

This CCH Axxess Master Agreement (this "Agreement") is made by and between CCH Incorporated, a Wolters Kluwer business ("CCH"), and "Customer", and governs Customer's right to access and use the Application, effective as of the date Customer signs the Order Form for the Application or otherwise purchases or renews a Subscription to the Application. This Agreement will continue to govern any other Application(s) listed on any future Order Forms, 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. "**Application**" means the CCH Axxess and/or ProSystem fx or CorpSystem application(s) listed on an Order Form, as such application(s) may be updated from time to time by CCH in its sole discretion.
- 1.3. "**Authorized User**" means an individual in Customer's practice who is authorized by Customer to access or use the Application and who is covered by an appropriate Subscription 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) (including remote users assigned to the Designated Office(s)) for the purpose of assisting Customer in its day-to-day business activities. An Authorized User does not acquire individual rights in the Application other than the right to access and use such Application on Customer's behalf and pursuant to the rights granted to Customer and subject to the terms and conditions of this Agreement, including [subsection 2.5](#) hereof.
- 1.4. "**Client**" means any third party client of Customer that has entered into a direct agreement with Customer for tax and/or accounting services.
- 1.5. "**Customer**" means the person or entity identified as the customer on 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.
- 1.6. "**Designated Office(s)**" means the site(s), location(s), and/or address(es) for which Customer purchases Subscriptions for the Application as identified in the Order Form(s).
- 1.7. "**Fees**" means the amounts payable by Customer to CCH under the Order Form(s) and this Agreement.
- 1.8. "**Online Account**" means the authorized access into the Application as established by CCH for use by any particular 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 of the Application 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 Subscriptions to the Application, (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 any Subscriptions for additional Application(s); or (iii) any renewal form for Subscriptions 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. "**Subscription**" means the rights granted to Customer by CCH to access and use the Application, pursuant to the terms of this Agreement.

The use of the word "including" means "including without limitation."

2. **RIGHT TO USE; CONDITIONS OF USE; OWNERSHIP**

2.1. **Right to Use.**

2.1.1. **Grant of Right.** Subject to the terms and conditions of this

Agreement, CCH grants to Customer a limited, nontransferable, nonexclusive right to access and use, and to permit Authorized Users to access and use, the Application solely for Customer's internal use and for the purpose of performing tax and accounting services for Clients, without any further right to access or use the Application in any manner. CCH reserves all rights in and to the Application not expressly granted in this Agreement. Without limiting the generality of the foregoing, the right to access and use the Application granted herein does not cover any underlying components of the Application, CCH's underlying application engines, or any other component of the Application or the operating environment within which the Application operates that is not intended by CCH for access by any Authorized User.

2.1.2. **Authorized Users.** Customer shall purchase a Subscription for each Authorized User and shall not permit any person other than an Authorized User to use or access the Application. Customer shall cause each Authorized User to comply with the terms and conditions of this Agreement.

2.1.3. **Clients.** Certain 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.

2.1.4. **Condition of Rights.** The rights granted to Customer under this Agreement are conditioned upon Customer's compliance with the terms of this Agreement and the Order Form(s), including the timely payment of all applicable Fees.

2.2. **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 within the Application. 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 use of the Application as made through 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.

2.3. **Additional Online Terms.** CCH may post duplicative and/or additional relevant terms, conditions and/or policies ("**Online Terms**") at the online location where Authorized Users access the Application. Authorized Users will be subject to such Online Terms from and after the date on which such Online Terms are first posted; provided, however, that to the extent that there is a conflict between this Agreement and any Online Terms, the terms of this Agreement will govern.

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

2.5. **Restrictions.** Customer must not do or attempt to do, or permit others

to do or attempt to do, any of the following: (a) possess, download, copy or print the Application or any part of the Application, including any component which comprises the Application; (b) view, read, modify, port, adapt or create derivative works of the Application; (c) reverse compile, reverse assemble, disassemble or print the Application's source code or object code or other runtime objects or files related to the Application or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any portion of the Application; (d) rent, lease, distribute (or redistribute), provide or otherwise make available the Application, in any form, to any third party (including in any service bureau or similar environment); (e) share use or access of the Application with other practitioners (including outsourcers performing work for Customer) who are not Authorized Users in Customer's practice, even if Customer shares office space or equipment; (f) share any Online Account or Online Account Access Information with third parties; (g) create any "links" to or "frame" or "mirror" the Application or any portion thereof; (h) defeat, disable or circumvent any protection mechanism related to the Application; (i) use the Application to process the data of clients of a third party (whether on an outsourcing, service bureau, or other basis); or (j) publish, distribute (or redistribute) or sell any document retrieved through the Application (even if in the public domain) to any individual or entity outside of Customer's own firm, except for documents prepared for Clients within the scope of the normal and intended use of the Application. In addition, Customer shall not violate or attempt to violate the security of CCH's networks or servers, including (x) accessing data not intended for Customer or log into a server or account which Customer is not authorized to access; (y) 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 (z) 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.

2.6. 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 and/or use of, or otherwise modify, the Application and/or any component thereof, and/or any Online Account or any Online Account Access Information 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 or attempted to have damaged, harmed or misused CCH's software, server, network or other systems; or (b) as necessary or appropriate to comply with any law, regulation, court order, or other governmental request or order 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 the Application 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 to or use of the Application as set forth in this Agreement.

2.7. Unauthorized Acquisition. CCH expressly 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 product or service that: (a) is acquired from an unauthorized reseller or distributor; (b) is pirated, cracked or hacked, including through the use of Online Account Access Information established for use by another individual; (c) has been 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) is acquired with the use of false or inaccurate statements and/or information (e.g., false name, contact information, EFIN, or payment information; or false declaration of the total number of end users).

2.8. Reservation of Rights & Ownership of Developed Materials. CCH and its Affiliates and any applicable licensors, retain all intellectual property and other proprietary rights, including all patent, copyright, trade secret, trade name, trademark, and other proprietary rights, related to the Application which are protected under United States intellectual property laws and international treaty provisions. Any unauthorized use of any Application will result in cancellation of this Agreement as well as possible civil damages and criminal penalties. Customer is not permitted

to use "CCH INCORPORATED," "CCH," "ProSystem fx", "CorpSystem," "CCH Access" 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 licensor's retention of contractual and intellectual property rights is an essential part of this Agreement. CCH and its Affiliates and any licensor (as applicable) will own and Customer hereby assigns to CCH all rights in (i) any copy, translation, modification, adaptation or derivative work of the Application, including any improvement or development thereof, whether provided as part of Support, Services or otherwise, and whether or not developed by or for the Customer, and (ii) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer.

2.9. U.S. GOVERNMENT RESTRICTED RIGHTS. The Application is provided with RESTRICTED RIGHTS. Any access or use of the Application 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 shall 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 Application from public disclosure and to consider the Application 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 use of the Application.

3. FEES AND PAYMENT

3.1. Fees. Customer must pay to CCH the Fees for the Application (including associated Support) set forth on the Order Form(s). Additional fees as documented on an Order Form may be charged for additional Support and/or Services. Customer agrees to pay all such Fees within thirty (30) days of the invoice date. CCH will 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. In addition, CCH, in its discretion, may suspend or deny access to the Application if there is an unpaid invoice that is outstanding. ALL SALES ARE FINAL.

3.2. Subscription Based on Volume of Processed Tax Returns. This provision is only applicable if Customer has obtained a Subscription for which the Fee is based on the number of tax returns processed during the applicable Term ("Volume-Based Subscription"). 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 of a Volume-Based Subscription, CCH reserves the right to charge Customer the difference between the Subscription Fee for the estimated volume of processed tax returns and the Subscription 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 Application or any 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 address and/or the address(es) of all Designated Office(s). Tax exemption certificates, if any, must be submitted at the time of order. Customer acknowledges that the Application is pre-written software of general application.

4. TERM & TERMINATION

- 4.1. **Expiration of Rights.** Subject to the terms of subsection 4.2 - 4.5, Customer's Subscription to the Application (including Support) shall expire one (1) year from the date of CCH's acceptance of the Order Form for the Application. Notwithstanding the term set forth above, Customer's Subscription to certain Applications (including CCH Access Tax, CCH Access Outsource, and CCH Access Planning) shall expire on November 30th of the tax processing year for which such particular Application was purchased (for example, the 2013 tax year Application, which is used in the 2014 tax filing season, will expire on November 30, 2014), unless stated otherwise on the applicable Order Form.
- 4.2. **Expiration of Agreement.** If the Subscription(s) granted under this Agreement are not renewed pursuant to subsection 4.5, then this Agreement will automatically expire and terminate upon the expiration of Customer's Subscription to the last Application governed under this Agreement.
- 4.3. **Termination of Agreement for Cause by CCH.**
- 4.3.1. This Agreement, including all rights 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. 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.
- 4.4. **Effect of Expiration or Termination of Agreement.** Upon any expiration or termination of this Agreement, all rights granted to Customer hereunder will immediately terminate and CCH will have the right to immediately and indefinitely terminate Customer's access to and use of the Application. The following sections will survive the expiration or termination of this Agreement: subsections 2.4, 2.5, 2.7, 2.8, 2.9, 4.3, 4.4, 5.2, 8.3, 8.4 and 8.5, and Sections 1, 7, 9, 10 and 11.
- 4.5. **Renewals.** Customer may be able to renew, pursuant to the terms and conditions of this Agreement (and subject to Section 11.1 hereof), its Subscription(s) for the Application applicable to the following tax year, and obtain related Support, by paying all applicable renewal Fees. CCH, in its discretion and for any reason, may decide not to renew Customer's Subscription(s) to the Application; in which case, CCH will make 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 support services as CCH provides generally to customers as part of its then current Application 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 any advice regarding the appropriate handling of tax and accounting issues, or otherwise. 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. **Data Retention.** CCH will use reasonable efforts to retain the Customer Data (as defined in Section 7.2.9) that Customer has properly submitted to CCH's online servers for at least one (1) 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. Upon Customer's request, and subject to payment of any fees charged by CCH therefor, CCH shall use commercially reasonable efforts to make available for retrieval by Customer, all Customer Data then in CCH's possession or control per

6. SERVICES

- 6.1. **General.** CCH may offer certain additional services related to the Application. 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"). 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 Application 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 Application or any other work product generated by Customer while using the Application;
- 7.1.2. Customer will neither inquire nor rely upon CCH for any 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 Applications to satisfy Customer's business needs and achieve Customer's intended results; (b) use of the Application; (c) all results obtained from the Application; (d) selecting, obtaining and maintaining all hardware, software, computer capacity, Internet service, program and system resources and other equipment and utilities needed for access to and use of the Application, and for all costs associated therewith; and (e) selection, use of, and results obtained from any other programs, computer equipment or services used with the Application.
- 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 accessing and using the Application solely for Customer's own use and/or to provide tax and accounting services to Clients and, to the extent Customer has obtained a Volume-Based Subscription, 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 Subscription Fee;

- 7.2.3. Customer will not access or use the Application to create a product, service or database that competes with CCH or any Application;
 - 7.2.4. Customer is responsible for complying with all rules, regulations and procedures of local, state, federal and foreign authorities applicable to Customer and its business, including all rules, regulations and procedures of the Internal Revenue 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 accessing or using the Application;
 - 7.2.7. Customer has sole responsibility for all data, information, records or files that are uploaded and/or stored on the Application by or on behalf of Customer ("Customer Data");
 - 7.2.8. Customer agrees not to: 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; or (vi) that violates, or encourages any conduct that would violate, any applicable law or regulation or would give rise to civil or criminal liability;
 - 7.2.9. Customer will not use the Application to transmit, route, provide connections to or store any material that violate or promote the violation of any of the restrictions of subsection 7.2.9 above;
 - 7.2.10. 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; and
 - 7.2.11. CCH does not claim any ownership rights in any Customer Data. However, by making Customer Data available through the Application, Customer grants CCH the nonexclusive, worldwide, transferable right, on a royalty-free basis, with a right to sublicense this right only to third parties assisting CCH in providing the Application or otherwise fulfilling CCH's obligations hereunder, to possess, store, use, copy, distribute and process Customer Data on the Application on Customer's behalf and on behalf of Clients (if applicable) solely for the purposes of fulfilling CCH's obligations and/or exercising CCH's rights hereunder. Customer represents, warrants and covenants to CCH that CCH's use of the Customer Data in compliance with the foregoing license grant shall not infringe, misappropriate or otherwise violate any intellectual property rights, or other rights, of any third party.
- 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 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 Application on behalf of Customer. Customer also agrees to provide CCH with Customer's most current EFIN, as well as proof of the EFIN holder's name and address, as 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 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 Application and/or any third party software, application or service.

8. CCH WARRANTIES

- 8.1. **CCH's General Warranties.** CCH represents and warrants that: (i) it has title to the Application or the right to grant Customer the rights granted hereunder; (ii) the Application does not violate any third party's United States patent, copyright or trade secret rights; and (iii) CCH has not inserted any virus or similar device to erase data. Customer's sole and exclusive recourse and remedy, and CCH's sole, exclusive and entire liability, for a breach of items (i) and (ii) by CCH shall be the exercise of Customer's indemnity rights under [subsection 8.2](#) below. For a breach of item (iii) 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 Application 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 and directors, 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 third parties alleging that Customer's use of the Application as provided and permitted herein 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 cooperates reasonably, 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 access or use of the Application in any manner other than as provided and permitted by CCH hereunder and as required to be used by Customer hereunder; (ii) the use of the Application in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH; or (iii) any data or information, or other intellectual property supplied by Customer, an Authorized User or any third party.
 - 8.2.3. If any Application 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 Application; (ii) modify the infringing portion of the Application 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 Application 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 Application 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 APPLICATION, SUPPORT AND SERVICES 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, NON-INFRINGEMENT, 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 APPLICATION. CCH DOES NOT WARRANT THAT THE APPLICATION OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED, THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE, THAT THE APPLICATION OR ANY COMPONENT THEREOF WILL ALWAYS BE ACCESSIBLE OR AVAILABLE, OR THAT ALL APPLICATION DEFECTS WILL BE CORRECTED. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE APPLICATION 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 APPLICATION, SUPPORT AND/OR SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO ANY VIOLATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AS SET FORTH HEREIN. 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 APPLICATION, SUPPORT AND/OR SERVICES FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED THE TOTAL FEES FOR THE APPLICATION OR SERVICES PAID HEREUNDER BY CUSTOMER 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 Application. 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 **Third Party Products.** The Application 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 Application may be offered through CCH but will be provided by third-parties. Furthermore, the Application may require data and information from third-parties in order to work properly. 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 SUCH THIRD-PARTY PRODUCTS OR SERVICES SHALL BE GOVERNED EXCLUSIVELY BY THE

TERMS AND CONDITIONS OF AGREEMENTS PROVIDED BY SUPPLIERS OF SUCH THIRD-PARTY PRODUCTS OR 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 the Application is being accessed and used in compliance with all of the terms and conditions of this Agreement, including being accessed and used only by Authorized Users and to the extent permitted herein, by Clients. At its expense, CCH, itself or by its third party agents, may 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 Fees required pursuant to this Agreement for Customer's access or use of the Application, 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 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.** The parties hereto, and each of them, 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. Customer agrees that this Agreement shall be interpreted and enforced according to the laws of the State of Illinois, without any regard to conflicts of law rules that would require another jurisdiction's law to apply, and shall be treated as if executed and performed in Cook County, State of Illinois. All disputes arising out of or relating to this Agreement shall be instituted and prosecuted exclusively in Cook County, State of Illinois, with 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 Application 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, 20101 Hamilton Ave., Suite 200, Torrance, CA 90502 with a copy to CCH Incorporated, Attn: Legal, 2700 Lake Cook Rd, Riverwoods, IL 60015. 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 such 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 Application, 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 persons in their respective organizations 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") of the taxpayer Clients of Customer as submitted to CCH by Customer to taxing authorities, 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 (i) 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; (ii) is lawfully obtained from a third party without an obligation of confidentiality; (iii) 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 (iv) is 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 5.2, 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 Agreement. 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, this Agreement will control, then the Order Form, 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 Application, Support and/or Services will not constitute warranties, will not be relied on by Customer, and will not be binding or enforceable. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by CCH and Customer after reasonable opportunity to accept or reject such supplement, modification or amendment, provided that CCH may supplement this Agreement if such supplement is a clarification or is otherwise not adverse to Customer. CCH reserves the right to revise this Agreement from time to time in its discretion, provided that any such revisions shall not be effective with respect to Customer until the commencement of Customer's next renewal term, if any.

11.2. **Evaluation Use.** If the Application is made available to Customer on an evaluation, demonstration or trial basis, then this Agreement will govern Customer's access and use except as modified by this [subsection 11.2](#). Any Application made available to Customer for evaluation, demonstration or trial purposes shall only be accessed and used for a limited period of time. Certain functionality of such Application may be disabled or restricted. Commercial use of such Application is not authorized, is outside the scope of this Agreement, and is a violation of U.S. and international copyright laws. Access to any Application made available on an evaluation, demonstration or trial basis shall be terminated and disabled by CCH upon the conclusion of the evaluation, demonstration or trial. Customer must purchase a Subscription from CCH before accessing or using the Application for any commercial purpose. The following sections of this Agreement shall not apply to any Application made available to Customer on an evaluation or trial basis: subsections 2.1, 8.1 and 8.2, and Sections 3, 4 and 5.

11.3. **Force Majeure.** CCH shall not 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 its reasonable control 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 or Internet services, vandals, hackers or other event beyond its reasonable control.

11.4. **Export Restrictions.** Customer is advised that the Application may be subject to access and export controls under United States laws and regulations, including the U.S. Export Administration Regulations, and diversion contrary to U.S. law and regulation is prohibited. Customer agrees to not directly or indirectly access, export, import or transmit the Application from or to any country, end user or for any end use that is prohibited by any applicable U.S. regulation or statute (including those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Customer agrees not to directly or indirectly access, export, import, transmit or use the Application contrary to the laws or regulations of any other governmental entity that has jurisdiction over such access, export, import, transmission or use. Customer represents and agrees that

neither the United States Bureau of Industry and Export Administration nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges.

- 11.5. **Modification/Replacement of Application.** CCH reserves the right, in its sole discretion and without first consulting with Customer, to discontinue or modify the Application or any component thereof for any reason. If the Application is discontinued during the term of a Subscription granted hereunder, then CCH will, in its discretion, either: i) provide a pro-rata refund of the Fees paid for the discontinued Application and any related Support; or ii) provide Customer with access to a product having substantially similar or greater functionality (with CCH reserving the right to charge additional Fees for any such greater functionality) for the remainder of the then current Subscription term.
- 11.6. **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.
- 11.7. **Assignment.** Neither this Agreement, the rights granted hereunder nor the Application may be sublicensed, assigned, sold, hypothecated, or transferred by Customer without the prior written consent of CCH, which shall not be unreasonably withheld in the case of an internal restructuring involving Customer unrelated to a change in ownership. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this Agreement without the prior written consent of CCH shall automatically terminate the rights granted hereunder and shall be void and of no effect. CCH may assign this Agreement or delegate its duties, in whole or in part, without any consent of Customer. Customer agrees that CCH's retention of these contractual and other legal rights is an essential part of 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), as well as certain records that Customer has created while using the Application, including those that Customer did not otherwise transmit to the IRS. CCH may use this information for purposes of improving, enhancing or further developing the Application, 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. CCH shall keep this information confidential in accordance with Article 10 hereof.

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