

## END USER LICENCE AGREEMENT

This end user licence agreement (**EULA**) is a binding agreement between you and Checkworkrights Pty Ltd as trustee for Checkworkrights Unit Trust (ABN 39 799 316 009) (**we, our, us**) for access to and use of our information verification, recording and reporting software (**Software**).

To access and use the Software you must be, and you warrant and represent that you are either:

- an employee or other authorised user of the organisation that has directed or otherwise facilitated your access to and use of the Software (such organisation being our **Customer**); or
- an individual who requires access to and use of the Software for your own internal business or compliance purposes,

(each an **Authorised User**).

By clicking the 'I accept' button or otherwise accessing or using the Software, you agree that you have read, understood and will be bound by this EULA. If you do not agree with the terms of this EULA, you must not access or use the Software.

Where applicable, to the extent the terms of this EULA are inconsistent with the terms of our standard subscription agreement that governs access to and use of our cloud-based information verification, recording and reporting platform (**CWR Platform**) between us and our Customer (as that agreement may be amended, updated or replaced from time to time) (**Subscription Agreement**), the terms of this EULA will not apply to the extent of such inconsistency.

If you are entering this EULA as an authorised representative of an organisation that requires access to and use of the CWR Platform and has not previously entered into a Subscription Agreement, you agree that organisation is bound by the terms of the Subscription Agreement (and the Subscription Agreement is incorporated by reference into this EULA), and you warrant and represent you have the capacity and authority to bind that organisation to the Subscription Agreement. You can view the terms of the Subscription Agreement at [www.checkworkrights.com.au/legal](http://www.checkworkrights.com.au/legal). If this paragraph is applicable to your circumstances and you do not agree to the terms of the Subscription Agreement, you must not access or use the CWR Platform.

### 1 Grant of Licence

We grant you a personal, non-exclusive, non-transferable, revokable, non-sub-licensable licence (**Licence**) to use the Software by loading or installing the Software onto the memory of your electronic device this EULA is displayed (**Device**) solely for the internal business purposes of our Customer as set out in the Subscription Agreement or your internal business or compliance purposes (as applicable) and otherwise described in this EULA (**Permitted Purpose**).

### 2 Restrictions on Licence

The Licence granted to you under this EULA authorises you to use the Software solely for the Permitted Purpose and you must not use the Software for any other purpose. Without limiting the above, you must not:

- (a) make any copies of the Software (except as permitted under clause 1);
- (b) modify, adapt, translate, reverse engineer, de-compile, disassemble or copy all or any part of the Software;
- (c) attempt to circumvent or break any encryption, decryption or other security device or technological protection measure contained in the Software;
- (d) distribute any part of the Software for commercial purposes or otherwise sub-licence or resell the Software;

- (e) create derivative works from all or any part of the Software;
- (f) transfer, assign, rent, lease, lend, sell or otherwise dispose of all or any part of the Software; or
- (g) publish, communicate or otherwise make any part of the Software publicly available.

### 3 Use of Software

You must:

- (a) comply with all applicable laws of your jurisdiction in connection with your access and use of the Software;
- (b) keep your username and password in connection with accessing the Software confidential, and not disclose your username and password to any third party without our prior written consent;
- (c) ensure your Device complies with our minimum hardware and operating requirements as notified by us from time to time;
- (d) be, and agree that you are, solely responsible for all your data and information used in connection with or inputted into the Software (**Relevant Data**), including in respect of the accuracy, completeness, integrity and your right to use the Relevant Data, including rights in relation to:
  - (i) any Intellectual Property Rights of any third party; or
  - (ii) any personal information or sensitive information of any third party (as those terms are defined in the *Privacy Act 1988* (Cth)); and
- (e) ensure you have all necessary rights, approvals and consents required for us to collect, use, store, copy, transfer, and modify the Relevant Data as required for the Software to be used by you for the Permitted Purpose and otherwise in accordance with this EULA (and you indemnify us for any loss that we may suffer in connection with such activities directly relating to our use of the Relevant Data for these purposes to the maximum extent permitted by law).

### 4 Ownership

- (a) We own all rights, title and interest in and to the Software and you agree you do not have any ownership of the Software or other rights in respect of the Software, including any Intellectual Property Rights, other than the Licence granted to you under this EULA.
- (b) For the purposes of this EULA, the term **Intellectual Property Rights** includes all patents, designs, copyright, trade marks, source code, object code, database rights, trade secrets and any right to apply for the registration or grant of any of the above.

### 5 Installation and services

#### 5.1 Installation

Unless we agree otherwise in writing, you will be responsible for installing the Software on your Device and otherwise integrating the Software with your Device's software and systems and we will have no installation or integration obligations to you in relation to the Software.

#### 5.2 Support services

You acknowledge and agree that we may provide online support services to you in our sole discretion as we may notify you from time to time. Unless we agree in writing, we will not have any obligations to provide any additional support services to you in respect of the Software including (without limitation) development or customisation services, technical support, training or maintenance services.

### 6 Third Party Software

You acknowledge and agree that:

- (a) for certain functions of the Software to properly operate, third party software may need to be integrated or installed on your Device as may be notified by us to you and/or our Customer from time to time (**Third Party Software**);
- (b) you and/or our Customer is responsible for obtaining any necessary licences for any Third Party Software at your and/or our Customer's cost; and
- (c) we are not responsible for procuring or otherwise providing any Third Party Software to or for you and the contractual relationship in respect of the relevant Third Party Software provider is between you and/or our Customer.

## 7 Updates and upgrades

You agree that:

- (a) we may update, upgrade, or undertake maintenance of the Software at any time (provided however that we have no obligation to provide such updates or upgrades to you pursuant to this EULA); and
- (b) vary, add, or delete functions or features of the Software provided that the performance of the Software is not materially adversely affected as a result of these activities.

## 8 Privacy

You acknowledge and agree that in connection with the Licence granted to you under this EULA, we may collect your personal information (as that term is defined in the *Privacy Act 1988* (Cth)). Our privacy policy sets out our collection, use and disclosure practices in relation to personal information and can be accessed at [www.checkworkrights.com.au/polices](http://www.checkworkrights.com.au/polices).

## 9 Exclusion of warranties

We expressly exclude from this EULA all conditions, warranties, guarantees and terms which may be implied into this EULA by statute, custom, or general law and are capable of being excluded, provided however this exclusion will not apply to the extent that:

- (a) you acquire goods or services from us under this EULA as a consumer for the purposes of the Australian Consumer Law (**ACL**); and
- (b) the consumer guarantees under the ACL apply in respect of those goods or services.

## 10 Liability and indemnity

### 10.1 Liability

To the extent that:

- (a) you suffer any loss or have any claim against us for breach by us of any condition, warranty or guarantee in relation to any goods or services provided by us under this EULA which condition, warranty or guarantee is imposed under the ACL or any other comparable legislation and cannot be excluded (including, without limitation, any applicable consumer guarantees); or
- (b) you suffer any other loss or have any other claim against us in connection with any goods or services provided by us under this EULA or the performance of our obligations under this EULA including (without limitation) any claim for breach of contract or negligence,

our liability for such loss or in respect of such claim will be limited, to the extent permitted by law, at our election and discretion to:

- (c) if the breach relates to goods:
  - (i) the replacement of goods or the supply of the equivalent goods;

- (ii) the payment of the cost of replacing the goods or of acquiring equivalent goods; or
- (d) if the breach relates to services:
  - (i) the re-supply of the services; or
  - (ii) the payment of the cost of having the services supplied again.

For the avoidance of doubt, this clause 10.1 does not apply to any claim you may have against us for breaching the consumer guarantee provisions of the ACL where the goods or services the subject of the claim are goods or services which are of a kind ordinary acquired for personal, domestic or household use or consumption (for the purposes of the ACL).

## 10.2 Indemnity

You are liable for, and indemnify us and each of our directors, officers, employees, agents, contractors and related bodies corporate (**Indemnified Parties**) and keep each of them indemnified, any damage, cost, loss, expense or liability of any kind (excluding Consequential Loss) (**Loss**) suffered or incurred by an Indemnified Party which arises from or in respect of:

- (a) any breach by you of this EULA; or
- (b) any negligent, or wilful act or omission, misconduct, dishonesty or fraud committed by you, your agents, representatives, delegates or contractors,

except to the extent that such Loss was directly caused or contributed to by us.

## 10.3 Consequential loss

Notwithstanding any clause in this EULA, neither party will be liable to the other party for any Consequential Loss. For the purposes of this EULA, **Consequential Loss** means indirect loss, loss of profits, loss or revenue, loss of savings, loss of opportunity, loss of goodwill, or any analogous loss.

## 11 Termination

- (a) Subject to clause 11(c), you acknowledge and agree this EULA will terminate immediately on the earlier of:
  - (i) if applicable, the expiry or termination of the Subscription Agreement between us and our Customer; and
  - (ii) any breach by you of this EULA.
- (b) You must cease using the Software immediately on the termination of this EULA and do all things reasonably required by us in connection with the termination of this EULA.
- (c) Notwithstanding clause 11(a), you agree clause 10.2 and clause 10.3 will survive the termination of this EULA and continue to bind you.

## 12 General

### 12.1 Governing law

This EULA will be governed by and construed exclusively under the laws of the State of Victoria, Australia and the parties submit to the non-exclusive jurisdiction of the courts of the State of Victoria and the Federal Court of Australia.

### 12.2 Assignment

You may not assign or otherwise deal with any of your rights or obligations under this EULA without our prior written consent. We may assign, novate or otherwise deal with our rights under this EULA at any time effective immediately upon us notifying you of the assignment or novation.

### **12.3 Entire agreement**

This EULA constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, representations, inducements, undertakings, agreements or arrangements between the parties or their respective officers, employees or agents.

### **12.4 Relationship between parties**

This EULA does not create a relationship of employment, agency, partnership or joint venture between the parties.

### **12.5 Variation**

This EULA may only be amended or varied by a document in writing signed by each party.

### **12.6 Waiver**

No failure to exercise or delay in exercising any right given by or under this EULA to a party constitutes a waiver and the party may still exercise that right in the future.

### **12.7 Severability**

If any provision of this EULA is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down, if possible, so as to be valid and enforceable and will otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this EULA or affecting the validity or enforceability of that provision in any other jurisdiction.