

## CCH Signatures Terms of Use

These terms of use (**Terms**) set out the respective obligations of CCH Australia Limited (NZBN ABN 95 096 903 365) (**CCH**) and the Customer, and form a legally binding agreement between the parties. Please read these Terms carefully.

These Terms, as amended from time to time, apply to the Customer and any use of the Application from the Commencement Date.

By indicating acceptance of the Application, either electronically or otherwise, or by accessing or otherwise using any part of the Application, the Customer acknowledges and agrees that it has read, understood and accepts to be bound by these Terms.

CCH reserves the right to alter, amend, modify or otherwise update these Terms in its sole and absolute discretion, from time to time. Updates will be effective upon the date of publication or notification. CCH will make reasonable efforts to communicate any updates to the Customer via email or notification on the Website. By continuing to use the Application after publication of any updates, the Customer acknowledges and agrees that it has read, understood and accepts to be bound by these Terms as altered, amended, modified or otherwise updated.

### 1. Definitions

1.1. In these Terms, unless the context otherwise requires:

**Acceptance Form** means a written confirmation of the order placed by the Customer with CCH, which documents the Customer's Subscription to the Application. The Acceptance Form incorporates and is subject to these Terms.

**Application** means the CCH Signatures software application and/or functionality, which is made available by CCH to the Customer under these Terms, and as altered, amended, modified or otherwise updated from time to time by CCH in its sole and absolute discretion.

**Authorised User** means an officer, employee, agent, independent contractor or advisor of the Customer who is authorised by the Customer to access or use the Application for the purpose of the Customer's day-to-day business activities.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales, Australia.

**Business Hours** means 6:30am to 7:30pm Sydney time on any given Business Day.

**Business Purposes** means the Customer's internal business purposes, which may include execution (or facilitation of execution) of Documents relevant or connected to those purposes by the Customer and/or Consumers.

**Claims** means any claim, demand, suit, action, cause of action, proceeding or judgment of any kind however caused, and whether arising under contract, tort, equity, statute or otherwise.

**Consumer** means any person or entity (other than the Customer) who or which is a signatory to a Document generated and sent to that Consumer by any Authorised User of the Customer.

**Commencement Date** means the earlier of, the date on which the Customer signs the Acceptance Form or the date the Customer first accesses the Application.

**Confidential Information** means information that is confidential to a party and includes all information exchanged between the parties, whether in writing, electronically or orally (including, the provisions of these Terms and any Acceptance Form, information relating to the Application

and information relating to the personnel, policies and business operations of the parties), but excludes information to the extent it:

- (a) Is or becomes publicly available other than through unauthorised disclosure by a party;
- (b) Is received from a third-party who lawfully acquired it and who is under no obligation restricting its disclosure;
- (c) Is in the possession of a party without restriction before the date of receipt from the disclosing party; or
- (d) Is independently developed without access to the Confidential Information.

**Consequential Loss** means any consequential loss, damage or costs or any loss of income, loss of revenue, loss of profit, loss of goodwill, loss of use, loss of financial opportunity, financing costs, loss of or interruption to business or loss of business opportunity, loss from third-party claims or failure to realise anticipated savings, whether the loss is direct or indirect.

**Customer** means the person or entity identified as the Customer in the Acceptance Form.

**Customer Data** means all Documents, signatory names and details, data, information, records or files that are uploaded to, entered in, or stored on the Application by or on behalf of the Customer, excluding De-identified Data.

**De-identified Data** means all information relating to the Customer's or any Authorised User's use of the Application that does not identify the Customer, Authorised Users, Consumers or any other individual, including:

- (a) Customer Data that has been altered so it does not identify the Customer, Authorised Users, Consumers or any other individual;
- (b) Information relating to the access or usage patterns of the Application by or on behalf of the Customer or any Authorised User and general and demographic information about the Customer's and any Authorised User's computer systems from which an Application is being accessed (for example, system configuration, type of internet connectivity, RAM, CPU, operating system, browser version); and
- (c) Any statistical or other analysis, information or data based on or derived from any of the foregoing.

**Document** means any contract, resolution, form, agreement, or similar document that the Customer signs and/or facilitates the signing of using the functionality of the Application.

**Envelope** means an electronic package containing one or more Documents, where each Document may require or contain one or more signature(s). The Fees payable by the Customer are based on the number of bundles of Envelopes purchased by the Customer.

**Fees** means the amounts payable by the Customer to CCH as set out in the Acceptance Form and in accordance with these Terms.

**GST Legislation** means the *A New Tax System Goods and Services Tax Act 1999* (Cth) and related Acts passed by the Federal Government; and **GST** means the goods and services tax payable pursuant to that GST Legislation.

**Initial Term** means the period specified as the minimum period in the Acceptance Form.

**Intellectual Property Rights** means all present and future intellectual property rights existing anywhere in the world, whether protected at common law or under statute, including:

- (a) Copyright, trade marks, designs, patents and inventions, whether or not registered;
- (b) Any application or rights to apply to register, revive or extend any of the rights referred to in paragraph (a); and
- (c) All other intellectual property as defined in article 2 of the Convention establishing the World Intellectual Property Organisation 1967.

**Moral Rights** means a right:

- (a) A right of attribution of authorship;
- (b) A right not to have authorship falsely attributed;
- (c) A right of integrity of authorship; and/or
- (d) A right of a similar nature,

Which is conferred by statute, and which exists or come to exist anywhere in the world.

**Online Account** means an account created for the purpose of an Authorised User's access or use of the Application, and includes the controls, permissions and data unique to such Authorised User.

**Online Account Access Information** means an Authorised User's private information used to access their Online Account, including their username and password.

**Personal Information** has the meaning given in Privacy Laws.

**Privacy Laws** means the *Privacy Act 1988* (Cth), including the *Australian Privacy Principles*, and any other applicable privacy legislation as may be in force from time to time.

**Product Terms** means any additional terms and conditions applicable to a particular Application.

**Related Body Corporate** has the meaning given in section 50 of the *Corporations 2001* (Cth)..

**Representatives** means, with respect to a party, any of that party's directors, officers, employees, independent contractors, agents, consultants, advisors, and other representatives.

**Services** means the services described in the Acceptance Form to be delivered by CCH to the Customer under these Terms.

**Support Services** means remote support services in relation to the Application as identified in the Acceptance Form, as CCH provides generally to customers as part of its then-current support program as set out on the Website for the Application.

**Subscription** means the Customer's level of access to the Application, as set out in the Acceptance Form and in accordance with these Terms.

**Term** means the Initial Term and any subsequent renewal term, in accordance with clause 11.1.

**Territory** means the territory set out in the Acceptance Form and, if no territory is specified, Australia.

**Website** means any website notified by CCH to the Customer from time to time for the purpose of the Customer accessing or using the Application.

**User Data** means data relating to the Customer and/or Authorised Users necessary for CCH to provide the Application and Services, and enforce these Terms (for example, contact details, usage data, billing and account management information).

## 2. Interpretation

2.1. In these Terms, unless the context otherwise requires:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation.
- (b) These Terms must not be interpreted adversely to a party only because that party was responsible for preparing them.
- (c) Headings are for convenience or reference only and do not affect the interpretation of these Terms.
- (d) Words denoting the singular includes the plural and vice versa.

- (e) References to a person or words denoting a person includes a company, statutory corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.
- (f) References to any gender includes all genders.
- (g) Where any word or phrase is defined in these Terms, any other grammatical form of that word or phrase will have a corresponding meaning.
- (h) The words “include”, “includes”, “including”, “for example”, “such as” and similar expressions are not words of limitation.
- (i) References to a “clause”, “paragraph” or “addendum” is to a clause, paragraph or addendum of these Terms.
- (j) Parties must perform their obligations on the dates and times fixed by reference to Sydney, New South Wales, Australia.
- (k) If the day on or by which anything is to be done is not a Business Day, then it must be done by the next Business Day.
- (l) All monetary amounts are in Australian dollars.
- (m) References to a “party” or “parties” are references to a party or parties of these Terms.
- (n) References to a party are intended to bind their executors, administrators and permitted transferees.
- (o) Obligations under these Terms affecting more than one party bind them jointly and each of them severally.
- (p) References to any agreement or other document annexed to or referred to in these Terms includes any amendments to it and any documents in addition to or in substitution for it which has been approved in writing by the parties to these Terms.

### **3. Rights and Conditions of Use**

#### **3.1. Right to Use**

CCH grants the Customer a limited, non-exclusive, non-transferable right to access and use the Application within the Territory during the Term solely for the Customer’s Business Purposes, as set out in these Terms.

#### **3.2. Reservation of Rights**

CCH reserves all rights in the Application not expressly granted in these Terms. Without limiting the generality of this clause, any right to access and use the Application does not include the right to access any underlying components of the Application, CCH’s underlying application engines, other applications published by CCH or its Related Body Corporate, or the operating environment within which the Application operates.

#### **3.3. Authorised Users**

The Customer may permit an Authorised User to use the Application. The Customer must purchase a bundle of Envelopes which allows Authorised Users to use the Application and must not permit any person other than an Authorised User to use or access the Application. The Customer must ensure each Authorised User complies with these Terms. An Authorised User does not acquire individual rights in the Application, but may access and use the Application on the Customer’s behalf and subject always to the Customer’s rights and obligations under these Terms.

#### **3.4. Conditions of Use**

CCH's provision, and Customer's use, of the Application is conditional upon and subject to the Customer agreeing to and complying with the following:

- (a) The purpose and functionality of the Application is limited to providing a means for

contracting parties to execute a Document electronically. Use of that functionality (and any other functionality provided by the Application) does not constitute an endorsement, validation, acceptance of responsibility, representation or warranty by CCH or any of its Related Body Corporate regarding the format, quality, content or subject matter of the any Document processed or executed using the Functionality which shall remain (as between CCH and the Customer) the Customer's sole responsibility.

- (b) The Customer agrees and acknowledges that CCH's sole obligation is to make the Application available in accordance with these Terms, and that nothing in these Terms shall be deemed to join CCH or any of its Related Body Corporate as a party to any Document that is processed or executed using the Application.
- (c) As between CCH and the Customer, the Customer is solely responsible for ensuring that applicable law permits and recognizes electronic or digital signatures in respect of the Document(s) in question, and in the context and circumstances in which the relevant Document(s) is to be executed (including the identity and characteristics of the parties to the Document, the subject matter of the Document, requirements under statute and applicable laws, and formalities required by each party's constitution, trust deed, articles of incorporation or other applicable governing document).
- (d) The Customer acknowledges and agrees CCH does not store or retain any Documents, information, documentation and/or records resulting from the Customer's use of such digital signature functionality, including any digital signature audit trail (other than for an initial period of 90 days in accordance with clause **Error! Reference source not found.**). It is the Customer's sole responsibility to backup and maintain on the Customer's own systems all of the Customer's digital/electronic signature information as required by applicable laws, rules and regulations.
- (e) Consumers will be required to agree to CCH's Collection Notice and other terms required by CCH before being able to use the Application or access Documents for signature.

### 3.5. Application Restrictions

The Customer must not do or attempt to do, or permit others to do or attempt to do, any of the following:

- (a) Possess, download, copy or print the Application or any part of the Application, including any component comprised in the Application;
- (b) Modify, port, adapt or create derivative works based on the Application;
- (c) View, read, reverse compile, reverse assemble, disassemble or print the Application's source code or object code or other runtime objects or files related to the Application or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any part of the Application;
- (d) Rent, lease, distribute (or redistribute), provide or otherwise make available the Application, in any form, to any third-party (including in any service bureau or similar environment), other than to Consumers in accordance with clause 3.4(e);
- (e) Share use of, or access to the Application with other persons (including service providers performing work for the Customer) who are not Authorised Users, even where the Customer shares office space or equipment;
- (f) Share any Online Account or Online Account Access Information with third-parties;
- (g) Create any "links" to or "frame" or "mirror" the Application or any part of the Application;
- (h) Defeat, disable or circumvent any protection or security mechanism related to the Application;
- (i) Use the Application to process the data of a third-party's clients, whether on an outsourcing, service bureau or other basis;

- (j) Use or misuse the Application in any way which may impair the functionality of the Application or Website, or impair the ability of any other user to use the Application or Website;
- (k) Transmit or input into the Application any files that may damage any person's computing devices or software, content that may be offensive, or material or data in violation of any law, including data or other material protected by Intellectual Property Rights, which the Customer does not have the right to use; or
- (l) Violate the security of CCH's networks or servers, including by:
  - (i) Accessing data not intended for the Customer or logging into a server, system or account which the Customer is not authorised to access;
  - (ii) Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without CCH's proper written request and authorisation; or
  - (iii) Attempting to interfere with service to any user, host or network, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing.

### **3.6. Online Account Access Information**

- (a) CCH will provide the Customer with the means to create unique Online Account Access Information for Authorised Users for the purpose of logging into their Online Account. An Online Account must be used by one Authorised User only and must only be accessed using an Authorised User's Online Account Access Information.
- (b) On CCH's request, the Customer must provide CCH with a list of Authorised Users.
- (c) The Customer acknowledges and agrees that it is solely and entirely responsible for protecting and keeping confidential Online Account Access Information and is responsible for the use of the Application by the Customer and Authorised Users in accordance with these Terms.
- (d) The Customer acknowledges and agrees to promptly:
  - (i) Notify CCH in writing of any unauthorised use of Online Account Access Information or any other breach of security upon becoming aware of such use or breach;
  - (ii) Assist CCH in preventing any recurrence of any unauthorised use or breach of security; or
  - (iii) Otherwise cooperate fully with any directions issued by CCH in connection with any unauthorised use or breach of security, including with any proceedings or other actions undertaken to protect the rights of CCH.

### **3.7. Communication Conditions**

- (a) If the Customer uses any communication tools available through the Website, the Customer agrees only to use such communication tools for lawful and legitimate purposes only. The Customer must not use any communication tools for posting or disseminating material unrelated to the use of the Application including, offers of goods or services for sale, files that may damage any person's computing devices or software, content that may be offensive to any other users or material in violation of any law, including material that may breach Intellectual Property Rights.
- (b) When the Customer makes any communication on or via the Application, the Customer represents that it owns the content of the communication. CCH is under no obligation to ensure that communications on or via the Application are legitimate or that they are related only to the use of the Application. As with any other web-based forum, the Customer must exercise caution when using any communication tools available on or via any Application. CCH reserves the right in its sole and absolute discretion to remove any

communication at any time.

### 3.8. Data

- (a) The Customer is the sole and exclusive owner of all right, title, and interest in Customer Data (including Documents). CCH and its subcontractors may only use Customer Data as necessary to provide the Application and Services, as permitted or required by law, as expressly authorised under these Terms, and as otherwise authorised by the Customer in writing. The Customer grants CCH a limited licence to use Customer Data for such uses.
- (b) CCH is the sole and exclusive owner of all right, title, and interest in User Data. To the extent the User Data includes or constitutes Personal Information, CCH's published Privacy Statement (as updated from time to time) shall apply.
- (c) CCH may disclose Customer Data and User Data to its subcontractors and third-party service providers for the purpose of providing the Application and Services.
- (d) For Customers located in Australia or New Zealand, the storage location of Customer Data is the United States and the storage location of User Data is Australia.
- (e) During the Term, CCH will retain Documents and details related to signatories of those Documents for a period of up to 90 days following execution of the relevant Document, before permanently deleting. The Customer must keep its own copies of Documents as required for its retention and record-keeping purposes. CCH will retain User Data in accordance with its internal business practices.
- (f) CCH is and remains the sole and exclusive owner of all right, title and interest in De-identified Data. CCH may use De-identified Data in any manner, including for its own business purposes, such as for benchmarking and for the support, improvement, and development of the Application or other CCH products and services.
- (g) CCH may make copies of Customer Data for the purpose of providing the Customer with Support Services and/or other Services.
- (h) CCH takes reasonable safeguards intended to prevent loss or unauthorised disclosure of Customer Data. The Customer acknowledges and agrees that security safeguards by their nature are capable of circumvention and that CCH does not and cannot guarantee that Customer Data, or the Application cannot be accessed by unauthorised persons. CCH will not be responsible or liable for any such unauthorised access or for loss of Customer Data, nor will any such unauthorised access or loss constitute a breach by CCH of its confidentiality obligations under these Terms. Nothing in these Terms will be deemed to diminish the Customer's responsibility for complying with applicable laws or standards regarding the protection of Customer Data. In the event notification to persons whose details are included in Customer Data is required, the Customer will be responsible for any such notifications at its own cost.
- (i) CCH reserves the right in its sole and absolute discretion at any time, to remove any Customer Data that it believes to be in violation of these Terms.
- (j) The Customer represents, warrants and covenants that it must not upload or transmit any Customer Data that:
  - (i) The Customer does not have the lawful right to copy, transmit, distribute and display (including any Customer Data the upload or transmission of which would violate any confidentiality or fiduciary obligations the Customer might be subject to);
  - (ii) Is Personal Information, unless the Customer has complied with applicable Privacy Laws, including as such laws apply to the upload, transmission and processing of Customer Data;
  - (iii) Infringes, misappropriates or otherwise violates any Intellectual Property Rights

or other proprietary rights or violates any other rights of any third-party; or

- (iv) The upload or transmission of which would otherwise violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability.
- (k) The Customer represents, warrants and covenants that CCH's storage and/or use of Customer Data in accordance with these Terms will not infringe, misappropriate or otherwise violate any Intellectual Property Rights, or other rights, of any third-party or any applicable laws, including Privacy Laws.
- (l) The Customer represents, warrants and covenants that it has sole responsibility for the accuracy, quality, integrity, reliability and appropriateness of Customer Data.
- (m) To the extent the Customer needs to upload or transmit to CCH's servers any Customer Data subject to the General Data Protection Regulation (EU) 2016/679, the Customer must first contact CCH at AU-Privacy@wolterskluwer.com and CCH will provide the Customer with an addendum outlining the terms and conditions of CCH's processing of such Customer Data pursuant to these Terms.

### **3.9. Additional Online Terms**

CCH may post these Terms and/or additional relevant terms, conditions and/or policies (**Online Terms**) at the Website. The Customer will be subject to all Online Terms on and from the date on which such Online Terms are first posted.

### **3.10. Product Terms**

The Customer acknowledges and agrees that its use of any Application is subject to these Terms and any relevant Product Terms.

### **3.11. Internet Connectivity**

The Customer acknowledges and agrees that:

- (a) Use of the Application requires the Customer to have Internet connectivity;
- (b) The Customer is solely responsible, at its own cost, for all necessary hardware, applications and Internet connectivity required to access the Application;
- (c) The Internet is known to be unpredictable in performance and may, from time to time, impede access to or performance of the Application; and
- (d) CCH is in no way responsible for any interference with the Customer's access or use of the Application arising from or attributable to the Internet and the Customer waives any and all claims against CCH in this regard.

### **3.12. Compliance Mechanisms**

The Application may contain technological copy protection or other security features designed to prevent unauthorised use of the Application, including features to protect against use of the Application beyond the scope of the licence granted under clause 3.1 or the Application restrictions detailed in clause 3.5. The Customer must not, and must not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.

### **3.13. Unauthorised Acquisition**

CCH expressly prohibits the use of any product or service from CCH that has been improperly obtained and/or accessed. For example, any CCH product or service that:

- (a) Is acquired from an unauthorised reseller or distributor;
- (b) Is pirated, cracked or hacked, including through the use of Online Account Access Information established for use by another person;
- (c) Has been acquired with the intent or for the purpose of using in a manner that is illegal,



fraudulent, in violation of these Terms or otherwise outside the normal, stated and/or reasonably understood purpose of such product or service; or

- (d) Is acquired with the use of false or inaccurate statements and/or information, for example false name, contact information or payment information, or false declaration of the total number of end users.

#### **3.14. Reservation of Rights and Ownership of Developed Materials**

- (a) CCH, its Related Body Corporate and any applicable licensors, retain all Intellectual Property Rights and other proprietary rights in the Application. Any unauthorised use of the Application will result in termination of these Terms as well as possible civil damages and criminal penalties. The Customer is not permitted to use "CCH", "CCH Signatures" or any other Intellectual Property Rights of CCH or any of its Related Body Corporate in the Customer's announcements, advertising or other materials, unless CCH expressly agrees in writing.
- (b) The Customer acknowledges and agrees that CCH, its Related Body Corporate and any applicable licensors' retention of contractual and Intellectual Property Rights is an essential part of these Terms. CCH, its Related Body Corporate and any applicable licensors will own, and the Customer will assign to CCH all rights in:
  - (i) Any copy, translation, modification, adaptation or derivative work of the Application, including any improvement to or development of the Application, whether provided, developed or generated as part of Support Services, Services or otherwise, and whether or not developed by or for the Customer, and
  - (ii) Any suggestions, ideas, enhancement requests, feedback or recommendations provided by or on behalf of the Customer.

#### **3.15. Suspension**

- (a) In addition to any other suspension or termination rights of CCH under these Terms, CCH may suspend or terminate the Customer's access to and/or use of, or otherwise modify, the Application and/or any component thereof, and/or any Online Account or any Online Account Access Information without notice:
  - (i) In the event the Customer, including any Authorised User, Consumer, or other person or entity acting through or on behalf of the Customer, is determined by CCH, in CCH's sole judgment, to have or attempted to have damaged, harmed or misused the Application, Website or CCH's software, server, network or other systems;
  - (ii) As necessary or appropriate to comply with any law, regulation, court order, or other governmental request or order or otherwise protect CCH from potential legal liability or harm to its business; or
  - (iii) If the Customer has obtained unauthorised access to the Application as described in clause 3.13.
- (b) CCH will use reasonable efforts to notify the Customer of the reasons for such suspension or termination as soon as reasonably practicable, unless such action is due to clause 3.13. In the event of a suspension, other than due to clause 3.13, CCH will promptly restore the Customer's access to the Application as soon as the event giving rise to the suspension has been resolved, as determined in CCH's sole and absolute discretion.
- (c) Nothing contained in these Terms will be construed to limit CCH's actions or remedies or act as a waiver of CCH's rights in any way with respect to any of the activities described in clause 3.13. CCH will not be responsible for any loss or damage incurred by the Customer as a result of any termination or suspension of access to or use of the Application in accordance with this clause 3.13.

#### **3.16. Modification/Replacement of the Application**

CCH reserves the right, in its sole and absolute discretion and without first consulting with the Customer, to discontinue or modify the Application or any component of the Application for any reason. If the Application is discontinued during the Term, then CCH will, in its sole and absolute discretion, either provide the Customer with:

- (a) A pro-rata refund of the Fees paid for the discontinued Application; or
- (b) Access to a product having substantially similar or greater functionality, with CCH reserving the right to charge additional fees for any greater functionality, for the remainder of the Term.

#### **4. Support and Services**

##### **4.1. General**

- (a) CCH will provide the Customer with Support Services during Business Hours as CCH provides generally to customers as part of its then-current support program as set out on the Website for the Application. The Customer may log support requests by emailing [au-support@wolterskluwer.com](mailto:au-support@wolterskluwer.com) or telephoning 1300 300 224.
- (b) The Customer must make all reasonable efforts to investigate and diagnose technical problems before contacting CCH.
- (c) Support Services may include automatic updates to the Application, which will be in CCH's sole and absolute discretion. CCH will have no obligation to provide updates.
- (d) CCH reserves the right to charge additional fees for any optional and ancillary features and/or functionality it may develop and/or market in connection with the Application.
- (e) It is possible that on occasion the Application may be unavailable, including to permit maintenance or other development activity to take place. CCH gives no guarantee in relation to availability of the Application.
- (f) If for any reason CCH has to interrupt availability of the Application for longer periods than CCH would normally expect, CCH will use reasonable endeavours to publish in advance details of such activity on the Website or by any other reasonable means.

##### **4.2. Support Waiver**

The Customer acknowledges and agrees that, when providing Support Services, CCH may access and perform work on the Website, Online Accounts, computer(s) and/or network(s), including software, hardware, peripherals and memory (**Computer System**). CCH will not be responsible for the loss of any information or data from the Customer's Computer System, whether related to the Application or otherwise, or any malfunction or failure of the Customer's Computer System. It is the Customer's sole responsibility to ensure that its Computer System is regularly backed up.

##### **4.3. Services**

The Acceptance Form will set out the nature, scope, project assumptions, fees, duration and locations of Services. CCH may offer additional Services in connection with the Application. Any additional Services are provided as set out in these Terms.

##### **4.4. Performance of Services**

- (a) In performing Services, CCH may assign CCH personnel, authorised agents or qualified third-party contractors (**Consultants**). The Customer acknowledges and agrees to provide any information, facilities, personnel and equipment, including suitably configured computers, reasonably identified by CCH as necessary or appropriate to perform Services.
- (b) The Customer will advise CCH of any hazards or potential hazards to the health and safety of Consultants on the Customer's premises, and will provide Consultants with appropriate information regarding applicable safety and security procedures.

#### **4.5. Pricing of Services**

Unless otherwise provided in the Acceptance Form, all Services will be provided on a time and expense/materials basis at CCH's then-current rates. CCH reserves the right to impose a higher rate for Services performed in excess of a 38-hour week, or Services performed outside Business Hours or on a day which is not a Business Day. Estimates for the pricing of Services are provided for the Customer's information only and are not guaranteed. Unless otherwise provided in the Acceptance Form, the Customer must pay or reimburse CCH for all reasonable travel and other out-of-pocket expenses incurred in connection with CCH's performance of Services under these Terms.

#### **4.6. Third-Party Infrastructure**

CCH has no control over the performance of third-party outsourced infrastructure and the Customer releases CCH from all liability and responsibility with respect to the performance of such infrastructure.

### **5. Fees and Payment**

#### **5.1. Fees**

- (a) The Customer must pay Fees to CCH.
- (b) CCH reserves the right in its sole and absolute discretion to increase Fees:
  - (i) At any time following expiration of the Initial Term; and
  - (ii) During any subsequent renewal term by providing the Customer with 30 days' written notice.
- (c) CCH reserves the right in its sole and absolute discretion to charge the Customer additional Fees where the Customer exceeds the number of Authorised Users set out in the Acceptance Form. Such additional Fees will be payable from the date on which the additional Authorised Users are created.

#### **5.2. Invoices and Payment**

- (a) CCH will issue the Customer with an invoice for Fees at the time of entering into these Terms.
- (b) CCH will issue the Customer with invoices for Fees during the Term at the intervals set out in the Acceptance Form.
- (c) The Customer acknowledges and agrees:
  - (i) All CCH invoices are payable within 30 days after the date of an invoice, and the Customer will make payment within these payment terms; and
  - (ii) The Customer is responsible for payment of all taxes and duties, including GST, if GST Legislation applies, in addition to Fees, and the Customer will promptly reimburse CCH for any such taxes payable or collectable by CCH.
- (d) Where the Customer pays Fees by direct debit, either from a bank account or credit card, the Customer acknowledges and agrees it must keep a valid bank account, credit card or debit card with sufficient funds on account with CCH in order to pay all Fees when due. If the Customer's payment is declined for any reason, CCH may suspend the Customer's and Authorised Users' access to the Application until the Customer updates its payment information and pays all outstanding Fees.
- (e) If the Customer fails to make payment within 90 days after the date of an invoice, CCH may terminate these Terms with immediate effect. The Customer will remain liable for the arrears and may be required to pay a reactivation fee prior to any future access to the Application.

## **6. Customer Obligations**

### **6.1. Indemnity**

The Customer will at all times defend, indemnify, keep indemnified and hold CCH, its Representatives and any Related Body Corporate harmless from and against any and all Claims, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges, liabilities, and expenses, whether direct or indirect, arising out of or in connection with:

- (a) The Customer's breach of any of these Terms, including any costs relating to the recovery of any Fees that have not been paid by the Customer;
- (b) A Consumer's and/or Authorised User's access to or use of the Application and Website; and
- (c) Any claim by a third-party in connection with the Customer's use of the Application or otherwise in connection with these Terms.

### **6.2. Security**

The Customer acknowledges and agrees it:

- (a) Is solely responsible for the use, supervision, management and control of access to the Application, Online Account, Online Account Access Information, Website and any associated documentation; and
- (b) Must ensure that the Application, Online Account, Online Account Access Information, Website and any associated documentation are protected at all times from unauthorised access.

### **6.3. Professional Responsibility**

- (a) Use of the Application does not relieve the Customer of responsibility for the preparation, content, accuracy, and review of Documents or other work product generated by the Customer while using the Application. CCH is not responsible for the results of any actions taken on the basis of information contained in or generated by the Application.
- (b) The Customer will neither enquire nor rely upon CCH for any tax, accounting, legal or other professional or expert advice of any kind. CCH does not provide legal, accounting or other professional advice or expert services.
- (c) The Customer is solely and entirely responsible for:
  - (i) Selection of adequate and appropriate tools and functionality within the Application to satisfy the Customer's business and legal needs and achieve the Customer's intended results;
  - (ii) Use of the Application and Website;
  - (iii) Any results obtained from the Application and Website;
  - (iv) Selecting, obtaining and maintaining all hardware, software, computer capacity, Internet service, program and system resources and other equipment and utilities needed for access to and use of the Application and Website, and for all associated costs; and
  - (v) Selection, use of, and results obtained from any other programs, computer equipment or services used with the Application and Website.

### **6.4. Customer's Representations**

The Customer represents, warrants and covenants that:

- (a) The Customer has full power and authority to enter into, and perform its obligations

under these Terms and the Acceptance Form;

- (b) These Terms and the Acceptance Form have been duly authorised and constitute valid and binding obligations on the Customer;
- (b) The Customer is accessing and using the Application solely for the Business Purpose;
- (c) The Customer will not access or use the Application to create a product, service or database that competes with the Application, CCH or any Related Body Corporate;
- (d) The Customer is responsible for complying with all laws, rules, regulations and procedures of local, state, federal and foreign authorities applicable to the Customer and its business;
- (e) The Customer will be solely responsible for compliance with these Terms by Authorised Users, and to the extent applicable, Consumers; and
- (f) The Customer will not violate the rights of any third-party while accessing or using the Application or Website.

## **7. Confidentiality**

### **7.1. General**

- (a) Each party will maintain the confidentiality of all Confidential Information of the other party obtained in connection with these Terms. Neither party will, without the prior written consent of the other party, disclose or make any Confidential Information of the other party available to any person, or use the Confidential Information of the other party for its own benefit, other than as contemplated by these Terms.
- (b) The disclosing party will retain all proprietary rights to the information it discloses in connection with these Terms.
- (c) Each party will be deemed to have fulfilled its confidentiality obligations under these Terms if it affords the other party's Confidential Information at least the same degree of care it takes in protecting its own Confidential Information, but in no event using less than a reasonable degree of care.
- (d) Each party's obligations under this clause will survive expiry or termination of these Terms.

### **7.2. Permitted Disclosures**

A party may disclose Confidential Information of the other party:

- (a) With the prior written consent of the disclosing party;
- (b) To its Representatives, legal and professional advisers, but only to the extent that they need to know such information for the purposes of these Terms and they are bound by obligations of confidentiality at least as onerous as the obligations of confidentiality contained in these Terms; or
- (c) If the disclosure is required or permitted by law, court order, tribunal order or the rules of any stock exchange to which the party is subject, provided that the other party must, to the extent permitted by law, notify the disclosing party of any such requirement prior to disclosure in order to afford the disclosing party an opportunity to seek a protective order to prevent or limit disclosure, and the other party will reasonably cooperate with the disclosing party's efforts to obtain such protective order.

### **7.3. Confidentiality Upon Termination or Expiration**

Upon termination or expiration of the Subscription, and subject to clause 3.8(d) which applies in relation to Customer Data, both parties agree to securely destroy all copies of written Confidential Information of the other party. Notwithstanding any of the preceding, CCH will be entitled to keep copies of Confidential Information of the Customer:

- (a) Preserved or recorded in any computerised data storage device or component, including any hard drive or database, or saved automatically to standard back-up or archival systems; and/or
- (b) As required by applicable law or regulation, provided that such Confidential Information will remain subject to the confidentiality requirements set out in these Terms.

## **8. Intellectual Property Rights**

### **8.1. General**

- (a) CCH and its Related Body Corporate retain all ownership of the Application, Website and any associated documentation, whether in their original form or as altered, amended, modified or otherwise updated during the Term.
- (b) CCH, its Related Body Corporate and any applicable licensors retain all Intellectual Property Rights and proprietary rights in the Application, Website and any associated documentation.
- (c) The Customer acknowledges and agrees that all Intellectual Property Rights or other rights arising directly or indirectly out of or in connection with the performance of these Terms are the sole property of CCH, its Related Body Corporate and any applicable licensors.
- (d) Nothing in these Terms affects the ownership of Moral Rights in the Application, Website and any associated documentation.

### **8.2. Customer Data**

- (a) The Customer retains all Intellectual Property Rights in Customer Data.
- (b) CCH adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss, damage or corruption of Customer Data. CCH expressly excludes liability for any loss, damage or corruption of data no matter how caused.

## **9. Acknowledgements, Warranties, Indemnification and Consumer Guarantees**

### **9.1. Acknowledgements**

The Customer acknowledges and agrees that:

- (a) The Customer is authorised to use the Application and to access the information that the Customer accesses using the Application (whether that information is the Customer's or that of anyone else).
- (b) The provision of, access to, and use of, the Application and Website is on an "as is" basis and at the Customer's own risk.
- (c) CCH does not warrant that the use of the Application and Website will be uninterrupted or error free or that the Application and Website will properly operate on or with any specific operating system or computer hardware or configurations. Among other things, the operation and availability of the systems used for accessing the Application and Website, including telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Application and Website. CCH is not in any way responsible for any such interference or prevention of the Customer's access or use of the Application and Website.
- (d) It is the Customer's sole responsibility to determine that the Application meets the needs of the Customer's business.
- (e) Failure to follow any documentation associated with the Application could result in erroneous data being produced by the Application and it is the Customer's sole

responsibility to check all final results produced by the Application for any anomalies. CCH does not guarantee that the Application checks for anomalies and accordingly incorrect data may be processed by the Application.

## **9.2. No Warranties**

- (a) To the extent permitted by law and subject to clause 9.2(b), CCH excludes all representations, warranties or terms, whether express or implied, other than those expressly set out in these Terms and gives no warranty about the Application and Website. Without limiting the preceding, CCH does not warrant that the Application and Website will meet the Customer's requirements or that they will be suitable for the Customer's purposes. To avoid doubt, all implied conditions or warranties are excluded to the extent permitted by law, including warranties of merchantability, fitness for purpose, title and non-infringement. CCH makes no warranty of any kind that the Application and Website, or any CCH or third-party goods, services, technologies or materials (including any software), or any products or results of the use of any of them, will operate without interruption, achieve any intended result, be compatible or work with any other goods, services, technologies or materials (including any software, hardware, system or network), or be secure, accurate, complete, free of harmful code or error free. Any open source software is provided "as is" and any representation or warranty of or concerning any of them is strictly between the Customer and the third-party owner or distributor of such open source software.
- (b) These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, CCH limits its liability in respect of any claim to, at CCH's option:
  - (i) In the case of goods:
    - (A) The replacement of the goods or the supply of equivalent goods;
    - (B) The repair of the goods;
    - (C) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
    - (D) The payment of having the goods repaired; and
  - (ii) In the case of services:
    - (A) The supply of the services again; or
    - (B) The payment of the cost of having the services supplied again.

## **9.3. Indemnification**

- (a) Subject to these Terms, CCH agrees to defend the Customer, its directors, officers and employees, at CCH's sole cost and indemnify the Customer (by paying for damages finally awarded against the Customer or any amounts payable in any settlement entered into in compliance with these Terms) from and against any claims, demands, actions or proceedings by any third-parties alleging that the Customer's use of the Application as provided and permitted under these Terms infringes or violates such third-party's Australian patent, copyright or trade secret rights, provided that:
  - (i) The Customer notifies CCH promptly in writing of the claim;
  - (ii) CCH controls the defence, settlement and approval of the claim; and
  - (iii) The Customer provides CCH with cooperation and assistance, including all necessary authority and required information in connection with the defence or settlement of the claim.
- (b) The Customer acknowledges and agrees that CCH's obligations under clause 9.3(a) will not apply if and to the extent that they arise from or relate to:

- (i) The access or use of the Application in violation of these Terms;
  - (ii) The use of the Application in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH; or
  - (iii) Any data or information, or other intellectual property supplied by the Customer, an Authorised User or any third-party.
- (c) If any Application becomes, or in CCH's opinion, is likely to become, the subject of a third-party claim covered by CCH's obligations under clause 9.3(a), then CCH may, in its sole and absolute discretion and at its sole cost and expense:
- (i) Procure for the Customer the right to continue using such Application; or
  - (ii) Replace the infringing portion of the Application with non-infringing items with substantially similar functionality.

If CCH reasonably determines that none of the foregoing is commercially practicable, then CCH may elect to terminate these Terms and grant the Customer a refund of the Fees paid for the affected Subscription Term less an allocation for use made by the Customer prior to the termination.

- (d) Clause 9.3(c) provides CCH's entire liability and the sole and exclusive remedy of the Customer, its directors, officers and employees, any Related Body Corporate and any Authorised User with respect to any actual or claimed infringement or other violation of any third-party's Australian patent, copyright or trade secret rights.

#### **9.4. Consumer Guarantees**

The Customer warrants and represents that the Customer is acquiring the right to access and use the Application and entering into these Terms for the purposes of a business and that, to the extent permitted by law, any statutory consumer guarantees or legislation intended to protect non-business consumers in any jurisdiction do not apply to the supply of the Application or these Terms. Where any consumer warranty or guarantee cannot be lawfully excluded, CCH limits its liability for any breach of any such consumer warranty or guarantee to the extent permitted by law.

#### **10. Limitation of Liability**

**10.1.** To the extent permitted by law, CCH, its Representatives and any Related Body Corporate exclude all liability and responsibility to the Customer or any other person in contract including under an indemnity, tort including negligence or otherwise, for any loss including Consequential Loss, or any damage resulting, directly or indirectly, from the use of, or reliance on, the Application and Website.

**10.2.** CCH's total aggregate liability to the Customer for all Claims relating to these Terms, whether arising in contract including under an indemnity, tort including negligence or otherwise, will be limited to an amount equal to the Fees paid by the Customer in the previous 12 months.

**10.3.** Without limiting this clause 10, CCH is not liable:

- (a) To the extent that the Customer's acts or omissions contributed to the Customer's loss;
- (b) For any processing deficiency in any system that is caused in whole or in part by input data that contains any date that is ambiguous as to the year, or is otherwise inaccurate;
- (c) For any defect or deficiency in any system or service that is not developed or provided by CCH under these Terms, including the Customer's production and legacy systems and systems that receive data from systems produced by CCH;
- (d) For any losses caused to the Customer as a result of the Application and Website being unavailable;



- (e) For any Consequential Loss; or
- (f) For any loss, damage or costs caused by any unauthorised access to the Application and Website via the Internet or any other means. The Customer acknowledges and agrees that it is responsible for all loss, damage and costs caused by any viruses. It is the Customer's sole responsibility to apply whatever virus protection measures the Customer considers appropriate.

**10.4.** The Application may contain code, content, features, functionality and components that are provided by third-parties. In addition, electronic filing and/or other products or services used in connection with the Application may be offered through CCH but will be provided by third-parties. Furthermore, the Application may require data and information from third-parties in order to work properly. Any such third-party products or services will be provided "as is" without warranty of any kind by CCH. All rights and obligations with respect to such third-party products or services will be governed exclusively by the terms and conditions of agreements provided by suppliers of such third-party products or services and, to the extent permitted by law, the Customer releases CCH from all liability and responsibility with respect to such products or services.

## **11. Term and Termination**

### **11.1. Term**

These Terms, and the Customer's Subscription to access and use the Application, will commence on the Commencement Date and will continue for the Initial Term. Upon the expiry of the Initial Term, and any subsequent renewal term, these Terms will automatically renew for a subsequent term of 12 months, unless a party elects not to renew pursuant to clause 11.2.

### **11.2. Non-Renewal**

Either party may elect not to renew these Terms by giving the other party written notice to that effect at least 30 days before the end of the Initial Term or any subsequent renewal term, in which case these Terms will terminate at the expiration of the then-current Term. For the avoidance of doubt, a party may elect not to renew part of the Application in accordance with this clause, in which case these Terms will be terminated in respect of that part of the Application but will remain in effect and automatically renew in relation to all other parts of the Application.

### **11.3. Breach**

If the Customer:

- (a) Breaches any of these Terms and does not remedy the breach within 14 days after receiving notice of the breach, where the breach is capable of being remedied;
- (b) Breaches any of these Terms and the breach is not capable of being remedied;
- (c) Breaches clauses 3.3 or 5.2; or
- (d) Goes into liquidation or has a receiver or manager appointed in relation to any of its assets or becomes insolvent, or makes any arrangement with its creditors, or becomes subject to any similar insolvency event in any jurisdiction,

CCH may take any or all of the following actions, at its discretion:

- (e) Terminate these Terms and the Customer's access and use of the Application and Website;
- (f) Suspend for any definite or indefinite period of time, the Customer's access and use of the Application and Website; and/or
- (g) Take either of the actions in clauses 11.3(e) and 11.3(f) in respect of any Authorised User or any other person within the Customer's organisation.

### **11.4. Accrued Rights**

Termination of these Terms is without prejudice to the rights and obligations of the parties

accrued up to and including the date of termination. On termination of these Terms the Customer must:

- (a) Remain liable for any accrued Fees, charges and amounts which become due for payment before or after termination;
- (b) Immediately cease to access or use the Application and Website; and
- (c) Return to CCH all copies of any associated documentation, except any records created by the Application the Customer is required to keep by law.

## **12. General**

### **12.1. Entire Agreement**

These Terms and the Acceptance Form constitute the entire agreement between the parties regarding their subject matter and supersede all other communications, representations, inducements, undertakings, arrangements, whether written or oral, of the parties in respect of their subject matter. Other than as expressly set out in these Terms and the Acceptance Form, no party has relied on any representations made by or on behalf of the other.

### **12.2. Waiver**

If either party waives any power, right or remedy under these Terms, this will not constitute a waiver of any other power, right or remedy under these Terms. A waiver will only be effective if made in writing and only in respect of the specific instance to which it relates.

### **12.3. Assignment**

The Customer must not assign, sublicense or transfer any rights or obligations under these Terms to any person without CCH's prior written consent. CCH may assign its rights and obligations under these Terms to a Related Body Corporate with written notice to the Customer.

### **12.4. Dispute Resolution**

If a dispute, controversy or claim arises between the parties in connection with these Terms (**Dispute**), a party must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied this clause:

- (a) Either party may give notice to the other party identifying the Dispute and the party's preferred outcome (**Dispute Notice**);
- (b) Within two days of the Dispute Notice being given, the parties will each nominate a senior executive to take part in negotiations, with authority to resolve the Dispute on behalf of the party (**Nominated Representative**);
- (c) Within five days of the Dispute Notice being given, the Nominated Representatives will meet at least once and undertake genuine and good faith negotiations to resolve the Dispute;
- (d) If the Nominated Representatives cannot resolve the Dispute within 14 days of the Dispute Notice being given, either party may, by written notice to the other, refer the dispute to mediation before a mediator chosen by the parties or, if the parties cannot agree, by the Australian Disputes Centre (**ADC**); and
- (e) The mediation will be conducted in accordance with the ADC guidelines for commercial mediation to the extent that they do not conflict with the provisions of this clause.
- (f) This clause survives expiry or termination of these Terms.

### **12.5. Governing Law and Jurisdiction**

The validity, interpretation and performance of these Terms are governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New

South Wales, Australia in respect of any dispute that arises in connection with these Terms.

#### **12.6. Severability**

If a provision of these Terms is unenforceable, illegal, invalid, void or in conflict with any rule of law, statute, ordinance or regulation, it is to be read down or severed to the extent necessary without affecting the validity or enforceability of the remaining provisions of these Terms.

#### **12.7. Merger**

No term, condition or obligation under these Terms merges on completion of any transaction contemplated by these Terms.

#### **12.8. Notices**

A notice or other communication required or permitted to be given by a party to another must be in writing and must be given:

- (a) Personally. Notices will be deemed to be given upon delivery;
- (b) By prepaid post to the postal address of the party as stated in the Acceptance Form or any postal address such party may have designated in writing as the address for service of notices. Notices will be deemed to be given 5 Business Days after the date of posting; or
- (c) By email to the email address of the party as stated in the Acceptance Form or any email address such party may have designated in writing as the email address for service of notices. Notices will be deemed to be given upon the sender receiving back from the recipient's email address, a confirmation read receipt, including any receipt generated by automated means. If such confirmation read receipt is not generated by the recipient's email system or is not received by the sender, notices will be deemed to be given 72 hours from the time a notice is sent. The parties acknowledge and agree that emailing notices must constitute sufficient and effective delivery when delivered to the recipient's email account, whether or not the specific electronic communication is accessed or read.

#### **12.9. Survival**

Clauses 1, 2, 3.4, 3.5, 3.8, 3.12, 3.13, 3.14, 5, 6.1, 6.3, 6.4(c), 7.1, 7.3, 8, 9.2, 9.4, 10, 11, 12.4, 12.5, 12.8 and 12.9 survive expiry or termination of these Terms, together with any other term, condition or obligation which by its nature is intended to do so.

#### **12.10. Subcontracting**

The Customer acknowledges and agrees that CCH may use a subcontractor in connection with the performance of its obligations under these Terms.

#### **12.11. Agency, Partnership etc...**

These Terms will not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the parties, other than the contractual relationship expressly provided for in these Terms. Neither party will have, nor represent that it has, any authority to make any commitments on the other party's behalf.

#### **12.12. Force Majeure**

- (a) A party (**Affected Party**) will not be liable for any delay or failure to perform its obligations under these Terms, other than an obligation to pay money, if such delay or failure is due to a circumstance beyond the reasonable control of the Affected Party, including acts of God, natural disaster, fire, explosion, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage or strikes, and any other circumstance beyond the reasonable control of the Affected Party (**Force Majeure Event**).
- (b) A party affected by a Force Majeure Event will be excused from performing its obligations under these Terms for the period of the Force Majeure Event and the time for performance of any such obligations will be extended accordingly.

### 12.13. Information and Audit

- (a) Within 72 hours of CCH providing the Customer with a written request, the Customer must provide CCH with a signed certificate verifying that access and use of the Application is in accordance with these Terms and the Acceptance Form, including being accessed and used only by the Customer, Authorised Users and to the extent permitted in these Terms by Consumers.
- (b) Within 72 hours of CCH providing the Customer with a written request, the Customer must provide CCH with access to all relevant information and all reasonable cooperation and assistance as CCH may require, to enable CCH to confirm that access and use of the Application is in accordance with these Terms and the Acceptance Form.
- (c) Subject to clause 12.13(e), at its cost, and by providing the Customer with at least 5 days written notice, CCH may, itself or by its third-party agents (**Auditors**), audit the Customer's compliance with the requirements of these Terms and the Acceptance Form (**Audit**). The Audit will be conducted during Business Hours at the Customer's offices, facilities or business premises, and will not unreasonably interfere with Business Purposes.
- (d) During the Audit, the Customer must provide Auditors with access to the Customer's computer systems, books, records, documents, equipment and other property relevant to the performance of the Audit, for the purpose of conducting forensic reviews to verify compliance with the requirements of these Terms and the Acceptance Form. Further, Auditors may interview any current or former Authorised Users and any of the Customer's current and former employees and contractors.
- (e) If CCH determines that the Customer has not paid Fees in accordance with these Terms and Acceptance Form relating to the Customer's access and use of the Application (**Unpaid Fees**), CCH reserves the right in its sole and absolute discretion to invoice the Customer for Unpaid Fees, plus an additional 1.5% monthly interest rate (18% per annum), or the maximum lawful amount, of the Unpaid Fees dating back to the time at which Fees should have been paid. The Customer acknowledges and agrees to pay CCH all Unpaid Fees and interest together with CCH's reasonable costs incurred in connection with the Audit, if the audit detects Unpaid Fees in excess of five percent of the total Fees actually paid for the period audited. The Customer acknowledges and agrees this clause is governed by the provisions of clause 5.2. CCH's rights under this clause do not limit or preclude any additional remedies available to CCH at law or in equity.