

This CCH ProSystem fx Master Agreement and any applicable Order Form(s) (this “Agreement”) is made by and between CCH Incorporated, a Wolters Kluwer business (“CCH”), and Customer, and governs Customer’s use of the Software, effective as of the date Customer signs the Order Form for the Software or otherwise purchases or renews a License to the Software. This Agreement will continue to govern all other Software listed on any future Order Form(s), subject to Section 11.1 hereof.

1. **DEFINITIONS.** Capitalized terms used but not defined elsewhere in this Agreement shall have the respective meanings set forth below:

- 1.1. **“Affiliate”** means with respect to an entity party to this Agreement, any entity which, directly or indirectly, controls, is controlled by or is under common control with such party, where control means the ability to direct the affairs of an entity through ownership of voting interest, contract rights or otherwise.
- 1.2. **“Authorized User”** means an individual in Customer’s company or practice who is authorized by Customer to use the Software and who is covered by an appropriate License hereunder. An Authorized User must be a full-time or part-time employee (but may be a contract/temporary employee) working for Customer primarily out of the Designated Office(s) for the purpose of assisting Customer in its day-to-day business activities. Authorized User also includes third party contractors, consultants or vendors used by Customer for staff augmentation purposes who, in each case, have been provided an individual named user account by Customer through the staff grouping and permissions functionality of the Software and who otherwise comply with all obligations and requirements of Authorized Users under this Agreement. An Authorized User does not acquire individual rights in the Software other than the right to use the Software on Customer’s behalf and pursuant to the rights granted to Customer and subject to the terms and conditions of this Agreement, including subsection 2.3 hereof.
- 1.3. **“Client”** means to the extent Customer is a CPA firm, any third-party client of Customer that has entered into a direct agreement with Customer for tax and/or accounting services.
- 1.4. **“Customer”** means the person or entity identified as the customer in the Order Form(s). The term “Customer” can also include an Affiliate of the primary Customer, provided that such Affiliate is specifically named as a covered entity on the applicable Order Form.
- 1.5. **“Designated Office(s)”** means the site(s), location(s), and/or address(es) for which Customer licenses the Software as identified in the Order Form(s).
- 1.6. **“Fees”** means the amounts payable by Customer to CCH under the Agreement.
- 1.7. **“License(s)”** means the licenses granted to Customer to use the Software as provided under subsection 2.1 of this Agreement.
- 1.8. **“Online Account”** means the authorized access to CCH’s servers, networks and/or systems, including, for access for electronic filing, as established by CCH for each Authorized User, and includes the controls, permissions and data unique to such user.
- 1.9. **“Online Account Access Information”** means the private access information (for example, username and password) used by each Authorized User to access his/her individual Online Account.
- 1.10. **“Order Form”** means (i) a written order in a form approved by CCH and executed by Customer that provides for Customer’s acquisition of a License to the Software, (ii) a written order in a form approved by CCH and accepted by Customer by execution thereof and/or payment therefor that provides for Customer’s acquisition of a License for additional Software title(s); or (iii) any renewal form for License(s) sent to Customer by CCH under which Customer exercises its right to renew. All Order Forms incorporate and are subject to the terms and conditions of this Agreement.
- 1.11. **“Software”** means the particular ProSystem fx software title(s), that are identified in the Order Form(s) for Customer, including the files, databases, documentation, materials, modifications, revisions, optional features, enhancements, and Updates, if any. Under no circumstances shall Customer receive, or be entitled to receive, any source code for the Software or any portion or component thereof.
- 1.12. **“Updates”** means all minor revisions, patches, fixes, and other improvements (version upgrades excluded) provided by CCH as part of CCH’s Support, in its sole discretion, to a particular version of the Software.

The use of the word “including” means “including without limitation.”

## 2. LICENSE, RESTRICTIONS & OWNERSHIP

### 2.1. License.

- 2.1.1. **Grant of License.** Subject to the terms and conditions of this Agreement, CCH grants to Customer a limited, revocable, nontransferable, nonexclusive right and license to use, and to permit Authorized Users to use, the Software solely for

Customer's internal business use and in conjunction with performance of tax and/or accounting services for Clients that are within the documented purpose(s) of the Software (i.e. for the CCH ProSystem fx Tax Software, such services would mean the preparation and filing of tax returns for Clients), without any further right to use, sublicense, distribute, transfer, transmit or otherwise exploit the Software in any manner. All end users of the Software must be Authorized Users who are covered by an appropriate License hereunder, which has been established and documented in an Order Form. Except as provided in Section 2.1.2, the Software may only be used by Authorized Users who primarily work out of a Designated Office. Customer may obtain a license for additional locations only if included in an Order Form and provided payment of the applicable Fees has been made in advance of any use by Authorized Users who primarily work out of such additional locations. Customer shall cause each Authorized User to comply with the terms and conditions of this Agreement and shall remain directly responsible and liable to CCH for the acts and omissions of Authorized Users and for each Authorized User's compliance herewith. In furtherance of the preceding, Customer acknowledges that (i) the Software is not purchased primarily for personal, family, or household purposes and (ii) the Software will be used for business purposes only.

- 2.1.2. **Unique Usage Licensing.** Certain software products may require additional licensing arrangements for unique uses. For example, if Authorized Users desire to use the ProSystem fx Tax software on mobile computers for business travel outside of the Designated Office(s), the Order Form will provide for an off-site License and Fee.
- 2.1.3. **Condition of License.** The License(s) granted to Customer under this Agreement are conditioned upon Customer's compliance with the terms of this Agreement, including the timely payment of all applicable Fees.
- 2.1.4. **Clients.** Certain Software or applications may include functionality that is documented and intended to allow Clients to access Customer's Online Account to view data specific to such Client. Customer may provide such limited access to its Clients.
- 2.2. **Back-up Copies.** Customer may make a reasonable number of copies of the installed Software solely for back-up purposes. All copies of the Software, including translations, compilations, and partial copies, are governed by this Agreement.
- 2.3. **Restrictions.** Customer must not do or attempt to do, or permit others to do or attempt to do, any of the following: (a) adapt or create derivative works of, port, copy or modify the Software in any way, except as permitted in subsection 2.2; (b) remove or modify CCH's copyright notices, trademark, logo, legend or other notice of ownership from the Software or any copy thereof; (c) access, view, read, modify, reverse compile, reverse assemble, disassemble or print the Software's source code or object code or other runtime objects, components or files distributed with the Software; (d) otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any portion of the Software; (e) defeat, disable or circumvent any protection mechanism related to the Software; (f) rent, lease, distribute (or redistribute), provide or otherwise make available the Software, in any form, to any third-party (including in any service bureau or similar environment); (g) share use or access of the Software with other practitioners (including outsourcers performing work for Customer) even if Customer shares office space or equipment (service bureaus and outsources are not Authorized Users); (h) share Online Account or Online Account Access Information with third parties; (i) use the Software to process the data of clients of a third-party (whether on an outsourcing, service bureau, or other basis); (j) install a copy of any installed Software at an office location not registered and/or licensed as a Designated Office with CCH; or (k) publish, distribute (or redistribute) or sell any document retrieved through the Software (even if in the public domain) to any individual or entity outside of Customer's own company, except for documents prepared for Clients within the scope of the normal and intended use of the Software (l) create any "links" to or "frame" or "mirror" the Software or any portion thereof. In addition, Customer shall not violate or attempt to violate the security of CCH's networks or servers, including (i) accessing data not intended for Customer or log into a server or account which Customer is not authorized to access; (ii) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper written request and authorization; or (iii) attempting to interfere with service to any user, host or network, including by means of submitting a virus, overloading, flooding, spamming, mail bombing or crashing.
- 2.4. **Protection of Online Account Access Information.** CCH will supply Customer with the means to create private Online Account Access Information for its Authorized Users so that such Authorized Users may log into their respective Online Accounts. Online Accounts are designed for private use and should only be accessed through Authorized User's Online Account Access Information. Customer is fully responsible for the protection and confidentiality of its Authorized Users' Online Account Access Information. Customer acknowledges and agrees that Customer is responsible for all activity under Customer's and its Authorized Users' Online Accounts by any person and for insuring that all use of Customer's and its Authorized Users' Online Accounts is for authorized purposes only and complies fully with the provisions of this Agreement. Customer agrees to promptly notify CCH of any unauthorized use of any Online Account Access Information or any other breach of security upon becoming aware thereof, assist in preventing any recurrence thereof and otherwise cooperate fully in any proceedings or other actions undertaken to protect the rights of CCH.
- 2.5. **Unauthorized Acquisition.** CCH prohibits the use of any product or service from CCH that has been improperly obtained and/or accessed. For purposes of illustration, but not limitation, examples include any products or services that are: (a) acquired from an unauthorized reseller or distributor; (b) pirated, cracked or hacked, including through the use of Online Account Access Information established for use by another individual; (c) acquired with the intent or for the purpose to use in a manner that is illegal, fraudulent, in violation of this Agreement or otherwise outside the normal, stated and/or reasonably understood purpose of such product or service; or (d) acquired with the use of false or inaccurate statements and/or information (e.g., false name, contact information, EFIN, or payment information; false declaration of the total number of end users; or false claim of ownership of multiple business locations with the intention of obtaining a multi-office discount).
- 2.6. **Reservation of Rights & Ownership of Developed Materials.** CCH and its Affiliates, and any applicable licensors, retain all intellectual property and other rights in the Software (including all patent, copyright, trade secret, trade name, trademark, and other proprietary rights related to the Software which are protected under United States intellectual property laws and international treaty provisions). Unauthorized use of any of the Software will result in cancellation of this Agreement as well as possible civil damages and criminal penalties. Customer is not permitted to use "CCH," "ProSystem fx," or any other trade or service marks of CCH or any of its Affiliates in Customer's announcements, advertising or other materials unless expressly agreed to in writing by an authorized

representative of CCH. Customer acknowledges and agrees that CCH and its Affiliates' and any applicable licensors' retention of contractual and intellectual property rights is an essential part of this Agreement. CCH and its Affiliates and any licensors (as applicable) will own and Customer hereby assigns to CCH all rights in (i) any copy, translation, modification, adaptation or derivative work of the Software, including any improvement or development thereof, whether provided as part of Support, Services or otherwise, and whether or not developed by or for Customer, and (ii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer.

- 2.7. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided with RESTRICTED RIGHTS. Any use, duplication or disclosure of the Software by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-1(a), 227.7202-3(a) and 227.7202-4 (1995) and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-19 (DEC 2007) or FAR 52.227-14 (DEC 2007). To the extent any Technical Data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government is subject to limited rights as set out in DFARS 252.227.7015 (NOV 1995) and DFARS 252.227-7037 (SEPT 1999). In the event that any of the above referenced agency regulations are modified or superseded, the subsequent equivalent regulation will apply. The name of the manufacturer is CCH Incorporated, 2700 Lake Cook Rd, Riverwoods, IL 60015-3867. If Customer is an agency, department, or other entity of any State government, the United States Government or any other public entity or funded in whole or in part by the United States Government, then Customer hereby agrees to protect the Software from public disclosure and to consider the Software exempt from any statute, law, regulation, or code, including any Sunshine Act, Public Records Act, Freedom of Information Act, or equivalent, which permits public access and/or reproduction or use of the Software.
- 2.8. **Delivery.** Except as otherwise provided in Section 3.1 below, delivery of the Software to Customer will take place when it becomes available to the entire client base of CCH. Deliveries are f.o.b. point of shipment.

### 3. FEES AND PAYMENT

- 3.1. **Fees.** Customer shall pay to CCH the Fees for the Software (including associated Support and access to electronic filing) as set forth in an Order Form and all payments for Fees shall be made by Automated Clearing House (ACH)/ Electric Funds Transfer ("EFT"). Additional Fees, as documented on an Order Form, may be charged for additional Support or Services. Customer shall pay all Fees due to CCH within thirty (30) days of the invoice date. CCH may assess a late payment Fee equal to the lesser of one and one-half percent (1½%) of the unpaid amount or the highest interest rate allowed by applicable law for each succeeding thirty (30) day period or portion thereof in which Fees are not paid in full. Notwithstanding the preceding, any payments made by credit card may be subject to processing fees. In addition (and in furtherance of Section 4.4 below), CCH, in its discretion, may suspend sending the Software and/or Updates, or deny access to electronic filing and/or to any other CCH application, Software and/or Services provided under this Agreement or any other CCH agreement, if any invoice is outstanding and, CCH may charge a fee to reinstate access to the Software, application, Services and/or Updates to the extent a suspension or denial of access was instituted by CCH as a result of Customer failure to timely pay fees when due. Except as may be specifically set forth in the Agreement, Customer's payment obligations under any Order Forms are non-refundable and cancellation of the Agreement is not permitted. ALL SALES ARE FINAL.
- 3.2. **License Based on Volume of Processed Tax Returns.** This provision is applicable only if Customer has obtained a License for which the Fee is based on the number of tax returns processed during the applicable Term ("**Volume-Based License**"). If the actual volume of processed tax returns is greater than the volume of estimated processed tax returns designated or confirmed by Customer at the time of order or renewal for a Volume-Based License, CCH reserves the right to charge Customer the difference between the License Fee for the estimated volume of processed tax returns and the License Fee for the actual number of processed tax returns during the relevant Term. Customer shall pay such amount within thirty (30) days of receiving an invoice from CCH.
- 3.3. **Taxes.** Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Software, License(s), Support or Services provided under this Agreement or on third-party fees disclosed in an Order Form, including sales, use, excise, value added, personal property, electronic/Internet commerce, export, import and withholding taxes. Customer is responsible for directly paying any such taxes assessed against it, and Customer will promptly reimburse CCH for any such taxes payable or collectable by CCH. Such taxes do not include taxes based upon CCH's income. Taxes are calculated on product plus additional charges, where applicable. Taxes include state and local sales or use taxes and are based upon the Customer's deliver-to address and/or Designated Office location(s). Tax exemption certificates, if any, must be submitted at the time of order. Customer acknowledges that the Software and all Updates thereof are pre-written software of general application.
- 3.4. **Consent to Electronic Communications.** Customer hereby consent to receiving electronic communications from CCH. These electronic communications may include notices about applicable fees and charges, transactional information, and other information concerning or related to the Software.
- 3.5. **Debt Communication Consent and Waiver.** To the extent that a Customer incurred a "**Debt**", defined as any obligation or alleged obligation of Customer to pay money, in connection with the purchase, sale, financing, leasing, or licensing of any of products or software governed by the terms of this Agreement and provided by CCH and/or its respective subsidiaries, affiliates, and agents', Customer expressly consents to receiving communications of any kind including, but not limited to, payment reminders, invoices, debt collection communications, and request for service of any kind from CCH and its respective subsidiaries, affiliates, and agents, through any medium including e-mails, telephone calls, text messages, and voice messages, at any time of the day or night including, but not limited to, between the hours of 9 p.m. and 8 a.m. in the Customer's time-zone.

### 4. TERM & TERMINATION

- 4.1. **Expiration of Rights.** Subject to the terms of subsection 4.2 - 4.5 and subsection 11.9, Customer's License to the Software will be perpetual. Notwithstanding the preceding sentence and/or anything in the Order Form to the contrary the foregoing, (a) Customer's access to Support (including Updates) shall expire one (1) year from the initial date of delivery for the applicable Software

and (b) Customer's use of any prior year version of any Software is at Customer's own risk and CCH makes no representation or warranty, and CCH shall have no responsibility, obligation or liability, including without limitation, to provide any Support, with respect to any such use whatsoever. Notwithstanding the term set forth above and for the avoidance of doubt, Customer will not receive the next tax year version of ProSystem fx Tax, ProSystem fx Outsource, or ProSystem fx Planning, nor access to electronic filing for the next tax year, unless Customer has renewed its respective License(s) thereto for such next tax year.

4.2. **Expiration of Agreement.** This Agreement will expire upon the expiration of Customer's Support and access to electronic filing pursuant to Section 4.1 above. The following sections, including Customer's obligation to pay Fees, will survive expiration of this Agreement: subsections 5.3, 8.3, 8.4, 8.5 and 8.6, and Sections 1, 2, 4, 7, 9, 10 and 11.

4.3. **Termination of Agreement for Cause by CCH.**

4.3.1. This Agreement, including all License(s), Support, access to electronic filing, and Services provided hereunder, may be terminated by CCH for cause, in its sole discretion: (i) immediately upon notice to Customer if Customer commits an incurable breach of the terms or conditions of this Agreement, or (ii) if Customer fails to cure a curable breach of this Agreement within thirty (30) days of being provided with notice of such breach.

4.3.2. Upon any termination of this Agreement under Section 4.3.1, all rights granted to Customer hereunder will immediately terminate and Customer must cease all further use of the Software, Support and electronic filing and at CCH's discretion, either return to CCH, or destroy, all copies of the Software. Upon request of CCH, Customer must certify in writing to CCH that it has destroyed or returned all copies of the Software and that Customer and its Authorized Users are no longer using any applicable Software previously licensed hereunder.

4.3.3. Termination of this Agreement pursuant to this subsection 4.3 will not require payment of a refund to Customer and will not affect: (a) Customer's obligation to pay any Fees due, or (b) any remedies available to CCH by law or equity.

4.3.4. The following sections will survive termination of this Agreement under this subsection 4.3: subsections 2.3, 2.5, 2.6, 4.3, 8.3, 8.4, 8.5 and 8.6, and Sections 1, 9, 10 and 11. The survival provision in subsection 4.2 will not apply to termination of this Agreement under this subsection 4.3.

4.4. **Suspension of Access.** In addition to any other suspension or termination rights of CCH pursuant to this Agreement, CCH may suspend or terminate Customer's access to any CCH operated Online Account(s), Software, application and/or CCH's provision of any Services without notice (a) in the event Customer (including any Authorized User, Client or other person or entity acting through or on behalf of Customer) is determined by CCH, in CCH's sole judgment, to have damaged or attempted to cause damage, a suspected or actual violation of Section 2.3, harm or where there is a misuse of any Software, CCH application, server, network or other system operated by or Services provided by CCH provided under this Agreement or any other CCH or CCH Affiliate agreement (including, but not limited to, circumstances where there is a material breach of the Agreement, including the failure to pay any outstanding Fees owed to CCH by Customer), or (b) as necessary or appropriate to comply with any law, regulation, court order, or other governmental request or order which requires immediate action or otherwise protect CCH from potential legal liability or harm to its business. CCH will use commercially reasonable efforts to notify Customer of the reason(s) for such suspension or termination action as soon as reasonably practicable unless such action is due to subsection (a) hereof. In the event of a suspension (other than due to subsection (a) hereof), CCH will promptly restore Customer's access to any CCH operated Online Account(s), Software, application and/or CCH's provision of Services as soon as the event giving rise to the suspension has been resolved as determined in CCH's discretion. Nothing contained in this Agreement will be construed to limit CCH's actions or remedies or act as a waiver of CCH's rights in any way with respect to any of the foregoing activities. CCH will not be responsible for any loss or damages incurred by Customer as a result of any termination or suspension of access as set forth in this Section.

4.5. **Renewals.** Upon Customer's payment of the applicable invoice and in accordance with the terms set forth therein, and further subject to Section 11.1, the Software will renew upon the expiration of the term. After renewing, Customer will obtain a new version of the Software title that was renewed when such version becomes available and an additional annual term of Support and access to electronic filing. CCH, in its discretion and for any reason, may decide not to renew Customer's License(s) to the Software (including associated Support and access to electronic filing); in which case, CCH will make a reasonable effort to notify Customer of this decision prior to the expiration of Customer's then- current term.

## 5. SUPPORT

5.1. **Support.** During each annual Support term as set forth in Section 4.1 above, CCH will provide such remote product support for the Software as CCH provides generally to customers as part of its then current Software support program ("**Support**"). Support shall not include, and CCH will not provide, any tax, accounting, legal or other professional or expert advice of any kind, including: the appropriate handling of tax and accounting issues, or otherwise. Support for prior year versions of the Software is limited and is only available in CCH's discretion. CCH may also choose not to provide Support for Software that is not installed on hardware that meets CCH's standard published system requirements (available at <http://support.cch.com/>). Customer agrees that Customer and/or Customer's agents or employees will not knowingly place more than one call at any given time to CCH's telephone Support number(s) regarding the same situation, Support question, issue or matter. CCH reserves the right to terminate Customer's access to Support if it determines that Customer is committing acts that are disruptive to CCH's Support or other business operations (e.g., placing multiple calls at one time; being verbally abusive to Support representatives; providing Clients with access information to CCH customer Support lines, etc.).

5.2. **Updates.** Also, as part of Support, CCH may, from time to time, provide Customer with Updates of the Software. However, supplying Updates will be at CCH's discretion and CCH will have no obligation, express or implied, to provide Updates. Customer agrees to timely install all available Updates to the Software and acknowledges that Customer's failure to do so is at Customer's sole risk. CCH reserves the right to charge additional license Fees for any optional and ancillary features and/or functionality it may market in connection with the Software.

5.3. **Data Retention.** CCH will use reasonable efforts to retain the information and data properly submitted, posted, received or

otherwise transmitted by Customer or an Authorized User through the use of the Software ("**Customer Data**") for at least one year following the year in which Customer submitted any such Customer Data. CCH will then maintain such Customer Data in accordance with its internal business practices. It is Customer's responsibility to backup onto Customer's own local system all data and records that Customer submits to CCH. For the avoidance of doubt, Customer Data does not include Usage Data.

- 5.4. **Data Security; Ownership.** CCH shall implement and maintain reasonable information security measures and policies intended to: (i) safeguard the security of Customer Data, (ii) protect against known or anticipated threats to the security of Customer Data and (iii) investigate and react to any known or suspected unauthorized access to or loss of Customer Data. As between CCH and Customer, CCH acknowledges that Customer retains ownership of the Customer Data.. Customer acknowledges and agrees that security safeguards, by their nature, are capable of circumvention and that CCH does not, and cannot, guarantee that the Software, CCH's systems, and the information contained therein (including Customer Data) cannot be accessed by unauthorized persons capable of overcoming such safeguards. For avoidance of doubt, the parties acknowledge and agree that in no event shall (i) CCH be responsible or liable for any unauthorized access to or loss of Customer Data if such unauthorized access or loss would have been avoided or mitigated by the use of a subsequent version (and/or Update) of the Software that is provided to Customer and/or (ii) such unauthorized access to or loss of Customer Data occurred notwithstanding CCH's compliance with its IT security standards.
- 5.5. **Customer eSign Information.** Notwithstanding any of the foregoing or any other provision of this Agreement, in the event Customer has licensed CCH eSign, Customer acknowledges and agrees that CCH eSign is a third-party functionality and accordingly, CCH does not store or retain any information, documentation and/or records resulting from Customer's use of CCH eSign, including without limitation, any electronically signed Form 8879 or any e-signature audit trail (collectively, "Customer eSign Information"). It is Customer's sole responsibility to backup and maintain on Customer's own systems all Customer eSign Information as required by applicable laws, rules and regulations.

## 6. SERVICES

- 6.1 **General.** CCH may offer certain additional services related to the Software. Such services may include, but are not limited to: (i) implementation services; (ii) training for Customer personnel; (iii) file conversion services; and (iv) any other services specifically identified in an Order Form (hereinafter referred to as "**Services**"). For avoidance of doubt, in no event shall any component or functionality of the Software be deemed a Service under this Agreement. CCH will provide Services, at Customer's election and following Customer's signature and CCH's acceptance of an Order Form describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with such Order Form and subject to the terms and conditions of this Agreement.
- 6.2 **Services Performance.** In performing Services, CCH may assign CCH personnel, authorized agents or qualified third-party contractors ("**Consultants**"). Customer agrees to provide the information, facilities, personnel and equipment, including, if applicable, suitably configured computers that may reasonably be identified by CCH as necessary or appropriate to the performance of any Services. Customer shall advise CCH of any hazards to the health and safety of CCH's personnel on the Customer's premises and provide CCH's personnel with appropriate information regarding applicable safety and security procedures.
- 6.3 **Services Pricing.** Unless otherwise provided in the applicable Order Form, all Services shall be provided on a time and expense/materials basis at CCH's then current rates. CCH reserves the right to impose a higher rate for Services performed upon the request or with the approval of Customer in excess of a forty (40) hour week or during weekend or holiday periods. Estimates are provided for Customer's information only and are not guaranteed. Customer shall pay or reimburse CCH for all reasonable travel and other out-of-pocket expenses incurred in connection with CCH's performance of Services hereunder.

## 7. CUSTOMER'S PROFESSIONAL RESPONSIBILITY AND WARRANTIES

- 7.1. **Professional Responsibility.** Customer understands, agrees and acknowledges that:
- 7.1.1. Use of the Software does not relieve Customer of responsibility for the preparation, content, accuracy (including computational accuracy), and review of tax returns prepared by Customer while using the Software or any other work product generated by Customer while using the Software;
  - 7.1.2. Customer will neither inquire nor rely upon CCH for tax, accounting, legal or other professional or expert advice of any kind;
  - 7.1.3. Customer will retrieve in a timely manner any electronic communications made available to Customer by CCH (for example, electronic filing transaction data such as acknowledgements and e-mail messages in Customer's mailbox); and
  - 7.1.4. Customer is fully and solely responsible for: (a) selection of adequate and appropriate versions of the Software to satisfy Customer's business needs and achieve Customer's intended results; (b) use of the Software; (c) all results obtained from the Software; (d) selecting, obtaining and maintaining all hardware, software, computer capacity, Internet service, program and system resources and other equipment and utilities needed to install and use the Software, and for all costs associated therewith; and (e) selection, use of, and results obtained from any other programs, applications, computer equipment or services used with the Software.
- 7.2. **Customer's Representations.** Customer represents, warrants and covenants that:
- 7.2.1. Customer has full power and authority to enter into this Agreement and all Order Forms hereunder and to perform its obligations under this Agreement and such Order Forms, and that this Agreement and all such Order Forms have been duly authorized and constitute valid and binding obligations of Customer;
  - 7.2.2. Customer is licensing the Software solely for Customer's own use and/or to provide tax and accounting services to Customer's direct Clients and, to the extent Customer has obtained a Volume-Based License, Customer has provided or confirmed to CCH a good faith estimate of the number of tax returns Customer expects to process during the applicable Term, which number is then used by CCH to determine the appropriate License Fee;
  - 7.2.3. Customer will not use the Software to create a product, service or database that competes with CCH or the Software;
  - 7.2.4. Customer is responsible for complying with all laws, rules, regulations and procedures of local, state, federal and foreign

authorities applicable to Customer and its business, including all laws, rules, regulations and procedures of the Internal Revenue Code and Service;

- 7.2.5. Customer will be solely responsible for compliance with this Agreement by the Authorized Users and, to the extent applicable, all Clients;
- 7.2.6. Customer will not otherwise violate the rights of any third-party while using the Software;
- 7.2.7. Customer has sole responsibility for the content and accuracy of all Customer Data; Customer will not bypass, override or disable any security mechanisms in the Software and will utilize a multi-factor authentication method consistent with Customer's obligations under Section 7.2.4;
- 7.2.8. As applicable, Customer has obtained each Client's consent to disclose such Client's TRI to CCH for the purpose of performing services that assist in the preparation of, or provide auxiliary services in connection with the preparation of, the tax return of the Client and each such consent complies with the requirements set forth in Treasury Regulations Section 301.7216-3 and, to the extent applicable, Revenue Procedure 2013-14. Customer will not upload or transmit any Customer Data: (i) that Customer does not have the lawful right to copy, transmit, distribute, and display (including any Customer Data that would violate any confidentiality or fiduciary obligations that Customer might have with respect to the Customer Data); (ii) for which Customer does not have the consent or permission from the owner of any personally identifiable information contained in the Customer Data; (iii) that infringes, misappropriates or otherwise violates any intellectual property or other proprietary rights or violates any privacy rights of any third-party (including any copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity); (iv) that is false or misleading; (v) that is defamatory, obscene, or offensive; (vi) if the uploading or transmission would violate, or encourage any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability or (vii) that constitutes protected health information under the Health Insurance Portability and Accountability Act (HIPAA) or any successor law;
- 7.2.9. Customer will not use the Software to transmit, route, provide connections to or store any material that violate or promote the violation of any of the restrictions of subsection 7.2.8 above;
- 7.2.10. To the extent Customer needs to upload or transmit to CCH's servers any Customer Data subject to Data Protection Laws (as defined in Exhibit A) the data processing annex ("DPA") attached hereto and incorporated by reference as Exhibit A sets forth the applicable terms and conditions of CCH's processing of such Customer Data pursuant to this Agreement;
- 7.2.11. CCH reserves the right, in its sole discretion, at any time, to remove any Customer Data that it believes to be in violation of this Agreement;
- 7.2.12. Customer understands, and has confirmed in writing that, if applicable, Client understands, that CCH may use or disclose Client's TRI as outlined in the Agreement, without Client's or Customer's consent to the extent permitted under Code Sections 6713 and 7216 and the Treasury Regulations promulgated thereunder;
- 7.2.13. Customer, as the party in contractual privity with both the Client and CCH, shall ensure that no "TRI" of any Client will be disclosed to CCH without the prior written consent of such Client if applicable;
- 7.2.14. Customer shall provide written notice to CCH promptly upon Customer's determination that any disclosure of a Client's TRI to CCH or any use (to the extent such use is contemplated by this Agreement) by CCH of such Client's TRI may subject Customer or CCH to penalties under Code Sections 6713 and 7216 and shall promptly and fully cooperate with CCH to resolve or mitigate the imposition of any such penalties; and
- 7.2.15. Customer acknowledges that it may be subject to Sections 6713 and 7216 of the Internal Revenue Code of 1986, as amended (the "Code"). As used herein, "TRI" means "tax return information" within the meaning of Treasury Regulations Section 301.7216-1(b)(3). "Client" means in addition to its meaning given at Section 1.3, the party that owns the TRI, and on whose behalf CCH SFS provides applications, products and/or services that facilitate the tax preparation and related auxiliary services provided by Customer to Client.

7.3. **Electronic Filing Representations.** The following electronic filing terms and conditions will apply to electronic filing services and are in addition to all other terms and conditions contained within this Agreement:

- 7.3.1. Customer agrees that Customer will comply with all State and/or Federal electronic filing and direct deposit/direct debit laws, rules and regulations as shall be in effect from time to time.
- 7.3.2. Customer acknowledges and agrees that all EFINs used by Customer and provided to CCH are registered to Customer or else are registered to an Authorized User who is using the Software on behalf of Customer. Customer also agrees to provide CCH with Customer's most current EFIN letter(s) in the manner directed by CCH, at the time of initial purchase or renewal of Customer's License to the Software or as otherwise requested by CCH.
- 7.3.3. Customer acknowledges and agrees that CCH may use Customer's release of the electronic file to the Electronic Filing Status System as Customer's authorization to electronically transmit to and file with the IRS Customer's tax returns included in such electronic file ("**Authorization**"). Customer further acknowledges and agrees that Customer will be deemed to have released its electronic file to the Electronic Filing Status System, and thus provided Authorization for the tax returns in such electronic file, when Customer provides CCH with Customer's locator/Client ID number for the Client to which such electronic file applies. Customer agrees to take full responsibility for any and all liability arising from the use, inability to use or misuse of its internal electronic filing processes and the filing of tax returns with the IRS and any other taxing authority resulting therefrom.
- 7.3.4. Customer acknowledges and agrees that Customer is solely responsible for any direct deposit or direct debit option which Customer elects in accordance with applicable federal and state signature authorization forms (or any other similar form(s)) and that Customer is solely responsible for providing all complete, correct and necessary information directly to the IRS and any other taxing authority with respect to the same.
- 7.3.5. Customer acknowledges and agrees that CCH cannot guarantee that taxing authorities will accept all returns due to circumstances that are beyond CCH's reasonable control. Customer agrees to review the electronic filing and remittance status after submission to confirm the file was accepted. For jurisdictions that do not accept electronic remittance, Customer

must submit returns using standard paper methods.

- 7.4. **Indemnification.** Customer agrees to indemnify and hold harmless CCH, its employees, officers, directors and Affiliates against any and all liability (including damages, recoveries, deficiencies, interest, penalties and reasonable attorney's fees) to third parties (including any Clients, the IRS and any taxing authorities) relating to: (a) Customer's breach of any of its obligations, representations and/or warranties under this Agreement; or (b) except to the extent of claims for which CCH is liable under Section 8 below, Customer's use of the Software, electronic filing and/or any third-party software, application or service.

## **8. CCH WARRANTIES**

- 8.1. **CCH's General Warranties.** CCH represents and warrants that: (a) it has title to the Software or the right to grant Customer the rights granted hereunder; (b) the Software does not violate any third-party's United States patent, copyright or trade secret rights; (c) CCH has not inserted any virus or similar device to erase data and (d) CCH SFS acknowledges that it may be subject to Sections 6713 and 7216 of the Internal Revenue Code of 1986, as amended (the "Code"). As used herein, "TRI" means "tax return information" within the meaning of Treasury Regulations Section 301.7216-1(b)(3). Customer's sole and exclusive recourse and remedy – and CCH's sole, exclusive and entire liability – for a breach of items (a) and (b) by CCH shall be the exercise of its indemnity rights under subsection 8.2 below. For a breach of items (c) and (d) Customer's sole and exclusive recourse and remedy – and CCH's sole, exclusive and entire liability – shall be to terminate the Agreement and obtain a refund of the Fees paid for the directly affected Software less an allocation for use made by Customer prior to the breach.

### **8.2. Indemnification by CCH.**

- 8.2.1. Subject to the other terms and conditions set forth herein, CCH agrees to defend Customer, its employees, officers, directors and Affiliates at CCH's sole cost and indemnify Customer (by paying for damages finally awarded against Customer or any amounts payable in any settlement entered into in compliance with this Agreement) from and against any claims, demands, actions or proceedings by any unaffiliated third-party alleging that the Software as provided hereunder infringes or violates such third-party's United States patent, copyright or trade secret rights; provided that: (i) CCH is notified promptly in writing of the claim; (ii) CCH controls the defense, settlement and approval of the claim; and (iii) Customer reasonably cooperates, assists and gives all necessary authority to CCH and reasonably required information in connection with the defense or settlement of the claim.
- 8.2.2. CCH's indemnity obligations under subsection 8.2.1 hereof will not apply if and to the extent that they arise from or relate to: (i) the use of the Software in any form or substance other than as provided by CCH hereunder and as required to be used by Customer hereunder; (ii) use of a superseded version of some or all of the Software if the infringement or violation would have been avoided or mitigated by the use of a subsequent version (and/or Update) of the Software that is provided to Customer; (iii) the modification of the Software by Customer or any third-party not authorized in writing by CCH to do so; (iv) the use of the Software in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH; or (v) any data or information, or other intellectual property supplied by Customer, an Authorized User or any third-party.
- 8.2.3. If the Software becomes, or in CCH's opinion, is likely to become, the subject of a third-party claim covered by CCH's indemnification obligations under subsection 8.2.1, then CCH may, in its sole discretion and at its sole cost and expense: (i) procure for Customer the right to continue using such Software; (ii) modify the infringing portion of the Software so as to render it non-infringing but still appropriate for its intended use under this Agreement; or (iii) replace the infringing portion of the Software with non-infringing items with substantially similar functionality. If CCH reasonably determines that none of the foregoing is commercially practicable, then CCH may elect to terminate this Agreement and grant Customer a refund of the Fees paid for the affected Software less an allocation for use made by Customer prior to the termination.
- 8.2.4. This Section 8.2 states CCH's entire liability and the sole and exclusive remedy of Customer, its employees, officers, directors and Affiliates and any Authorized User with respect to any actual or claimed infringement or other violation of any third-party's intellectual property rights.

- 8.3. **Limited Warranty.** EXCEPT AS STATED IN SUBSECTION 8.1, THE SOFTWARE, SUPPORT, ELECTRONIC FILING AND ALL SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CCH DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IRRESPECTIVE OF ANY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE OF TRADE. CUSTOMER BEARS THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE, INCLUDING ELECTRONIC FILING. CCH DOES NOT WARRANT THAT USE OR OPERATION OF THE SOFTWARE OR ELECTRONIC FILING WILL BE UNINTERRUPTED, THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE, THAT ALL DEFECTS WILL BE CORRECTED OR THAT THE SOFTWARE WILL PROPERLY OPERATE ON ANY SPECIFIC OPERATING SYSTEM OR COMPUTER HARDWARE OR CONFIGURATIONS OR BEFORE OR AFTER ANY SPECIFIC DATE OR TIME PERIOD. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE SOFTWARE AND CCH WILL HAVE NO LIABILITY THEREFOR.

- 8.4. **Limitation of Liability and Damages.** NEITHER PARTY (AND, IN THE CASE OF CCH, ITS AFFILIATES, CONSULTANTS, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND LICENSORS) WILL HAVE ANY LIABILITY TO THE OTHER OR ANY THIRD-PARTY (INCLUDING ANY CONTRACTOR, AGENT, AFFILIATE OR CLIENT OF CUSTOMER) FOR ANY LOSS OF PROFITS, SALES, BUSINESS, DATA, OR OTHER INCIDENTAL, CONSEQUENTIAL, OR SPECIAL LOSS OR DAMAGE, INCLUDING EXEMPLARY AND PUNITIVE DAMAGES, OF ANY KIND OR NATURE RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE SOFTWARE, SUPPORT, ELECTRONIC FILING AND/OR ANY SERVICES PROVIDED HEREUNDER. THE TOTAL LIABILITY OF CCH AND ITS AFFILIATES, CONSULTANTS, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND LICENSORS TO CUSTOMER OR ANY THIRD-PARTY RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE SOFTWARE, SUPPORT, ELECTRONIC FILING AND/OR ANY SERVICES PROVIDED HEREUNDER, FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES, SHALL NOT EXCEED THE TOTAL FEES IN THE ORDER FORM GIVING RISE TO THE CLAIM PAID HEREUNDER BY CUSTOMER FOR THE SOFTWARE OR SERVICES

GIVING RISE TO SUCH CLAIM IN THE TWELVE-MONTH PERIOD PRECEDING THE DATE SUCH CLAIM OR CAUSE OF ACTION FIRST AROSE. CCH is not an insurer with regard to performance of the Software or otherwise. Customer agrees to assume the risk for: (a) all liabilities disclaimed by CCH herein, and (b) all alleged damages in excess of the amount of the limited remedy provided hereunder. The allocations of liability in this subsection 8.4 represent the agreed, bargained-for understanding of the parties and CCH's compensation hereunder reflects such allocations. THE LIMITATION OF LIABILITY AND TYPES OF DAMAGES STATED IN THIS AGREEMENT ARE INTENDED BY THE PARTIES TO APPLY REGARDLESS OF THE FORM OF LAWSUIT OR CLAIM A PARTY MAY BRING, WHETHER IN TORT, CONTRACT OR OTHERWISE, AND REGARDLESS OF WHETHER ANY LIMITED REMEDY PROVIDED FOR IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

8.5 **Internet Connectivity; Disclaimer.** Access to electronic filing and to Customer's Online Account(s) is made available by CCH (either itself or through a third-party) via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet connectivity necessary for such access. Customer acknowledges that the Internet is known to be unpredictable in performance and may, from time to time, impede access to electronic filing and/or to Customer's Online Account(s). Customer agrees that CCH is not in any way responsible for any interference with Customer's use of or access to electronic filing and/or to Customer's Online Account(s) arising from or attributable to the Internet and Customer waives any and all claims against CCH in connection therewith.

8.6 **Third-party Products.** The Software may contain code, content, features, functionality and components that are provided by third-parties. In addition, electronic filing and/or other products or services used in connection with the Software may be offered through CCH but will be provided by third- parties. Any such third-party products or services shall be provided "AS IS" without warranty of any kind by CCH. All rights and obligations with respect to any such third-party products or services shall be governed exclusively by the terms and conditions of agreements provided by suppliers of said third-party products and services and Customer hereby releases CCH from all liability and responsibility with respect thereto.

## 9. DISPUTE RESOLUTION

9.1. **Audit.** Upon CCH's written request, Customer must furnish CCH with a signed certificate verifying that Customer's use of the Software is (a) in compliance with the terms of this Agreement, (b) only at the Designated Office(s) and (c) only by Authorized Users and to the extent permitted herein, Clients. At its expense, CCH may, itself or by third-party agents, audit Customer's compliance with the requirements of this Agreement. Any such audit will be conducted not more than once per calendar year and during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. During any such audit CCH and its designees may have access to Customer's computer systems and records and conduct forensic reviews thereof and may interview any of Customer's current and former employees and contractors. If CCH determines that Customer has not paid the appropriate Fees, Customer will be invoiced for such Fees, plus an additional 1.5% monthly interest rate, or the maximum lawful amount, of the unpaid Fees (dating back to the time when such Fees should have been paid). Customer shall pay (directly or by reimbursing CCH) the reasonable cost of the audit if the audit detects unpaid Fees that exceed five percent (5%) of the total Fees actually paid for the period so audited. This right shall not limit or preclude any additional remedies available to CCH provided by law or equity.

9.2. **Limitations Period.** Except for collection actions which may be brought by CCH within the applicable statute of limitations period at any time and without limiting claims for indemnification hereunder, any claim or cause of action arising under or otherwise relating to this Agreement, any Order Form, or the subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one year from the date such claim or cause of action first arose.

9.3. **Jurisdiction.** Customer agrees that this Agreement shall be interpreted and enforced according to the laws of the State of New York, without any regard to conflicts of law rules that would require another jurisdiction's law to apply. All disputes arising out of or relating to this Agreement shall be instituted and prosecuted exclusively in a state or federal court located in New York, New York, with each of CCH and Customer specifically consenting to extraterritorial service of process for that purpose. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply in any respect to this Agreement or to the parties in general.

9.4. **Waiver of Jury Trial.** EACH PARTY, TO THE EXTENT PERMITTED BY LAW, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ORDER FORM OR THE SUBJECT MATTER HEREOF OR THEREOF.

9.5. **Enforcement.** Customer will pay all of CCH's attorneys' fees and costs and expenses incurred in the enforcement of any of the provisions of this Agreement.

9.6. **Remedies.** Customer acknowledges that the Software and other proprietary information of CCH are unique and that, in the event of any breach of this Agreement by Customer, CCH may not have an adequate remedy at law, and will be entitled to seek injunctive or other equitable relief without the necessity of proving actual damages. Unless specifically stated otherwise elsewhere in this Agreement, the various rights, options, elections, powers and remedies of a party or parties to this Agreement shall be construed as cumulative and no one of them exclusive of any others or of any other legal or equitable remedy, which said party or parties might otherwise have in the event of breach or default in the terms hereof.

9.7. **Notices.** All notices, demands, consents or requests given by a party hereto must be in writing and sent by delivery via a third-party, nationally recognized tracked express mail service, postage prepaid, addressed to either Customer's billing address or CCH Incorporated, Attn: Software Sales, 2050 W 190th St, Torrance, CA 90504-6220 with a copy to CCH Incorporated, Attn: TAA-AGC, 28 Liberty Street, 43<sup>rd</sup> Floor, New York, New York 10005. Customer agrees to always provide CCH with Customer's most current contact information, including Customer's address, phone number, fax number and e-mail address.



- 9.8. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. In any event, the remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.
- 9.9. **Waiver.** A party's failure or delay to require compliance with any term of this Agreement, or to exercise any right provided herein, shall not be deemed a waiver by the party of such term or right. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, shall operate as a waiver or legally bar a party from enforcing any right, remedy or condition. All waivers must be made in writing and signed by the waiving party and any such waiver on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a waiver on any future occasion.

## 10. CONFIDENTIALITY

- 10.1. **Nonuse and Nondisclosure.** Customer and CCH agree that during the term hereof and for four (4) years after termination or expiration of this Agreement, or for such longer period as may be required by applicable law or regulation (e.g., IRS regulations), all non-public information furnished or disclosed to the other pursuant to this Agreement, including the terms of Customer's Order Form(s), proprietary information within the Software, Customer Data and any discussions between the parties regarding other potential business relationships (the "Confidential Information"), shall be held in strict confidence by the other party, and will not be used other than as provided herein or made available or disclosed to any third-party without the other party's prior written consent. Each party also agrees to restrict dissemination of such Confidential Information to only those employees or third-party consultants or service providers who have a need to know such Confidential Information to perform the obligations under this Agreement. Each party will be deemed to have fulfilled its confidentiality obligations under this Section 10 if it affords the other party's Confidential Information at least the same degree of care it takes in protecting its own confidential information from unauthorized disclosure (but in no event using less than a reasonable degree of care).
- 10.2. **Personally Identifiable Information.** Notwithstanding anything in subsection 10.1 to the contrary, Customer authorizes CCH to transmit the personally identifiable information ("PII") and any necessary tax return information of any taxpayer Clients of Customer and submitted by Customer to CCH and/or to applicable taxing authorities (via CCH Software and/or Service), as well as to third-party service providers that CCH may use in conjunction with the services it renders hereunder, subject to applicable laws and regulations, including Internal Revenue Code Section 7216.
- 10.3. **Exceptions.** Notwithstanding the above restrictions, neither party will have any obligation for any nonuse or nondisclosure of Confidential Information which (a) is now or subsequently enters the public domain through means other than disclosure by a party hereto in breach of the terms of this Agreement; (b) is lawfully obtained from a third-party without an obligation of confidentiality; (c) is independently developed by such party or is already lawfully in the possession of the receiving party free of any obligation of confidence to the other party; or (d) is intended or aimed at detecting or reporting suspicious or fraudulent tax returns and/or possible fraudulent activity. Furthermore, the confidentiality obligations herein will not restrict disclosure of information required to be disclosed by law, by court order or by order of any government or administrative tribunal having jurisdiction over the recipient, provided that the recipient must, to the extent legally permitted, notify the disclosing party of any such requirement prior to disclosure in order to afford such other party an opportunity to seek a protective order to prevent or limit disclosure, and the recipient will reasonably cooperate with the disclosing party's efforts to obtain such protective order.
- 10.4. **Expiration.** Subject to Section 5.3, upon termination or expiration of this Agreement, both parties agree to destroy all copies of written Confidential Information. Notwithstanding any of the foregoing, CCH shall be entitled to keep copies of Confidential Information (i) preserved or recorded in any computerized data storage device or component (including any hard drive or database) or saved automatically to standard back-up or archival systems, and/or (ii) as required by applicable law or regulation; provided, that such Confidential Information shall remain subject to the confidentiality requirement of this Section 10. The disclosing party will retain all proprietary rights to the information it discloses hereunder, regardless of the expiration of the obligations under this Section 10.

## 11. MISCELLANEOUS

- 11.1. **Entire Agreement.** This Agreement, along with the Order Form(s), and any other terms otherwise published by CCH outside of this Agreement, constitutes the entire and exclusive agreement, understanding and representation, express or implied, between Customer and CCH with respect to the subject matter hereof; it is the final expression of that agreement and understanding, and it supersedes all prior agreements and communications between the parties (including all oral and written proposals) with respect to said subject matter. In the event of a conflict, the applicable Order Form will control, then this Agreement, and then any other terms provided by CCH, unless CCH explicitly acknowledges and upholds the particular conflict in such other document. Oral statements made about the Software, Support, electronic filing and/or any Services shall not constitute warranties, will not be relied on by Customer, and will not be binding or enforceable. Notwithstanding anything in the Agreement to the contrary, CCH may modify this Agreement and the DPA at any time by providing notice to Customer by posting the updated Agreement at [CCH@ProSystem fx® Master Agreement](#), providing notice to Customer through Customer's CCH account (i.e., My Account), sending Customer a renewal notice communication, or using other similar means. Customer is responsible for reviewing and becoming familiar with any such modifications. Modified terms become effective immediately upon such posting.
- 11.2. **No Construction Against Drafter.** Each of the parties hereto acknowledge that they have had the opportunity to be represented by independent counsel of their choice prior to entering into this Agreement and any Order Form hereunder. As a consequence, the parties agree that in construing this Agreement and/or any Order Form hereunder, no provision hereof shall be construed in favor of one party on the ground that such provision was drafted by the other.

- 11.3. **Evaluation Use of Software.** If Customer is using any CCH software on a trial, demonstration or evaluation basis, then this Agreement will govern such use by Customer except as modified by this subsection 11.3. Software provided to Customer for trial, demonstration or evaluation purposes shall only be used at one authorized location for a limited period of time. Certain functionality of such software may be disabled or restricted. Commercial use of such software is not authorized, is outside the scope of this Agreement, and is a violation of U.S. and international copyright laws. Customer is required to remove any trial, evaluation or demonstration copies of software from any and all Customer equipment upon the conclusion of the trial, evaluation or demonstration and to destroy or promptly return such copies to CCH. Customer must purchase a License from CCH before using the Software for commercial purpose. The following sections of this Agreement shall not apply to Customer's use of any software provided on a trial, demonstration or evaluation basis: subsections 2.1, 2.2, 8.1 and 8.2, and Sections 3, 4 and 5.
- 11.4. **Force Majeure.** Neither party hereto shall be held liable for the failure to perform any obligation, or for the delay in performing any obligation, arising out of or connected with this Agreement if such failure or delay results from or is contributed to by any cause beyond the reasonable control of such party including failures or delays caused by the act or omission of any governmental authority, fire, flood, failures of third- party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications, hosting, Internet or other services, vandals, hackers or other event beyond such party's reasonable control.
- 11.5. **Export Restrictions.** . Customer agrees to handle the Software and the Services in compliance with all applicable export controls and economic sanctions laws, including without limitation by not exporting or transferring the Software or the Services to, using the Application or the Services for the benefit of, or making the Software or the Services available for use by any person, entity or organization located in any jurisdiction that is subject to comprehensive US, EU, UN or UK economic sanctions; or with whom US, EU or UK persons are otherwise prohibited from engaging in such transaction. CCH shall have no obligation to make the Software or the Services available to any user or in any jurisdiction if doing so, in its reasonable discretion, would violate applicable law.
- 11.6. **Modification/Replacement of Software.** CCH reserves the right, in its sole discretion and without first consulting with Customer, to discontinue or modify the Software for any reason. However, if the Software is discontinued during the term of a License granted hereunder, then CCH will, in its discretion, either: (a) continue to provide Support for the discontinued Software for the remainder of the then current License term; (b) provide a pro-rata refund of the License Fees paid for the discontinued Software; or (c) replace the discontinued Software for the duration of the License term with a successor product having equal or greater functionality (with CCH reserving the right to charge extra Fees for any such greater functionality). If Customer purchases Software that is discontinued prior to its shipment to Customer, CCH will provide Customer a refund of the Fees paid toward such Software.
- 11.7. **No Third-Party Beneficiary.** No third-party is intended to be or shall be a third-party beneficiary of any provision under this Agreement. CCH and Customer shall be the only parties entitled to enforce the rights set out in this Agreement.
- 11.8. **Data Transmission Notification.** The Application may transmit to the servers on which the Application is hosted, various information relating to how Customer and its Authorized Users access and/or use the Application, as well as general information about Customer's and its Authorized Users' computer system from which the Application is being accessed (for example, system configuration, type of internet connectivity, RAM, CPU, operating system, browser version) ("Usage Data") as well as certain records that Customer has created or uploaded while using the Application, including those that Customer did not otherwise transmit to the IRS. Customer hereby grants to CCH the nonexclusive right, on a royalty-free basis, to possess, store, use, copy, analyze, distribute and process Customer Data and Usage Data as necessary or appropriate in compliance with applicable privacy laws to provide and improve one or more CCH products or services, including creating new features, functionalities and/or automations for such CCH products and/or services, as well as for internal quality assurance and software error checking, to assist users with multiple offices and as otherwise necessary or appropriate to perform its obligations pursuant to this Agreement. Customer acknowledges and agrees that the preceding use of Customer Data and/or Usage Data shall not constitute a disclosure of Customer's Confidential Information (provided however, CCH shall otherwise keep said information confidential in accordance with Article 10 hereof). Any new features, functionalities and automations for any CCH products and/or services, including all underlying engines and algorithms therein or related thereto, shall remain at all times the property of CCH and its licensors and Customer shall have no right, title or interest therein.
- 11.9. **Assignment.** Customer may not sublicense, assign, sell or transfer this Agreement or any rights or obligations hereunder, without prompt notification to and the prior written consent of CCH. Such consent shall be at the sole discretion of CCH. For the purposes of the forgoing, any change of ownership or control of Customer, whether by merger, reorganization, sale of substantially all of its stock or assets or otherwise, shall be deemed an assignment of this Agreement and CCH reserves the right to revoke Customer's Software licenses in its sole discretion under such circumstances. Any attempt to sublicense, assign or transfer any of Customer's rights, duties and/or obligations under this Agreement without the prior written consent of CCH shall constitute a material breach. In the event CCH consents to a sublicense, assignment, sale or transfer of this Agreement, Customer's payment obligations shall be non-cancelable and non-refundable (except as may otherwise be specifically provided herein) during the remainder of the term. Customer agrees that CCH's retention of these contractual and other legal rights is an essential part of the Agreement.
- 11.10. **Non-disparagement.** . Customer agrees that it will not at any time speak or act in any manner that may have the effect of reflecting adversely upon the reputation, business or goodwill, or which is intended to harm such reputation, business or goodwill, of CCH, and Customer will not engage in any other disparaging conduct or communications with respect to CCH. Such conduct as described in this section will be deemed a material breach of the Agreement. Notwithstanding the preceding provisions of this section, nothing herein shall restrict Customer's right to make any disclosure or statement that is required or otherwise protected by applicable law.

## EXHIBIT A

### Data Protection Annex

In accordance with the terms of the Agreement, this Data Protection Annex ("Annex") applies to and is incorporated into, and made part of, the Agreement to the extent that CCH Processes any Personal Information within the scope of Data Protection Laws when performing its obligations under the Agreement.

1. **Definitions.** Capitalized terms used but not defined in this Annex will have the same meanings as set forth in the Agreement. In this Annex, the following terms shall have the meanings set out below:

- a. "Agreement" means the license terms and conditions plus the applicable Order Form(s) referencing this Annex or the terms of which this Annex is subject to, that is entered into between CCH Incorporated ("CCH") and the subscribing individual, institution or organization (the "Customer");
- b. "CCPA" means the California Consumer Privacy Act of 2018, Cal. Civil. Code 1798.100 et seq., as amended or superseded from time to time (including the California Privacy Rights Act of 2020), and any regulations promulgated thereunder.
- c. "Canadian Data Privacy Laws" means the Personal Information Protection and Electronic Documents Act (S.C. 2000, c. 5) and applicable provincial laws relating to the processing, protection, or privacy of personal data in Canada, as well as any regulations made thereunder, as such laws or regulations are amended from time to time.
- d. "Data Protection Laws" means the Canadian Data Privacy Laws and the CCPA.
- e. "Subprocessor" means any person appointed by or on behalf of CCH to Process Personal Information in connection with the provision of services under the Agreement.
- f. For purposes of this Data Protection Annex, "Business Purpose", "Consumer", "Data Breach", "Data Subject", "Personal Information", "Processing", "Sell", and "Share" shall have the meanings given to such terms in applicable Data Protection Laws, and their cognate terms shall be construed accordingly.

2. To the extent CCH is Processing Personal Information of Consumers or Data Subjects within the scope of Data Protection Laws:

- a. CCH shall Process such personal information on behalf of Customer and in furtherance of one or more enumerated Business Purposes under applicable law.
- b. CCH shall comply with the obligations applicable to it under Data Protection Laws, including providing the same level of privacy protection with respect to such Personal Information as is required by Data Protection Laws.
- c. If CCH determines that it can no longer meet its obligations under the Data Protection Laws with respect to Personal Information, CCH will notify Customer.
- d. CCH will not: (i) Sell or Share Personal Information; (ii) retain, use, or disclose Personal Information for any purpose other than performing its obligations under the Agreement or as otherwise permitted under applicable law; (iii) retain, use, or disclose Personal Information outside of the direct business relationship between CCH and Customer; or (iv) combine Personal Information with Personal Information that it receives from, or on behalf of, another entity, or collects from its own interaction with data subjects except as permitted under applicable Data Protection Laws.
- e. Customer shall have the right to take reasonable and appropriate steps to help ensure that CCH processes Personal Information in a manner consistent with CCH's obligations under Data Protection Laws, including without limitation the right, upon reasonable advanced notice, to stop and remediate any unauthorized processing of Personal Information.
- f. CCH will implement and maintain reasonable security procedures and practices designed to protect Personal Information from unauthorized access, destruction, use, modification, or disclosure.
- g. CCH shall provide reasonable assistance to Customer to meet its response obligations to requests from Consumers or Data Subjects under applicable Data Protection Laws.
- h. CCH shall ensure that the arrangements with Subprocessors are governed by a written contract including terms that meet the requirements under applicable Data Protection Laws.
- i. CCH will report any Data Breach for which CCH becomes aware in accordance with the reporting obligations under Data Protection Laws and CCH will reasonably cooperate with Customer in investigating such breach.

3. **Customer Obligations.** Customer remains responsible for its compliance obligations under Data Protection Laws, including providing any required notices and obtaining any required consents, and for the processing instructions it gives to CCH. Customer shall ensure that any

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required consents that it obtains from its customers in accordance with Data Protection Laws shall be adequate with respect to the processing of Personal Information by CCH contemplated and instructed by Customer under the Agreement.

4. Severance; Order of Precedence. Should any provision of this Annex be invalid or unenforceable, then the remainder of this Annex shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein. In the event of a conflict or discrepancy between this Annex and any term of the Agreement, this Annex shall take precedence.