

Software Licence Agreement – Clarisse Enterprises Pty Ltd

1 Introduction

- (a) This document, together with the Privacy Policy and the Order Terms, contains the terms and conditions that govern the supply of various products and services to you by Clarisse Enterprises Pty Ltd ACN 118 987 901 of Waterman Business Centre Suite 082, 44 Lakeview Drive. SCORESBY VIC 3179 (**us, our, we, CEPL**) and your use of those products and services (**Terms**).
- (b) These Terms apply to any person who submits an order for Software Services to CEPL on the Order Terms (whether by such person personally, or by any of its Representatives) and any person who accesses or uses the Software Services, whether on behalf of such person or otherwise (**you, your, Customer**).
- (c) These Terms supersede and replace all other agreements, arrangements and understandings (whether verbal or written) between you and CEPL or any of its Representatives.
- (d) Your use of the Software Services is conditional on your accepting these Terms. By you accessing or using (or, if applicable, downloading, installing or copying) any of the Software Services, you accept and agree to be bound by the Terms.

2 Definitions and interpretation

- (a) In this document, the following definitions apply:
 - (i) **Confidential Information** means all confidential, non-public or proprietary information of a party ('Discloser') which is provided by the Discloser or any of its Representatives to the other party ('Receiver') or any of the Receiver's Representatives, or otherwise obtained or accessed by the Receiver or any of its Representatives, whether provided, obtained or accessed before or after acceptance of these Terms, in connection with the Discloser or its business or affairs. It includes all confidential business information, documents, records, financial information, reports and technical information which relate to the Discloser or its business, and any information that the Discloser indicates to the Receiver is information of a confidential nature, or which is marked 'confidential'.
 - (ii) **Customer Content** means any data, content, documents, metadata, information, communications, text, images, logos, files, attachments, links, Third Party Content or other materials that the Customer or any of its Representatives directly or indirectly posts on, enters into, uploads onto, provides, or otherwise makes available on or via, any part of the Website, a Product or the Software Services (or which is otherwise obtained by CEPL from the Customer or its Representatives).
 - (iii) **Effective Date** means the date on which an order for Software Services that has been submitted by the Customer to CEPL, on the Order Terms, is accepted by CEPL (in accordance with the terms and conditions set out in the Order Terms).
 - (iv) **Fees** has the meaning given in clause 11(a).
 - (v) **Government Agency** means any government or governmental, administrative, monetary, fiscal or judicial, regulatory body, minister,

department, commission, authority, instrumentality, board, organisation, tribunal, agency, trade union or entity in any part of the world (or any office or delegate thereof).

- (vi) **GST** has the meaning given to that term in the GST Act.
- (vii) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (viii) **Initial Period** means the initial period or term of access to the Software Services as set out in the applicable Order Terms from time to time.
- (ix) **Insolvency Event** means, in relation to a person:
 - (A) anything which reasonably indicates that there is a significant risk that such person is or will become unable to pay its debts as and when they fall due, including each of the following:
 - (1) a meeting of the person's creditors being called or held;
 - (2) a step being taken to make the person bankrupt;
 - (3) an application being presented or an order made for the sequestration of the person's estate;
 - (4) a step being taken to wind the person up;
 - (5) a step being taken to have a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator appointed to the person or any of its assets;
 - (6) the person entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors; or
 - (7) the person ceases or threatens to cease to carry on its main business; or
 - (B) the appointment of a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator to the person or any of its assets.
- (x) **Intellectual Property Rights** means any and all intellectual property rights (anywhere in the world, whether statutory, common law or otherwise) including patents, patent applications, utility models, copyright (including future copyright), trade marks, logos and design marks, service marks, trade names, business names, brand names, circuit layouts, designs, know how, trade secrets, domain names, other names and locators associated with the world wide web, internet addresses, and including all applications and rights to apply for registration of such intellectual property rights and the right to take action against any third party for infringement of any of those intellectual property rights.
- (xi) **Law** means any law or legal requirement, including at common law, in equity, under any State, Territory or Commonwealth statute, regulation, by-law or authorisation, and any decision, directive or requirements of any Government Agency.
- (xii) **Order Terms** means the document provided by CEPL which sets out the Software Services to be provided by CEPL to the Customer, the Initial Period or Renewal Period (as applicable) and the Fees payable by the Customer to CEPL in respect of its access to those Software Services for the Initial Period

or Renewal Period (as applicable), together with any other terms agreed between the parties, whether in the form of an invoice, order form or other document.

- (xiii) **Permitted Users** means parties who have been allocated usernames and passwords in relation to Software Services in accordance with these Terms.
- (xiv) **Personal Information** means any information or opinions to which the Privacy Laws are capable of applying, and includes 'health information' as that term is defined in the Privacy Laws.
- (xv) **Privacy Laws** means any Laws in relation to privacy and/or personal, health or sensitive information, and includes the *Privacy Act 1988* (Cth), the *Health Records and Information Privacy Act 2002* (NSW), the *Health Records Act 2001* (Vic) and the *Health Records (Privacy and Access) Act 1997* (ACT).
- (xvi) **Privacy Policy** means CEPL's privacy policy located at <http://www.cepl.com.au/terms-of-service/>, as amended from time to time.
- (xvii) **Product** means the nForma software as a service and any other products (including any software or modules) set out in the relevant Order Terms (which could include nReports, nRoll, nWellbeing, nILP, nAid, nAssessment, Student Contacts, Parent Portal, AutoPrint and/or Front Cover Designer).
- (xviii) **Related Party** means:
 - (A) in respect of a body corporate, anyone who is an associate of that body corporate under sections 11 to 15 (inclusive) of the *Corporations Act 2001* (Cth);
 - (B) in respect of an individual, an 'associate' of that individual as defined in section 318 of the *Income Tax Assessment Act 1936* (Cth); and
 - (C) in respect of any other entity or legal person, a person who is related to, an affiliate of or otherwise associated with that other entity or legal person.
- (xix) **Renewal Period** has the meaning given in clause 3(b).
- (xx) **Representatives** means, in respect of a person, any Permitted User, director, officer, employee, agent, contractor, adviser or Related Party of or to that person, or any director, officer, employee, agent, contractor or adviser of or to a Related Party of or to that person.
- (xxi) **Software Services** means any Products and services set out in the relevant Order Terms.
- (xxii) **Supporting Materials** means all guides, manuals, instructions, samples, checklists, and other documents, in any material form, relating to the Products, including all such documents made available on or via the Website.
- (xxiii) **Territory** means Australia.
- (xxiv) **Third Party Content** means web sites, platforms, content, products, services and information of other parties including content provided to us by links to sites owned by other parties.
- (xxv) **Website** means the website located at www.cepl.com.au including all password protected areas and subdomains of such website and all related top-level domains, mobile sites, apps, applications, APIs and widgets.

- (b) In the interpretation of this document, unless the context otherwise requires:

- (i) all references to dollars or '\$' are references to Australian currency and all amounts payable are payable in Australian dollars;
- (ii) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (iii) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this document;
- (iv) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (v) a reference to a person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- (vi) where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (vii) a word which indicates the singular also indicates the plural, a word which indicates the plural also indicates the singular, and a reference to any gender also indicates the other gender;
- (viii) a reference to the word 'include' or 'including' is to be interpreted without limitation;
- (ix) headings are inserted for convenience only and do not affect interpretation;
- (x) any schedules, annexures and attachments form part of this document; and
- (xi) no clause will be construed to the disadvantage of a party because that party was responsible for the preparation of this document or that clause or the inclusion of the provision in the deed.

(c) Business days and time

In the interpretation of this document, unless the context otherwise requires:

- (i) a reference to time is to the time in Melbourne, Australia;
- (ii) a reference to a business day means a day on which all banks are open for business generally in Melbourne, Australia, other than a Saturday, Sunday or public holiday; and
- (iii) if the day on which any act, matter or thing is to be done is not a business day, that act, matter or thing may be done on the next business day.

3 Term

- (a) These Terms become binding as between the Customer and CEPL on the Effective Date and continue in force until the end of the Initial Period.
- (b) These Terms will automatically renew for further periods of equal length to the Initial Period, (**Renewal Period**) unless either party gives the other party notice of its intention not to renew at least 90 days before the end of the Initial Period, or unless these Terms are otherwise validly terminated prior to such renewal.

4 Licence

In consideration for the payment of the Fees in respect of the Initial Period or any Renewal Period, CEPL grants to the Customer a limited, revocable, non-exclusive, non-transferable, non-sublicensable licence for that relevant period to:

- (a) access and use the Software Services and Supporting Materials; and
- (b) to the extent any individual Product or component of a Product requires installation on any device or local network in order to be used in the ordinary course, to install such individual Product or component of a Product on the relevant local network,

in each case, in accordance with these Terms and solely for the Customer's internal business purposes in the Territory.

5 Restrictions

- (a) The Customer must use the Software Services strictly in accordance with these Terms.
- (b) The Customer must use the Software Services solely for the purpose for which they are intended, and in accordance with all Laws.
- (c) Except as expressly permitted under these Terms or to the extent permitted by Law, the Customer and its Representatives must not:
 - (i) decompile, disassemble, reverse compile or otherwise reverse engineer all or any portion of the Software Services, including any source code, object code, algorithms, methods or techniques used or embodied therein;
 - (ii) copy, modify, vary, alter, reproduce, duplicate, create any derivative works based upon, translate or adapt the Software Services;
 - (iii) distribute, resell, disclose, market, publish, rent, lease, assign, incorporate into any database, sublicense or otherwise transfer any Product in any form to any third party, or use the Software Services on behalf of or for the benefit of any third party;
 - (iv) remove or alter any copyright, trademark, logo or other proprietary notice or label appearing on or in the Software Services;
 - (v) data mine, scrape, crawl, email harvest or use any process or processes that send automated queries to the Software Services;
 - (vi) merge or incorporate any portion of the Software Services into any other materials, products or services that are not intended for the Customer's internal business use; or
 - (vii) use, or offer to use, the Software Services for, in connection with, or with the intention of encroaching upon the privacy of an individual or otherwise breaching the Privacy Laws as more specifically set out in clause 22.

6 Access to Software Services

- (a) The Customer must only access the Software Services in the manner notified by CEPL to the Customer from time to time. If CEPL provides the Customer or its Permitted Users with (or allows the Customer or its Permitted Users to facilitate the generation of) any account, usernames and/or passwords, the Customer:
 - (i) bears sole responsibility for protecting all usernames and passwords;

- (ii) must not, and must ensure that its Permitted Users do not, share or provide such usernames and passwords to any third party;
 - (iii) will remain fully responsible and liable for any authorised or unauthorised use of any usernames and passwords; and
 - (iv) will for security purposes change such usernames passwords periodically or as directed by CEPL (and ensure that its Permitted Users do the same).
- (b) The Customer is fully responsible and liable for all acts and omissions of its Representatives in relation to the Software Services.
 - (c) If Permitted Users share usernames or passwords in contravention of this clause, each incidence of such sharing will constitute use of the Software Services by a person other than the Customer within the meaning of clause 17(c).

7 Intellectual Property Rights

- (a) The Customer expressly acknowledges and agrees that:
 - (i) the Website and the Software Services, their underlying code, all related technology, all data, content, documents, materials, text, images, logos, files and attachments in any format forming part of or connected to the Website or the Software Services (excluding Third Party Content and Customer Content);
 - (ii) the Supporting Materials;
 - (iii) all enhancements, modifications and derivative works of the foregoing; and
 - (iv) all creations, inventions and Intellectual Property Rights contained or embodied within the foregoing anywhere in the world, whether statutory, common law or otherwise,

(collectively, '**CEPL IP**'), is owned by, or licensed to, CEPL or its Related Parties.
- (b) The Customer:
 - (i) acquires no rights in or to , except for the limited licence in clause 4; and
 - (ii) must not, and must not permit any other person to, infringe the CEPL IP or modify, copy, republish, frame, distribute or communicate any part of the CEPL IP without our prior written consent, or otherwise use the Website or Software Services in a way which infringes our Intellectual Property Rights or other rights.
- (c) All rights not expressly granted are expressly reserved.

8 Changes to Software Services

- (a) CEPL reserves the right to change, update or refine the features and functionality of the Software Services from time to time.
- (b) CEPL will not be obliged to provide access to Software Services to the extent it is prohibited from doing so by Law or any of its agreements with its suppliers or service providers.

- (a) The Customer hereby grants to CEPL and its service providers a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and licence to use, reproduce, transmit, perform, display, adapt and make derivative works of, all Customer Content for the sole purpose of providing the Software Services.
- (b) The Customer represents and warrants to CEPL and its service providers that:
 - (i) it has the right to grant the licences referred to above, in and to the Customer Content;
 - (ii) the Customer Content does not and will not infringe the rights of any third parties, CEPL or its service providers, including, without limitation, Intellectual Property Rights;
 - (iii) the Customer Content and its storage on or via the Software Services complies with applicable Law, and does not breach any legal duty owed to a third party, such as a contractual duty or a duty of confidence;
 - (iv) the Customer Content is not defamatory, obscene, offensive, inappropriate, socially unacceptable or fraudulent; and
 - (v) the Customer Content is free of worms, viruses, trojan horses, malware and any other disabling code or harmful components.
- (c) The Customer represents and warrants to CEPL that it will abide by all applicable Laws, rules and regulations for Customer Content.
- (d) Because the Customer Content is not in any way developed or provided by CEPL, CEPL will not be responsible to check or verify any Customer Content nor assess it for suitability for any purpose. Accordingly, any use of or reliance by the Customer, its Representatives or any third parties upon anything contained in the Customer Content will be at the Customer's own risk.
- (e) CEPL may in its discretion, but is not under any obligation to, remove from the Products and Software Services any Customer Content which breaches these Terms.

10 Support and third party services

- (a) CEPL will use reasonable endeavours to provide the following technical support in connection with the Products and Software Services:
 - (i) support and assistance by telephone or email between the hours of 9am and 5pm on business days; and
 - (ii) updates, corrections, patches and new releases in respect of the Software Services as they are made generally available.
- (b) You acknowledge that other than as set out in clause 10(a) or required under the Order Terms, CEPL is not under any obligation to provide any technical or other support or training to the Customer. Any additional technical or other support required by the Customer shall be at the fees imposed by CEPL from time to time.
- (c) You acknowledge that:
 - (i) all cloud, hosting and data storage services in relation to the Customer Content, the Software Services and the Website are provided by independent service providers, and not by CEPL;

- (ii) the Software Services exclude all cloud, hosting and data storage services in relation to the Customer Content, the Software Services and the Website; and
- (iii) all terms and conditions relating to cloud, hosting and data storage services in relation to the Customer Content, the Software Services and the Website, including applicable fees, are governed solely by any agreements in place between you and the providers of those services.

11 Fees

- (a) The Customer will pay the fees set out in the Order Terms (**Fees**) in accordance with the payment methods and frequencies required by the Order Terms and this document.
- (b) All Fees, when paid, are non-refundable, even if the Customer stops using the Software Services.
- (c) CEPL may at its discretion increase the Fees for or during any Renewal Period by providing the Customer written notice of its intention to do so at least 30 days prior to the application of the increase. On receiving a notice of a Fee increase from CEPL, the Customer may terminate these Terms by giving CEPL written notice within 30 days of its receipt of the notice of Fee increase.
- (d) If any invoice is not paid in full by the Customer to CEPL by the due date:
 - (i) the Customer must pay, on demand, interest on that sum from the due date until the date immediately before the date of actual payment. Interest will be calculated at 8% per annum and be capitalised monthly, with interest accruing from day to day from and including the due date for payment up to the actual date of payment; and
 - (ii) without limiting any other rights under these Terms or at Law, CEPL may withhold any supply from the Customer under these Terms until such time as the invoice and all interest payable under clause 11(d)(i) are paid in full.

12 Disclaimer

- (a) Except as otherwise required by Law, the Software Services are provided 'as is' and 'as available' without any express or implied representation, warranty or guarantee of any kind. It is a condition of accessing the Software Services that the Customer accepts and agrees that CEPL shall not be liable for any harmful effect of accessing or using the Software Services, and that the Customer and its Representatives access and use the Software Services entirely at their own risk.
- (b) Except as otherwise required by Law, CEPL makes no representations, and gives no warranties or guarantees, express or implied, in respect of, and accepts no responsibility in respect of:
 - (i) the times during which the Software Services are available;
 - (ii) the reliability, accuracy, security or fitness for purpose of the Software Services;
 - (iii) any websites operated or controlled by anyone other than CEPL which are or may become linked or framed to or from the Software Services, or for any third party services the Customer or its Representatives use to access the Software Services

- (iv) whether or not the Software Services are error-free;
 - (v) the availability of the Customer Content via the Software Services at any given time;
 - (vi) the availability, security or function of the Website, including to the extent the Website is required in order to access the Software Services;
 - (vii) worms, viruses, trojan horses, malware and any other disabling code or harmful components contained in the Software Services from time to time, although CEPL will use reasonable endeavours to ensure that the Software Services will be free of viruses.
- (c) CEPL does not guarantee continuous, uninterrupted or secure access to the Software Services or Customer Content or any specific results from use of the Software Services.
- (d) Your (and your Representatives') access to the Software Services may be suspended or restricted occasionally to allow for maintenance, repairs, upgrades, or the introduction of new features, functionality, facilities or services. CEPL will always try to limit the frequency and duration of any planned disruption, but will not be liable to you if for any reason the Software Services (or Customer Content) are unavailable at any time or for any period.
- (e) You acknowledge that access and use of the Software Services may be interfered with by numerous factors outside of our control.
- (f) We cannot ensure that the Customer Content you upload onto our systems will never be accessed without our consent or that our systems are impenetrable.
- (g) We are not responsible for loss of or corruption of any data that is entered or uploaded by you or by a third party (including your Representatives) in relation to your access to or use of the Software Services.
- (h) You are responsible for taking and keeping, external to the Software Services, copies of all data and content on the Software Services to which you require access. To the extent permitted by Law, we make no representations, and give no warranties or guarantees, express or implied, about the availability of such data and content.
- (i) We cannot ensure that any files you download from the Website will be free of viruses or contamination or destructive features. While we will use reasonable endeavours to prevent the Website from containing or spreading viruses or other malicious code, we recommend that you ensure that computers and other devices used to access the Website and Software Services run up-to-date anti-virus software as a precaution, and that you virus-check all materials downloaded from the Website and Software Services and regularly check for the presence of viruses and other malicious code.
- (j) We will not be liable for any loss or damage caused by a virus or other technologically harmful material that may infect your computer equipment, computer programs, data or other proprietary material due to your use of the Website or and Software Services or to your downloading of any content from it, or from any website linked to it.
- (k) We cannot ensure that the Website and Software Services will be free from defects or error or will operate in any particular way. To the extent permitted by law, we disclaim all liability for any loss or damage, of any nature whatsoever, which may be suffered or incurred by any person as a result of any defect in, or error in the operation or functionality of, the Website or Software Services (including any part of their underlying code or related technology).

13 Limitation of liability

- (a) You agree that, to the maximum extent permitted by Law, we and our Representatives are not liable to you or anyone else for any loss or damage (including any direct, indirect, special or consequential loss) whether in contract, tort (including negligence), breach of statutory duty or otherwise arising out of, or in connection with:
 - (i) your or your Representatives' use or access of, or inability to use or access, the Software Services;
 - (ii) your or your Representatives' reliance on anything contained in or omitted from the Software Services;
 - (iii) you or your Representatives being unable to access the Software Services, Website or Customer Content for any reason (including our negligence); or
 - (iv) the failure of the Software Services or Website for whatever reason (including our negligence).
- (b) Subject to clause 14 and to the maximum extent permitted by law, our maximum liability for all claims related to the Website and Software Services and the use thereof by you and your Representatives, will be the lesser of an amount not exceeding the aggregate amount of Fees paid to us by you in respect of the 12 month period preceding your claim and \$10,000. This limit applies collectively to us and our Representatives.
- (c) We will not be liable for special, incidental, exemplary, indirect or consequential loss or damages, or lost profits, business, value, revenue, goodwill or anticipated savings in any circumstances.
- (d) You agree not to bring legal action or make a claim against us or any of our Representatives arising out of or related to the Website, the Software Services or Customer Content, more than two years after the cause of action arose.

14 Severance and the Australian Consumer Law

- (a) The Customer acknowledges and agrees that:
 - (i) prior to establishing an account with CEPL, it reviewed these Terms and raised all issues of concern with CEPL (which you can do by email at info@cepl.com.au);
 - (ii) these Terms are reasonably necessary to protect the legitimate interests of CEPL; and
 - (iii) if any part of these Terms is deemed to be invalid, void or unenforceable (including, but not limited to, as an unfair term for the purpose of the Australian Consumer Law), then that part will be severed from these Terms and all parts which are not deemed to be invalid, void or unenforceable will remain in full force and effect.
- (b) If you constitute a consumer under the Australian Consumer Law while using the Software Services, nothing in these Terms is intended to remove your rights under the Australian Consumer Law, including to statutory guarantees that may apply to the Software Services. If we are entitled to limit the remedies available to you for breach of such guarantees, we expressly limit our liability to either supplying access to the affected Software Services again or paying the cost of supplying access to the Software Services again.

15 Directions

The Customer will follow all reasonable instructions that CEPL gives it from time to time about the use of the Software Services.

16 Confidentiality

- (a) The Customer must not disclose CEPL's Confidential Information to any person except:
 - (i) employees of the Customer requiring the information for the purposes of these Terms who:
 - (A) are aware of the confidentiality obligations imposed in this clause 16; and
 - (B) have entered into written confidentiality agreements with the Customer which require such employees to comply with confidentiality obligations no less restrictive than those set forth in this clause 16;
 - (ii) to the extent the Customer is required to do so by Law; or
 - (iii) to the extent the Customer is required to do so in connection with legal proceedings relating to these Terms.
- (b) Subject to its rights under these Terms, CEPL must not disclose the Customer's Confidential Information to any person except:
 - (i) employees of CEPL requiring the information for the purposes of these Terms who:
 - (A) are aware of the confidentiality obligations imposed in this clause 16; and
 - (B) have entered into written confidentiality agreements with CEPL which require such employees to comply with confidentiality obligations no less restrictive than those set forth in this clause A17;
 - (ii) to the extent CEPL is required to do so by Law; or
 - (iii) to the extent CEPL is required to do so in connection with providing the Software Services or Products under, or in connection with legal proceedings, relating to these Terms.
- (c) The parties must not use each other's Confidential Information, except for the purpose of exercising their respective rights or performing their respective obligations under these Terms.
- (d) Clauses 16(a), 16(b) and 16(c) do not apply to information which:
 - (i) is in or becomes part of the public domain other than through breach of these Terms or an obligation of confidence owed to CEPL;
 - (ii) the party who receives the information already knew the information at the time of disclosure by the other party (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality or other contractual obligation by any party); or
 - (iii) as otherwise agreed in writing between the parties for the purposes of this clause.

- (e) The parties will each take any action that is necessary to prevent or remedy any breach of that party's confidentiality obligations or other unauthorised disclosure of the other party's Confidential Information.
- (f) The Customer acknowledges that due to the unique nature of CEPL's Confidential Information, any breach by the Customer of its obligations under this clause 16 could result in irreparable harm to CEPL and its service providers for which there is no adequate remedy; and therefore, upon any such breach or threat thereof, CEPL and its service providers will be entitled to injunctive and other appropriate equitable relief (without the necessity of proving damages, or posting bond or other security), in addition to whatever remedies CEPL and its service providers may have at Law.
- (g) Except as otherwise agreed or duly required by Law, no party will disclose any part of these Terms to any person other than its Representatives on a confidential basis.

17 Breach and termination

- (a) If the Customer or any of its Representatives breaches any term of these Terms, CEPL may, at its election, do one or any of the following:
 - (i) suspend or terminate the Customer's access to the Software Services (and the access of its Representatives) immediately upon written notice to the Customer;
 - (ii) commence proceedings against the Customer for any loss or damage CEPL suffers as a result of the breach;
 - (iii) refer the matter (including the Customer's name and contact details) to any debt collector or other third party to assist CEPL in collecting any fee not paid to CEPL under these Terms, including conducting any consumer credit searches or listing the Customer with a credit reporting agency.
- (b) CEPL reserves the right to suspend or terminate the Customer's access to the Software Services (and the access of its Representatives) in circumstances where:
 - (i) an Insolvency Event occurs in relation to the Customer;
 - (ii) CEPL or its service providers reasonably believe that the Customer or any of its Representatives has used or disclosed the Software Services or any of CEPL's Confidential Information in a manner not permitted under these Terms or otherwise has materially breached these Terms; or
 - (iii) an event of force majeure occurs that affects CEPL's ability to provide the Software Services.
- (c) If any use is made of the Software Services by any person other than the Customer or its Representatives and such use is attributed to the act or default of the Customer or its Representatives, then without prejudice to CEPL's other rights and remedies, the Customer will immediately be liable to pay to CEPL an amount equal to the fees and charges which such person would have been obliged to pay had CEPL granted a licence to the unauthorised user at the beginning of the period of the unauthorised use.
- (d) The Customer may terminate its (and, consequently, its Representatives') access to the Software Services at any time with 90 days notice by sending an email to info@cepl.com.au requesting closure of its account with CEPL. On termination the Customer will not receive a refund of any Fees, charges or other amounts already paid to CEPL, unless it has terminated as a result of CEPL changing these Terms in a way that has a materially detrimental effect on the Customer. In that case:

- (i) the Customer must notify CEPL within 14 days of CEPL's notice to the Customer about the relevant change to these Terms;
- (ii) the Customer's termination will take effect on the date of the change to these Terms; and
- (iii) CEPL will issue to you a pro-rata refund of the amount already paid to it to the extent the amount relates to a period following the date of the change to these Terms.

18 Consequences of termination or expiry

- (a) If the Customer's (or its Representatives') access to the Software Services is terminated or expires, all of the Customer's rights to use the Software Services will immediately end, and the Customer will at its expense promptly return, or at CEPL's election destroy, any copies of Software Services and any of CEPL's Confidential Information that are either in the Customer's possession or under the Customer's control.
- (b) Termination of the Customer's (or its Representatives') access to the Software Services will not act as a waiver of any breach of these Terms and will not act as a release of either party from any liability for breach of such party's obligations under these Terms.
- (c) Termination of the Customer's (or its Representatives') access to the Software Services will be without prejudice to any other right or remedy that CEPL may have, and will not relieve either party of any obligation or liability which arose prior to the effective date of such termination.
- (d) The following clauses will survive any termination of the Customer's (or its Representatives') access to the Software Services: 2; 7; 11; 12; 13; 14; 16; 17; 18; 19; 20; 21; 22 and 23.

19 Indemnity

The Customer will indemnify and keep indemnified CEPL and its Representatives, and each of them, from and against all liabilities, damages, claims, proceedings, actions, demands, costs, losses and expenses incurred by any of them directly or indirectly arising out of or in connection with

- (a) any breach or non-observance of any of these Terms;
- (b) any breach of a warranty or representation contained in these Terms;
- (c) any breach, or alleged breach, of intellectual or other proprietary rights or interests of third parties; and
- (d) any claim made against us by any party, arising out of or in connection with any breach of these Terms or other act or omission by you relating to the Software Services or the Customer Content.

20 Goods and services tax

20.1 Interpretation

In this clause 20, a word or expression defined in the GST Act has the meaning given in that act.

20.2 Consideration exclusive of GST

All consideration provided under these Terms is exclusive of GST, unless it is expressed to be GST-inclusive.

20.3 Recovery of GST on supplies and adjustments under these Terms

- (a) Where a party ('**Provider**') makes a supply to another party ('**Recipient**') under or in connection with these Terms that is a taxable supply, the Recipient must pay to Provider an additional amount equal to the GST payable on the supply (unless the consideration for that taxable supply is expressly stated to include GST). The additional amount must be paid by the Recipient at the later of the following:
 - (i) the date when any consideration for the taxable supply is first paid or provided; and
 - (ii) the date when Provider issues a tax invoice to the Recipient.
- (b) If, under or in connection with these Terms, Provider has an adjustment for a supply under the GST Act that varies the amount of GST payable by Provider, Provider will adjust the amount payable by the Recipient to take account of the varied GST amount and an adjustment note must be provided to the Recipient.

20.4 Other GST matters

- (a) Subject to an express provision in these Terms to the contrary, any payment, amount, reimbursement or indemnity required to be made to a party ('**Payee**') under these Terms that includes any calculation by reference to a cost, expense, Liability or other amount paid or payable by the Payee to a third party ('**Expense**') will be calculated by reference to that Expense inclusive of GST, less the amount of any input tax credit which the Payee is entitled to claim on that Expense.
- (b) If part of a supply is a separate supply under the GST Law (including for the purpose of attributing GST payable to tax periods), that part is a separate supply for the purposes of this clause.
- (c) Where the context requires, a reference to the Provider, the Recipient or the Payee in this clause includes the representative member of a GST Group of which the Provider, the Recipient or the Payee respectively is a member.

21 Notices

- (a) Any notice given or made by a party under or in connection with this document must be in writing and signed by that party by an authorised signatory of that party. A person is an authorised signatory if he or she is a director of the relevant party or is authorised in writing by that party. Any notice by email is taken to be signed by the named sender.
- (b) Any notice given under this document is only given if it is in writing and delivered or posted to that party at its address and marked for the attention of the relevant department or person (if any) or sent by email to that party at its email address and marked for the attention of the relevant department or person (if any).
- (c) If a party gives each other party three business days' notice of a change of its address or email address, any notice is only given to that party if delivered or posted to its latest address or email address.
- (d) Any notice is to be treated as given at the following time:
 - (i) if it is delivered, when it is left at the relevant address;

- (ii) if it is sent by post, two (or in the case of a notice posted to another country, nine) business days after it is posted; or
- (iii) if sent by email, on the date of transmission, or if sent on a non-business day to the recipient's address, on the next business day, and provided that the sender's email software from which the email was sent records a successful transaction.

If any notice is given on a day that is not a business day or after 5.00pm on a business day in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next business day. If the sender's email software indicates that the notice was received after 5.00pm it shall be deemed to have been received on the following day.

- (e) All notices hereunder will be in writing addressed to the parties at their respective addresses notified to each other from time to time.

22 Privacy

- (a) The Privacy Policy is expressly incorporated into these Terms.
- (b) The Customer must:
 - (i) notify CEPL immediately (by email to info@cepl.com.au) of any actual or potential privacy complaints or breaches of Privacy Laws of which it becomes aware, which involve CEPL or its Related Parties; and
 - (ii) use all reasonable endeavours to assist CEPL in dealing with any such actual or potential complaints or breaches.
- (c) If any individual requests access to, deletion of, or correction of their Personal Information stored with or held by the Customer, subject to its obligations under Privacy Laws, the Customer must not direct the individual to pursue the request with CEPL instead of itself.
- (d) The Customer expressly acknowledges that CEPL may be required to use, disclose or otherwise deal with Personal Information forming part of the Customer Data in accordance with its obligations under Privacy Laws and expressly consents to same.
- (e) To the extent the Customer Content from time to time includes any Personal Information, the Customer warrants and represents to CEPL on an ongoing basis that:
 - (i) its recording and collection of that Personal Information is necessary for one or more of Customer's functions or activities;
 - (ii) its recording, collection, holding, disclosure and use of that Personal Information (including its inclusion of such Personal Information in the Customer Content and all other uses and disclosures contemplated in these Terms) complies with all Privacy Laws;
 - (iii) it has obtained consent from all individuals to which that Personal Information relates (and/or from all people authorised under the Privacy Laws to give consent on behalf of such individuals) to:
 - (A) record and/or collect (as applicable) that Personal Information;
 - (B) each use and disclosure of that Personal Information undertaken by the Customer or its Representatives, including the inclusion of such

Personal Information in the Customer Content and all other uses and disclosures contemplated in these Terms; and

- (C) the hosting arrangements in respect of their Personal Information in connection with the Software Services;
- (iv) it has taken all steps required under the Privacy Laws to ensure that all individuals to which that Personal Information relates are made aware of all matters which the Privacy Laws require they be made aware of in relation to the recording, collection, holding, use and disclosure of their Personal Information, including:
 - (A) CEPL's identity and how to contact it (including by ensuring those individuals are aware of, and have access to, the Privacy Policy);
 - (B) the fact that the individual is able to gain access to their Personal Information;
 - (C) the purposes for which their Personal Information is collected;
 - (D) any Laws that require their Personal Information to be collected; and
 - (E) the main consequences (if any) for the individual if all or part of their Personal Information is not provided;
- (v) CEPL's use of the Customer Content as contemplated in these Terms will not put CEPL in breach of the Privacy Laws;
- (vi) the Personal Information is accurate, complete, up to date and relevant to the Customer's functions and activities;
- (vii) it has taken, and maintains external to the Software Services, complete copies of all such Personal Information;
- (viii) it has not deleted any such Personal Information in contravention of the Privacy Laws;
- (ix) it has taken reasonable steps to correct any such Personal Information which it has been established is inaccurate, incomplete, misleading or not up to date and has done so in accordance with the Privacy Laws; and
- (x) it has otherwise complied with all Privacy Laws in relation to that Personal Information.

23 General provisions

(a) Failure to perform or delay

CEPL will not be liable for any failure to perform or delay in performing its obligations if the failure or delay results from circumstances beyond the control of CEPL (whether occurring in the Territory or elsewhere), including acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, natural disasters, acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damages, sabotage, revolution or strikes.

(b) Approvals and consent

Except as otherwise set out in this document, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by that party. A party is not obliged to give reasons for giving or

withholding a consent or approval or for giving a consent or approval subject to conditions.

(c) Assignment

The Customer cannot assign, subcontract or otherwise transfer its account with CEPL, the Software Services it or its Representatives access or use, or any of its rights or obligations under these Terms to any person without the prior written consent of CEPL.

CEPL may assign, subcontract, or otherwise transfer any or all of its rights and obligations under these Terms by providing the Customer with reasonable notice in writing.

(d) Entire agreement

This document, the Privacy Policy and the Order Terms constitute the entire agreement between the parties in relation to their subject matter. No party can rely on an earlier document, or anything said or done by another party, or by a Representative of that party, before these Terms were entered into.

(e) Exercise of rights

A party may exercise a right, power or remedy separately or concurrently with another right, power or remedy available to it at law or under this document. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy and a failure by a party to exercise, or delay by a party in exercising, a right, power or remedy does not prevent its exercise.

(f) Further acts

Each party must at its own expense promptly execute all documents and do, or use reasonable endeavours to cause a third party to do, all things that another party from time to time may reasonably request in order to give effect to, perfect or complete these Terms and all transactions incidental to them.

(g) Governing law and jurisdiction

This document is governed by the law of Victoria, Australia. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

(h) Indemnities

Except as otherwise set out in this document, each indemnity in this document is a continuing obligation, separate and independent from the other obligations of the indemnifying party and survives termination of this document.

(i) Relationship

Except as otherwise set out in this document, this document does not create a relationship of employment, trust, agency or partnership between the parties.

(j) Rights cumulative

Except as otherwise set out in this document, the rights of a party under this document are cumulative with and in addition to any other rights available to that party under these Terms, any other document or by law and nothing in this document excludes any such rights.

(k) Severability

Each provision of this document is individually severable. If any provision is, or becomes illegal, unenforceable or invalid in any jurisdiction it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected and the legality, validity and enforceability of the provision in any other jurisdiction will not be affected.

(l) Successors and assigns

This document continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party's rights and obligations are assigned in accordance with the requirements of this document.

(m) Variation

We reserve the right to change these Terms at any time by providing at least 30 days' notice. This may include changes needed to reflect changes to the Law, changes to our terms of trade, or changes to the Products or Software Services or to their features or functionality. The amended Terms will only become effective following the above notice period. If you disagree with the revised Terms, you may elect to terminate your access to the Software Services in accordance with clause 17(d). Your continued use of the Products or Software Services constitutes your acceptance of these Terms as amended from time to time.

(n) Waiver

A waiver of any right, power or remedy under this document must be in writing signed by the party granting it. A waiver only affects the particular obligation or breach for which it is given. It is not an implied waiver of any other obligation or breach or an implied waiver of that obligation or breach on any other occasion.