

CCH eLending Terms of Use – New Zealand

These terms of use (**Terms**) set out the respective obligations of CCH New Zealand Limited (NZBN: 9429039532763) (**CCH**) and the Customer, and form a legally binding agreement between the parties. Please read these Terms carefully.

Attached as the SCHEDULE to these Terms is the CCH eLending Terms of Use – Australia (**Australian Terms**).

- (a) All capitalised terms used in these Terms shall have the respective meanings ascribed to them in the Australian Terms as may be altered, amended, modified or supplemented from time to time, unless otherwise defined herein.
- (b) These Terms shall apply in addition to the Australian Terms if the Customer is incorporated in, residing in or operating from New Zealand or otherwise subject to the laws or jurisdiction of New Zealand (such Customer an **Applicable Customer**).
- (c) In respect of an Applicable Customer, the following provisions of the Australian Terms shall be amended as follows:

Parties

- (i) Any reference made to "**CCH**" in the Australian Terms shall refer to CCH New Zealand Limited (NZBN: 9429039532763).
- (ii) The first un-numbered paragraph is deleted and replaced with the following paragraph:

"These terms of use (**Terms**) set out the respective obligations of CCH New Zealand Limited (NZBN: 9429039532763) (**CCH**) and the Customer, and form a legally binding agreement between the parties. Please read these Terms carefully."

Clause 1.1 (Definitions)

- (iii) The deletion of the definition of "**Business Day**" in clause 1.1 of the Australian Terms and substituting with the following definition:

"**Business Day** means any day other than a Saturday, Sunday or public holiday in Auckland, New Zealand."
- (iv) The deletion of the definition of "**Business Hours**" in clause 1.1 of the Australian Terms and substituting with the following definition:

"**Business Hours** means [8:30am to 5:00pm Auckland, New Zealand] time on any given Business Day."
- (v) The deletion of the definitions of "**GST Legislation**" and "**GST**" in clause 1.1 of the Australian Terms and substituting with the following definitions:

"**GST Legislation** means the *Goods and Services Tax Act 1985* of New Zealand; and **GST** means the goods and services tax payable pursuant to that GST Legislation."
- (vi) The deletion of the definition of "**Privacy Laws**" in clause 1.1 of the Australian Terms and substituting with the following definition:

"**Privacy Laws** means the *Privacy Act 2020* of New Zealand, and any other applicable privacy legislation as may be in force from time to time."
- (vii) The deletion of the definition of "**Related Body Corporate**" in clause 1.1 of the Australian Terms and substituting with the following definition:

"**Related Body Corporate** has the meaning given to "*related company*" in the *Companies Act 1993* of New Zealand."

- (viii) The deletion of the definition of “**Territory**” in clause 1.1 of the Australian Terms and substituting with the following definition:

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

Clause 2.1 (Interpretation)

- (ix) The deletion of clause 2.1(j) of the Australian Terms and substituting with the following clause:

“Parties must perform their obligations on the dates and times fixed by reference to Auckland, New Zealand.”

- (x) The deletion of clause 2.1(l) of the Australian Terms and substituting with the following clause:

“All monetary amounts are in New Zealand dollars.”

Clause 3.4 (Restrictions)

- (xi) The deletion of clause 3.4(b)(i) of the Australian Terms and substituting with the following clause:

“Possess, download, copy (no greater than what is fair dealing for the purpose of research or private study in accordance with section 43 of the *Copyright Act 1994* of New Zealand) or print a material part of eBooks and Content, except that Users may download, copy (no greater than what is fair dealing for the purpose of research or private study in accordance with section 43 of the *Copyright Act 1994* of New Zealand) and/or print materials borrowed via CCH eLending in the limited manner permitted by CCH eLending and in accordance with these Terms;”

Clause 9.3 (Indemnification)

- (xii) The deletion of the word “Australian” where it appears in clauses 9.3(a) and 9.3(d) of the Australian Terms and substituting with the words “New Zealand”.

Clause 9.4 (Consumer Guarantees)

- (xiii) The addition of the following words at the end of clause 9.4 of the Australian Terms:

“Without limiting the generality of the foregoing provisions of this clause 9.4, the parties agree that the products and services are being supplied and acquired in trade, and both parties are in trade and agree to contract out of the provisions of the *Consumer Guarantees Act 1993* of New Zealand and sections 9, 12A, 13 and 14 (1) of the *Fair Trading Act 1986* of New Zealand.”

Clause 12.4 (Dispute Resolution)

- (xiv) The deletion of the words “by the Australian Disputes Centre (**ADC**)” where they appear in clause 12.4(d) of the Australian Terms and substituting with the words “by the New Zealand Disputes Resolution Centre (**NZDRC**); and”

- (xv) The deletion of the words “ADC guidelines for commercial mediation” where they appear in clause 12.4(e) of the Australian Terms and substituting with the words “Mediation Rules of the NZDRC”.

Clause 12.5 (Governing Law and Jurisdiction)

- (xvi) The deletion of the words “New South Wales, Australia” where they appear in clause 12.5 of the Australian Terms and substituting with the words “New Zealand”.

- (d) The Australian Terms and these Terms shall be read and construed as one document, and, without prejudice to the generality of the foregoing, where the context so allows, references in each document to “Terms” and in any other document shall be read and construed as references to such document as altered, amended, modified or supplemented by these Terms and as it may be further amended, supplemented and/or restated from time to time. Save to the extent expressly amended by these Terms, all terms and conditions, rights and obligations of the

parties arising out of or under the foregoing and all other instruments and agreements executed, delivered or entered into thereunder or pursuant thereto shall remain unchanged and continue to apply in full force and effect.

SCHEDULE

CCH eLending Terms of Use – Australia

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

These Terms, as amended from time to time, apply to the Customer and any access to and/or use of CCH eLending and/or eBooks from the Commencement Date.

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

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

1. Definitions.

1.1 In these Terms, unless the context otherwise requires:

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

Business Hours means 8.30am to 5.00pm Sydney time on any given Business Day.

CCH eLending means the software forming part of CCH's digital library solution, made available by CCH to the Customer for access to and/or use of eBooks under these Terms, as altered, amended, modified or otherwise updated by CCH in its sole and absolute discretion, from time to time.

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

Commencement Date means the earlier of, the date on which the Customer signs the Order Form or the date the Customer or any of its Users first access and/or use CCH eLending.

Confidential Information means information that is confidential to a party and includes all information exchanged between the parties, whether in writing, electronically or orally (including, the provisions of these Terms and any Order Form, information relating to CCH eLending and information relating to the personnel, policies and business operations of the parties), but excludes information to the extent it:

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

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

Content means the content within eBooks.

Customer means the person or entity identified as the Customer in the Order Form.

Customer Data means all data, information, notes, annotations, records or files that are uploaded to, entered in, or stored on CCH eLending by or on behalf of the Customer, including by its Users, excluding any De-identified Data.

Defined Collection means the defined collection of eBooks limited to specific titles, as set out in the Order Form.

De-identified Data means all information relating to the Customer's or any of its Users' access to and/or use of CCH eLending that does not identify the Customer, its Users or any other individual, including:

- (a) Customer Data that has been altered so it does not identify the Customer, its Users or any other individual;
- (b) Information relating to the access or usage patterns of CCH eLending by or on behalf of the Customer or its Users and general and demographic information about the Customer's and any of its Users' computer systems from which CCH eLending 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.

eBooks means literary work published as digital content in the form of electronic book titles forming part of CCH's digital library solution, made available by CCH to the Customer for access and/or use via CCH eLending.

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

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

Initial Term means the period specified as the minimum period in the Order Form.

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

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

Moral Rights means:

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

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

Online Account means an authorised account created for the purpose of a User's access to and/or use of CCH eLending established by a particular User, and includes the controls, permissions and data unique to such User.

Online Account Access Information means a User's private information used to access

and/or use their Online Account, including their username and password.

Order Form means a written confirmation of the order placed by the Customer with CCH, which documents the Customer's access to and/or use of CCH eLending and Up-front Payment for the Defined Collection. The Order Form incorporates and is subject to these Terms.

Permitted Purpose means the Customer's or its Users' lawful and legitimate business, research or study purposes only. The Permitted Purpose excludes any use for the purpose of distribution, sale, license, training, hire, let or trade to a third-party.

Personal Information has the meaning given in the Privacy Laws.

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

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

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

Support Services means remote support services in relation to CCH eLending, 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.

Term commences on the Commencement Date and terminates in accordance with clause 11.1.

Territory means the territory set out in the Order Form or, if no territory is specified, Australia.

Third-party eBook Provider means an eBook provider not including CCH Australia Limited (ABN 95 096 903 365), CCH New Zealand Limited (NZBN 9429039532763), CCH Asia Pte Limited (Company Registration No. 199703606K) and/or Commerce Clearing House (Malaysia) Sdn. Bhd (Company No. 199101005993 [216303-M]).

Up-front Payment means the Customer's access to and/or use of CCH eLending and the up-front payment of Fees for the Defined Collection, as set out in the Order Form and in accordance with these Terms.

User means an officer, employee, agent, independent contractor and/or student of the Customer who is authorised by the Customer to access and/or use CCH eLending and the Defined Collection for the Permitted Purpose.

Website means any website notified by CCH to the Customer from time to time for the purpose of the Customer or its Users accessing and/or using CCH eLending.

2. Interpretation.

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

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation.
- (b) These Terms must not be interpreted adversely to a party only because that party was responsible for preparing them.
- (c) Headings are for convenience or reference only and do not affect the interpretation of these Terms.
- (d) Words denoting the singular includes the plural and vice versa.
- (e) References to a person or words denoting a person includes a company, statutory corporation, partnership, joint venture, association, authority, trust, state or government and vice versa.
- (f) References to any gender includes all genders.
- (g) Where any word or phrase is defined in these Terms, any other grammatical form of

that word or phrase will have a corresponding meaning.

- (h) The words “include”, “includes”, “including”, “for example”, “such as” and similar expressions are not words of limitation.
- (i) References to a “clause”, “paragraph” or “addendum” is to a clause, paragraph or addendum of these Terms.
- (j) Parties must perform their obligations on the dates and times fixed by reference to Sydney, New South Wales, Australia.
- (k) If the day on or by which anything is to be done is not a Business Day, then it must be done by the next Business Day.
- (l) All monetary amounts are in Australian dollars.
- (m) References to a “party” or “parties” are references to a party or parties of these Terms.
- (n) References to a party are intended to bind their executors, administrators and permitted transferees.
- (o) Obligations under these Terms affecting more than one party bind them jointly and each of them severally.
- (p) References to any agreement or other document annexed to or referred to in these Terms includes any amendments to it and any documents in addition to or in substitution for it which has been approved in writing by the parties to these Terms.

3. Rights and Conditions of Use.

3.1. Right to Access and/or Use.

- (a) CCH eLending is supported by an electronic platform licensed by CCH from applicable licensors. CCH grants to the Customer a limited, non-exclusive, non-transferable right to access and/or use CCH eLending and the Defined Collection within the Territory pursuant to clause 11.1 solely for the Permitted Purpose, as set out in these Terms and in accordance with any instructions on the Website.
- (b) Subject to clause 3.1(a), the Customer and its Users must only access and/or use the Defined Collection in the following manner:
 - (i) Browse and search the Defined Collection, including Content;
 - (ii) Download and temporarily store to a storage device under the Customer’s or its User’s exclusive control immaterial parts of Content solely for the internal display of Content and/or for the quotation of Content excerpts into documents created for the Permitted Purpose;
 - (iii) Create and/or store notes and annotations in an Online Account; and/or
 - (iv) Print immaterial parts of Content solely for internal use.

3.2. Reservation of Rights.

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

3.3. Users.

The Customer may permit its Users to access and/or use CCH eLending and the Defined Collection. The Customer must have made Up-front Payment for CCH eLending and the Defined Collection for its Users and must not permit any person other than its Users to access and/or use CCH eLending and the Defined Collection. The Customer must ensure each of its Users complies with these Terms. A User does not acquire individual rights in CCH eLending and the Defined Collection, but may access and/or use CCH eLending and the Defined Collection via the Customer and subject always to the Customer’s rights and

obligations under these Terms.

3.4. Restrictions.

- (a) In relation to CCH eLending, the Customer must not do or attempt to do, and must ensure that its Users must not do or attempt to do, any of the following:
- (i) Subject to clause 3.4(b)(i), possess, download, copy or print CCH eLending or any part of CCH eLending, or any material retrieved through CCH eLending (even if in the public domain);
 - (ii) Modify, port, adapt or create derivative works based on CCH eLending;
 - (iii) View, read, reverse compile, reverse assemble, disassemble or print CCH eLending's source code or object code or other runtime objects or files related to CCH eLending or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any part of CCH eLending;
 - (iv) Rent, lease, distribute (or redistribute), provide or otherwise make available CCH eLending, in any form, to any third-party (including in any service bureau or similar environment);
 - (v) Share access to or use of CCH eLending with any persons other than its Users;
 - (vi) Share any Online Account or Online Account Access Information with any third-party other than its Users;
 - (vii) Create any "links" to or "frame" or "mirror" CCH eLending or any portion thereof;
 - (viii) Defeat, disable or circumvent any protection or security mechanism related to CCH eLending;
 - (ix) Use or misuse CCH eLending in any way which may impair the functionality of CCH eLending or the Website, or impair the ability of any other user to access and/or use CCH eLending or the Website;
 - (x) Transmit or input into CCH eLending 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 Intellectual Property Rights, which the Customer does not have the right to use;
 - (xi) Publish, distribute (or redistribute) or sell any document retrieved through CCH eLending (even if in the public domain); or
 - (xii) Violate or attempt to violate the security of CCH's networks or servers, including by:
 - (A) Accessing data not intended for the Customer and/or its Users or logging into a server, system or account which the Customer and/or its Users is not authorised to access;
 - (B) Attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without CCH's proper written request and authorisation; or
 - (C) 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.
- (b) In relation to eBooks, the Customer must not do or attempt to do, and must ensure that its Users must not do or attempt to do, any of the following:
- (i) Possess, download, copy (no greater than 10%) or print a material part of eBooks and Content, except that Users may download, copy (no greater than 10%) and/or print materials borrowed via CCH eLending in the limited manner permitted by CCH eLending and in accordance with these Terms;
 - (ii) Access and/or use eBooks and Content for any purpose other than the Permitted Purpose or access and/or use Content as part of or as a basis for

publishing, distribution (or redistribution), sale, license, training, hire, let or trade to a third-party;

- (iii) Use and/or store Content in a database or storage facility in any form for the provision of know how;
- (iv) Modify, translate, alter, disassemble, decompile, reverse engineer or convert into readable form Content or any part thereof; or
- (v) Defeat, disable, tamper with, alter or circumvent any protection or security mechanism related to Content and any feature or mechanism designed to protect the Intellectual Property Rights of CCH, its Related Body Corporate, any applicable licensors and Third-party eBook Providers.

3.5. Online Account Access Information.

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

3.6. Customer Data.

- (a) **Authorised Use.** As between CCH and the Customer, the Customer is and remains the sole and exclusive owner of all right, title, and interest in and to Customer Data. CCH, its Related Body Corporate, any applicable licensors and its subcontractors may only use Customer Data as:
 - (i) Necessary to provide CCH eLending and eBooks to the Customer;
 - (ii) Permitted or required by law;
 - (iii) Expressly authorised under these Terms; and
 - (iv) Otherwise authorised by the Customer in writing (each use an **Authorised Use**). The Customer grants to CCH its Related Body Corporate, any applicable licensors and its subcontractors a limited licence to use Customer Data for each Authorised Use.
- (b) **Disclosure.** CCH may disclose Customer Data to its Related Body Corporate, any applicable licensors, subcontractors and third-party service providers for the purpose of providing CCH eLending and eBooks.
- (c) **Storage Location.** The storage location of Customer Data is New Zealand.
- (d) **Third-party Cloud Provider.** The Customer acknowledges and agrees that Customer Data may be stored with a third-party cloud provider for which different terms may govern the management of and access to Customer Data. CCH is not, and will not be, responsible for any data loss or errors, omissions or violations of applicable laws or regulations by any such third-party cloud provider.
- (e) **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 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 CCH eLending or other CCH products and services.

- (f) **Copying Customer Data for Support Services.** CCH may make copies of Customer Data for the purpose of providing the Customer with Support Services and/or other services.
- (g) **Security.** CCH will take reasonable safeguards intended to prevent loss or unauthorised disclosure of Customer Data. The Customer acknowledges and agrees that security safeguards by their nature are capable of circumvention and that CCH does not and cannot guarantee that Customer Data, or CCH eLending cannot be accessed by unauthorised persons. CCH will not be responsible or liable for any such unauthorised access or for loss of Customer Data, nor will any such unauthorised access or loss constitute a breach by CCH of its confidentiality obligations under these Terms. Nothing in these Terms will be deemed to diminish the Customer's responsibility for complying with applicable laws or standards regarding the protection of Customer Data. In the event notification to persons whose details are included in Customer Data is required, the Customer will be responsible for any such notifications at its own cost.
- (h) **Removal of Customer Data.** CCH reserves the right in its sole and absolute discretion at any time, to remove any Customer Data that it believes to be in violation of these Terms.
- (i) **Customer Obligations Regarding Customer Data.** The Customer represents, warrants and covenants that it must not upload or transmit any Customer Data that:
 - (i) The Customer does not have the lawful right to copy, transmit, distribute and display (including any Customer Data the upload or transmission of which would violate any confidentiality or fiduciary obligations that the Customer might be subject to);
 - (ii) Is Personal Information, unless the Customer has complied with applicable Privacy Laws, including as such laws apply to the upload and transmission of such Customer Data and the processing of that Customer Data by CCH eLending as contemplated by these Terms;
 - (iii) Infringes, misappropriates or otherwise violates any Intellectual Property Rights or other proprietary rights or violates any other rights of any third-party; or
 - (iv) The upload or transmission of which would otherwise violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability.
- (j) **CCH Use of Customer Data.** The Customer represents, warrants and covenants that CCH's storage and/or use of Customer Data in accordance with these Terms and as required to provide CCH eLending to the Customer, 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.
- (k) **Customer Responsible for Customer Data.** The Customer represents, warrants and covenants that it has sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data.

3.7. Additional Online Terms.

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

3.8. Internet Connectivity.

The Customer acknowledges and agrees that:

- (a) CCH (either itself or through a third-party) will make CCH eLending available for access via the Internet and use of CCH eLending requires the Customer to have

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

3.9. Compliance Mechanisms.

CCH eLending may contain technological copy protection or other security features designed to prevent unauthorised use of CCH eLending, eBooks or any other materials accessible via CCH eLending, including features designed to protect against use of CCH eLending:

- (a) Beyond the scope of the licence granted pursuant to clause 3.1; or
- (b) Prohibited in clause 3.4. 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.

3.10. Unauthorised Acquisition.

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

- (a) Is acquired from an unauthorised reseller or distributor;
- (b) Is pirated, cracked or hacked, including through the use of Online Account Access Information established for use by another person;
- (c) Has been acquired with the intent or for the purpose of using in a manner that is illegal, fraudulent, in violation of these Terms or otherwise outside the normal, stated and/or reasonably understood purpose of such product or service; or
- (d) Is acquired with the use of false or inaccurate statements and/or information, for example false name, contact information or payment information, or false declaration of the total number of users.

3.11. Reservation of Rights and Ownership of Developed Materials.

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

3.12. Suspension.

- (a) In addition to any other suspension or termination rights of CCH under these Terms, CCH may suspend or terminate the Customer's access to and/or use of, or otherwise modify, CCH eLending and/or any component thereof, and/or any Online Account or any Online Account Access Information without notice:
 - (i) In the event the Customer, including any of its Users, or other person or entity acting through or on behalf of the Customer, is determined by CCH, in CCH's sole judgment, to have or attempted to have damaged, harmed or misused CCH eLending, eBooks, the Website or CCH's software, server, network or other systems;
 - (ii) As necessary or appropriate to comply with any law, regulation, court order, or other governmental request or order or otherwise protect CCH from potential legal liability or harm to its business; or
 - (iii) If the Customer has obtained unauthorised access to CCH eLending and eBooks as described in clause 3.10.
- (b) CCH will use reasonable efforts to notify the Customer of the reasons for such suspension or termination as soon as reasonably practicable, unless such action is due to clause 3.10. In the event of a suspension, other than due to clause 3.10, CCH will promptly restore the Customer's access to CCH eLending as soon as the event giving rise to the suspension has been resolved, as determined in CCH's sole and absolute discretion.
- (c) Nothing contained in these Terms will be construed to limit CCH's actions or remedies or act as a waiver of CCH's rights in any way with respect to any of the activities described in clause 3.10. CCH will not be responsible for any loss or damage incurred by the Customer as a result of any termination or suspension of access to and/or use of CCH eLending and eBooks in accordance with this clause 3.12.

3.13. Modification of CCH eLending and Licensors.

- (a) CCH reserves the right, in its sole and absolute discretion and without first consulting with the Customer, to discontinue, alter, amend, modify, or otherwise update CCH eLending, any component of CCH eLending or eBooks for any reason. If CCH eLending is discontinued, then CCH may in its sole and absolute discretion provide the Customer with access to software having substantially similar or greater functionality to CCH eLending (**Replacement Software**), with CCH reserving the right to charge additional fees for any greater functionality. If CCH does not provide the Customer with Replacement Software and the Customer's Defined Collection includes eBooks published by:
 - (i) CCH Australia Limited (ABN 95 096 903 365), CCH New Zealand Limited (NZBN 9429039532763), CCH Asia Pte Limited (Company Registration No. 199703606K) and/or Commerce Clearing House (Malaysia) Sdn. Bhd (Company No. 199101005993 [216303-M]), then CCH will reasonably provide the Customer with those eBooks in an alternative media format, subject to any additional terms and conditions in CCH's sole and absolute discretion;
 - (ii) A Third-party eBook Provider, then CCH will not provide the Customer with those eBooks in an alternative media format, and the Customer's access to and/or use of those eBooks will terminate, subject to any terms and conditions of the Third-party eBook Provider.
- (b) CCH reserves the right, in its sole and absolute discretion and without first consulting with the Customer, to vary, change, modify or discontinue any applicable licensors which support CCH eLending.

4. Support.

4.1. General.

- (a) CCH will provide the Customer with Support Services during Business Hours as CCH provides generally to customers as part of its then-current support program.

- (b) CCH does not provide Support Services to Users.
- (c) The Customer must make all reasonable efforts to investigate and diagnose technical problems before contacting CCH.
- (d) Support Services may include automatic updates to CCH eLending, which will be in CCH's sole and absolute discretion. CCH will have no obligation to provide updates.
- (e) CCH reserves the right to charge additional fees for any optional and ancillary features and/or functionality it may develop and/or market in connection with CCH eLending.
- (f) It is possible that on occasion CCH eLending may be unavailable, including to permit maintenance or other development activity to take place. CCH gives no guarantee in relation to availability of CCH eLending.
- (g) If for any reason CCH has to interrupt availability of CCH eLending for longer periods than CCH would normally expect, CCH will use reasonable endeavours to publish in advance details of such activity on the Website or by any other reasonable means.

4.2. Support Waiver.

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

5. Fees and Payment.

5.1. Fees for CCH eLending.

CCH will not charge the Customer Fees for access to and/or use of CCH eLending (for the avoidance of doubt, access to and/or use of CCH eLending does not include access to and/or use of the Defined Collection), however CCH reserves the right in its sole and absolute discretion to charge such Fees. Should CCH decide to charge the Customer Fees for access to and/or use of CCH eLending:

- (a) CCH will provide the Customer with 30 days' written notice.
- (b) CCH may in its sole and absolute discretion waive such Fees subject to the Customer meeting criteria as determined by CCH.

5.2. Fees for the Defined Collection.

The Customer must pay Fees to CCH for the Defined Collection. The Customer must pay CCH Fees at the time of purchasing the Defined Collection. If the Customer expands the Defined Collection by purchasing additional eBooks, the Customer must pay additional Fees for the additional eBooks.

5.3. Invoices and Payment.

- (a) CCH will issue the Customer with an invoice for Fees at the time of entering into these Terms.
- (b) CCH will issue the Customer with invoices for Fees during the Term at the intervals set out in the Order Form.
- (c) The Customer acknowledges and agrees:
 - (i) All CCH invoices are payable within 30 days after the date of an invoice, and the Customer will make payment within these payment terms; and
 - (ii) The Customer is responsible for payment of all taxes and duties, including GST, if GST Legislation applies, in addition to Fees, and the Customer will promptly reimburse CCH for any such taxes payable or collectable by CCH.
- (d) If the Customer fails to make payment within 90 days after the date of an invoice, CCH may terminate these Terms with immediate effect. The Customer will remain

liable for the arrears and may be required to pay a reactivation fee prior to any future access to and/or use of CCH eLending and the Defined Collection.

6. Customer Obligations.

6.1. Indemnity.

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

- (a) The Customer's breach of any of these Terms, including any costs relating to the recovery of any Fees that have not been paid by the Customer;
- (b) Any User's access to and/or use of CCH eLending, the Website and/or eBooks;
- (c) Any claim by a third-party in connection with the Customer's or its Users' use of CCH eLending and/or eBooks, or otherwise in connection with these Terms; and
- (d) Arising out of anything lawfully done by or on behalf of CCH pursuant to CCH's rights under clause 6.2.

6.2. Verification of Use.

The Customer authorises CCH and its Representatives to enter any premises which the Customer occupies at any time and from time to time during the Term, without notice, during Business Hours to verify that the Customer's access to and/or use of CCH eLending, the Website and/or eBooks is consistent with these Terms. The Customer agrees to cooperate with CCH in order to facilitate the verification process by affording access to the Customer's computer systems for this purpose.

6.3. Security.

The Customer acknowledges and agrees it:

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

6.4. Customer's Representations.

The Customer represents, warrants and covenants that:

- (a) The Customer has full power and authority to enter into, and perform its obligations under these Terms and the Order Form;
- (b) These Terms and the Order Form have been duly authorised and constitute valid and binding obligations on the Customer;
- (c) The Customer is accessing and/or using CCH eLending and eBooks solely for the Permitted Purpose;
- (d) The Customer will not access and/or use CCH eLending and eBooks to create a product, service or database that competes with CCH eLending, CCH, its Related Body Corporate, any applicable licensors and Third-party eBook Providers;
- (e) The Customer is responsible for complying with all laws, rules, regulations and procedures of local, state, federal and foreign authorities applicable to the Customer and its business;
- (f) The Customer will be solely responsible for compliance with these Terms by its Users; and
- (g) The Customer will not violate the rights of any third-party while accessing and/or using CCH eLending, the Website and/or eBooks.

7. Confidentiality.

7.1. General.

- (a) Each party will maintain the confidentiality of all Confidential Information of the other party obtained in connection with these Terms. Neither party will, without the prior written consent of the other party, disclose or make any Confidential Information of the other party available to any person, or use the Confidential Information of the other party for its own benefit, other than as contemplated by these Terms.
- (b) The disclosing party will retain all proprietary rights to the information it discloses in connection with these Terms.
- (c) Each party will be deemed to have fulfilled its confidentiality obligations under these Terms if it affords the other party's Confidential Information at least the same degree of care it takes in protecting its own Confidential Information, but in no event using less than a reasonable degree of care.
- (d) Each party's obligations under this clause 7 will survive expiry or termination of these Terms.

7.2. Permitted Disclosures.

A party may disclose Confidential Information of the other party:

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

7.3. Confidentiality Upon Termination or Expiration.

Upon termination or expiration of these Terms, both parties agree to securely destroy all copies of written Confidential Information of the other party. Notwithstanding any of the preceding, CCH will be entitled to keep copies of Confidential Information of the Customer:

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

8. Intellectual Property Rights.

8.1. General.

- (a) CCH, its Related Body Corporate, any applicable licensors and Third-party eBook Providers retain all ownership of CCH eLending, the Website, any associated documentation and eBooks, whether in their original form or as altered, amended, modified or otherwise updated during the Term.
- (b) CCH, its Related Body Corporate, any applicable licensors and Third-party eBook Providers retain all Intellectual Property Rights and proprietary rights in CCH eLending, the Website, any associated documentation and eBooks.
- (c) The Customer acknowledges and agrees that all Intellectual Property Rights or other

rights arising directly or indirectly out of or in connection with the performance of these Terms are the sole property of CCH, its Related Body Corporate, any applicable licensors and Third-party eBook Providers.

- (d) Nothing in these Terms affects the ownership of Moral Rights in CCH eLending, the Website, any associated documentation and eBooks.

8.2. Customer Data.

- (a) The Customer retains all Intellectual Property Rights in Customer Data.
- (b) The Customer acknowledges and agrees that the Customer's ongoing access to Customer Data via CCH eLending and the Website is contingent on the Customer's full and timely payment of Fees in accordance with these Terms.
- (c) CCH adheres to its best practice policies and procedures to prevent data loss, including a daily system data back-up regime, but does not make any guarantees that there will be no loss, damage or corruption of Customer Data. CCH expressly excludes liability for any loss, damage or corruption of data no matter how caused.

9. Acknowledgements, Warranties, Indemnification and Consumer Guarantees.

9.1. Acknowledgements.

The Customer acknowledges and agrees that:

- (a) The Customer and its Users are authorised to use CCH eLending and eBooks.
- (b) The provision of, access to, and/or use of, CCH eLending, the Website and eBooks is on an "as is" basis and at the Customer's and its User's own risk.
- (c) CCH does not warrant that the use of CCH eLending, the Website and eBooks will be uninterrupted or error free or that CCH eLending and the Website will properly operate on or with any specific operating system or computer hardware or configurations. Among other things, the operation and availability of the systems used for accessing and/or using CCH eLending and the Website, including telephone services, computer networks and the Internet, can be unpredictable and may from time to time interfere with or prevent access to and/or use of CCH eLending and the Website. CCH is not in any way responsible for any such interference or prevention of the Customer's or its Users' access to and/or use of CCH eLending and the Website.
- (d) It is the Customer's sole responsibility to determine that CCH eLending meets the needs of the Customer's business.
- (e) eBooks are not a substitute for legal and/or professional advice.

9.2. No Warranties.

- (a) To the extent permitted by law and subject to clause 9.2(b), CCH excludes all representations, warranties or terms, whether express or implied, other than those expressly set out in these Terms and gives no warranty about CCH eLending, the Website and eBooks. Without limiting the preceding, CCH does not warrant that CCH eLending, the Website and eBooks will meet the Customer's and its User's requirements or that they will be suitable for the Customer's and its User's purposes. To avoid doubt, all implied conditions or warranties are excluded to the extent permitted by law, including warranties of merchantability, fitness for purpose, title and non-infringement. CCH makes no warranty of any kind that CCH eLending, the Website and eBooks, or any CCH, applicable licensors, Third-party eBook Providers or any other third-party goods, services, technologies or materials (including any software), or any products or results of the use of any of them, will operate without interruption, achieve any intended result, be compatible or work with any other goods, services, technologies or materials (including any software, hardware, system or network), or be secure, accurate, complete, free of harmful code or error free. Any open source software is provided "as is" and any representation or warranty of or concerning any of them is strictly between the Customer and the third-party owner or distributor of such open source software.

- (b) These Terms are to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, CCH limits its liability in respect of any claim to, at CCH's option:
 - (i) In the case of goods:
 - (A) The replacement of the goods or the supply of equivalent goods;
 - (B) The repair of the goods;
 - (C) The payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - (D) The payment of having the goods repaired; and
 - (ii) In the case of services:
 - (A) The supply of the services again; or
 - (B) The payment of the cost of having the services supplied again.

9.3. Indemnification.

- (a) Subject to these Terms, CCH agrees to defend the Customer, its directors, officers and employees, at CCH's sole cost and indemnify the Customer (by paying for damages finally awarded against the Customer or any amounts payable in any settlement entered into in compliance with these Terms) from and against any claims, demands, actions or proceedings by any third-parties alleging that the Customer's use of CCH eLending as provided and permitted under these Terms infringes or violates such third-party's Australian patent, copyright or trade secret rights, provided that:
 - (i) The Customer notifies CCH promptly in writing of the claim;
 - (ii) CCH controls the defence, settlement and approval of the claim; and
 - (iii) The Customer provides CCH with cooperation and assistance, including all necessary authority and required information in connection with the defence or settlement of the claim.
- (b) The Customer acknowledges and agrees that CCH's obligations under clause 9.3(a) will not apply if and to the extent that they arise from or relate to:
 - (i) The access to and/or use of CCH eLending, the Website and/or eBooks in violation of these Terms;
 - (ii) The use of CCH eLending and/or eBooks in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH; or
 - (iii) Any data or information, or other intellectual property supplied by the Customer, any of its Users or any third-party.
- (c) If CCH eLending becomes, or in CCH's opinion, is likely to become, the subject of a third-party claim covered by CCH's obligations under clause 9.3(a), then CCH may, in its sole and absolute discretion and at its sole cost and expense:
 - (i) Procure for the Customer the right to continue using CCH eLending; or
 - (ii) Replace the infringing portion of CCH eLending with non-infringing items with substantially similar functionality.

If CCH reasonably determines that none of the foregoing is commercially practicable, then CCH may elect to terminate these Terms and grant the Customer a refund of the Fees paid for the affected Term less an allocation for use made by the Customer prior to the termination.
- (d) Clause 9.3(c) provides CCH's entire liability and the sole and exclusive remedy of the Customer, its directors, officers and employees, any Related Body Corporate and any of its Users with respect to any actual or claimed infringement or other violation of any third-party's Australian patent, copyright or trade secret rights.

9.4. Consumer Guarantees.

The Customer warrants and represents that the Customer is acquiring the right to access and/or use CCH eLending 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 CCH eLending or these Terms. Where any consumer warranty or guarantee cannot be lawfully excluded, CCH limits its liability for any breach of any such consumer warranty or guarantee to the extent permitted by law.

10. Limitation of Liability.

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

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

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

- (a) To the extent that the Customer's acts or omissions contributed to the Customer's loss;
- (b) For any processing deficiency in any system that is caused in whole or in part by input data;
- (c) For any defect or deficiency in any system or service that is not developed for or provided by CCH under these Terms, including the Customer's production and legacy systems and systems that receive data from systems produced for or by CCH;
- (d) For any losses caused to the Customer as a result of CCH eLending, the Website and eBooks being unavailable;
- (e) For any Consequential Loss; or
- (f) For any loss, damage or costs caused by any unauthorised access to CCH eLending, the Website and eBooks via the Internet or any other means. The Customer acknowledges and agrees that it is responsible for all loss, damage and costs caused by any viruses. It is the Customer's sole responsibility to apply whatever virus protection measures the Customer considers appropriate.

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

11. Term and Termination.

11.1. Term.

These Terms, and the Customer's access to and/or use of CCH eLending and the Defined Collection, will commence on the Commencement Date. If the Customer's Defined Collection includes eBooks published by:

- (a) CCH Australia Limited (ABN 95 096 903 365), CCH New Zealand Limited (NZBN 9429039532763), CCH Asia Pte Limited (Company Registration No.

199703606K) and/or Commerce Clearing House (Malaysia) Sdn. Bhd (Company No. 199101005993 [216303-M]), access to and use of CCH eLending and those eBooks will terminate in accordance with and will be subject to clause 3.13(a)(i);

- (b) A Third-party eBook Provider, access to and use of CCH eLending and those eBooks will terminate in accordance with and will be subject to clause 3.13(a)(ii).

11.2. Breach.

If the Customer:

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

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

- (e) Terminate these Terms and the Customer's access to and/or use of CCH eLending, the Website and eBooks;
- (f) Suspend for any definite or indefinite period of time, the Customer's access to and/or use of CCH eLending, the Website and eBooks; and/or
- (g) Take either of the actions in clause 11.2(e) and clause 11.2(f) in respect of any of the Customer's Users or any other person accessing and/or using CCH eLending, the Website and eBooks via the Customer.

11.3. 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 the Customer must:

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

12. General.

12.1. Entire Agreement.

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

12.2. Waiver.

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

12.3. Assignment.

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

12.4. Dispute Resolution.

If a dispute, controversy or claim arises between the parties in connection with these Terms (**Dispute**), a party must not commence any court or arbitration proceedings, except where that party seeks urgent interlocutory relief, unless it has first complied this clause 12.4:

- (a) Either party may give notice to the other party identifying the Dispute and the party's preferred outcome (**Dispute Notice**);
- (b) Within two days of the Dispute Notice being given, the parties will each nominate a senior executive to take part in negotiations, with authority to resolve the Dispute on behalf of the party (**Nominated Representative**);
- (c) Within five days of the Dispute Notice being given, the Nominated Representatives will meet at least once, either in-person or via technological means, and undertake genuine and good faith negotiations to resolve the Dispute;
- (d) If the Nominated Representatives cannot resolve the Dispute within 14 days of the Dispute Notice being given, either party may, by written notice to the other, refer the dispute to mediation before a mediator chosen by the parties or, if the parties cannot agree, by the Australian Disputes Centre (**ADC**); and
- (e) The mediation will be conducted in accordance with the ADC guidelines for commercial mediation to the extent that they do not conflict with the provisions of this clause 12.4.
- (f) This clause 12.4 survives expiry or termination of these Terms.

12.5. Governing Law and Jurisdiction.

The validity, interpretation and performance of these Terms are governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales, Australia in respect of any dispute that arises in connection with these Terms.

12.6. Severability.

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

12.7. Merger.

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

12.8. Notices.

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

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

12.9. Survival.

Clauses 2.1(b), 3.2, 3.4, 3.6, 3.9, 3.10, 3.11, 3.13(a), 5.1, 5.2, 5.3, 6.1, 6.4(d), 7.1, 7.2, 7.3, 8.1, 8.2, 9.1(e), 9.2, 9.4, 10.1, 10.2, 10.3, 10.4, 11.1, 11.3, 12.1, 12.2, 12.4, 12.5, 12.7, 12.8, 12.9, 12.11 and 12.13(e) survive expiry or termination of these Terms, together with any other term, condition or obligation which by its nature is intended to do so.

12.10. Subcontracting.

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

12.11. Agency, Partnership etc.

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

12.12. Force Majeure.

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

12.13. Information and Audit.

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

clause 5.2. CCH's rights under this clause 12.13(e) do not limit or preclude any additional remedies available to CCH at law or in equity.