

## CCH ProSystem fx Master Agreement

### TERMS & CONDITIONS

This Agreement sets out the terms and conditions governing the Customer's use of the Solution and the provision of the Services by the Supplier.

This CCH ProSystem fx Master Agreement (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 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 fulltime 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. 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 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 Order Form(s) and this Agreement.

- 1.7. “Global fx Tax”** means the online platform version of the ProSystem fx Tax software title. A License to Global fx Tax will also include a copy of ProSystem fx Tax.
- 1.8. “License(s)”** means the licenses granted to Customer to use the Software as provided under subsection 2.1 of this Agreement.
- 1.9. “Online Account”** means the authorized access to CCH’s servers, networks and/or systems, including, for access to Global fx Tax and/or for electronic filing, as established by CCH for each Authorized User, and includes the controls, permissions and data unique to such user.
- 1.10. “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.
- 1.11. “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.
- 1.12. “Software”** means the particular ProSystem fx or CorpSystem software title(s), including Global fx Tax, 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.
- 1.13. “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, nontransferable, nonexclusive right and license to use, and to permit Authorized Users to use, the Software solely for Customer’s internal use and for the purpose of performing tax and/or accounting services 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.

- 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. Global fx Tax.** This Agreement also governs the License to the Global fx Tax software, if such product is ordered. The License for use of Global fx Tax must be registered to a particular Designated Office and may only be used by Authorized Users primarily working out of such Designated Office, but may be accessed from any location by such Authorized User. CCH may include functionality that is documented and intended to allow Customer's Clients to access Customer's Online Account to view data specific to such Client and in such circumstances Customer may provide such limited access to its Clients.
- 2.1.4. Condition of License.** The License(s) 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. 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) create derivative works of, 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) who are not Authorized Users in Customer's practice, even if Customer shares office space or equipment; (h) share Online Account or Online Account Access Information with third parties; (i) link to, "frame" or "mirror" Global fx Tax or any portion thereof; (j) use the Software to process the data of clients of a third party (whether on an outsourcing, service bureau, or other basis); (k) install a copy of any installed Software at an office location not registered and/or licensed as a Designated Office with CCH; or (l) 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 firm, except for documents prepared for Clients within the scope of the normal and intended use of the Software.

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 2 of 6 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.

- 2.4. 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," "CorpSystem" 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 must pay to CCH the Fees for the Software (including associated Support and access to electronic filing) as set forth in an Order Form. Additional Fees, as documented on an Order Form, may be charged for additional Support or Services. Customer agrees to pay all such Fees 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. In addition, CCH, in its discretion, may suspend sending the Software and/or Updates, or deny access to Global fx Tax and/or to electronic filing, if there is an unpaid invoice that is outstanding. 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.

#### **4. TERM & TERMINATION**

4.1. Expiration of Rights. Subject to the terms of subsection 4.2 - 4.5, the License granted under this Agreement to use the Software will be perpetual. Notwithstanding the foregoing, Customer's access to Support, including Updates, will expire one (1) year from the initial date of delivery for the applicable Software. Notwithstanding the term set forth above, access to Global fx Tax and access to electronic filing for ProSystem fx Tax, ProSystem fx Outsource, and ProSystem fx Planning will expire on November 30th of the tax processing year for which such particular Software was purchased (for example, the 2013 tax year software, 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.** This Agreement will stay in effect until Support and access to electronic filing and if applicable, Global fx Tax, have expired pursuant to Section 4.1 above. The following sections will survive the expiration of this Agreement under this subsection 4.2: 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, access to Global fx Tax 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 termination under this subsection 4.3, the License(s) granted hereunder, including all Support and access to electronic filing, will terminate and Customer must cease all further use of the Software, Support and electronic filing and at CCH's direction, 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 3 of 6 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 its Online Account(s) 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 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 its Online Account(s) 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.** Customer may be able to renew, pursuant to the terms and conditions of this Agreement (and subject to Section 11.1 hereof), its previously purchased License(s) for Software by paying the thenapplicable renewal Fees as set forth in the renewal Order Form. 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 may be more 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 Customer Data (as defined in Section 7.2.7 below) that Customer has properly submitted to CCH’s online servers 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.

## 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”). 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, 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 rules, regulations and procedures of local, state, federal and foreign authorities applicable to Customer and its business, including 4 of 6 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 has sole responsibility for all data, information, records or files that are uploaded and/or stored on CCH's networks or servers by or on behalf of Customer ("Customer Data");
  - 7.2.7. Customer has all rights necessary to legally transmit the Customer Data to CCH's networks or servers, and the possession, storage and use by CCH of such Customer Data will not infringe, misappropriate or otherwise violate any intellectual property rights, or other rights, of any third party. 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
- 7.2.8. Customer will not otherwise violate the rights of any third party while using the Software.

**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 Software 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 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; and (c) 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 (a) and (b) by CCH shall be the exercise of its indemnity rights under subsection 8.2 below. For a breach of item (c) 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 FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO ANY 5 OF 6 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 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 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 Global fx Tax, 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 Global fx Tax, 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 Global fx Tax, 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 thirdparties. 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 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 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, 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 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 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 6 of 6 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 (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 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 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 Software, Support, electronic filing and/or any 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 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 11.2. 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.
- 11.3. 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 or Internet services, vandals, hackers or other event beyond such party's reasonable control.
- 11.4. Export Restrictions.** Customer is advised that the Software is subject to the U.S. Export Administration Regulations and diversion contrary to U.S. law and regulation is prohibited. Customer agrees to not directly or indirectly export, import or transmit the Software to any country, end user or for any end use that is prohibited by any applicable U.S. regulation

or statute (including to those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Customer agrees to not directly or indirectly export, import, transmit or use the Software contrary to the laws or regulations of any other governmental entity that has jurisdiction over such 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 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.
- 11.6. 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. Data Transmission Notification.** Customer's use of the Software and/or electronic filing may transmit to CCH's servers various information relating to how Customer and its Authorized Users use the Software and/or the electronic filing services, as well as general information about Customer's and its Authorized Users' computer system from which CCH's servers are 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 Software, 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 Software and/or the electronic filing services, 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.
- 11.8. Assignment.** Neither this Agreement, the License(s) granted hereunder nor the Software 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. Customer agrees that CCH's retention of these contractual and other legal rights is an essential part of this Agreement.