

CCH eLending Terms of Use

These terms of use (**Terms**), as amended from time to time, are binding on any use of CCH eLending and apply to you from the Commencement Date. Please read them carefully.

It is likely that CCH eLending will evolve over time. These Terms are not intended to answer every question or address every issue raised by the use of CCH eLending. CCH Australia Limited (ABN 95 096 903 365) (**CCH**) reserves the right to change these Terms at any time, effective upon the date of publication of the modified terms. CCH will communicate these changes to you via notification on the Website. It is your obligation to ensure that you have read, understood and agree to the most recent terms available at <http://wolterskluwer.com.au/cch-elending>.

By accessing CCH eLending or by otherwise indicating acceptance (electronically or otherwise) of CCH eLending, you acknowledge your agreement to these Terms.

1. Definitions

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

CCH eLending means CCH's digital library solution, as such solution may be updated from time to time by CCH in its sole discretion.

Commencement Date means the earlier of the date the Customer is first invoiced for eLending or the date the Customer or a User first accesses CCH eLending.

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

Customer and/or **you** means the person or entity identified as the Customer in the Order Form.

Customer Data means all data or information uploaded to CCH eLending by or on behalf of the Customer, including by its Users. Customer Data does not include any Statistical Data (as defined below).

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

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

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

Permitted Purpose means the Customer's lawful business or study purposes only. The Permitted Purpose does not include 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), the Australian Privacy Principles and any other applicable privacy legislation.

Support Services means remote support services in relation to CCH eLending, as CCH provides generally to customers as part of its then current support program.

Statistical Data means any information reflecting the access or usage patterns of an CCH eLending by or on behalf of Customer and general information about Customer's computer systems from which CCH eLending is being accessed, including any statistical or other analysis, information or data based on or derived from any of the foregoing; provided that such information has been anonymized so as to not identify Customer or any User.

Subscription means the level of rights granted to Customer to access and use CCH eLending pursuant to these Terms.

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

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

User means a person authorised under the Customer's Subscription to use CCH eLending.

Website means the Internet site at which the Customer and its Users access CCH eLending, as notified by CCH.

2. Rights and Conditions of Use

- 2.1. **Right to use.** CCH grants to the Customer a non-exclusive, non-transferable right to access and use CCH eLending within the Territory during the Term for the Permitted Purposes, on the terms and conditions set out in these Terms and in accordance with any instructions on the Website.
- 2.2. **Reservation of Rights.** CCH reserves all rights in and to CCH eLending not expressly granted in these Terms. Without limiting the generality of this clause, any right to access and use CCH eLending does not include the right to access: a) any underlying components of CCH eLending; or c) other applications published by CCH or its Affiliates.
- 2.3. **CCH eLending restrictions.** 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: (a) 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), except that Users may download and/or print materials borrowed via CCH eLending in the limited manner permitted by CCH eLending; (b) modify, port, adapt or create derivative works based on CCH eLending; (c) 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); (d) share use of or access to CCH eLending with any persons other than the Users; (e) share any Online Account or Online Account Access Information with any third party (other than the relevant User); (f) create any "links" to or "frame" or "mirror" CCH eLending or any portion thereof; (g) defeat, disable or circumvent any protection mechanism related to CCH eLending or content available via CCH eLending; (h) 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 use CCH eLending or the Website; (i) 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 copyright or trade secrets which the Customer does not have the right to use); or (j) publish, distribute (or redistribute) or sell any document retrieved through CCH eLending (even if in the public domain). In addition, Customer shall not, and shall ensure that its Users shall not, violate or attempt to violate the security of CCH's networks or servers, including by: (i) accessing data not intended for the Customer and/or User or logging into a server, system or account which the Customer and/or User is not authorised to access; (ii) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper written request and authorisation by CCH; or (iii) attempting to interfere with service to any user, host or network, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing.

2.4. Online Account Access Information.

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

2.5. Data.

- (a) **Authorised Use.** As between CCH and the Customer, the Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to Customer Data. CCH and its subcontractors will only use Customer Data as (a) necessary to provide CCH eLending to Customer; (b) as permitted or required by law; (c) expressly authorised under these Terms; and (d) otherwise authorised by the Customer in writing (each use an **Authorised Use**). Customer grants to CCH and its subcontractors a limited licence to use Customer Data for each Authorised Use.
- (b) **Disclosure.** CCH may disclose Customer Data to third party service providers that CCH may use in conjunction with the provision of CCH eLending.
- (c) **Statistical Data.** As between CCH and the Customer, CCH is and remains the sole and exclusive owner of all right, title and interest in and to the Statistical Data. CCH may use Statistical Data for its own business purposes, including the support, improvement, and development of CCH eLending or other CCH products.

- (d) **Security.** CCH will take reasonable safeguards intended to prevent the loss or unauthorised disclosure of Customer Data in connection with CCH eLending. CCH shall not be responsible or liable for any such unauthorised access to or loss of Customer Data nor shall any such unauthorised access or loss constitute a breach by CCH of its confidentiality obligations under these Terms.
 - (e) **Customer obligations regarding Customer Data.** Customer agrees not to upload or transmit any Customer Data: (i) that Customer does not have the lawful right to copy, transmit, distribute and display (including any Customer Data the upload or transmission of which would violate any confidentiality or fiduciary obligations that Customer might be subject to); (ii) that is Personal Information, unless the Customer has complied with any applicable Privacy Laws, including as such laws apply to the upload and transmission of such Customer Data and the processing of that Customer Data by the Application as contemplated by these Terms; (iii) that infringes, misappropriates or otherwise violates any Intellectual Property Rights or other rights of any third party; or (iv) the upload or transmission of which would otherwise violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability.
 - (f) **CCH use of Customer Data.** Customer represents and warrants that CCH's storage and/or use of the Customer Data in accordance with these Terms 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.
 - (g) **Customer responsible for Customer Data.** Customer has sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data.
- 2.6. **Internet Connectivity.** CCH (either itself or through a third party) will make CCH eLending available for access via the Internet. The Customer shall provide, at the Customer's own expense, Internet connectivity necessary to access CCH eLending. The Customer acknowledges that 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.
- 2.7. **Compliance Mechanisms.** CCH eLending may contain technological copy protection or other security features designed to prevent unauthorised use of CCH eLending or 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 2.1; or (b) prohibited in clause 2.6. The Customer must not, and must not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features.
- 2.8. **Reservation of Rights and Ownership of Developed Materials.** CCH and its Affiliates and any applicable licensors, retain all Intellectual Property Rights and other proprietary rights in and to CCH eLending.
- 2.9. **Modification of CCH eLending.** CCH reserves the right, in its sole discretion and without first consulting with the Customer, to modify CCH eLending or any component of CCH eLending.

3. Support

- 3.1. **General.** CCH will provide remote Support Services to the Customer in relation to CCH eLending during business hours as CCH provides generally to customers as part of its then current support program. In the case of technical problems, the

Customer must make all reasonable efforts to investigate and diagnose problems before contacting CCH. Support Services may include automatic updates to CCH eLending in CCH's absolute discretion. CCH will have no obligation to provide updates. CCH reserves the right to charge additional fees for any optional and ancillary features and/or functionality it may market in connection with CCH eLending. CCH does not provide Support Services to Users.

- 3.2. 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.

4. Intellectual Property

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

5. Warranties and Liability

5.1. Acknowledgement:

The Customer acknowledges that:

- (a) The provision of, access to, and use of, CCH eLending is on an "as is" basis and at the Customer's own risk.
- (b) CCH does not warrant that the use of CCH eLending will be uninterrupted or error free or that CCH eLending will properly operate on or with any specific operating system or computer hardware or configurations.

5.2. No warranties:

- (a) To the extent permitted by law and subject to clause 6.2(b), CCH excludes all representations, warranties or terms (whether express or implied) other than those expressly set out in this Agreement and gives no warranty about CCH eLending. To avoid doubt, all implied conditions or warranties are excluded to the extent permitted by law, including (without limitation) warranties of merchantability, fitness for purpose, title and non-infringement. CCH makes no warranty of any kind that CCH eLending, or any CCH or third-party goods, services, technologies or materials, will operate without interruption, achieve any intended result, be compatible or work with any other goods, services, technologies or materials (including any software, hardware, system or network), or be secure, accurate, complete, free of harmful code or error free. Any open source software is provided "as is" and any representation or warranty of or concerning any of them is strictly between the Customer and the third-party owner or distributor of such open source software.
- (b) This Agreement is to be read subject to any legislation which prohibits or restricts the exclusion, restriction or modification of any implied warranties, conditions, guarantees or obligations. If such legislation applies, to the extent possible, CCH limits its liability in respect of any claim to, at CCH's option:
 - (i) in the case of goods: (A) the replacement of the goods or the supply of equivalent goods; (B) the repair of the goods; or (C) 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.

5.3. Liability:

To the extent permitted by law, CCH excludes all liability and responsibility to the

Customer (or any other person) in contract, tort (including negligence) or otherwise, for any loss (including Consequential Loss) or damage resulting, directly or indirectly, from the use of, or reliance on, CCH eLending.

6. General

- 6.1. **Entire agreement:** These Terms constitute the entire agreement of the parties regarding the subject matter of these Terms. To the extent permitted by law, all prior negotiations, commitments, representations (whether oral or written) and understandings are superseded by these Terms and are of no effect.
- 6.2. **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.
- 6.3. **Assignment:** The Customer may not assign, sublicense or transfer any rights or obligations under these Terms to any person without CCH's prior written consent. CCH may assign its rights and obligations under these Terms to a related body corporate upon written notice to the Customer.
- 6.4. **Governing law and jurisdiction:** These Terms are governed by the laws of New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales for all disputes arising out of or in connection with these Terms.
- 6.5. **Severability:** If any part or provision of these Terms is illegal, invalid or unenforceable under applicable law, that part or provision will be severed from these Terms to the extent of the illegality, invalidity or unenforceability. The remainder of these Terms will be binding on the parties.
- 6.6. **Notices:** Any notice given under these Terms by either party to the other must be in writing by email and will be deemed to have been given on transmission to the other party's Notice Address.
- 6.7. **Subcontracting:** CCH may use subcontractors in connection with its performance of its obligations under these Terms. CCH will be responsible for the work carried out by any subcontractors, as if the work had been performed by CCH.
- 6.8. **Force Majeure:** A party (**Affected Party**) shall not be liable for any delay or failure to perform its obligations under these Terms (other than an obligation to pay money) if such delay or failure is due to a circumstance beyond the reasonable control of the Affected Party, including acts of God, natural disaster, fire, explosion, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage or strikes, and any other circumstance beyond the reasonable control of the Affected Party.