

## CCH Business Fitness (via CCH iFirm)

### TERMS OF USE

This Agreement sets out the terms and conditions governing the Customer's use of the Solution and the provision of the Services by the Supplier.

These terms of use (Terms) set out the respective obligations of CCH New Zealand Limited (CCH) and you and form a legally binding agreement between us. Please read them carefully.

These Terms, as amended from time to time, are binding on any use of the Application and apply to you from the Commencement Date.

It is likely that the Application will evolve over time. These Terms are not intended to answer every question or address every issue raised by the use of the Application. CCH reserves the right to change these Terms at any time, effective upon the date of publication of the modified terms. CCH will make reasonable efforts to communicate these changes to you via email or notification on the Website. It is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Website.

By accessing the Application or by otherwise indicating acceptance (electronically or otherwise) of the Application, the Customer acknowledges its agreement to these Terms.

### 1. Definitions

**Affiliate** means with respect to a party to these Terms, any entity which, directly or indirectly, controls, is controlled by or is under common control with such party, where control means the ability to direct the affairs of an entity through ownership of voting interest, contract rights or otherwise.

**Application** means the application/s and modules identified in the Order Form, as such application/s and modules may be updated from time to time by CCH in its sole discretion.

**Authorised User** means an employee of the Customer who is authorised by the Customer to access or use the Application for the purpose of assisting the Customer in its day-to-day business activities and who is covered by a Subscription.

**Business Hours** means 9am to 5pm Monday to Friday, excluding public holidays, in New Zealand.

**Business Purposes** means the Customer's lawful internal business purposes only, including the provision of professional services to Clients. Business Purposes do not include any use for the purpose of distribution, sale, license, training, hire, let or trade to a third party.

**Client** means a third party client of the Customer that has entered into an agreement with the Customer for the provision of professional services by the Customer to the Client.

**Client Access Functionality** means functionality in an Application expressly allowing Clients to access the Website to view data specific to the Client.

**Commencement Date** means the earlier of the date of the Order Form for the Application and 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 to these Terms, whether in writing, electronically or orally (including the terms of these Terms, information relating to the Application and information relating to the personnel, policies and business operations of CCH or the Customer), but does not include information to the extent it:

- (a) is or becomes publicly available other than through unauthorised disclosure by the other 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 the receiving 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** and/or **you** means the person or entity identified as the Customer in the Order Form.

**Customer Data** means all data, information, records or files that are uploaded to or stored on an Application by or on behalf of the Customer, but not including any De-identified Data (as defined below).

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

- (a) Customer Data that has been altered so that it does not identify the Customer, any Authorised User, any Client or any other individual;
- (b) information relating to the access or usage patterns of an Application by or on behalf of the Customer or any Authorised User and general information about Customer's and its Authorised Users' 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.

**Fees** means the fees set out in the Order Form, which include licence fees and fees for any Services and which are expressed exclusive of any taxes or duties.

**Initial Term** means the period set out in the Order Form.

Intellectual **Property Right** means any patent, trade mark, service mark, domain name, copyright, moral right, right in a design, know-how and any other intellectual or industrial property rights, anywhere in the world whether or not registered, and any applications for registration or rights to make such application.

**Notice Address** means the email address for notices for each party set out in the Order Form.

**Online Account** means an authorised account with access into the Application established for use by a particular Authorised User, and includes the controls, permissions and data unique to such user.

**Online Account Access Information** means the individual access information (for example, username and password) used by an Authorised User of the Application to access his/her individual Online Account.

**Order Form** means a written confirmation of order issued by CCH that documents the Customer's Subscription to the Application. All Order Forms incorporate and are subject to these Terms.

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

**Privacy Laws** means the Privacy Act 1993 and any other applicable privacy legislation.

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

**Services** means services listed in an Order Form, which may include (a) implementation services; (b) training for Customer personnel; (c) file conversion services; and (d) any other services specifically identified in the Order Form.

**Support Services** means remote support services in relation to the Application as identified in the Order 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 level of rights granted to Customer by CCH to access and use the Application pursuant to these Terms, as set out in the Order Form, and may include the number of Authorised Users, the modules and data volumes.

**Support Address** means NZ-ifirmsupport@wolterskluwer.com or another email address for support notified to the Customer by CCH.

**Term** means the Initial Term and any renewal terms pursuant to clause 11.1.

**Terms means** this agreement between CCH and the Customer in relation to the Customer's access to and use of the Application, and comprises these Terms and any relevant Product Terms as amended from time to time.

**Territory** means the territory set out in the Order Form and, if no territory is specified, New Zealand.

**Website** means the Internet site at which the Customer accesses the Application, as notified to the Customer by CCH.

## 2. Interpretation

In these Terms, except to the extent the context otherwise requires:

- (a) headings are for convenience only and will not affect the interpretation of these Terms;
- (b) reference to any statute or statutory provision includes any modification or re-enactment of, or any legislative provisions substituted for, and all legislation and statutory instruments issued under such legislation or provision;
- (c) words denoting the singular include the plural and vice versa;
- (d) words denoting individuals will include corporations, associations, trustees, instrumentalities and partnerships and vice versa;
- (e) references to parties, parts and clauses are references to parties, parts and clauses to these Terms as modified or varied from time to time;
- (f) references to any document, deed or agreement includes references to such document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (g) references to any party to these Terms or any other document, deed or agreement includes, in the case of a company, its successors, administrators and/or permitted assigns and, in the case of a natural person, his representatives and permitted assigns;
- (h) includes means includes without limitation;
- (i) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning;
- (j) all references to dates and times are to Auckland time;
- (k) all references to "\$" and "dollars" are to the lawful currency of New Zealand unless otherwise expressly stated.

## 3. Rights and Conditions of Use

- 3.1. **Right to use.** CCH grants to the Customer a non-exclusive, non-transferable right to access and use the Application within the Territory during the Term for its Business Purposes, on the terms and conditions set out in these Terms.
- 3.2. **Reservation of Rights.** CCH reserves all rights in and to the Application not

expressly granted in these Terms. Without limiting the generality of this clause, any right to access and use an Application does not include the right to access a) any underlying components of the Application, b) CCH's underlying application engines, c) other applications published by CCH or its Affiliates, or d) the operating environment within which the Application operates.

- 3.3. **Authorised Users.** The Customer may permit the Authorised Users to use the Application. Customer must purchase a Subscription for each Authorised User and must not permit any person other than an Authorised User to use or access the Application. Customer must require each Authorised User to comply with the terms and conditions of these Terms. An Authorised User does not acquire individual rights in the Application other than the right to 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. **Clients.** Certain Applications may include Client Access Functionality. Customer may provide access to the Website to its Clients via the Client Access Functionality solely to allow a Client to view data relating to itself. Customer must ensure that any access to and use of the Application by a Client is in accordance with these Terms.
- 3.5. **CCH iFirm Portal Storage.** CCH will provide storage for the Portal module for each customer. If the Customer's use of such storage exceeds what CCH considers to be reasonable, additional fees and terms may apply.
- 3.6. **Application restrictions.** 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 portion 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 its Clients in accordance with clause 3.4; (e) share use of or access to the Application with other practitioners (including service providers performing work for Customer) who are not Authorised Users in Customer's practice, even if 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 portion thereof; (h) defeat, disable or circumvent any protection mechanism related to the Application; (i) use the Application to process the data of clients of a third party (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 other 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 copyright or trade secrets which the Customer does not have the right to use); or (l) publish, distribute (or redistribute) or sell any document retrieved through the Application (even if in the public domain) to any individual or entity outside of Customer's own firm, except for documents prepared for Clients within the scope of the normal and intended use of the Application and then only for the purposes for which the document is generated. In addition, Customer shall not violate or attempt to violate the security of CCH's networks or servers, including by: (i) accessing data not intended for Customer or logging into a server, system or account which 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 proper written request and authorisation by CCH; 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.

### 3.7. **Online Account Access Information.**

- (a) CCH will supply the Customer with the means to create private Online Account Access Information for its Authorised Users so that the Authorised Users may log into their respective Online Accounts within the Application. Online Accounts are designed for use by one Authorised User and must only be accessed using an Authorised User's Online Account Access Information.
- (b) The Customer will provide a list of the Authorised Users to CCH on request by CCH.
- (c) The Customer is fully responsible for the protection and confidentiality of its Authorised Users' Online Account Access Information. The Customer acknowledges and agrees that the Customer is responsible for all use of the Application via the Customer's and its Authorised Users' Online Accounts a for ensuring that all use of the Application by the Customer and its Authorised Users is in accordance with these Terms.
- (d) The Customer agrees to promptly:
  - (i) notify CCH in writing of any unauthorised use of any Online Account Access Information or any other breach of security upon becoming aware of any such use or breach;
  - (ii) assist in preventing any recurrence of any such use or breach; and
  - (iii) otherwise cooperate fully with any directions issued by CCH in connection with any such use or breach, including in connection with any proceedings or other actions undertaken to protect the rights of CCH.

### 3.8. **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. The Customer must not use any such communication tool for posting or disseminating any material unrelated to the use of the Application including (but not limited to): offers of goods or services for sale, files that may damage any other person's computing devices or software, content that may be offensive to any of our other users, or material in violation of any law (including material that is protected by copyright or trade secrets which the Customer does not have the right to use).
- (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. However, CCH does reserve the right to remove any communication at any time in its sole discretion.

### 3.9. **Data.**

- (a) **Authorised Use.** As between CCH and the Customer, the Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to Customer Data. CCH and its subcontractors will only use Customer Data as (a) necessary to provide the Application and Services (as defined below) to Customer; (b) as permitted or required by law; (c) expressly authorised under these Terms; and (d) otherwise authorised by the Customer in writing (each use an "Authorised Use"). Customer grants to CCH and its subcontractors a limited licence to use Customer Data for each Authorised Use.
- (b) **Disclosure.** CCH may disclose Customer Data to third party service providers that CCH may use in conjunction with the services it renders under these Terms.
- (c) **Data Retention.** During the Term, CCH will retain the Customer Data that Customer has properly submitted to CCH's online servers for at least one year following the calendar year in which the Customer submitted any such Customer Data. CCH shall have the right to turn off all access to the Application and the Customer Data once the Customer's Subscription is terminated or expires or in the event the Customer breaches its payment obligations under these Terms. CCH will then maintain the Customer Data in accordance with its internal business practices. Upon a request by the Customer, CCH shall use commercially reasonable efforts to make any

Customer Data then in CCH's possession or control available for retrieval by the Customer, subject to payment by the Customer of any fees charged by CCH in connection with making such Customer Data available. The Customer acknowledges and understands that CCH is not performing any data warehousing or file retention services on behalf of the Customer. It is the Customer's responsibility to take copies and backup any records that it is required to retain to comply with any obligations at law or to its Clients.

- (d) **De-identified Data.** As between CCH and the Customer, CCH is and remains the sole and exclusive owner of all right, title and interest in and to the 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.
- (e) **Copying of Customer Data for purposes of Support Services.** CCH may make copies of Customer Data for the purposes of its provision of Support Services and/or other Services.
- (f) **Security.** CCH will take reasonable safeguards intended to prevent the loss or unauthorised disclosure of Customer Data in connection with the Application. Customer acknowledges that security safeguards by their nature are capable of circumvention and that CCH does not and cannot guarantee that the Customer Data, or the Application cannot be accessed by unauthorised persons capable of overcoming such safeguards. CCH shall not be responsible or liable for any such unauthorised access to or loss of Customer Data nor shall any such unauthorised access or loss constitute a breach by CCH of its confidentiality obligations under these Terms. Nothing in this Agreement will be deemed to diminish 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, Customer will be responsible for any such notifications at its expense.
- (g) **Removal of Customer Data.** CCH reserves the right, in its sole discretion, at any time, to remove any Customer Data that it believes to be in violation of these Terms.
- (h) **Customer obligations regarding Customer Data.** Customer agrees not to upload or transmit any Customer Data: (i) that 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 that Customer might be subject to); (ii) that is Personal Information, unless the Customer has complied with any applicable Privacy Laws, including as such laws apply to the upload and transmission of such Customer Data and the processing of that Customer Data by the Application as contemplated by these Terms;

(iii) that infringes, misappropriates or otherwise violates any Intellectual Property Rights or 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.

- (i) **CCH use of Customer Data.** Customer represents and warrants that CCH's storage and/or use of the 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.
- (j) **Customer responsible for Customer Data.** Customer has sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data.

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

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

3.12. **Internet Connectivity.** CCH (either itself or through a third party) will make the Application available for access via the Internet. The Customer shall provide, at the Customer's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Application. The Customer acknowledges that the Internet is known to be unpredictable in performance and may, from time to time, impede access to the Application or performance under these Terms. The Customer agrees that CCH is not in any way responsible for any interference with the Customer's use of or access to the Application arising from or attributable to the Internet and Customer waives any and all claims against CCH in connection therewith.

3.13. **Compliance Mechanisms.** An 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: (a) beyond the scope of the licence granted pursuant to clause 2.1; or (b) prohibited in clause 2.6. 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.

3.14. **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 individual;

- (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 (e.g., false name, contact information or payment information; or false declaration of the total number of end users).

3.15. **Reservation of Rights and Ownership of Developed Materials.** CCH and its Affiliates and any applicable licensors, retain all Intellectual Property Rights and other proprietary rights in and to the Application. Any unauthorised use of the Application will result in termination of these Terms as well as possible civil damages and criminal penalties. Customer is not permitted to use “CCH,” “iFirm” or any other trade or service marks of CCH or any of its Affiliates in Customer’s announcements, advertising or other materials unless expressly agreed in writing by CCH. CCH will own and the Customer assigns to CCH all rights in (a) 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 (b) any suggestions, ideas, enhancement requests, feedback or recommendations provided by or on behalf of Customer.

3.16. **Suspension.** 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 (a) in the event Customer (including any Authorised User, Client or other person or entity acting through or on behalf of Customer) is determined by CCH, in CCH’s sole judgment, to have or attempted to have damaged, harmed or misused CCH’s software, server, network or other systems; (b) 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 (c) if Customer has obtained unauthorised access to the Application as set forth in clause 2.12. CCH will use commercially reasonable efforts to notify Customer of the reason(s) for such suspension or termination action as soon as reasonably practicable unless such action is due to clause 2.14(a). In the event of a suspension (other than due to clause 2.14(a)), CCH will promptly restore Customer’s access to the Application as soon as the event giving rise to the suspension has been resolved as determined in CCH’s discretion. 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 clauses 2.14(a), (b) or (c). CCH will not be responsible for any loss or damage incurred by Customer as a result of any termination or suspension of access to or use of the Application in accordance with this clause 2.14.

- 3.17. **Modification/Replacement of Application.** CCH reserves the right, in its sole 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 of a Subscription granted under these Terms, then CCH will, in its discretion, either: i) provide a pro-rata refund of the Fees paid for the discontinued Application; or ii) provide the Customer with 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 then current Subscription term.

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

- 4.1. **General.** CCH will provide remote Support Services in relation to the Application during Business Hours as CCH provides generally to customers as part of its then current support program as set forth on the website for the Application. In the case of technical problems, the Customer must make all reasonable efforts to investigate and diagnose problems before contacting CCH. Support Services may include automatic updates to the Application in CCH's absolute discretion. CCH will have no obligation to provide updates. CCH reserves the right to charge additional fees for any optional and ancillary features and/or functionality it may market in connection with the Application.
- 4.2. 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.
- 4.3. 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.
- 4.4. **Support Waiver.** 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 but not limited to 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 Computer System. It is the Customer's responsibility to ensure that the Computer System has been backed up.
- 4.5. **Services.** CCH may offer certain additional Services in connection with the Application. The Order Form must set out the nature, scope, project assumptions, fees, duration and location(s) of the Services. Any Services are provided on the terms and conditions set out in these Terms.
- 4.6. **Services Performance.** In performing Services, CCH may assign CCH personnel, authorised agents or qualified third-party contractors ("Consultants"). The Customer agrees to provide any information, facilities, personnel and

equipment, including if applicable suitably configured computers, reasonably identified by CCH as necessary or appropriate to the performance of any Services. The Customer shall advise CCH of any hazards to the health and safety of CCH's personnel on the Customer's premises and provide CCH's personnel with appropriate information regarding applicable safety and security procedures.

- 4.7. **Services Pricing.** Unless otherwise provided in the applicable Order 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 40 hour week or during weekend or holiday periods. Estimates are provided for the Customer's information only and are not guaranteed. The Customer will 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.
- 4.8. **Third party infrastructure.** The Application will be provided through outsourced infrastructure that will be configured consistently with prevailing industry standards. CCH has no control over the performance of third party outsourced infrastructure and Customer releases CCH from all liability and responsibility with respect to the performance of such infrastructure.
- 4.9. **Third party integration services.** If Customer elects to engage any third party service provider in connection with its use of the Application, including any CCH iFirm Integration Partner, Customer acknowledges and agrees that any services provided by such third party are not provided by CCH and CCH provides no warranties or representation regarding such third party services. All rights and obligations with respect to third party products or services shall 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.

## 5. Fees and Payment

- 5.1. The Customer must pay the Fees to CCH. An invoice will be issued to the Customer at the time of entry into these Terms. CCH will issue the Customer with invoices for the Fees during the Term at the intervals set out in the Order Form. CCH may increase Fees at any time following the expiration of the Initial Term.
- 5.2. All CCH invoices are payable within 30 days after the date of invoice. The Customer is responsible for payment of all taxes and duties (including GST) in addition to the Fees and the Customer will promptly reimburse CCH for any such taxes payable or collectable by CCH. The Customer agrees to keep a valid credit or debit card with sufficient funds on account with CCH in order to pay all Fees when due.

- 5.3. If the Customer's payment is declined for any reason, CCH may suspend the Customer's and Authorised Users' access to any Applications until the Customer updates its payment information and pays all outstanding Fees. If the Customer fails to make payment before the date 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 the Customer may be required to pay a reactivation fee prior to any future access to any Application.

## **6. Customer obligations**

- 6.1. **Indemnity.** The Customer indemnifies and holds harmless CCH and its employees, directors, officers and Affiliates against all claims, costs, damage and loss (including any damages, interest, penalties and reasonable legal fees):
- (a) arising from 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) arising out of a Client's access to or use of the Application; and
  - (c) incurred in respect of 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:
- (a) is solely responsible for the use, supervision, management and control of access to the Application and any associated documentation; and
  - (b) must ensure that the Application 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 (including computational accuracy) and review of 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 inquire 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 or expert services.
  - (c) The Customer will retrieve in a timely manner any electronic communications made available to the Customer by CCH (for example, electronic filing transaction data such as acknowledgements and e-mail messages in Customer's mailbox).

- (d) The Customer is fully and solely responsible for: (i) selection of adequate and appropriate applications, modules, tools and content to satisfy Customer's business needs and achieve Customer's intended results; (ii) use of the Application; (iii) any results obtained from the Application; (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 for all associated costs; and (v) selection, use of, and results obtained from any other programs, computer equipment or services used with the Application.
- (e) The Customer acknowledges and agrees that to the extent the Application may be used in connection with the preparation and/or lodgement of forms, reports and other documentation with government authorities, the Customer is solely responsible for any such forms, reports, documentation and lodgements made via or using the Application. Among other things, the Customer is solely responsible for ensuring that any Lodgement:
  - (i) is made on time; and
  - (ii) is received by the relevant authority (for example, by ensuring that it receives acknowledgment of receipt from the relevant authority).

6.4. **Customer's Representations.** The Customer represents and warrants that:

- (a) Customer has full power and authority to enter into, and perform its obligations under, these Terms and any Order Forms.
- (b) these Terms and all Order Forms have been duly authorised and constitute valid and binding obligations on the Customer.
- (b) Customer is accessing and using the Application solely for the Business Purpose.
- (c) Customer will not access or use the Application to create a product, service or database that competes with CCH or the Application.
- (d) Customer is responsible for complying with all rules, regulations and procedures of local, state, federal and foreign authorities applicable to Customer and its business.
- (e) Customer will be solely responsible for compliance with these Terms by the Authorised Users, and to the extent applicable, its Clients.
- (f) Customer will not violate the rights of any third party while accessing or using the Application.

## 7. Confidentiality.

### 7.1. Confidentiality.

- (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.
- (b) Each party's obligations under this clause will survive 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 employees, officers, 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.

### 7.3. **Expiration.** Upon termination or expiration of these Terms, and subject to clause 3.9(c) which applies in relation to Customer Data, both parties agree to destroy all copies of written Confidential Information of the other party. Notwithstanding any of the foregoing, CCH shall 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 shall remain subject to the confidentiality requirements set out in these Terms.

## 8. Intellectual Property

- 8.1. General. Title to, and all Intellectual Property Rights in the Application and any documentation relating to the Application remain the property of CCH (or its licensors). The Customer acknowledges that any discoveries, inventions, patents, design rights or other rights arising (directly or indirectly) out of or in connection with the performance of these Terms are the property of CCH.

- 8.2. **Customer Data.** Title to, and any Intellectual Property Rights in, the Customer Data remain the property of the Customer. However, the Customer's ongoing access to the Customer Data via the Application is contingent on full payment of the Fees. 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. Warranties and Acknowledgements

- 9.1. Acknowledgement:

The Customer acknowledges 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 is on an "as is, where is" basis and at the Customer's own risk.
- (c) CCH does not warrant that the use of the Application will be uninterrupted or error free or that the Application 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, including public telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to the Application. CCH is not in any way responsible for any such interference or prevention of the Customer's access or use of the Application.
- (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 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 this Agreement and gives no warranty about the Application. Without limiting the foregoing, CCH does not warrant that the Application will meet the Customer's requirements or that it 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 (without limitation) warranties of merchantability, fitness for purpose, title

and non-infringement. CCH makes no warranty of any kind that the Application, or any CCH or third- party goods, services, technologies or materials (including any software), or any products or results of the use or 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) This Agreement is 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:
  - (iii) 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
  - (iv) 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. **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 excludes 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 damage resulting, directly or indirectly, from the use of, or reliance on, the Application.
- 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 licence 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 being unavailable;
  - (e) for any Consequential Loss; or
  - (f) for any loss, damage or costs caused by any unauthorised access to the Application via the Internet or any other means. The Customer acknowledges that the Customer is responsible for all loss, damage and costs caused by viruses. It is the Customer's responsibility to apply whatever 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 shall be provided "as is" without warranty of any kind by CCH. All rights and obligations with respect to such third-party products or services shall 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 right to access and use the Application, will commence on the Commencement Date and will continue for the Initial Term set out in the Order Form. 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 or the licence or services under any Order Form 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 shall terminate at the expiration of the then- current term. For the avoidance of doubt, a party may elect not to renew one or more Application/s in accordance with this clause, in which case these Terms shall be terminated in respect of those Application/s but will remain in effect and automatically renew in relation to any other Application/s.

### 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 if the breach is capable of being remedied;
- (b) breaches any of these Terms and the breach is not capable of being remedied (which includes any breach of clause 3.3 or any payment more than 30 days overdue); or
- (c) 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:

- (d) terminate these Terms and the Customer's use of the Application and the Website;
- (e) suspend for any definite or indefinite period of time, the Customer's use of the Application and the Website;
- (f) take either of the actions in clauses 11.3(d) and 11.3(e) in respect of any other persons in the Customer's organisation or who have access to the Customer's information or that of 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 will:

- (a) remain liable for any accrued charges and amounts which become due for payment before or after termination; and
- (b) immediately cease to use the Application and the Website, and must return to CCH all copies of any associated documentation, except that the Customer may retain any records created by the Application required by law to be kept.

#### 11.5. Survival:

Clauses 6.1, 6.4, 7, 8, 9, 10, 11, 12 and any other clauses which, by their nature, survive the expiry or termination of these Terms, continue in full force and effect following termination or expiry of these Terms.

#### 11.6. Transitional access

The Customer will be entitled to read-only access to the Customer Data stored in an Application database for a period of 30 days after termination or expiry of these Terms for the purpose of facilitating transition by the Customer to an alternative system.

## **12. General**

#### 12.1. Entire agreement:

These Terms constitute the entire agreement of the parties regarding the subject matter of these Terms. To the extent permitted by law, all prior negotiations, commitments, representations (whether oral or written) and understandings are superseded by these Terms and are of no effect.

#### 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 may 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 upon written notice to the Customer.

#### 12.4. Disputes

If a dispute, controversy or claim arises in connection with these Terms (**Dispute**), the following process applies:

- 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 notice being given pursuant to clause 10.5(a), 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 notice being given pursuant to clause 10.5(a), the Nominated Representatives will meet with at least once and undertake genuine and good faith negotiations to endeavor to resolve the Dispute;
- d. if the nominated representatives cannot resolve the Dispute within 14 days of the notice referred to in clause 10.5(a), either party may, by written notice to the other, refer the dispute to mediation before a mediator chosen by the parties.

#### 12.5. Governing law and jurisdiction:

These Terms are governed by the laws of New Zealand and the parties submit to the exclusive jurisdiction of the courts of New Zealand for all disputes arising out of or in connection with these Terms, without reference to any conflicts of laws.

#### 12.6. Severability:

If any part or provision of these Terms is illegal, invalid or unenforceable under applicable law, that part or provision will be severed from these Terms to the extent of the illegality, invalidity or unenforceability. The remainder of these Terms will be binding on the parties.

#### 12.7. Notices:

Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission to the other party's Notice Address.

#### 12.8. Subcontracting:

CCH may use subcontractors in connection with its performance of its obligations under these Terms.

#### 12.9. Force Majeure

- a. A party (**Affected Party**) shall 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.

#### 12.10. Information and Audit

- a. Upon CCH's written request, Customer must furnish CCH with a signed certificate verifying that the Application is being accessed and used in compliance with all of these Terms, including being accessed and used only by Authorised Users and to the extent permitted herein, by Clients.
- b. Within 72 hours following a written request by CCH, the Customer will provide CCH with access to all relevant information and all reasonable cooperation and assistance as may be required, to enable CCH to confirm that use of the Application is in accordance with these Terms and any Order Form.
- c. At its expense and on at least 5 days written notice, CCH, itself or by its third party agents, may audit Customer's compliance with the requirements of these Terms. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. During any such audit CCH and its designees may have access to Customer's computer systems and records and conduct forensic reviews thereof and may interview any of Customer's current and former employees and contractors. If CCH determines that Customer has not paid the Fees required pursuant to these Terms for Customer's access or use of the Application, CCH will invoice Customer for such 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 such fees should have been paid). Customer will pay to CCH the reasonable costs incurred by CCH in connection with the audit if the audit detects unpaid Fees that exceed five percent (5%) of the total Fees actually paid for the period audited. This right does not limit or preclude any additional remedies available to CCH at law or in equity.