

# CBAFF AirCertifyNZ Terms & Conditions

## 1. Introduction

- 1.1 These terms and conditions (**Programme Terms**) apply to all users of the System, and all content, services, goods and products available to users of the System through the OneReg Platform, including the Services. By using the System and/or the Services you are deemed to agree to these Programme Terms without qualification. If you do not agree to be bound by these Programme Terms, you must stop accessing and using the System and/or the Services.

## 2. Definitions

- 2.1 In these Programme Terms, unless the context indicates the contrary:

**Account Data** means all information you upload to the System.

**CAA** means the Civil Aviation Authority of New Zealand.

**CAA Rules** means the Civil Aviation Rules in force from time to time pursuant to the Civil Aviation Act 1990.

**CBAFF** means Customs Brokers and Freight Forwarders Federation of New Zealand Incorporated.

**Collected Information** is defined in clause 10.2(a).

**IVS** means Independent Verification Services Limited.

**IVS Terms and Conditions** means the general terms of trade of IVS as may be accessed at <https://www.ivslimited.co.nz/about-us/terms-of-trade> as amended from time to time.

**Known Customer** means a known customer as that term is defined in Part 109 of the CAA Rules in force from time to time in respect of one or more RACAs who are participating in the Programme.

**Known Customer Security Programme** means the security programme delivered by IVS to Known Customers as requested through the Platform.

**OneReg** means OneReg Limited.

**OneReg Platform** means the OneReg software platform.

**OneReg Subscription Agreement** means, in respect of OneReg and each RACA, the subscription agreement entered into between OneReg and that RACA, relating to the use of the OneReg Platform by the RACA.

**OneReg Terms and Conditions** means the Terms and Conditions of use of the OneReg platform as may be accessed at [www.onereg.com](http://www.onereg.com) as amended from time to time.

**Order Form** means any order for access to services, goods and products from us.

**RACA** means each member of CBAFF who is a Regulated Air Cargo Agent under Part 109 of the CAA Rules and is participating in the Programme.

**Personnel** includes all employees, officers, contractors and agents.

**Programme** means the AirCertifyNZ Programme **Services** means all services provided by us to you as requested through the System including:

- (a) making the System available to RACAs, Known Customers and the CAA through the OneReg Platform to facilitate the storage and sharing of compliance information pursuant to the CAA Rules;
- (b) our provision of the Known Customer Security Programme, including:
  - (i) Known Customer security awareness training; and
  - (ii) arranging for IVS to carry out independent verification of Known Customers pursuant to Part 109 of the CAA Rules, including evaluation of Known Customer submitted procedure, verification visits (including travel), and reporting.

**System** means the AirCertifyNZ system, accessible via the OneReg Platform at [www.onereg.com](http://www.onereg.com) or other website(s) from time to time through which we make the System available to you.

**User Type** means the type of user you access the System as, either as RACA or as Known Customer, as applicable.

2.2 In these Programme Terms, the following apply:

- (a) reference to any legislation or provision includes reference to that legislation or provision as amended or replaced from time to time;
- (b) references to **we, us or our** are references to CBAFF, IVS and OneReg; and
- (c) references to **you or your** are references to both you and any organisation or entity you are authorised to represent.

### 3. Programme Terms

3.1 All use of the System, the OneReg Platform and/or the Services shall be governed by these Programme Terms which include and incorporate by reference:

- (a) any Order Form;
- (b) the OneReg Terms and Conditions;
- (c) the IVS Terms and Conditions shall apply to all Services;

in each case, to the extent they are consistent with the express provisions of these Programme Terms. In the event of any inconsistency between these Programme Terms and the provisions of any Order Form, the OneReg Terms and Conditions or

the IVS Terms and Conditions, these Programme Terms will take precedence and apply.

#### 4. **Use of the Platform**

4.1 You will ensure that your use of the System complies with all applicable laws and any other requirements specified by us. You may not use the System in a way that infringes or violates any person's rights.

4.2 You represent and warrant that:

- (a) any information you, your Personnel or anyone authorised by you provides to us for the purposes of accessing or using the System, or which you otherwise input into the System and OneReg Platform is true, correct and accurate in all respects;
- (b) you hold all rights, consents and permissions necessary to provide or input such information.

#### 5. **Services**

5.1 You may request Services from us at any time through the System. Upon receiving your request for Services, we will, through the System, provide you with an Order Form that outlines:

- (a) the Services we will provide;
- (b) the fees you need to pay and payment terms; and
- (c) any other terms and conditions that apply,

5.2 You can complete the Order Form through the System. We will not supply Services to you without a completed Order Form that has been accepted by us.

#### 6. **Provision of services**

6.1 If we have accepted your Order Form in accordance with clause 5.2:

- (a) we will provide the Services to you, under these Terms;
- (b) we will not be liable for any delay or non-performance in providing the Services if the delay or non-performance is attributable (directly or indirectly) to circumstances beyond our reasonable control;
- (c) you may not cancel any order for Services (in full or in part) without our agreement; and
- (d) we will cease to provide the Services if our agreement with you is cancelled, terminated or suspended.

#### 7. **Fees and payments**

- 7.1 You are responsible for paying all applicable fees for use of the System and OneReg Platform and any Services ordered through the System.
- 7.2 Your use of the System requires you to pay fees based on your User Type as follows:
- (a) **RACA** – RACA's using the System through the OneReg Platform must pay subscription fees to OneReg on the terms and conditions set out in each relevant OneReg Subscription Agreement; and
  - (b) **Known Customer** – Known Customer's using the System must pay an initial fee to CBAFF for initial Known Customer verification. When you request this service you will be informed of the pricing. All fees are payable in advance,
- 7.3 We may vary fees payable by written notice through the System.
- 7.4 The price for Services to be provided by us will be as specified in the relevant Order Form. All prices and charges are expressed as exclusive of:
- (a) GST and GST will be payable by you in addition to the specified prices and charges; and
  - (b) travel charges, including all charges for travel outside of metropolitan areas (with the boundaries of such metropolitan areas being determined by us from time to time in our sole discretion), and such travel charges are payable by you in addition to any other charges specified within the relevant Order Form.
- 7.5 Payment for all Services ordered through the System must be made to CBAFF, in accordance with any payment instructions advised by CBAFF, in advance of the provision of such Services. Unless we otherwise agree, we will not provide and are under no obligation to provide such Services until we have received payment in full and in cleared funds in accordance with our payment instructions.
- 7.6 The price of some Services will be calculated on a time and attendance basis as specified in the relevant Order Form.
- 7.7 Where we provide you Services without receiving payment in advance for those Services payment for those Services will be due on the date stated in the Order Form or invoice issued by us in relation to those Services. If there is no date stated in the relevant Order Form or invoice, the due date for payment will be the 10th of the month following the date of the relevant Order Form or Invoice unless we have requested payment before this date.
- 7.8 If you fail to make payment on the due date for payment in accordance with clause 7.7 above, then you will pay us default interest calculated as 5% above the average monthly base commercial lending rate from time to time charged by our bank. Interest will be calculated monthly and payable on demand.
- 7.9 You agree to indemnify us and hold us harmless against any and all losses, damage, expenses, disbursements and costs incurred or suffered by us in the enforcement of any rights contained in these Programme Terms against you, including any solicitor's fees (on a solicitor and own client basis) or debt collection agency fees.

## 8. **Known Customer Obligations**

- 8.1 This clause 8 applies to you if you are accessing the System and/or the Services as a Known Customer.
- 8.2 You confirm that we may engage IVS to carry out independent verifications in respect of your compliance obligations as a Known Customer. IVS may input the results of the verification into the System.
- 8.3 You will comply with any and all requirements of the CAA and IVS in relation to the Programme as we advise to you, from time to time.
- 8.4 You may, through the System, select the RACA(s) in respect of whom you wish to be a Known Customer. You acknowledge and agree that we may share all or any part of the information collected from or about you with any such RACA you have selected and with the CAA. Such information may be shared through the System or via any other means we choose.
- 8.5 If you access the System and/or the Services as a Known Customer, you must:
- (a) ensure that you, your Personnel and all persons authorised by you are aware of, and comply with, these Programme Terms;
  - (b) pay any fees accrued by you and all persons authorised by you to use the System and/or receive the Services.
  - (c) verify the accuracy and completeness of any information that you, your Personnel or anyone authorised by you inputs into the System or otherwise provides to IVS;
  - (d) co-operate with us to enable us to deliver the Services available in a timely and efficient manner;
  - (e) provide all records and information reasonably requested by us and ensure that such information is accurate;
  - (f) provide us with access to your premises at reasonable times as requested by us; and
  - (g) provide all reasonable assistance and/or information as may be required by us to assist us in the delivery of the Services, including full co-operation with Known Customer Security Programme audit requirements.
- 8.6 If you do not provide any information reasonably requested by us in accordance with this clause 8, you acknowledge that:
- (a) we may be unable to provide the Services (including the independent verification required by the Known Customer Security Programme audit); and
  - (b) we may report your non-response and identity to the CAA (including via the System or in any other way).

## 9. RACA obligations

9.1 This clause 9 applies to you if you are accessing the System and/or the Services as a RACA.

9.2 If you access the System as a RACA, you must:

- (a) ensure that you, your Personnel and all persons authorised by you to use the System are aware of, and comply with, these Programme Terms;
- (b) pay any fees accrued by you, your Personnel and all persons authorised by you to use the System;
- (c) verify the accuracy and completeness of any information that you, your Personnel or anyone authorised by you inputs into the System;
- (d) co-operate with us to enable us to deliver the Services in a timely and efficient manner;
- (e) provide all records and information reasonably requested by us and ensure that such information is accurate; and
- (f) provide such reasonable assistance or information as may be required by us to assist us in the delivery of the Services.

9.3 If you do not provide any information reasonably requested by us in accordance with clause 9.2 above, you acknowledge that we may report your non-response and identity to the CAA.

9.4 You will comply with any requirements of the CAA and IVS in relation to the Programme as we advise to you, from time to time.

9.5 You are responsible for understanding and complying with all applicable laws, rules and regulations in force from time to time, including the CAA Act, the CAA Rules and any directions from the CAA.

## 10. Information

10.1 Each of IVS, OneReg and CBAAFF will collect, store, use, and disclose Collected Information which may include personal information in accordance with this clause 10 and, to the extent Collected Information includes personal information, this will also be in accordance with their own privacy policies available at each of their websites.

10.2 You agree and acknowledge that:

- (a) you authorise us to collect any information (**Collected Information**) about you, your business or organisation that we consider desirable or which we consider may be required or useful to collect for the Key Purposes;
- (b) for the purposes of this clause, the term **Collected Information** includes:
  - (i) Account Data;

- (ii) details and documents relating to independent verifications carried out pursuant to Part 109 of the CAA Rules;
  - (iii) information about incidents or non-compliance with the CAA Rules;
  - (iv) correspondence with and documents submitted between RACAs, Known Customers and the CAA;
  - (v) information and data derived from the Collected Information, including any reports and/or information generated with, from or using the Collected Information by CBAFF, IVS, OneReg, applicable RACAs (per clause 8.5 above), the CAA and/or any other person; and
  - (vi) information about your use of the Services and the System (including metadata);
- (c) given the System is intended to provide a means of simplifying the sharing of information which must be shared between Known Customers, RACAs and the CAA for regulatory purposes, no part of the Collected Information is confidential and such information is not imparted by you and collected by us in circumstances implying a duty of confidence;
- (d) we may freely store, use and disclose the Collected Information for any purpose (including the Key Purposes); and
- (a) we may directly or indirectly and via the System or otherwise:
- (i) disclose Collected Information relating to Known Customers to RACAs (where you are linked as a Known Customer to that RACA);
  - (ii) at our option, disclose Collected Information about both Known Customers and RACAs to the courts, law enforcement agencies, and other government or regulatory agencies, including the CAA;
  - (iii) issue press releases or respond to all press or other enquiries received by us, as we consider appropriate, and such releases or responses may relate to or include the Collected Information; and
  - (iv) disclose Collected Information to media organisations, interest groups and other international organisations.
- (b) the **Key Purposes** referred to in this clause are:
- (i) the purpose of providing, marketing or making improvements or modifications to the System and/or Services;
  - (ii) the purpose of complying with our legal requirements and facilitating RACA's and Known Customers to comply with their legal requirements, including the requirements of:
    - (1) the CAA or the CAA Rules or any other applicable law, regulation;

- (2) any contractual commitments we have entered into or do enter into in the future;
  - (3) any directive or request by a government or regulatory agency; or
- (iii) any other reasonable purpose that we may notify to you from time to time.

## 11. **General warranties**

### 11.1 You represent and warrant that:

- (a) all information provided to us by you, your Personnel or anyone authorised by you is true and correct; and
- (b) your performance of your obligations under these Programme Terms will not breach or conflict with any applicable law, agreement, mortgage or other security interest to which you are subject.

## 12. **New Zealand**

- 12.1 The System is operated from New Zealand. The System may not be appropriate or available for use in other jurisdictions. If you choose to access the System from a jurisdiction other than New Zealand, you do so on your own initiative and fully at your own risk. You are responsible for compliance with any applicable laws of that jurisdiction.

## 13. **Intellectual Property Rights**

- 13.1 We own or have rights in all legal rights, titles and interests in and to any and all elements of the System and the Services including any and all intellectual property. No part of the System and the Services including any trade marks or logos, may be distributed or copied and you are not permitted for any purpose to incorporate the contents of the System and the Services or any part of it in any other work or publication (whether in hard copy, electronic or any other form) without our prior written consent.

## 14. **Links Provided**

- 14.1 We will not be responsible for the contents of any linked sites or be liable for any direct or indirect loss or damage suffered by you from accessing, using, relying on or trading with third parties. The inclusion of any linked site does not imply any endorsement of it by us or any association with its operators.

## 15. **Disclaimer**

- 15.1 To the fullest extent permitted by law, use of the System, including to carry out any transactions or to receive and use the Services, is at your own risk. We are not responsible for any adverse consequences arising out of such use. We are also not responsible for any content, representations, statements, services, products or other information or data posted into the System by you or by any other RACA, Known Customer, the CAA or any other third party. The System has not been prepared by taking into account the particular objectives, situation or needs of any individual users.



15.2 We give no warranty that the System or the Services meet your compliance or legal requirements (including any requirements under the CAA Rules), and you are responsible for ensuring the System and the Services continue to meet your needs.

## 16. **Contracting Out**

16.1 Notwithstanding anything to the contrary, you acknowledge and agree that:

- (a) both you and us are in trade;
- (b) the System and the Services (and all content, services and products available through the System) are supplied by us in trade for business purposes and are acquired by you in trade for business purposes;
- (c) it is fair and reasonable for you and us to contract out of the provisions of the Consumer Guarantees Act 1993 and sections 9, 12A and 13 of the Fair Trading Act 1986, and those provisions do not apply to these terms; and
- (d) the provisions of part 3 (Sale of Goods) of the Contract and Commercial Law Act 2017 will not apply to these Programme Terms or to the supply of any goods or services by us to you.

16.2 If these Programme Terms (or any contract into which they are incorporated) constitute a standard form small trade contract, as defined in the Fair Trading Act 1986, as between you and us, any provision of these Programme Terms which is declared to be an unfair contract term will not apply to you.

## 17. **Limitation of liability**

17.1 To the fullest extent permitted by law, we exclude:

- (a) all warranties, representations and guarantees in relation to the System and the Services including in relation to the use of the System to carry out transactions, any content on the System and any other services provided through or in conjunction with the System whether implied, statutory or otherwise and we will not be responsible for any errors or misstatements in the System;
- (b) all warranties about the suitability of the System and any services provided through or in conjunction with the System, including the Services, for your intended use, continuity of access, noninfringement of intellectual property and any implied warranties of merchantability or fitness for purpose;
- (c) all liability for any loss or damage which you may sustain or suffer whatsoever out of or in connection with the supply of the Services or as a result of your use of the System or as the result of any act or omission by us; and
- (d) any special, indirect or consequential loss or damage, including loss of profits, loss of business, or loss of goodwill or loss of opportunity, in any circumstances whatsoever.

17.2 To the extent we have any liability to you, our liability is limited to \$500.

## 18. **Health and safety**

- 18.1 In providing the Services, IVS staff may visit your premises. Without limiting any other provisions in these Programme Terms, you will comply with and procure that your Personnel comply with any policies and directions given by us or IVS in respect of health and safety or related matters.
- 18.2 You will immediately notify us in respect of any failure to comply with the policies and directions referred to in paragraph 18.1.
- 18.3 You will take all practicable steps to ensure the safety and health of IVS and its Personnel and any recipients of the Services. This includes complying with the requirements of clause 18.1.
- 18.4 You will work, consult, co-operate and co-ordinate activities in order to meet your and our respective health and safety obligations under these Programme Terms and under any applicable laws or regulations.

## 19. **Indemnity**

- 19.1 You will take all necessary action to defend, indemnify and hold harmless us and our Personnel against all loss, damage, costs, expenses and liabilities incurred or suffered in connection with any claim brought by a third party against us arising from a breach by you or your Personnel of any of these Programme Terms.

## 20. **Change to terms of use**

- 20.1 We reserve the right to change these Programme Terms at any time by notifying users of the existence of the amended Programme Terms through the System. By continuing to access the System and the Services, you agree to be bound by the amended Programme Terms.

## 21. **Entire agreement**

- 21.1 These Programme Terms, including any document or agreement incorporated by reference, and the OneReg Subscription Agreement form the entire agreement between us and you relating to the Use of the System and your use of the Services available through or in conjunction with the System. Our agents and representatives have no authority to make any oral representations, statements, warranties, conditions, or agreements that conflict with these terms.

## 22. **Contact**

- 22.1 You have the right to request access to the personal information we hold about you. If you would like to request access, or correct any personal information we hold about you or if you have any questions or concerns in relation to these Programme Terms, please contact us by [aircertifynz@cbaff.org.nz](mailto:aircertifynz@cbaff.org.nz)

## 23. **Governing Law**

- 23.1 Your use of the System, and any transactions carried out on the System, is governed by New Zealand Law.

## 24. Relationship

24.1 Nothing in these Programme Terms shall be construed as implying any fiduciary relationship, partnership, agency relationship or employer/employee relationship as between:

- (a) CBAFF, OneReg and IVS;
- (b) between us and any RACA or Known Customer; and
- (c) between you and us.

## 25. General

25.1 If at any time we do not enforce any of these Programme Terms or grant you time or other indulgence, we will not be construed as having waived that term or condition or our rights to later enforce that or any other term or condition. Further, if any part or provision of these Programme Terms is deemed to be invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remaining terms and conditions will be binding on the parties. You may not assign or delegate any rights or obligations under these terms.

## 26. Force majeure

26.1 We will not be liable for any delay or failure to perform our obligations under these Programme Terms or to deliver the Services if the cause of the delay or failure is beyond our control.

## 27. Privity

27.1 You acknowledge for the purposes of subpart 1 of Part 2 of the Contract and Commercial Law Act 2017 that the obligations contained in these Programme Terms are inserted for the benefit of and are intended to create obligations enforceable at the suit of each of CBAFF, IVS and OneReg.

## 28. Termination

28.1 We have the right to terminate these Programme Terms and cancel or suspend our agreement with you, including any Order Form, for any reason we deem necessary. You agree that we are not required to provide you with any advanced notice of any suspension or termination, and that we are not required to provide you with any advanced notice of termination of our agreement with you, and that we are not liable to you or any other third party for any damages or consequences caused by any such suspension or termination.