</b> .....	9
<b>13. TERMINATION OF CONTRACT</b> .....	9
<b>14. AFTER TERMINATION</b> .....	9
<b>15. APPEALS</b> .....	10
<b>16. ASSIGNMENT</b> .....	10
<b>18. WAIVER</b> .....	10
<b>19. RELATIONSHIP</b> .....	10
<b>20. NOTICE</b> .....	10
<b>21. HEADINGS</b> .....	10
<b>22. FORCE MAJEURE</b> .....	11
<b>23. GOVERNING LAW AND JURISDICTION</b> .....	11
<b>24 SPECIFIC REQUIREMENTS</b> .....	11
<b>25. SPECIFIC REQUIREMENTS FOR WHS CERTIFICATION ONLY</b> .....	11

## 1. APPLICABILITY

These terms and conditions govern the supply of Certification or Assessment Services by ComplyNet to the client. These terms and conditions prevail over any other terms that may be communicated by the Client in writing or orally, whether in an order, letter, other document, in negotiations or otherwise.

No person acting or purporting to act on behalf of ComplyNet shall have authority to waive or change these terms orally. Waivers or changes shall have effect only if made in writing and signed by a duly authorised officer of ComplyNet.

ComplyNet may vary these terms and conditions at any time by notifying the Client in writing.

## 2. DEFINITIONS

In these terms and conditions:

**'Certificate'** means the document issued by ComplyNet to record Certification;

**'Certification'** means confirmation that a product, process or service has been assessed in accordance with Certification Procedures as meeting specified requirements;

**'Certification Mark'** means a symbol, word or other sign that signifies that a product, process or service has been certified by a competent person as meeting specified requirements;

**'Certification Procedures'** means procedures developed by ComplyNet and used in assessing a product, process or service for the purpose of granting or maintenance of Certification. These terms and conditions override any inconsistent Certification Procedures;

**'Certification Services'** means assessment of a product, process or service in accordance with Certification Procedures. Certification Services includes assessment and verification services, gap analysis and second party audits, whether or not a certificate is issued;

**'Client'** means the company, organisation or individual seeking Certification;

**'Contract'** means the contract between ComplyNet and the Client resulting from the Client's application for Certification and License;

**'Site'** means the location of manufacture of product or of performance of a process or service;

**'ComplyNet'** means ComplyNet Pty Ltd ABN

## **3. CERTIFICATION AND ASSESSMENT SERVICES**

Under the contract, ComplyNet agrees to provide and the Client agrees to accept, the Certification and Assessment Services requested by the Client.

ComplyNet may appoint an agent or contractor to provide Certification and Assessment Services, including undertaking all or part of the Certification Procedures.

## **4. FEES**

The Client must pay to ComplyNet all fees due in respect of Certification and Assessment Services provided by ComplyNet to the Client. Failure to pay fees in full by the due date may result in additional administration/late fees and/or suspension of certification.

The fees payable are those set out in the Contract agreed between ComplyNet and the Client.

ComplyNet may from time to time, render invoices for fees due and the Client must pay the invoiced amount to ComplyNet in the currency specified within 14 days of the date of ComplyNet invoice.

ComplyNet reserves the right to amend its Schedule of Fees at the completion of any defined contract period.

## **5. ASSESSMENT**

### **5.1 Access and Co-operation**

The Client agrees to comply with the applicable Certification and Assessment Procedures and to provide ComplyNet employees, agents and contractors with all co-operation and assistance required by the applicable Certification and Assessment Procedures necessary to enable ComplyNet to provide the Certification and Assessment Services requested by the Client, including reasonable access to the premises, facilities, documents and records of the Client and the Client's contractors and agents.

The Client must promptly comply with any reasonable requirement of ComplyNet in relation to the Client's product, process or service to make appropriate the Certification request by the Client including access to complaints related to their clients.

### **5.2 Safety**

The Client accepts responsibility for the safety of ComplyNet employees, agents and contractors in activities required under the applicable Certification Procedures, including the provision of all relevant safety or protective clothing and/or equipment and advising ComplyNet appropriately of any safety hazards or special training requirements.

### **5.3 Accuracy of Information Provided to ComplyNet**

The Client warrants that all information made available to ComplyNet, is to the best of its knowledge and belief, complete and accurate.

### **5.4 Witness audits**

The certification process is subject to JASANZ external validation and assessment for standards & integrity purposes, it is therefore a pre-requisite of these terms that the external auditor is extended the same permitted access as the ComplyNet Lead auditor under the duties as an 'Observer' only

JASANZ Observers will not contribute to the audit and will not steer or guide the evidence gathering, processes, questioning and proofing, or in anyway interfere with the audit unless this is a matter of Risk or Safety to anyone associated with the ongoing Stage 2 witness audit.

In cohesion with current National & International COVID & JASANZ Witness audit guidelines these observations may be conducted 'Remotely' whereas they will be present on a Zoom, Webex, Teams or their media equivalent

## 6. CERTIFICATION – Granting / Refusal

If the Client is not in breach of these terms and conditions; and after assessment of the Client's product, process or service in accordance with the applicable Certification and Assessment Procedures, ComplyNet is satisfied that Certification is appropriate

ComplyNet will:

- grant Certification.
- issue the Client with a Certificate; and
- grant to the Client license to use the applicable Certification Mark.

If ComplyNet is not satisfied that Certification can be appropriately achieved, ComplyNet must notify the Client of the refusal and the reasoning pertaining to the refusal.

### 6.1 Renewal of Certification

Subject to these terms and conditions, Legal status and continuous compliance with standards, surveillances, and audit outcomes, provide sufficient information for renewal of the certification. Which will continue until the expiry date referenced in the Certificate, the current plan is for a three-year recertification cycle.

### 6.2 Maintenance of Certification

The Client must maintain the product, process or service as certified and comply with all reasonable requirements including the payment of fees that ComplyNet considers necessary to ensure that Certification continues to be appropriate, including any requirements listed or referred to in the Certificate.

### 6.3 Changes

The client must promptly inform ComplyNet of any change in relation to the certified product, process or service that is likely to substantially affect the Certification, including change of address of any relevant sites or other premises. Specifically, the following issues must be notified to ComplyNet:

- change in legal, commercial, organisational status or ownership;
- change in organisation or management (key decision makers or technical staff);
- change in contact address and sites;
- change in scope of operations under the certified management system; and,
- major changes to the management system or processes.

### 6.4 Scope reduction or expansion

ComplyNet may be required to, in consultation with the client, have grounds to adjust the scope of the audit for the achievement of certification requirements. The adjustment can be to increase the scope on discovery of information and evidence, that can support an increased scope criterion.

Conversely, should an insufficient or lack of evidence be presented or observed, then consideration shall be made by the auditor to potentially reduce the scope to a more fitting and achievable criteria.

## 6.5 Suspension, Cancellation or Expiry of Certification

ComplyNet may suspend / restore the Client's Certification with immediate effect by giving notice to the Client if ComplyNet reasonably believes that Certification is no longer appropriate.

If the Client's Certification is suspended:

- ComplyNet must within 30 days of notifying the Client of the suspension, furnish the Client with information outlining the steps that must be taken by the Client to enable the suspension to be lifted.
- The Client must immediately take all steps necessary to enable the suspension of its Certification to be lifted; and
- The client must take all steps reasonably required by ComplyNet to prevent the public being misled or otherwise harmed.

If ComplyNet is satisfied with the remedial action taken by the Client, ComplyNet may lift the suspension of Certification by notifying the Client.

ComplyNet may cancel / withdraw the Client's Certification with immediate effect by giving notice to the Client if the Client's Certification has remained suspended for a period of more than 90 days. If the Client's Certification expires or is cancelled or the Contract is terminated under clause 14, the Client must immediately:

- pay to ComplyNet all amounts due but unpaid by the Client.
- cease using any Certification Mark licensed in connection with the Client's Certification (if any);
- withdraw from public display and return to ComplyNet, as required by ComplyNet, the original and all copies of the Certificate.
- cease all advertising, promotions or other publication of the fact of Certification;
- take any steps reasonably required by ComplyNet to notify staff, customers and/or suppliers of the expiry or cancellation of Certification;
- take steps to repaint or redecorate signage or other parts of the Client's premises to remove reference to Certification;
- stop using ComplyNet confidential information and, at ComplyNet option:
- return to ComplyNet;
- destroy and certify in writing to ComplyNet the destruction of; or
- destroy and permit ComplyNet to witness the destruction of all ComplyNet confidential information in the Client's possession or control; and
- take all other necessary steps to ensure that third parties are not misled to believe that the Certification has not expired or been cancelled.

This legally enforceable arrangement shall also require that the certified client informs ComplyNet, without delay, of the occurrence of a serious incident or breach of regulation necessitating the involvement of the competent regulatory authority".

Information on incidents such as a serious accident, or a serious breach of regulation necessitating the involvement of the competent regulatory authority, provided by the certified client or directly gathered by the audit team during the audit, shall provide grounds for ComplyNet to decide on the actions to be taken, including the granting,

renewal, refusal, suspension, withdrawal, restoration, expanding or reducing the scope of certification, this information shall also be made publicly available on open source electronic media or similar for research on verification of status. In cases where it can be demonstrated that the system seriously failed to meet the OH&S certification requirements, such requirements shall be part of the contractual agreements between ComplyNet and the organization

## 6.6 Use of Certificate

The Client must not, without ComplyNet permission, alter, modify, deface or destroy the Certificate.

Subject to these terms and conditions, the Client may publicise the fact that Certification has been granted and use the Certificate as evidence of Certification.

The Client may copy the Certificate provided that each copy is clearly identified as a copy and provide the copy as part of any Company Report to its clients. The original and any copies of the certificate remain the property of ComplyNet and must be returned immediately if requested by ComplyNet. The Certificate does not imply that any Certification is approved by any accreditation authority or any Government Ministers.

## 6.7 No Misrepresentation of Certification

The Client must not:

- engage in any conduct which might mislead, deceive or confuse any person in relation to; or
- otherwise misrepresent the nature, status, scope or effect of its Certification by ComplyNet.

The Client must promptly comply with any directions given by ComplyNet to correct any conduct or misrepresentation in breach of the Terms and Conditions and the Contract.

## 7. CONFIDENTIALITY

- 7.1** ComplyNet must ensure that its employees, agents and contractors treat as confidential, and do not disclose to any other third person without the prior written consent of the Client, any proprietary or confidential information belonging to the Client with which ComplyNet becomes acquainted during the term of the Contract except that, where ComplyNet considers it appropriate, ComplyNet may disclose the Client's identity and the nature, status, scope or effect of the Client's Certification.
- 7.2** Nothing in 8.1 restricts ComplyNet from disclosing information obtained as a result of the services provided, to a relevant regulatory body, wherein ComplyNet opinion, the health or safety of another party may be compromised.
- 7.3** The Client must treat as confidential and not disclose to any third party without the prior written consent of ComplyNet any proprietary or confidential information belonging to ComplyNet.
- 7.4** The obligations of confidentiality under these terms and conditions do not extend to information that:
- is rightfully known to or in the possession or control of the receiving party and not subject to an obligation of confidentiality owed by the receiving party;
  - is public knowledge (otherwise than as a result of breach of these terms and conditions);
  - is required by an accreditation authority to be disclosed; or

- is required by law to be disclosed.

## 8. INTELLECTUAL PROPERTY RIGHTS

The Client acknowledges that:

- ComplyNet is the owner or licensee of copyright, know-how and other intellectual property rights in the Certification and Assessment Procedures and any associated documentation; and
- No right, title or interest in the Certification and Assessment Procedures or that documentation is transferred to the Client under the Contract.

## 9. LIMITATION OF LIABILITY

- 9.1 ComplyNet excludes from these terms and conditions all conditions and warranties implied by statute (including the Trade Practices Act, 1974), general law or custom except any implied condition or warranty the exclusion of which would contravene any statute or cause any part of this clause to be void ('non-excludable statutory condition').
- 9.2 ComplyNet liability to the Client for breach of any express provision of these terms and conditions or any non-excludable statutory condition (other than an implied warranty of title) is limited at ComplyNet option to:
- providing the Certification Services again; or
  - paying the cost of having the Certification Services supplied again.
- 9.3 Except to the extent prohibited by the Trade Practices Act, 1974 or any other applicable laws, ComplyNet excludes liability for any loss or damage suffered by the Client (whether direct, indirect or consequential) arising in any way out of any services (including defective services) rendered by ComplyNet or out of the Client's product, process or service the subject of Certification by ComplyNet or any negligent act or omission of ComplyNet, its officers, employees, agents or contractors, including but not limited to profits lost and damage sustained or incurred as a result of a claim by a third person.

## 10. INSURANCE

The Client must:

- take out and maintain valid and enforceable public liability, professional indemnity and workers' compensation insurance policies to cover potential liability of:
  - the Client arising out of the Contract.
- provide ComplyNet with certificates of currency and any other evidence of those policies that ComplyNet may reasonably require, if requested to do so.

## 11. INDEMNITY

The Client must indemnify ComplyNet from and against all expenses, losses, damages and costs (on a solicitor and own client basis and whether incurred by or awarded against ComplyNet and ComplyNet may sustain or incur as a result, whether directly or indirectly, of:



- any breach of these terms and conditions by the Client, including, but not limited to, a breach in respect of which ComplyNet exercises an express right to terminate these terms and conditions; or
- any loss of or damage to any property or injury to or death of any person:
  - caused by any negligent act or omission or wilful misconduct of the Client or its officers and employees; or
  - arising out of or in connection with the Client's product, process or service that is the subject of Certification.

The common law in the Commonwealth of Australia allows ComplyNet to exclude itself from professional indemnity insurance required to compensate a client for liability on the part of ComplyNet. You should be aware of this position and consider taking out professional indemnity insurance referred to in this clause that covers your organisation against this possibility.

## 12. NON-SOLICITATION OF PERSONNEL

The Client agrees not to solicit any ComplyNet officers, employees, agents or contractors during the contractor for six months after the termination of the Contract. This agreement by the Client is specifically focused on offers of employment or contract to the ComplyNet employee.

## 13. TERMINATION OF CONTRACT

- 13.1 The Client may terminate the Contract at any time by giving 30 days prior notice to ComplyNet.
- 13.2 ComplyNet may terminate the Contract with immediate effect by giving notice to the Client if:
- the Client breaches any of these terms and conditions (other than in a manner permitting suspension) and fails to remedy the breach within 30 days after receiving notice requiring it to do so;
  - the Client breaches a material provision of these terms and conditions where that breach is not capable of remedy; or
  - any event referred to in clause 14.3 happens to the Client.
- 13.3 The Client must notify ComplyNet immediately if:
- there is any change in the direct or indirect beneficial ownership or control of the Client;
  - it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - it ceases to be able to pay its debts as they become due;
  - any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operation or business;
  - any step is taken to enter into any arrangement between the Client and its creditors;
  - any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the whole or any part of its assets or business; or
  - where the Client is a partnership, any step is taken to dissolve that partnership or a partner dies.

## 14. AFTER TERMINATION

- 14.1 On termination of the Contract the Client must immediately comply with all its obligations under clause 7.
- 14.2 Clauses 8, 9, 10, 12, 13 and 15 continue after termination of the Contract.

- 14.3 Termination of the contract under clause 14 (Termination) or clause 23 (Force Majeure) does not affect any accrued rights or remedies of either party.

## 15. APPEALS

The Client may have rights of appeal against a decision made by ComplyNet. Please direct any enquiry to ComplyNet directly. The Complaints and appeals process is listed on the ComplyNet Website

## 16. ASSIGNMENT

- 16.1 ComplyNet may assign all or any of its rights under the Contract.
- 16.2 The Client must not assign or otherwise transfer all or any of its rights under the Contract without the prior written consent of ComplyNet.

## 17. SEVERABILITY

If all or any part of the Contract is found by a court of competent jurisdiction to be illegal or unenforceable, the illegal or unenforceable part(s) may be severed from the Contract and the remaining parts of the contract shall continue in force.

## 18. WAIVER

The failure of ComplyNet at any time to require performance of any obligation under the Contract is not a waiver of its right at any other time to require performance of that or any other obligation under the Contract.

## 19. RELATIONSHIP

The contract does not create any fiduciary, employment, agency or partnership relationship between ComplyNet and the Client.

## 20. NOTICE

- 20.1 A party giving notice or notifying under the Contract must do so in writing:
- directed to the recipient's address for correspondence as nominated in the Application or varied by any notice; and
  - hand delivered or sent by prepaid post or email to that address.
- 20.2 A notice given in accordance with clause 21.1 is taken to be received:
- if hand delivered, on delivery;
  - if sent by prepaid post, five days after the date of posting; or
  - if sent by email, when the sender's email system generates a message confirming successful receipt of the message.

## 21. HEADINGS

Headings are for ease of reference only and do not affect the meaning of these terms and conditions.

## 22. FORCE MAJEURE

No party is liable for any failure to perform or delay in performing its obligations under the Contract if that failure or delay is due to flood, fire, earthquake or other occurrence beyond that party's reasonable control. If that failure or delay exceeds 60 days, the other party may terminate the Contract with immediate effect by giving notice to the other party.

## 23. GOVERNING LAW AND JURISDICTION

23.1 The Contract is governed by the law applicable in the State of New South Wales

23.2 Each party submits to the non-exclusive jurisdiction of the courts of the State of New South Wales

## 24 SPECIFIC REQUIREMENTS

Notwithstanding the information set out above, the client must in all cases comply with the following:

- comply with the relevant provisions of the certification program;
- make all necessary arrangements for the conduct of the assessment including provision for examining documentation and the access to all areas, records and personnel for the purposes of assessment, surveillance, reassessment and resolution of complaints;
- only claim that it is certified with respect to those activities for which it has been granted certification;
- not use its certification in such a manner as to bring the certification body into disrepute, and not make any statement regarding its certification, which the certification body may consider misleading or unauthorised;
- upon suspension or withdrawal of its certification, discontinue use of all advertising material that contains any reference thereto and return any certification documents as required by the certification body
- ensure that no certification document, mark or report, or any part thereof is used in a misleading manner;
- use certification only to indicate that the management system is in conformity with specified standards or other normative documents, and not use its certification to imply that a product or service is approved by the certification body; and,
- in making reference to its certification in communication media such as documents, brochures or advertising, comply with the requirements of the certification body

## 25. SPECIFIC REQUIREMENTS FOR WHS CERTIFICATION ONLY

The Certification Body regulator requires that any client certified to ISO 45001 must agree to notify ComplyNet without delay of the occurrence of a serious incident or breach of regulation necessitating the involvement of the local regulatory authority (e.g. SafeWork NSW in New South Wales). Acceptance of the ComplyNet quotation is accepted as evidence that this agreement is in place. If the Client's OHSMS significantly fails to meet the certification requirements during the Client's certification cycle, the certification may be subject to suspension or termination.



**26. AGREEMENT & ACCEPTANCE**

**Client**

Name: \_\_\_\_\_

Date:

Signature \_\_\_\_\_

**ComplyNet**

Name: \_\_\_\_\_

Date:

Signature: \_\_\_\_\_

These Terms & Conditions – which are a legally binding document related to the Legal status of the Client company, any changes must be relayed to the certification body without delay

These Terms & Conditions – which are a legally binding document related to the certification status of the ComplyNet, any changes must be relayed to the Client without delay