

## CCH Companies

### 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.

Welcome to CCHCompanies, an online system designed to assist in the management of companies. These Terms are intended to explain our obligations as a service provider and your obligations as a client. Please read them carefully.

These Terms are binding on any user of the Software and apply to you from the time that CCH provides you with access to the Software.

We believe CCHCompanies will evolve over time based on user feedback. These Terms are not intended to answer every question or address every issue raised by the use of CCHCompanies.

By using this Website, you signify your assent to these Terms. If you do not agree to these Terms, please do not use the Website. We reserve the right, at our discretion, to change, modify, add or remove portions of these Terms at any time. Please check these Terms periodically for changes. Your continued use of CCHCompanies following the posting of changes to these Terms will mean you accept those changes.

These Terms were last updated on 24th January 2020.

#### 1. Definitions

“Enhancement, Support and Hosting Fee”

means the annual or monthly fee (excluding any taxes and duties) payable by you in accordance with the fee schedule (which CCH may change from time to time on notice to you).

“Confidential Information”

includes all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including the Software but does not include information which is, or becomes, publicly available other than through unauthorised disclosure by the other party.

“Data”

means any data inputted by you into the Software.

“Intellectual Property Right”

means any patent, trade mark, service mark, copyright, moral right, right in a design, know-how or any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“Terms”

means the terms of use.

“Software”

means the CCHCompanies software available (as may be changed or updated from time to time by CCH) via the Website, and includes the company forms and precedents where applicable.

“Website”

means the Internet website at the domain [www.cchcompanies.com](http://www.cchcompanies.com) or [www.cchcompanies.co.nz](http://www.cchcompanies.co.nz) or any other website operated by CCH New Zealand Ltd

“CCH”

means CCH New Zealand Ltd.

“you”

means you and includes your employees, consultants, representatives and agents.

## **2. Use of Software**

CCH grants you the right to access and use the Software via the Website with the user roles according to your subscription type. This right is non-exclusive and non-transferable and limited by these Terms.

## **3. Your Obligations**

### **1. Payment obligations:**

CCH will continue invoicing you monthly or annually for the Enhancement, Support and Hosting Fee until this Agreement is terminated in accordance with clause 8. Monthly invoices are raised in arrears and based on the number of companies entered into CCHCompanies. Payment is due on or before 20th of month.

Annual invoices are raised in advance and based on the number of companies entered into CCHCompanies. Further companies added will be invoiced pro-rata to the next annual invoice.

No credits will be issued if a company is deleted or moved to the archive but the space will be available for a new company to be added.

All CCH invoices are payable as per your monthly notification. You are responsible for payment of all taxes and duties in addition to the Service Fee.

2. General obligations:

You must only use the Software and Website for your own lawful internal business purposes, in accordance with these Terms and any notice sent by CCH or condition posted on the Website.

3. Access conditions:

1. You will ensure that all usernames and passwords required to access the Software are kept secure and confidential. You will immediately notify CCH of any unauthorised use of your passwords or any other breach of security and CCH will reset your password.
2. As a condition of these Terms, when accessing and using the Software, you must not:
  1. attempt to undermine the security or integrity of CCH's computing systems or networks or, where the Software is hosted by a third party, that third party's computing systems and networks;
  2. use, or misuse, the Software in any way which may impair the functionality of the Software or Website, or impair the ability of any other user to use the Software or Website;
  3. attempt to gain unauthorised access to any materials other than those to which you have been given express permission to access or to the computer system on which the Software is hosted;
  4. transmit, or input into the Software, 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 you do not have the right to use); and
  5. modify, copy, adapt, reproduce, disassemble, decompile or reverse engineer the Software or the Website except as is strictly necessary to use either of them for normal operation.

4. Indemnity:

Every care will be taken in the preparation of this Software and in the preparation of general information which is made available on our Website and in supporting documentation. However, use of the Software is not intended to constitute accounting, tax, legal, investment, consulting or other professional advice or service. You indemnify CCH against all claims, costs, damage and loss arising from your breach of any of these Terms or any obligation you may have to CCH, including (but not limited to) any costs relating to the recovery of any Software and Enhancement, Support and Hosting Fees that have not been paid by you.

#### **4. Confidentiality**

1. Confidentiality:

Unless the relevant party has the prior written consent of the other or unless required to do so by law:

1. Each party will preserve the confidentiality of all Confidential Information of the other obtained in connection with these Terms. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by these Terms.
2. Each party's obligations under this clause will survive termination of these Terms.
3. The provisions of clauses 4.1.1 and 4.1.2 shall not apply to any information which:
  1. is or becomes public knowledge other than by a breach of this clause;
  2. is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
  3. is independently developed without access to the Confidential Information.
2. CCH reserves the right to use aggregated data to determine usage of the product for billing and marketing purposes.

#### **5. Intellectual Property**

1. General:

Title to, and all Intellectual Property Rights in, the Software, the Website and any documentation relating to the Software remain the property of CCH (or its licensors).

2. Data:

Title to, and all Intellectual Property Rights in, the Data remain your property. However, your access to the Data is contingent on full payment of the CCH Enhancement, Support and Hosting and Support Fee. CCH adheres to reasonable 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 of Data. CCH expressly excludes liability for any loss of Data no matter how caused.

3. Copyright:

In addition to the rights expressed in 5.1 above, copyright in CCHCompanies and supporting material, including the Website and the forms and precedents, is owned by CCH. No part of the service covered by copyright may be reproduced or copied in any form or by any means (graphic, electronic or mechanical, including photocopying, recording, taping, or information- retrieval systems) except to use the precedents on bona fide one-off occasions to prepare documentation for one of your companies, and on the terms for use of precedents set out below, or except with the written permission of the copyright owners. You are not entitled to access to source code for any software.

## **6. Terms of Use of Forms and Precedents**

The forms and precedents in this product are made available on the understanding that the giving of professional advice and the drafting of legal documents are the sole responsibility of the customer and the customer acknowledges that it is completely reliant on its own expertise in using the forms and precedents, and recognises that company law and practice is constantly changing and that expert advice on particular facts should be sought before using the precedents. Neither CCH nor any authors, consultants or editors are responsible for the results of any actions taken or advice given by you based on the forms and precedents or on the information contained in the forms and precedents. Accordingly, neither CCH nor any authors, consultants or editors have any liability whatsoever for any claim or action that may arise from the use of the forms and precedents or the information contained therein. The forms and precedents can only be used for the purposes of providing professional advice and the drafting of company documents. The right to use the forms and precedents is non- transferable.

## **7. Warranties and Acknowledgements**

1. Acknowledgement:

You acknowledge that:

1. You are authorised to use the Software and the Website and to access the information that you access using the Software and the Website (whether that information is your own or that of anyone else).
2. If you are using the Software and accessing the Website on behalf of or for the benefit of an organisation (whether a body corporate or not) then CCH will assume that you have the right to do so and that organisation will be liable for your actions or omissions (including any breach of these Terms).
3. The provision of, access to, and use of, the Software is on an “as is, where is” basis and at your own risk.



4. CCH does not warrant that the use of the Software will be uninterrupted or error free. Among other things, the operation and availability of the systems used for accessing the Software, 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 Software. CCH is not in any way responsible for any such interference or prevention of your access or use of the Software.
5. It is your sole responsibility to determine that the Software meets the needs of your business.
6. It is your responsibility to save a local copy (in your registered office in New Zealand) of your corporate records in accordance with Sections 88, 190 and 195 of the NZ Companies Act 1993.

2. No warranties:

CCH gives no warranty about the Software. Without limiting the foregoing, CCH does not warrant that the Software will meet your requirements or that it will be suitable for your purposes. To avoid doubt, all implied conditions or warranties are excluded in so far as is permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement.

3. Consumer guarantees:

You warrant and represent that you are acquiring the right to access and use the Software and agreeing to these Terms for the purposes of a business and that, to the maximum 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 Software, the website or these Terms.

## **8. Limitation of Liability**

1. To the maximum extent permitted by law, CCH excludes all liability and responsibility to you (or any other person) in contract, tort (including negligence), or otherwise, for any loss (including loss of Data, profits and savings) or damage resulting, directly or indirectly, from the use of, or reliance on, the Software.
2. If you suffer loss or damage in connection with the use of the Software (whether in contract or tort, including negligence, or otherwise) CCH's aggregate liability to you on account of all defaults or other breaches arising from your use of the Software shall be limited to the amount that you have paid us in Enhancement, Support and Hosting Fees in the previous 12 months.
3. If you are not satisfied with the Software, your sole and exclusive remedy is to terminate these Terms in accordance with clause 9.



4. CCH, its employees, agents and contractors are not liable for any damages or losses resulting from your inability to use this service or the Software. Because of the nature of the Internet, the CCHCompanies Website is provided on an “as available” basis and we cannot promise that the site will be uninterrupted or entirely error free. CCH, its employees, agents and contractors will not be responsible to you if we are unable to provide the site for any reason.
5. The Software is provided on the understanding that we are not liable to you or to any third party for any damage or loss arising from any conflict of interest or potential conflict of interest.

## 9. Termination

1. No-fault termination:

These Terms will continue for the period covered by the Enhancement, Support and Hosting Fee paid in clause 3.1. These Terms will automatically continue for the same period unless either party terminates these Terms by giving notice to the other party at least 30 days before the end of the relevant payment period.

2. Breach:

If you:

1. breach any of these Terms and do not remedy the breach within 14 days after receiving notice of the breach if the breach is capable of being remedied;
2. breach any of these Terms and the breach is not capable of being remedied (which includes (without limitation) any payment more than 30 days overdue); or
3. go into liquidation or have a receiver or manager appointed of any of your assets or become insolvent, or make any arrangement with creditors, or become subject to any similar insolvency event in any jurisdiction, CCH may take any or all of the following actions, at its entire discretion:
4. Terminate these Terms and your use of the Software and the Website;
5. Suspend, for any definite or indefinite period of time, your use of the Software and the Website;
6. Take either of the actions in clause 9.2.4 and 9.2.5 in respect of any other persons in your organisation or who have access to your information or that of your organisation.

- 3 .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 you will:

1. remain liable for any accrued charges and amounts which become due for payment before or after termination; and
  2. immediately cease to use the Software and the Website.
4. Expiry or termination:

Clause 3.1, and clause 4.1 survive the expiry or termination of these Terms.

On termination of these Terms and/or suspension of your use of the Software and the Website your data will be available for you to download as an Excel or XML file.

## **10. Help Desk**

1. Technical problems:

In the case of technical problems you must make all reasonable efforts to investigate and diagnose problems before contacting CCH. If you still need technical help, please check the support provided online by CCH or failing that email us at [support@cch.co.nz](mailto:support@cch.co.nz).

2. Service availability:

Whilst CCH intends that the Software should be available 24 hours a day, seven days a week, it is possible that on occasion it may be unavailable to permit maintenance or other development activity to take place. If for any reason CCH has to interrupt the Software for longer periods than CCH would normally expect, we will use reasonable endeavours to publish in advance details of such activity.

## **11. General**

1. Entire agreement:

These Terms, together with the terms of any other notices or instructions given to you under these Terms, supersede and extinguish all prior agreements, representations (whether oral or written), and understanding and constitute the entire agreement between you and CCH relating to the Software and the other matters dealt with in these Terms.

2. Waiver:

If either party waives any breach of these Terms, this will not constitute a waiver of any other breach. No waiver will be effective unless made in writing.



3. Delays:

Neither party will be liable for any delay or failure in performance of its obligations under these Terms if the delay or failure is due to any cause outside its reasonable control. This clause does not apply to any obligation to pay money.

4. No assignment:

You may not assign or transfer any rights to any other person without CCH's prior written consent.

5. Governing law and jurisdiction:

This site is controlled and operated by CCH from its offices in Auckland, New Zealand. CCH makes no representations that materials on the site are appropriate or available for use in other locations. Those who choose to access this site from other locations do so on their own initiative and are responsible for compliance with local laws, if and to the extent local laws are applicable

6. Severability:

If any part or provision of these Terms is invalid, unenforceable or in conflict with the law, that part or provision is replaced with a provision which, as far as possible, accomplishes the original purpose of that part or provision. The remainder of this Agreement will be binding on the parties

7. Notices:

Any notice given under these Terms by either party to the other must be in writing (which includes writing by email) and will be deemed to have been given on transmission. Notices to CCH must be sent to support@cch.co.nz or to any other email address notified by email to you by CCH. Notices to you will be sent to the email address which you provided when setting up your access to the Software.

8. Rights of Third Parties:

A person who is not a party to these Terms has no right to benefit under or to enforce any term of these Terms. Your use of the Software does not extend to forwarding directly for the use by, and reliance upon, any third party.