

# CMMI 365 - Terms of Service

Version 1.1 – November 2020

THESE TERMS OF SERVICE ARE AN ADDENDUM TO THE CONTRACT EXECUTED BETWEEN COMPLIANCE POWER 365 AND YOUR COMPANY

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### 1. Summary

Thank you for your interest in the CMMI 365 software and service offerings! Please read these Terms of Service carefully before obtaining a license to the CMMI 365 system.

CMMI® is a trademark name of the CMMI Institute and ISACA. See [CMMIInstitute.com](http://CMMIInstitute.com) for further information.

#### *Terminology:*

- We refer to our company, Compliance Power 365, as “we” or “us”.
- Your Company and users of the CMMI 365 System within your company are referenced as “you” or “your Company”.

- “System” refers to the CMMI 365 System and the services offered in support of CMMI 365.

The “Agreement” between our companies consists of two documents: the Contract and the Terms of Service.

- A “Contract” will be executed between Compliance Power 365 and your Company. The Contract is a brief and simple one-page document that identifies each party, your licensing fee for the CMMI 365 system, the license duration, and our addresses for Notice. The Contract is signed and executed by the executive managers of each company.
- This document is for “Terms of Service” and serves as an addendum to the Contract. We grant you a license to use the System, and in return you compensate us and agree to abide by the terms of service. Your failure to abide by your obligations under these Terms of Service constitutes grounds for suspension or termination of the System license and revocation of your access.

You acknowledge and agree that, as provided in greater detail in this Agreement:

- The System is licensed, not sold to you, and that you may use the System only as set forth in this Agreement;
- The System is provided “as is” without warranties of any kind, and our liability to you is limited;
- You are solely responsible for protecting the privacy and legal rights of your End Users, except as provided for in a Non-Disclosure Agreement or Data Use Agreement, if any, between you and Compliance Power 365;
- Disputes arising hereunder will be resolved by binding arbitration, and BY ACCEPTING THIS AGREEMENT, YOU AND COMPLIANCE POWER 365 ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury and your claims cannot be brought as a class action. Please review the Arbitration Agreement in Section 15 below for the details regarding your agreement to arbitrate any disputes with Compliance Power 365.

This Agreement takes effect when you sign and execute the Contract that incorporates these terms by reference.

## **2. Eligibility**

You represent and warrant you have the authority to bind your organization to this Agreement and you agree to be bound by this Agreement on behalf of that organization. We may, in our sole discretion, refuse to offer the Services to any person or entity, and may change its eligibility criteria at any time.

## **3. Acceptable Use Policy**

You agree to identify a technical point of contact on your staff to act as your application administrator. We will work with your application administrator to install the System on your Microsoft 365 tenant. Your administrator will then add user accounts, assign login passwords, and grant access to the System. You are responsible for all activities that occur under your

Microsoft 365 tenant regardless of whether the activities are undertaken by you, your employees or a third party (including your contractors or agents). Your obligations include complying with all applicable laws, regulations, and ordinances, including any laws regarding the export of data or software.

You agree not to:

- Develop or create a competing product, system or service;
- Copy, modify, create a derivative work of, reverse engineer, decompile, translate, disassemble, or otherwise attempt to extract the source code of the System or any component thereof;
- Sub-license, resell, or distribute the System or any component thereof separate from any integrated application;
- Violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third-party intellectual property right;

#### **4. Fees and Charges**

The System is licensed in pre-paid 12-month increments. Fees are identified in the Contract document which is a companion to these Terms of Service.

All amounts payable are denominated in United States dollars, and you agree to pay all such amounts in United States dollars.

Late payments may bear interest at the rate of 1.5% per month (or the highest rate permitted by law, if less). Charges are exclusive of taxes. You are responsible for paying all reasonable expenses and attorney's fees we incur collecting late payments. We reserve the right to discontinue the provision of the Services to you for any late payments.

You are responsible to pay all taxes and government charges. In the event Compliance Power 365 is obligated to collect or pay taxes, those taxes will be invoiced to you, unless you provide us a timely and valid tax exemption certificate issued by the appropriate authority for each jurisdiction in which you claim exempt status.

If any deduction or withholding is required by law, you will notify us and will pay us any additional amounts necessary to ensure that the net amount that we receive, after any deduction and withholding, equals the amount we would have received if no deduction or withholding had been required. Additionally, you will provide us with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.

Our obligations. We will always try to resolve issues within a mutually acceptable timeframe. We reserve the right to take unilateral Remedial Action at any time, however, to enforce our policies. If we take Remedial Action without prior notice, we will provide the reason to you as soon as is practically possible.

If we take Remedial Action:

- 1) You remain responsible for all fees and charges you have incurred through the date of the Remedial Action;
- 2) You remain responsible for any applicable fees and charges for any Services to which you continue to have access;

3) You will not be entitled to any credits for any period of suspension.

## **5. Security Policy**

The System is provided for operation on your Microsoft 365 tenant; therefore, you are responsible for properly configuring and using the System at the application level and taking your own steps to maintain the appropriate security, privacy, and protection of your content. You are responsible to determine whether the security and privacy controls applied to your Microsoft 365 applications and data are sufficient for your requirements. We do not require, and will not request, a user account for your Microsoft 365 tenant.

## **6. System Support Policy**

We provide comprehensive installation and System start-up support:

- We'll work with your designated system administrator to support System installation on your Microsoft 365 tenant account. We do not require and will not request a user account on your Microsoft 365 tenant.
- We will designate one of our staff members to be your designated account representative. The account representative will answer and be responsive to all technical and administrative questions. Our account representatives are also CMMI subject matter experts and will, therefore, be available to your Appraisal Preparation Team for questions on the best use of the System as your company prepares for their CMMI appraisal.
- The account representative will conduct a one-hour Kick-Off video conference with your management and staff to introduce the System.
- The account representative will closely follow and support your Appraisal Preparation Team for the four weeks following the Kick-Off meeting to assure that the System is adopted and used to the fullest extent possible.
  - When/if invited, the account representative will attend the daily stand-up meetings of your Appraisal Preparation Team.
  - When/if requested, the account representative will host additional video conferences to address specific issues encountered by the Appraisal Preparation Team.
- In addition to our designated account representative, you have access to Compliance Power 365 senior leadership who are highly responsive to customer questions and issues.

We will provide technical support:

- We will answer questions about the System, services and features in a timely manner.
- We will provide limited advice regarding best practices for System deployment and adoption of the system by the user community of your company.
- We will troubleshoot System operation in collaboration with your System Administrator.

Technical support business hours:

- Normal business hours are 9:00 am to 5:00 pm Eastern.

Our technical support does not include:

- Developing your application code or debugging custom software
- Performing system administration tasks on your Microsoft 365 tenant account
- Running specialized or proprietary security scans on your on-premise or Azure servers

- Support of third-party applications, services and frameworks related to Microsoft 365

System updates:

- From time to time, we will provide System updates that include new features and software corrections. We'll provide notification to your system administrator via email, then provide the System update, then schedule a convenient time to support your system administrator when they apply the System update.

## **7. Intellectual Property**

You own Your Content. You are solely responsible for the development, operation, maintenance, and use of Your Content. You are solely responsible for compliance of content with the Acceptable Use Policy, other Policies, and any applicable laws or regulations;

Proprietary rights. This Agreement does not grant either party any rights, implied or otherwise, to the other's Content or any of the other's intellectual property. As between the parties, you own all intellectual property rights in your business processes, workflows and customer data, and we own all intellectual property rights in the System.

Notwithstanding that general principle, you consent to allow our System to deliver your Content to you and your End Users.

## **8. Your License to the System**

We grant you a limited, revocable, non-exclusive, non-sublicensable, non-transferrable license to access and use the System solely in accordance with this Agreement. This license is valid only during the term of this Agreement and is revoked upon termination. This license is subject to the following restrictions:

- Neither you nor any End User may use the System in any manner or for any purpose other than as expressly permitted by this Agreement.
- Neither you nor any End User may, or may attempt to (a) modify, alter, tamper with, repair, or otherwise create derivative works of any software included in the System (except to the extent the System is provided to you under a separate license that expressly permits the creation of derivative works), (b) reverse engineer, disassemble, or decompile the System or apply any other process or procedure to derive the source code of any software included in the System, (c) resell or sublicense the System, or (d) circumvent any security mechanisms used by the System, or any applications running on the System.
- All licenses granted to you in this Agreement are conditional on your continued compliance with this Agreement and will immediately and automatically terminate if you do not comply with any term or condition of this Agreement.
- During and after the Term, you will not assert, nor will you authorize, assist, or encourage any third party to assert, against us or any of our affiliates, customers, vendors, business partners, or licensors, any patent infringement or other intellectual property infringement claim regarding any System you have used.

Compliance Power 365 hereby grants you a limited, non-exclusive, royalty-free, non-transferable license with no right to sub-license. You may display the CMMI 365 trademark for the sole purpose of promoting or advertising that you use the System. You agree that all goodwill

generated through your use of the CMMI 365 trademarks shall inure to the benefit of Compliance Power 365.

## **9. Modification of the System**

You acknowledge and agree that the form and nature of the System provided by Compliance Power 365 may change from time to time without prior notice, subject to the terms in Section 11. Changes to the form and nature of the System will be effective with respect to all versions of the System; examples of changes to the form and nature of the System include without limitation changes to billing policies, security patches, added functionality, and other enhancements.

## **10. Termination**

The license granted in this Agreement will remain in effect, unless terminated earlier as set forth in this Agreement. Sections 7 (Intellectual Property), 10 (this Section), 12 (Indemnification), 13 (Exclusion of Warranties), 14 (Limitations of Liability), 15 (Governing Law), 15 (Governing Laws for Dispute Resolution and Arbitration), and 16 (General Terms) shall continue to be effective after this Agreement is terminated.

Unless you have executed another contractual commitment to Compliance Power 365:

- You may terminate this Agreement at any time by canceling your System license, and;
- We may, in our sole discretion for any or no reason, terminate this Agreement by canceling your license or any portion of your access to the System.

You will not receive any refunds if you terminate this Agreement. If the Agreement is terminated, all of your rights under this Agreement immediately terminate and all fees and charges (including any applicable taxes) owed by you to us are due immediately, including fees and charges for in-process tasks completed after the date of termination.

## **11. Changes to these Terms**

We reserve the right, at our discretion, to change these Terms, as well as the Policies, on a going-forward basis at any time.

If the changed Terms or Policies materially modify your rights or obligations, we may require you to provide consent by accepting the changed Terms or Policies, as applicable. If we require your acceptance of the changed Terms or Policies, changes are effective only after your acceptance.

In the event that a change to these Terms or Policies does not materially modify your rights or obligations, we will make reasonable efforts to notify you of such change. We may provide notice by sending an email to any address you may have used to register for an account, or through other similar mechanisms. These changes are effective upon publication of the changed Terms or Policies.

If you do not accept the changed Terms or Policies, we may terminate your license to use the System.

Disputes arising under this Agreement will be resolved in accordance with the version of this Agreement that was in effect between the parties at the time the dispute arose.

## **12. Indemnification**

You agree that you will be responsible for your use of the System, and if you harm someone or get in a dispute with someone else, we will not be involved. You agree to defend and indemnify Compliance Power 365 and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “Compliance Power 365 Entities”) from and against every third-party claim, liability, damage, loss, and expense, including reasonable attorneys’ fees and costs, arising out of or in any way connected with: (a) your access to, use of, or alleged use of, the System; (b) your violation of any portion of this Agreement, any representation, warranty, or agreement referenced in this Agreement, or any applicable law or regulation; (c) your violation of any third-party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of that claim. The assumption of such defense or control by us, however, shall not excuse any of your indemnity obligations.

### **13. Exclusion of Warranties**

- Except as expressly provided for herein, to the maximum extent permitted by applicable law, Compliance Power 365 does not make any other warranty of any kind, whether express, implied, statutory or otherwise, including without limitation warranties of merchantability, fitness for a particular use and noninfringement.
- Compliance Power 365 is not responsible or liable for the deletion of or failure to store any content and other communications maintained or transmitted through use of the System. You are solely responsible for securing and backing up your application and customer data, except where backup or security controls are expressly provided as features of the System.
- Compliance Power 365 does not warrant that the operation of the System will be error-free, timely, or uninterrupted.
- Compliance Power 365 does not warrant that the System will be secure, except as expressly documented. The System is not designed, manufactured, or intended for high risk activities. You understand that you use the System at your own discretion and risk.
- No advice or information, whether oral or written, obtained by you from the System or any materials or content available through the System will create any warranty regarding any of the Compliance Power 365 entities that is not expressly stated in this agreement.
- You assume all risk for any damage that may result from your use of or access to the System and any materials or content available through the System. You understand and agree that you use the System, and use, access, download, or otherwise obtain materials or content through the System and any associated sites or systems, at your own discretion and risk, and that you are solely responsible for any damage to your property (including your computer system or mobile device used in connection with the system), or the loss of data that results from the use of the System or the download or use of that material or content.

Some jurisdictions may prohibit a disclaimer of warranties and you may have other rights that vary from jurisdiction to jurisdiction.

### **14. Limitations of Liability**

- In no event will the Compliance Power 365 entities be liable to you for any indirect, incidental, special, consequential or punitive damages (including damages for loss of profits, goodwill, or any other intangible loss) arising out of or relating to your access to or use of, or your inability to access or use, the System or any materials or content on the System, whether based on warranty, contract, tort (including negligence), statute, or any other legal theory, and whether or not any Compliance Power 365 entity has been informed of the possibility of damage.
- You agree that the aggregate liability of the Compliance Power 365 entities to you for all claims arising out of or relating to the use of or any inability to use any portion of the System or otherwise under this agreement, whether in contract, tort, or otherwise, is limited to the amount paid by you to Compliance Power 365 for access to and use of the System in the 12 months prior to the claim.

Some jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages. accordingly, the above limitation may not apply to you.

Each provision of this agreement that provides for a limitation of liability, disclaimer of warranties, or exclusion of damages is to allocate the risks under this agreement between the parties. This allocation is an essential element of the basis of the bargain between the parties. Each of these provisions is severable and independent of all other provisions of this agreement. The limitations in this Section 14 will apply even if any limited remedy fails of its essential purpose.

The foregoing limitations of liability do not apply to breaches of confidentiality obligations, violations of a party's intellectual property rights by the other party, or indemnification obligations.

## **15. Governing Law**

This Agreement is governed by the laws of the Commonwealth of Virginia without regard to conflict of law principles. If a lawsuit or court proceeding is permitted under this Agreement, then, unless another location is expressly specified in this Agreement, you and Compliance Power 365 agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Virginia for the purpose of litigating any dispute.

### **Dispute Resolution and Arbitration**

- A. Generally. In the interest of resolving disputes between you and Compliance Power 365 in the most expedient and cost-effective manner, you and Compliance Power 365 agree that every dispute arising in connection with this Agreement will be resolved by binding arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of this Agreement, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of this Agreement. **YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THIS AGREEMENT, YOU AND COMPLIANCE POWER 365 ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.**



- B. Exceptions. Despite the provisions of Section 16(A), we both agree that nothing in the Agreement will be deemed to waive, preclude, or otherwise limit the right of either of us to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- C. Arbitrator. Any arbitration between you and Compliance Power 365 will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by this Agreement, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Compliance Power 365.
- D. Notice; Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or if we do not have a physical address on file for you, by electronic mail ("Notice"). The Notice must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought ("Demand"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Compliance Power 365 may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Compliance Power 365 must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If our dispute is finally resolved through arbitration in your favor, Compliance Power 365 will pay you the highest of the following: (i) the amount awarded by the arbitrator, if any; (ii) the last written settlement amount offered by Compliance Power 365 in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.
- E. Any arbitration hearing will take place at a location to be agreed upon in Virginia, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse Compliance Power 365 for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- F. No Class Actions. YOU AND COMPLIANCE POWER 365 AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Compliance Power 365 agree otherwise, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding.

- G. Modifications. If Compliance Power 365 makes any future change to this arbitration provision (other than a change of address for Notice), you may reject the change by sending us written notice within 30 days of the change to our address for Notice, in which case your license with the System will be immediately terminated and this arbitration provision, as in effect immediately prior to the amendments you reject, will survive.
- H. Enforceability. If Section 16(F) is found to be unenforceable or if the entirety of this Section 16 is found to be unenforceable, then the entirety of this Section 16 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 15 will govern any action arising out of or related to this Agreement.

## **16. General Terms**

- A. Notices. All notices to Compliance Power 365 must be in writing and addressed to [legal@CompliancePower365.com](mailto:legal@CompliancePower365.com). Notice will be treated as given on receipt as verified by written automated receipt or by electronic log (as applicable).
- B. You agree that Compliance Power 365 may provide you with notices, including those regarding changes to this Agreement, by email, or regular mail. By providing Compliance Power 365 your email address, you consent to our using the email address to send you any notices required by law in lieu of communication by postal mail.
- C. Assignment. You may not assign any part of this Agreement without our written consent. Notwithstanding the foregoing, either party may assign the entirety of its rights and obligations under this Agreement, without consent of the other party, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party.
- D. Force Majeure. Compliance Power 365 shall not be liable for failing or delaying performance of its obligations resulting from any condition beyond its reasonable control, including but not limited to, governmental action, acts of terrorism, earthquake, fire, flood or other acts of God, labor conditions, power failures, and Internet disturbances.
- E. No Agency. This Agreement does not create any agency, partnership or joint venture between the parties.
- F. No Waiver. You agree that any delay or failure of Compliance Power 365 to exercise or enforce any legal right or remedy which is contained in this Agreement (or which we have the benefit of under any applicable law), for any reason, does not constitute a formal waiver of our rights and that those rights or remedies will still be available to us.
- G. Severability. If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.
- H. No Third-Party Beneficiaries. This Agreement does not confer any benefits on any third party unless expressly stated.
- I. Equitable Relief. Subject to Section 15 (Governing Law), nothing in this Agreement will limit either party's ability to seek equitable relief.
- J. Amendments. Any amendment must be in writing, signed by both parties, and expressly state that it is amending this Agreement.
- K. Entire Agreement. This Agreement supersedes all other agreements between the parties relating to its subject matter. In entering into this Agreement, neither party has relied on, and neither party will have any right remedy based on, any statement, representation or warranty (whether made negligently or innocently), except those expressly set out in this Agreement. The terms referenced in this Agreement and the Documentation are hereby incorporated by

this reference. After the Effective Date, Compliance Power 365 may provide you with an updated URL in place of any URL in this Agreement.

- L. Interpretation of Conflicting Terms. If there is a conflict among the documents that make up this Agreement, the documents will control in the following order: the Contract, these Terms of Service, and the terms of service on the Compliance Power 365 web site.