

END USER LICENSE AGREEMENT
FOR THE CAPITAL GAINS TAX REPORTER

This Agreement

Between:

CCH Australia Limited, ACN 096 903 365 ("Supplier")

And:

The Customer

RECITALS

- A. The Customer wishes to use the Licensed Software and the data therein contained.
- B. The Supplier has offered to grant the Customer and the Customer has agreed to accept a nontransferable and non-exclusive Licence to use the Licensed Software and the data therein in accordance with this Agreement.

GENERAL TERMS AND CONDITIONS

1. Definitions and Interpretation

1.1 In this Agreement

"Agreement" means this Software Licence Agreement if any, the Purchase Order and the Schedule.

"Associated Documentation" means any operating manuals or other printed materials relating to the Licensed Software including but not limited to user manuals and implementation instructions including revisions.

"Authorised Site" means a location at which the Customer is authorised to use the Licensed Software as set out in the Schedule or Purchase Order.

"Authorised User" means an employee or contractor of the Customer authorised by the Customer to use the Licensed Software.

"Business Day" means any day except Saturday, Sunday or a public holiday.

"Commencement Date" means the date of this Agreement.

"Data" means any data inputted by the Customer into the Software.

"GST" means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the GST Law or otherwise on a supply.

"GST Law" has the same meaning as in the GST Act.

"Inherent Defect" means a significant error or defect caused by a programming error other than one that is the result of:-

- (a) an alteration or modification to the Licensed Software not authorised in writing by the Supplier;
- (b) use of the Licensed Software other than in accordance with the Supplier's directions;
- (c) use of the Licensed Software in combination with equipment, programs or services not authorised in writing by the Supplier; or
- (d) failure by the Customer to meet its obligations under this Agreement or any other agreement relating to the Licensed Software.

"Licence" means the Licence granted by the Supplier to the Customer pursuant to this Agreement for the use of the Licensed Software.

"Licence Fee" means the fee specified in the Schedule being the annual fee payable by the Customer to the Supplier for the use of the Licensed Software and the data therein contained.

"Licensed Software" means the Capital Gains Tax Reporter and computer software applications and data structures owned by the Supplier and specified in the Purchase Order or Schedule including upgrades, improvements or modifications furnished to the Customer by the Supplier whether on disc or online and all Associated Documentation.

"Licensed Software Computer Requirements" means the minimum software and hardware requirements specified in the Associated Documentation.

"Maximum Number of Authorised Users" means the Maximum Number of Authorised Users specified in the Purchase Order.

"Purchase Order" means the order for the purchase of Licensed Software and associated Services placed by the Customer in accordance with this Agreement.

"Schedule" means the schedule to this Agreement.

"Services" means the goods and services supplied by the Supplier under this Agreement.

"Software Component" means the individual components of the Licensed Software as determined by the Supplier from time to time.

"Term" means the period beginning on the Commencement Date or on delivery of the Licensed Software (or whichever is later), but in any event terminating on 30 June of the following year.

"Territory" means the Territory specified in the Schedule.

"Updates" means any updates to the data contained in the Licensed Software and released during the year and which have been paid for by the Customer.

"Worksheet" means a tool to assist in the preparation of the capital gains tax calculations.

2. Alterations to Licensed Software

Licensed Software will continue to be subject to this Agreement notwithstanding any alteration or modification of the Licensed Software.

3. Associated Documentation

The Associated Documentation is subject to the same restrictions on copying and modifications as are imposed in respect of the Licensed Software and shall not be used by the Customer except to assist in the normal operation of the Licensed Software.

4. Licence

4.1 In consideration of the Licence Fee, the Supplier grants to the Customer a non-transferable and non-exclusive Licence to access and use the Licensed Software for the Term.

4.2 The total number of Authorised Users shall not exceed the Maximum Number of Authorised Users at the Authorised Sites.

4.3 The Customer acknowledges that there is no transfer of title, or ownership of the Licensed Software or data therein or any modifications, updates or new versions of the Licensed Software.

4.4 In addition to other remedies available to the Supplier under this Agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Licensed Software shall entitle the Supplier to any available equitable remedy against the Customer including injunctive relief.

4.5 The Supplier will not be responsible for integrating the Licensed Software with any existing systems or procedures of the Customer, except as may be separately agreed between the parties.

4.6 The Customer must not use the Licensed Software or any information or reports derived from the Licensed Software in any manner, or for any purpose, that is unlawful or in any manner that violates any right of the Supplier.

4A. Access

4A.1 The Customer may request, from time to time, to change the list of people nominated as Authorised Users.

4A.2 The Supplier shall supply unique Logon IDs to the Authorised Users nominated by the Customer.

4A.3 The Supplier may refuse to supply a particular person with a Logon ID, or may cancel a particular Logon ID, at any time without providing reasons.

4A.4 The Customer must make reasonable efforts to ensure its Authorised Users do not disclose their Logon IDs to anyone else.

4A.5 If an Authorised User discloses their Logon ID to someone else, the Customer authorises that person to act on its behalf and the Customer will be responsible for any use whatsoever of the Licensed Software by that person.

4A.6 The Customer must immediately notify the Supplier if any Authorised User's Logon ID should be cancelled.

4A.7 Authorised Users may access the Licensed Software online from any location using their allocated Logon ID.

4A.8 The Customer must not:

- (a) use the Licensed Software or any derived information or reports in any manner, or for any purpose, that is unlawful or in any manner that violates any right of the Supplier;

- (b) restrict or inhibit any other user from using the Licensed Software;
- (c) transmit during access to the Licensed Software anything that contains, or may contain, a virus or other property that may be contaminating or destructive to the Licensed Software;
- (d) interfere with or disrupt the Associated Websites or any services provided thereon or thereby, or any servers or networks connected to the Associated Websites, or disobey any requirements, procedures, policies or regulations of networks connected to the Associated Websites;
- (e) use any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine," or in any way reproduce or circumvent the navigational structure or presentation of the Licensed Software.

5. Payment of Licence Fee

5.1 The Customer shall pay the Licence Fee to the Supplier on the Commencement Date or on the submission of the invoice by the Supplier.

5.2 The Supplier reserves the right to charge Fees where the Customer requests the provision of Services.

5.3 Unless otherwise specified in this Agreement, the Customer shall pay the Supplier within 30 days of receiving an invoice from the Supplier. The Customer must pay interest on any amount due and not paid by the Customer within the time required by this Agreement at the rate of interest specified in the Purchase Order.

6. GST

6.1 Words used in this clause 6 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

6.2 Unless expressly excluded, the consideration for any taxable supply under or in connection with this Agreement includes GST at the rate of 10%.

7. Copying and Intellectual Property

7.1 Subject to Clause 7.3, the Customer shall not copy or reproduce the Licensed Software or the data therein by any means or form, without the prior written consent of the Supplier. Title to and all Intellectual Property rights in the Licensed Software remains the property of the Supplier.

7.2 If requested by the Supplier, the Customer shall issue a notice in a form approved by the Supplier to all Authorised Users of the Licensed Software, advising such persons of the Customer's obligations pursuant to this Clause 7 and also advising of consequences in the event of a breach of this Clause 7.

7.3 The Customer shall be entitled to copy the Licensed Software for back up and security purposes.

7.4 The Customer may not for any reason remove, modify, alter or reproduce any copyright or trade mark symbol appearing on any part of the Licensed Software.

7.5 Nothing in this Agreement gives the Customer any rights in any business name, copyright or trademark held by the Supplier and applied to the Licensed Software and the Customer acknowledges that all right, title and interest in and to the Licensed Software vests in the Supplier or its licensors.

7.6 Title to and all Intellectual Property rights in the Data remain Customer property. The Customer must maintain copies of all Data inputted into the Software. CCH adheres to its best practice policies and procedures to prevent data loss, including a 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.

8. Modifications

The Customer shall not modify, adapt, translate or alter the Licensed Software, merge all or any part of it with any other software program, or create any derivative works based on the Licensed Software, without the Supplier's prior written consent on such terms required by the Supplier.

9. Reverse Engineering

The Customer shall not reverse assemble or reverse compile or directly or indirectly allow or cause a third party to reverse assemble or reverse compile the whole or any part of the Licensed Software.

10. Security

The Customer shall:

- (1) be solely responsible for the use, supervision, management and control of the Licensed Software and Associated Documentation; and

- (2) ensure that the Licensed Software and Associated Documentation are protected at all times from unauthorised access.

11. Warranties

11.1 The Supplier warrants that

- (a) it has the right and authority to grant the Licence to the Customer; and
- (b) the Licensed Software and the Associated Documentation are free and clear from all encumbrances and may lawfully be used by the Customer without infringing any rights of any third party.

11.2 Subject to Clause 11.4 the Customer warrants that it has not relied on any representations made by the Supplier which have not been expressly stated in this Agreement or upon any descriptions, illustrations or specifications contained in any document including any catalogues or publicity material produced by the Supplier, except for the Schedule and only to the extent it is not inconsistent with this Agreement.

11.3 The Supplier does not warrant that

- (a) the Licensed Software is error or defect free;
- (b) the use of the Licensed Software shall be uninterrupted;
- (c) the Licensed Software shall meet the Customer's requirements; or
- (d) the Licensed Software shall provide any functions not identified in the Associated Documentation.

11.4 The Customer acknowledges that to the extent the Supplier has made any representation which is not otherwise expressly stated in this Agreement, the Customer has been provided with the opportunity to independently verify the accuracy of that representation.

11.5 The Supplier warrants that the Licensed Software will perform free of Inherent Defects.

11.6 The Customer acknowledges that the Licensed Software and the Associated Website will not always be available due to upgrades, maintenance and the nature of the Internet.

12. Liability of Supplier

12.1 (a) If the Competition and Consumer Act 2010 (Cth), the Corporations Act 2001 or any other legislative provision prohibits or otherwise precludes the restriction, modification or exclusion of any statutory condition, warranty, guarantee, right, remedy or other benefit, then this Clause 12.1 does not restrict, modify or exclude it.

(b) (i) The Customer agrees that for all loss or damage sustained by the Customer in relation to this Agreement (including interest and costs), the Supplier is only liable to the extent of the Licence Fee.

(ii) This limitation

- applies to all liability - whether (without limitation) for negligence or for breach of section 18 of the Australian Consumer Law being Schedule 2 of the Competition and Consumer Act 2010 (Cth) or under the Corporations Act 2001; and
 - is modified, or expanded in 12.1(c) and 12.1(d) below.
- (c) The Customer agrees that the Supplier may, in its absolute discretion, choose either to re-supply the Services, or to pay the Customer the cost of having the Services re-supplied if it is fair and reasonable for the Supplier to make that choice.
- (d) The Supplier is not liable:
- to the extent that the Customer is responsible for an act or omission that contributed to the Customer's loss;
 - for any processing deficiency (in any system) that is caused (in whole or in part) by input data that contains any date that is ambiguous as to the year, or is otherwise inaccurate;
 - for any defect or deficiency in any system or service that is not developed or provided by the Supplier under this Agreement. That includes (without limitation) the Customer's production and legacy systems and systems that receive data from systems produced by the Supplier;
 - for any losses caused to the Customer as a result of the Licensed Software being unavailable;
 - for any indirect or consequential loss, damage or costs or loss of profits.

12.2 (a) Further to Clause 12.1, the Licensed Software is supplied for the sole use of the Authorised Users. The Supplier will not be liable for any direct, indirect or consequential loss, damage or costs arising out of or in connection with the contents or operation of the Licensed Software to persons not being the Customer.

(b) The Customer agrees to indemnify the Supplier against all liabilities, claims, costs and expenses incurred by the Supplier in respect of any claim by a third party which is related to, arises out of, or is in any way associated with this Agreement.

12.3 Further to Clause 12.1, the Customer acknowledges that in particular the Customer acknowledges that failure to follow the Associated Documentation could result in erroneous data being produced by the Licensed Software and that it has been advised to check all final results given by the Licensed Software for any anomalies. The product does not check for anomalies and incorrect data may be processed without question.

12.4 The Supplier will not be liable to the Customer for loss, damage or costs caused by any unauthorised access to the Licensed Software via the Internet or any other means. The Customer acknowledges that it is responsible for all loss, damage and costs caused by viruses. It is the Customer's responsibility to apply whatever protection measures it considers appropriate, including maintenance of firewall, internal network security, and virus scanning of all software installation, including the Licensed Software.

12.5 This Clause 12 will survive the termination of this Agreement.

13. Confidentiality

13.1 The Customer shall

- (a) treat as confidential, information relating in any way to the Licensed Software (including, without limitation, information concerning the functionality of the Licensed Software), the Supplier or its clientele ("**Confidential Information**");
- (b) not, without the Supplier's written consent, copy or disclose or cause to be copied or disclosed Confidential Information to a third party,
- (c) only disclose Confidential Information to those of its employees and contractors who need to know the information to enable the Licensed Software to be used in the manner contemplated by this Agreement; and
- (d) ensure that such employees and contractors shall be similarly bound by the terms of this Agreement

13.2 The Customer acknowledges that any discoveries, inventions, patents, designs or other rights arising (directly or indirectly) out of or in the performance of this Agreement are the property of the Supplier.

13.3 The Customer's obligations under this Clause 13 shall survive the termination of this Agreement.

14. Term and Termination

14.1 The Customer's licence to use the Licensed Software commences on the Commencement Date or on delivery of the Licensed Software, but in any event terminating on 30 June of the following year.

14.2 Subject to early termination as provided in Clauses 14.3 and 14.4, the Customer's licence to use the Licensed Software will continue for the Term of the Agreement.

14.3 The Licence may be terminated immediately on the happening of a terminating event by notice in writing at the option of the party which has not committed or been subject to the terminating event.

14.4 For purposes of this Agreement, the following are terminating events:

- (a) the breach by either party of any of its obligations under this Agreement where such breach is not remedied within 14 days of written notice requiring it to do so;
- (b) the appointment of any type of insolvency administrator to the Customer;
- (c) the entry by the Customer into any scheme, composition or arrangement with any of its creditors;
- (d) the merger with or takeover of the Customer by a third party,
- (e) any event described in this Agreement as entitling a party to terminate this Agreement; and
- (f) the Customer ceases or threatens to cease conducting its business in the normal manner.

14.5 If notice is given by the Supplier to the Customer pursuant to Clauses 14.3 and 14.4 then the Supplier may also:

- (a) repossess any copies of the Licensed Software in the possession, custody or control of the Customer;
- (b) revoke all User IDs granted to the Customer's Authorised Users, and otherwise prevent the Customer from accessing the Licensed Software and the Associated Website;
- (c) retain any moneys paid;
- (d) be regarded as discharged from any further obligations under this Agreement; and
- (e) pursue any additional or alternative remedies provided at law or in equity.

14.6 On termination of this Agreement the Customer shall immediately cease to access and/or use the Licensed Software, and must uninstall the Licensed Software and return to the Supplier all copies of any Associated Documentation, except that the Customer may retain any records created by the Licensed Software required by law to be kept and may continue to use and access any part of the Licensed Software which is necessary to access those records.

14.7 The Customer shall be entitled to read-only access to Customer data stored in the application and database for a period of 30 days after termination for the purpose of facilitating transition by the Customer to an alternative system.

15. Force Majeure

15.1 A party shall not be liable for any delay or failure to perform its obligations if such delay or failure is due to a circumstance beyond the reasonable control of the party which results in the party being unable to observe or perform on time an obligation under this Agreement because of acts of God, natural disaster, fire, explosion, acts of war, terrorism, riots, civil commotion, malicious damage, sabotage, evolution or strikes or without prejudice to the generality of the foregoing, any other circumstances beyond the reasonable control of the party ("**Force Majeure**").

15.2 A party affected by Force Majeure shall be suspended from performing its obligations under this Agreement for the period of the delay due to Force Majeure.

16. Assignment

The benefit of this Agreement shall not be dealt with in any way by the Customer (whether by assignment, on-selling, sub-licensing, subcontracting or otherwise).

17. Notices

17.1 Notices under this Agreement may be delivered by hand, by electronic mail, by mail or by facsimile transmission to the addresses specified in this Agreement

17.2 Notice will be deemed given:

- (a) in the case of hand delivery, when delivered;
- (b) in the case of electronic mail, when received and confirmed by delivery, posting or facsimile;
- (c) in the case of posting, two days after dispatch;
- (d) in the case of facsimile, upon receipt of a correct and complete transmission report by the sender upon complete transmission.

18. Mediation

If there is a dispute relating to this Agreement, the parties will submit to mediation before having recourse to any other dispute resolution process. Written notice of the dispute will be given for it to be submitted to mediation before a mediator chosen by the parties or, where the parties cannot agree, by the Australian Commercial Disputes Centre (ACDC). The parties will use their best endeavours to settle the dispute promptly. The mediation will be conducted in accordance with the ACDC Mediation Guidelines to the extent that they do not conflict with the provisions of this clause. If the dispute is not resolved within 60 days after notice of the dispute, the mediation will terminate unless the parties otherwise agree.

19. Waiver

No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of those rights operate as a waiver of any subsequent breach.

20. Severability

If any provision of this Agreement is found to:

- (a) be illegal, unenforceable or otherwise invalid; then, despite that invalidity or infringement:
- (b) this Agreement will remain in full force and effect to the extent permissible under or consistent with the relevant laws; and
- (c) that provision will be deemed to be deleted and, substituted by a valid one which in its economic effect comes so close to the invalid provision that it can be reasonably assumed that the parties would have contracted also with this new provision.

21. Governing Law

This Agreement will be governed by and construed in accordance with the laws for the time being in force in the State of New South Wales, Australia and the parties irrevocably submit to the exclusive jurisdiction of the Courts of that State.

22. Audit

The Supplier may without notice, but during normal business hours, audit the Customer's compliance with the terms and conditions of this Agreement (including without limitation, the payment of all applicable fees). The Customer agrees to provide the Supplier such access and assistance as is reasonably necessary to conduct any such audit and to pay all the Supplier's reasonable expenses and all other amounts due to the Supplier should the Customer be found to be in breach of this Agreement.

23. General

23.1 In this Agreement, unless the context otherwise requires, a reference to any party includes that party's successors or permitted assigns.

23.2 The covenants, conditions and provisions of this Agreement which are capable of having effect after the expiration of this Agreement shall remain in full force and effect following the expiration of this Agreement.

23.3 The Customer shall do all things necessary or desirable to give effect to this Agreement and will procure its officers, employees and agents to declare, make or do all things necessary or desirable to give full effect to this Agreement.

23.4 This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior representations and agreements in connection with that subject matter; and may only be altered in writing signed by both parties.

23.5 Where the Customer consists of two or more persons, the provisions of this Agreement bind each person individually and all of them jointly.