



ACCESS SERVICE AGREEMENT

Please retain for your records

NOTE: *This is an important agreement. This agreement governs your right to use information and software provided by CHEP and the output generated by that software for the purposes of your business. There are limitations upon how You can use the software and output. If You have any questions concerning the agreement, or if anything is unclear, please let us know.*

This agreement is made the [] day of [] 200 [] .

Between:

CHEP Australia Limited (ABN 11 117 266 323) of Level 6, Building C, 11 Talavera Road, North Ryde NSW 2113, Facsimile (02) 9856 2404 (CHEP)

And:

Customer Name:	[]
Customer ABN:	[]
Customer Address (You)	[]

RECITALS

- A. *CHEP has rights as licensee under the Licence Agreement, or as owner, to all Intellectual Property Rights, and is entitled to all Confidential Information in the Transaction Information, the Program and any Output.*
- B. *At your request, CHEP has agreed to grant You a limited licence in Australia to access the Access Service, and to use the Program, the Output and the Transaction Information subject to the following terms and conditions.*

OPERATIVE PROVISIONS

1 DEFINITIONS

- 1.1 **Access Service** means the service provided by CHEP which permits the interaction between any CHEP transaction accounting database system (PCMS) and You or the Program.
- 1.2 **CHEP Trade Marks** means trade marks used by CHEP in conjunction with the provision of the Access Service.
- 1.3 **Communicate** has the same meaning as that term is defined in the *Copyright Act 1968* (Cth).
- 1.4 **Confidential Information** means the confidential information of a party and includes (without limitation) information relating to:
 - the design, format, specification and content of the Transaction Information, the Program and/or Output; and
 - trade secrets, financial, marketing, customer related and technical information, ideas, concepts, know how, technology, processes and knowledge which relate to the Transaction Information, the Program, and/or the Output.
- 1.5 **Electronic Rights Management Information** has the same meaning as that term is defined in the *Copyright Act 1968*.
- 1.6 **Equipment** means items of property lent or hired out by CHEP from time to time to You.



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- 1.7 **Hire Agreement** means the hire agreement between CHEP and You in respect of the Equipment provided by CHEP.
- 1.8 **Intellectual Property Rights** means copyright, trade mark, design, patent, semiconductor or circuit layout rights and any application for registration or registration of those rights.
- 1.9 **Licence Agreement** means the licence agreement between CHEP and CHEP Technology Pty Ltd dated 2 June 2006 pursuant to which CHEP is granted a licence to use certain Intellectual Property Rights.
- 1.10 **Normal Use** means the use of the Program for the internal management of the Equipment You have obtained under the Hire Agreement.
- 1.11 **Output** means any data, compilation of data, report or report format that is generated by the Program in any material form.
- 1.12 **Program** means any computer program, including any version of any CHEPMate or Portfolio? software provided to You by CHEP, used to access the Access Service, and any updates, upgrades, enhancements or modifications thereto, and its associated documentation and user manuals.
- 1.13 **related body corporate** has the meaning given to it in the Corporations Act 2001 (Cth);
- 1.14 **Technological Protection Measure** has the same meaning as that term is defined in the Copyright Act 1968.
- 1.15 **Transaction Information** means any invoice, data, compilation of data, report or report format that is provided by or on behalf of CHEP in any material form.

2 PROPRIETARY RIGHTS

- 2.1 You agree and acknowledge that:
- (a) copyright subsists in Australia in the Transaction Information, the Program, and any Output as original literary works;
 - (b) CHEP is the licensee or owner of all Intellectual Property Rights and is entitled to any Confidential Information, in the Transaction Information, the Program, and any Output; and
 - (c) the Transaction Information, the Program, and the Output contains:
 - (i) Electronic Rights Management Information; and
 - (ii) one or more Technological Protection Measures; and
 - (d) the Program contains algorithms and other information which is confidential to CHEP and its related bodies corporate.
- 2.2 CHEP reserves all rights not expressly granted to You in this agreement.
- 2.3 You may not use any of the CHEP trade marks as trade marks.

3 LICENCE

- 3.1 CHEP hereby grants You a limited non-transferable non-exclusive royalty-free licence to use the Program anywhere in Australia but only:
- (a) upon the equipment specified in the installation form delivered with the Program; and
 - (b) solely for the Normal Use.
- 3.2 CHEP hereby grants You a limited non-transferable non-exclusive royalty-free licence to gain access to and use the Access Service in Australia but only:
- (a) for the purpose of the normal use of the Program;
 - (b) for the purpose of sending Output and receiving Transaction Information; and
 - (c) solely for the Normal Use.



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- 3.3 CHEP grants You a limited non-transferable non-exclusive royalty free licence in Australia to make a single copy of either the Output or the Transaction Information at each of the Locations:
- (a) in the same format as:
 - (i) supplied to You by CHEP; or
 - (ii) produced by the normal operation of the Program,
for archival (including back-up), internal record keeping, auditing or financial accounting purposes, provided that You do not remove or alter any Electronic Rights Management Information or any Technological Protection Measure; or
 - (b) in the paper format produced through the normal operation of the Program, provided that you do not remove or alter any Electronic Rights Management Information appearing thereon.
- 3.4 The limited licences granted to You by CHEP in this agreement does **not** permit You:
- (a) to reproduce the Transaction Information or the Output (or any substantial part thereof) otherwise than in accordance with the limited licence granted to You by clause 3.3 of this agreement;
 - (b) to Communicate the Transaction Information or Output to the public except:
 - (i) to CHEP;
 - (ii) to Your legal or accounting advisers or auditors;
 - (iii) to Your related bodies corporate; or
 - (iv) in respect of a particular item of Transaction Information or particular Output, to the counterparty to the transaction to which that particular item of Transaction Information or Output relates;
 - (c) to alter or remove any Electronic Rights Management Information or any Technological Protection Measure;
 - (d) to make an adaptation of the Transaction Information, the Program, or the Output; and
 - (e) to do anything outside Australia in relation to the Transaction Information, the Program, or the Output.

4 USE OF ACCESS SERVICE, PROGRAM AND UPGRADES

- 4.1 You must comply with all requirements concerning the use of the Access Service issued by CHEP from time to time.
- 4.2 You must comply with all requirements concerning the use of the Program issued by CHEP from time to time.
- 4.3 You acknowledge that CHEP is under no obligation to provide You with upgrades or new releases of the Program.
- 4.4 If CHEP does provide You with an upgrade or new release of the Program You must install and use the upgrade or new release in substitution for the previous release within three months of receipt of the upgrade or new release from CHEP.
- 4.5 Subject to the provisions of Division 4A of the Copyright Act 1968 You may not modify, copy, reproduce or reverse engineer the Program except to make a copy of it for bona fide backup purposes.

5 CONFIDENTIALITY AND ACCESS

- 5.1 You must treat the Program as confidential and must not without the prior written consent of CHEP disclose or make available or permit to be disclosed or made available the Program to any third party.



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- 5.2 You may only disclose or make available the Program to those of your employees or agents to whom disclosure is required to enable you to use the Program as permitted by this agreement.
- 5.3 You may not disclose any information which would enable the recipient of the information to gain access to the Access Service or gain access to or use the Program unless such access or use is permitted by this agreement.
- 5.4 You are responsible for the use, supervision, management and control of the Program at the Locations. You must ensure that, at the Locations, the Program is protected at all times against misuse, damage or destruction and from access or use by any person not authorised under this agreement.
- 5.5 You are responsible for the use, supervision, and management of the Access Service at the Locations. You must ensure that the Access Service is protected at all times against access or use at the Locations by any person not authorised under this agreement.

6 RECORD KEEPING AND AUDIT

- 6.1 You must keep accurate records of the use by You of the Access Service, the Transaction Information, the Program, or the Output. You may keep this information in electronic format.
- 6.2 You will permit CHEP to inspect such records at any time during your normal business hours. If CHEP requests, You will provide to CHEP (at CHEP's reasonable expense) a copy, in electronic format, of all or any part of such records.
- 6.3 You authorise CHEP to generate, maintain and use information concerning or relating to your use of the Access Service, the Program, and Transaction Information issued or released to You.

7 WARRANTY

- 7.1 CHEP warrants that for a period of 90 days after the date of delivery to You:
- (a) the Program will substantially conform to the then current Program specification; and
 - (b) the media on which the Program is furnished will be free from defects.
- 7.2 CHEP will replace, at no charge, any Program that does not conform to the warranty specified in clause 7, provided that You return the Program to CHEP Australia within 90 days of the date of delivery. To the maximum extent permitted by law CHEP has no other liability to You in respect of this warranty.
- 7.3 This warranty does not apply if the defect is the result of:
- (a) modifications to the Program not authorised in writing by CHEP;
 - (b) use of the Program other than in accordance with CHEP's directions;
 - (c) any other misuse or misapplication of the Program; or
 - (d) any misuse, improper handling or storage of the media upon which the Program is furnished.
- 7.4 Your continuing use of the Program or the Access Service is a warranty by You that:
- (a) You are complying with the obligations of this agreement; and
 - (b) You are maintaining accurate records as required by clause 6 of this agreement.

8 WARRANTY

- 8.1 You indemnify CHEP and its related bodies corporate and You agree to keep CHEP and its related bodies corporate indemnified against any and all claims, demands, losses, damages and costs (including, without limitation, legal costs and investigation costs) that CHEP or its related bodies corporate incurs or may incur as a result of or arising out of:



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- (a) a breach by You of any of Your obligations under this agreement;
- (b) any act of default or omission or wilful conduct or negligence by You;
- (c) the authorisation by You of any action or activity which infringes copyright in the Transaction Information, the Program, or the Output; or
- (d) any use of the Transaction Information, the Program, or the Output which is outside the limited licence granted in this agreement.

CHEP holds the benefit of this clause 8 on trust for itself and its related bodies corporate.

9 LIMITATION OF LIABILITY

9.1 Except to the extent warranted above and subject to clause 9.2, CHEP excludes all terms, conditions, warranties, undertakings, inducements or representations whether express or implied, statutory or otherwise relating in any way to the Program, the Output or this agreement and in particular but without limitation CHEP does not warrant:

- (a) that the Program will meet your requirements;
- (b) that the Access Service will meet your requirements; or
- (c) that the operation of the Access Service or the Program will be uninterrupted or error free.

9.2 In respect of conditions and warranties implied by law that cannot lawfully be excluded, CHEP's liability is limited to one of the following, as determined by CHEP:

- (a) in the case of services supplied by CHEP to:
 - (i) the supplying of the services again, or
 - (ii) the payment of the cost of having the services supplied again; or
- (b) in the case of goods supplied by CHEP to:
 - (i) the replacement of the goods or the supply of equivalent goods; or
 - (ii) the cost of the replacement or supply of the goods.

9.3 Except as expressly provided to the contrary in this agreement and to the maximum extent permitted by law, CHEP is not under any liability to You in respect of any loss, damage, injury, claims, demands, costs or expenses, howsoever caused, which may be suffered or incurred or which may arise in respect of the supply or use of the Program or any negligence by CHEP, any failure or omission on the part of CHEP to comply with any of the terms of this agreement, or otherwise in connection with this agreement.

9.4 In no event is CHEP liable for any indirect, incidental, special or consequential damage or loss of profits, revenue, data or other use by You or any third party whether in any action in contract or tort or strict liability or any other basis, even if CHEP has been advised of the possibility of such damages. This clause 9.4 shall extend beyond termination of this agreement.

9.5 Subject to section 74J of the Trade Practices Act 1974 any action against CHEP must be brought within 18 months after the cause of the action occurs.

10 TERMINATION

10.1 CHEP may terminate this agreement if:

- (a) You commit a breach of this agreement and that breach is not rectified within 30 days of written notice from CHEP requesting the breach to be rectified;
- (b) You fail to use the Program for more than 30 consecutive days;
- (c) You fail to pay any sum payable under any agreement with CHEP when due; or
- (d) You become, threaten or resolve to become or You are in jeopardy of becoming subject to any form of insolvency administration.



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- 10.2 You may terminate this agreement by giving 7 days written notice to CHEP.
- 10.3 If the Hire Agreement is terminated, this agreement is automatically terminated.
- 10.4 If the Licence Agreement is terminated, this agreement is automatically terminated.
- 10.5 If this agreement is terminated, for whatever reason, any licences granted by CHEP under or pursuant to this agreement are also immediately terminated.
- 10.6 Upon termination of this agreement, however caused, You must immediately:
- (a) return to CHEP all copies of the Program and its associated documentation and user manuals in your possession or control; and
 - (b) irretrievably delete from the hard drive of your computer and from any other storage device or devices (including, without limitation, any removable media) any copy of the Transaction Information, the Program, and the Output apart from Transaction Information.
- 10.7 Notwithstanding clause 10.6 hereof, You may retain one copy of the Transaction Information or the Output to meet your taxation record keeping, internal auditing or accounting obligations, but not otherwise.

11 MISCELLANEOUS

- 11.1 **Assignment** . You are not entitled to assign, sub-licence or otherwise transfer the benefit of this agreement the Program or the Output without the prior written consent of CHEP.
- 11.2 **Waiver** . A party's failure or delay to exercise a power or a right does not operate as a waiver of that power or right and the exercise of a power or a right does not preclude its future exercise or the exercise of any other power or right.
- 11.3 **Severability** . If any part of the terms, conditions or provisions contained in this agreement are determined to be invalid, unlawful or unenforceable, such part of the affected term, condition or provision will be severed from the remaining terms, conditions and provisions of this agreement, which remaining terms, conditions and provisions will continue to be valid and enforceable to the fullest extent permitted by the law.
- 11.4 **Replacement of Previous Terms** . These terms replace any other agreement previously in force between CHEP and You in respect of any of the Access Service, the Output, the Program and/or the Transaction Information. By continuing to use the Access Service or the Program after receipt of this agreement You accept and are bound by the terms of this agreement as from that date. No variation of these terms binds either party unless confirmed by a CHEP director in writing or made under clause 11.5.
- 11.5 **Changes to Terms** . CHEP may change these terms (including, but not limited to, any charges payable by You) at any time. CHEP must give You written notice, signed by a CHEP director, of the changes. By continuing to use the Access Service or the Program after notification of any changes, You accept and are bound by the changed terms as from the date specified in such notification. If You do not accept the change, You must terminate this agreement and return the Program and its associated documentation and user manuals to CHEP in accordance with clause 10.
- 11.6 **Governing Law** . This agreement and the transactions contemplated by this agreement are governed by and shall be interpreted in accordance with the law in force in New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales.
- 11.7 **Survival of Terms** . The obligations in clauses 2.1, 5, 5.2, 8 and 10.6 are continuing obligations, separate and independent from the other obligations of the parties and they survive the termination of this agreement.
- 11.8 **Notices** . A notice to be given under this agreement may be given:
- (a) as for CHEP, by:
 - (i) leaving it at or posting it to Your address last notified in writing to CHEP, and is taken as given at the time it is left or, if posted, on the next business day after it is posted;



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- (ii) sending it over the internet to Your email address last notified in writing to CHEP, and is taken as given:
 - (A) if sent prior to 4.00 pm, at the close of that day; or
 - (B) if sent after 4.00 pm, at the commencement of the next day; or
 - (iii) *sending it by facsimile to Your facsimile number last notified in writing to CHEP, and is taken as given when transmitted to You;*
- (b) *as for You, by:*
- (i) leaving it at or posting it to CHEP's address last notified in writing to You, and is taken as given at the time it is left or, if posted, on the next business day after it is posted;
 - (ii) sending it over the internet to CHEP's email address last notified in writing to You, and is taken as given:
 - (A) if sent prior to 4.00 pm, at the close of that day; or
 - (B) if sent after 4.00 pm, at the commencement of the next day; or
 - (iii) sending it by facsimile to CHEP's facsimile number last notified in writing to You, and is taken as given when transmitted to You.

11.9 **Conflicts with terms of Hire Agreement** . To the extent that there is any inconsistency or conflict between the terms and conditions set out in this agreement and the terms and conditions set out in the Hire Agreement, insofar as such inconsistency or conflict relates to terms and conditions covering Access Services and/or Transaction Information, the terms and conditions relating to Access Services and/or Transaction information set out in this agreement will prevail.



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EXECUTED as an Agreement.
Customer

I understand that this is a binding agreement governing access to the Access Service and use of the Program, the Output and the Transaction Information subject to the terms and conditions set out above, and confirm that I am authorised to enter into this agreement.

Signed by CHEP Australia Limited.
By:

Signature (Authorised Officer)

Signature (Authorised Officer)

Print name

Print name

Office/Position held

Office/Position held

Date

Date