

## CCH iFirm Document Management

### TERMS & CONDITIONS

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 CCH iFirm, an online system designed especially for accountants. These terms of use 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 use of the Software and apply to you from the time that CCH provides you with access to the Software.

We believe CCH iFirm 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 CCH iFirm. CCH reserves the right to change these terms at any time, effective upon the posting of modified terms and CCH will make every effort to communicate these changes to you via email or notification via the website. It is likely the terms of use will change over time. It is your obligation to ensure that you have read, understood and agree to the most recent terms available on the Website.

Please also follow the links below for the Licence Agreements specific to the following modules and/or content.

These Terms were last updated on 1 July 2013.

#### 1. Definitions

“Enhancement, Support & Hosting Fee”

means the 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 and any other intellectual or industrial property rights, anywhere in the world whether or not registered.

“Software”

means the CCH iFirm software available (as may be changed or updated from time to time by CCH) via the Website.

“Website”

means the Internet site at the domain [www.cchifirm.com](http://www.cchifirm.com), [www.cchifirm.co.nz](http://www.cchifirm.co.nz), [www.cchifirm.com.au](http://www.cchifirm.com.au) or any other site operated by CCH Collaborative Solutions.

“CCH”

Means CCH Collaborative Solutions 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:

An invoice will be issued to you at the time of purchase. CCH will continue invoicing you monthly for the Enhancement, Support & Hosting Fee until this Agreement is terminated in accordance with clause 8.

All CCH invoices are payable as per your monthly notification You are responsible for payment of all taxes and duties in addition to the Enhancement, Support & Hosting 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:

1. not 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. not 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. not 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. not 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. not 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. Communication Conditions:**

As a condition of these Terms, if you use any communication tools available through the Website, you agree only to use such communication tools for lawful and legitimate purposes. You must not use any such communication tool for posting or disseminating any material unrelated to the use of the Software 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 you do not have the right to use).

When you make any communication on the Website, you represent that you own the content of the communication. CCH is under no obligation to ensure that the communications on the Website are legitimate or that they are related only to the use of the Software. As with any other web-based forum, you must exercise caution when using the communication tools available on the Website. However, CCH does reserve the right to remove any communication at any time in its sole discretion.

5. Indemnity.

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, Training 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 in the possession of the receiving party without restriction in relation to disclosure before the date of receipt from the disclosing party; or
  4. is independently developed without access to the Confidential Information.

## **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 and Support Fee. 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 of Data. CCH expressly excludes liability for any loss of Data no matter how caused.

## **6. 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.

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 does not apply to the supply of the Software, the website or these Terms.

## **7. 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 as a result of CCH's negligence or failure to comply with these Terms, and claim by You against CCH arising from CCH's negligence or failure will be limited in respect of any one incident, or series of connected incidents to the enhancement and support fees paid by you 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 8.

## **8. Termination**

1. Thirty day money back policy

When you sign up for the Service you have 30 days in which you can evaluate CCH iFirm with no obligation to continue. The 30 days begins from the date of activation of your CCH iFirm site. Should you choose to discontinue using CCH iFirm, you will be refunded the amount already paid in full. If you choose to continue no action is required.

2. No-fault termination:

These Terms will continue for the period covered by the Enhancement, Support & 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.

3. 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 breach of clause 3.4 or any payment more than 30 days overdue); or
3. the paying subscriber goes into liquidation or has a receiver or manager appointed of 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 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 sub-clause 4 and 5 of this clause 8(3) in respect of any other persons in your organisation or who have access to your information or that of your organisation.

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 this Agreement 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.

Expiry or termination:

Clauses 3.1, 3.6, 4, 5, 6, 7, 8 and 10 survive the expiry or termination of these Terms.

## 9. 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 [ifirmsupport@cch.co.nz](mailto:ifirmsupport@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 have 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 on the Website.

## **10. 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 understandings 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:**

If the information you are accessing using the Software and the Website is solely that of a person who is tax resident in New Zealand at the time you accept these terms then New Zealand law governs these Terms and you 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. If the information you are accessing using the Software and the Website is solely that of a person who is tax resident in Australia at the time you accept these terms then Australian law governs these Terms and you submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with these Terms, without reference to any conflicts of laws. In all other situations these Terms are governed by the laws of Australia and you hereby submit to the exclusive jurisdiction of the courts of Australia for all disputes arising out of or in connection with these Terms, without reference to any conflicts of laws.

### **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 by email and will be deemed to have been given on transmission. Notices to CCH must be sent to [collaborativesolutions@cch.co.nz](mailto:collaborativesolutions@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.