

The CCH Small Firm Services Standard Software License Agreement (this “Agreement”) is made by and between Universal Tax Systems, Inc. d/b/a CCH Small Firm Services, its successors, and assigns (“CCH SFS”) and “Customer” (as defined below), and governs Customer’s use of any CCH SFS software that is accompanied by an electronic copy of this Agreement. This Agreement can be viewed at CCH SFS’ web sites, at the time of installation of the Software and in the “About” section under the Software program’s ‘Help’ menu. By installing and/or using the Software or by otherwise indicating acceptance (electronically or otherwise) of this Agreement, Customer acknowledges its agreement to the terms set forth below.

1. DEFINITIONS. In addition to the terms defined elsewhere in this Agreement, the following are defined terms in this Agreement:

- 1.1. **“Authorized User”** refers solely to an individual for whom Customer has obtained a valid User License. An Authorized User must be a full-time or part-time employee (but may be a contract/temporary employee) working for Customer primarily at the Designated Office(s) for the purpose of assisting Customer in its day-to-day business activities (subject to the other terms and conditions of this Agreement, including, without limitation, subsection 2.3). An Authorized User does not acquire individual rights in the Software other than the right to use such Software on Customer’s behalf and pursuant to the rights granted to Customer and subject to the terms and conditions herein.
- 1.2. **“Customer”** means the person or entity that is the registered end user of the Software, as specified on the Order Confirmation.
- 1.3. **“Deliverables”** means all services and materials, and the related benefits, available from time-to-time from, and as determined in the discretion of, CCH SFS or its authorized affiliates for use in connection with the Software (including, but not limited to: product support, Updates, electronic filing, and access to the Online Account(s) of Web-based Applications).
- 1.4. **“Designated Office(s)”** means the site(s), location(s), and/or address(es) for which Customer licenses the Software as identified on the Order Confirmation.
- 1.5. **“Desktop Application”** means software that is available on DVD or CD-ROM for installation and execution on Customer’s own computers.
- 1.6. **“Fees”** means the fees payable by Customer to CCH SFS under the Order Confirmation and this Agreement for use of the Software and Deliverables.
- 1.7. **“License”** means the license granted to Customer to use the Software as granted by the Order Confirmation and subsection 2.1 of this Agreement.
- 1.8. **“Online Account”** means the authorized access into a Web-based Application as established by CCH SFS 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 a Web-based Application to access his/her individual Online Account.
- 1.10. **“Order Confirmation”** means a purchase order written and approved by CCH SFS, or its authorized affiliates, for Customer’s acquisition of a License to the Software. The Order Confirmation may contain additional terms that govern Customer’s relationship with CCH SFS and Customer’s use of the Software.
- 1.11. **“Software”** means the particular software title(s) and version(s) (including all accompanying code, files, databases, documentation, materials, modifications, revisions, optional features, enhancements, and Updates, if any) that are identified in the Order Confirmation written and approved by CCH SFS for Customer.
- 1.12. **“Updates”** mean all minor revisions, patches, fixes, and other improvements (version upgrades excluded) provided by CCH SFS, in its sole discretion, for a particular version of the Software.
- 1.13. **“User License”** means the right granted by CCH SFS to a particular individual to use the Software, pursuant to the terms of this Agreement.
- 1.14. **“Web-based Application”** means software that is hosted on servers operated and/or controlled by CCH SFS and available for use by Customer via the Internet. Certain terms and conditions within this Agreement (including, but not limited to, Section 6) may only apply to the use of Web-based Application versions of the Software, if so stated herein.

2. LICENSE, RESTRICTIONS & OWNERSHIP

2.1. License.

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

- 2.6. **U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is provided with RESTRICTED RIGHTS. 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 Universal Tax Systems, Inc. d/b/a CCH Small Firm Services, 6 Mathis Drive, NW, Rome, Georgia 30165. 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.

3. FEES AND PAYMENT

- 3.1. **Fees.** Customer will owe the Fees set forth on the Order Confirmation to CCH SFS upon acceptance of such Order Confirmation. Additional Fees may apply for setup, transactions, use of certain Deliverables or for certain Web-based Applications. Customer agrees to pay such Fees for such Deliverables when due, in accordance with the terms of this Agreement and the applicable Order Confirmation. The Order Confirmation, published product descriptions or other documents that may be provided in connection with the Deliverables will contain information concerning applicable Fees. All Fees are due and payable upon receipt of the invoice by the Customer. CCH SFS 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.
- 3.2. **Taxes.** All Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Software, License or Deliverables granted under this Agreement, including, without limitation, sales, use, excise, value added, personal property, electronic/Internet commerce, export, import, withholding taxes, and third-party fees as disclosed in the Order Confirmation. Customer will directly pay any such taxes assessed against it, and Customer will promptly reimburse CCH SFS for any such taxes payable or collectable by CCH SFS. Such taxes do not include taxes based upon CCH SFS' 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. Tax exemption certificates, if any, must be submitted at the time of order.

4. TERM & TERMINATION

- 4.1. **Term.** Subject to the terms of subsection 4.2 and 4.3, the License granted under this Agreement to use a Desktop Application version of the Software is perpetual. The License to use a Web-based Application version of the Software will terminate on the same date that the Deliverables provided with such Software expire. Access to the Deliverables, and thus the full benefit of this Agreement, will expire one (1) year from the date of the initial shipment of the Software. Notwithstanding the term set forth above, access to the Deliverables associated with software that is directly used for Federal and/or State tax return preparation/filing [Desktop Application or Web-based Application versions] will expire on November 15th of the tax processing year (or at such earlier time for certain Deliverables that are no longer available through third parties, such as e-filing or bank products) for which such particular Software was purchased (for example, the 2009 tax year software, which is used in the 2010 tax filing season, will expire on November 15, 2010). This Agreement will automatically expire and terminate with the expiration of the Deliverables. The following sections will survive the expiration of this Agreement under this subsection 4.1: subsections 5.3, 8.3, 8.4 and 8.5, and Sections 1, 2, 4, 7, 9, 10 and 11.
- 4.2. **Termination of Agreement for Cause.**
- 4.2.1. This Agreement, including both the License and Deliverables provided hereunder, may be terminated by CCH SFS for cause, in its sole discretion, immediately upon notice to Customer if Customer materially breaches any terms or conditions of this Agreement, or if any Fees remain unpaid for a period of thirty (30) days after invoicing or otherwise due.
- 4.2.2. Upon termination under this subsection 4.2, Customer will cease all further use of the Software and Deliverables and at CCH SFS' direction, either return to CCH SFS, or confirm to CCH SFS as destroyed, all copies of the Software. Upon request of CCH SFS, Customer will certify in writing to CCH SFS that it has destroyed or returned all copies of the Software and that Customer and its Authorized Users are no longer using any applicable Software previously licensed hereunder.
- 4.2.3. Termination of this Agreement pursuant to this subsection 4.2 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 SFS by law or equity.
- 4.2.4. The following sections will survive termination of this Agreement under this subsection 4.2: subsections 2.3, 2.5, 2.6, 4.2, 8.3, 8.4 and 8.5, and Sections 1, 9, 10 and 11. The survival provision in subsection 4.1 will not apply to termination of this Agreement under this subsection 4.2.
- 4.3. **Suspension of Access.** CCH SFS may suspend or terminate (where appropriate), as determined in CCH SFS' discretion, Customer's use of, or otherwise modify, the Software or the Deliverables at any time in order to: (a) prevent damages to, or degradation of the integrity of, CCH SFS' Internet network; (b) comply with any law, regulation, court order, or other governmental request or order which requires immediate action; or (c) otherwise protect CCH SFS from potential legal liability or harm to its business. CCH SFS will use commercially reasonable efforts to notify Customer of the reason(s) for such suspension

or termination action as soon as reasonably practicable. In the event of a suspension, CCH SFS will promptly restore use of the Software to Customer as soon as the event giving rise to the suspension has been resolved as determined in CCH SFS' discretion. Nothing contained in this Agreement will be construed to limit CCH SFS' actions or remedies or act as a waiver of CCH SFS' rights in any way with respect to any of the foregoing activities.

- 4.4. **Renewal of Deliverables.** Customer may be able to renew certain software titles (i.e., Trial Balance, Fixed Asset Manager, Client Write-Up Suite, Payroll, Client Write-Up with Payroll, and Document Manager) by paying a renewal fee of 50% of the standard retail price. After renewing, Customer will obtain an upgraded version of the renewed software, along with another year of access to the Deliverables. Notwithstanding anything to the contrary in subsection 4.1, access to the Deliverables that have been renewed will expire on the anniversary of the shipment date of the version of the Software that was purchased immediately prior to the first version of the Software purchased as a renewal. No credit will be provided for the time that the Deliverables were not utilized if Customer chooses to renew the Software at a time after the expiration of the Deliverables. The option to renew the Software is not guaranteed and is subject to change at the discretion of CCH SFS. In the case of a renewal, any updated license agreement that is included with the new version of the software will govern. CCH SFS, in its discretion and for any reason, may decide not to renew Customer's access to the Software and Deliverables; 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. UPDATES & SUPPORT

- 5.1. **Updates.** CCH SFS may, from time to time, provide Updates of the Software to Customer. However, supplying Updates will be at CCH SFS' discretion and CCH SFS will have no obligation, express or implied, to provide Updates. Customer agrees to install all available Updates to the Software and acknowledges that Customer's failure to do so is at Customer's sole risk. CCH SFS reserves the right to charge additional license fees for any optional enhancements which incorporate significant new features or functionality to the Software, as determined by CCH SFS in its sole discretion.
- 5.2. **Support.** CCH SFS may also offer, in its sole discretion, product support for the Software remotely from CCH SFS' offices. Support for prior year versions of the Software may be more limited and is only available in CCH SFS' discretion. CCH SFS, at its sole discretion, may choose to only support the most recent version of any particular Software. CCH SFS may also choose not to support software that is not installed on hardware that meets CCH SFS' standard published system requirements, as in effect from time to time. Customer agrees that Customer and/or Customer's agents or employees will not place more than one call at any given time to CCH SFS' telephone support number(s) regarding the same situation, support question, issue or matter. CCH SFS reserves the right to terminate Customer's access to product support if it determines that Customer is committing acts that are disruptive to the service (e.g., placing multiple calls at one time; being verbally abusive to support representatives; providing Customer clients with access information to CCH SFS customer support lines, etc.).
- 5.3. **Data Retention.** CCH SFS will retain the data that Customer has properly submitted to CCH SFS' online servers for at least one year following the year in which Customer submitted any such data. CCH SFS will then maintain the 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 SFS' network.
- 5.4. **Miscellaneous.** Updates and support will only be available to Customer until the expiration of the Deliverables included with the Software, as specified in subsection 4.1. CCH SFS reserves the right to modify its update and support policies, procedures and fees from time to time.

6. WEB-BASED APPLICATIONS

- 6.1. **Protection of Account Access Information.** For Web-based Application versions of the Software, CCH SFS 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 Customer's Online Account within the Software. Customer's Online Account is designed for private use and should only be accessed through Authorized User's Online Account Access Information. Customer agrees to immediately notify CCH SFS of any unauthorized use of Online Account Access Information or any other breach of security. 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 Software as made through Customer's Online Account by any person and for insuring that all use of Customer's Online Account is for authorized purposes only and complies fully with the provisions of this Agreement.
- 6.2. **Additional Online Terms.** CCH SFS may post additional terms, conditions and/or polices ("Online Terms") at the online location where Customer accesses any particular Web-based Application version of the Software. Customer agrees to abide by any and all such Online Terms. To the extent that there is a conflict between this Agreement and any Online Terms, the terms of this Agreement will govern unless explicitly stated otherwise by CCH SFS in such Online Terms.
- 6.3. **Internet Disclaimer.** Customer acknowledges that the delivery systems used for Web-based Applications, namely the Internet and the World Wide Web, are known to be unpredictable in their performance and may, from time to time, impede access to the Web-based Application or other Deliverables or performance hereunder. Customer agrees that CCH SFS is not in any way responsible for any such interference with Customer's use of or access to such versions of the Software or the related Deliverables and Customer waives any and all claims against CCH SFS in connection therewith.

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, 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 review any computations made by the Software and satisfy itself that those computations are correct;
 - 7.1.3. Customer will not rely upon CCH SFS for advice regarding the appropriate treatment of tax, accounting and/or other matters;
 - 7.1.4. Customer will retrieve in a timely manner any electronic communications made available to Customer by CCH SFS (for example, electronic filing transaction data such as acknowledgements and e-mail messages in Customer's mailbox); and
 - 7.1.5. 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, Internet service, and other equipment and utilities needed for access to and use of 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 to perform its obligations hereunder, and that this Agreement has been duly authorized, executed and delivered by Customer and constitutes a valid and binding obligation 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;
 - 7.2.3. Customer will not use the Software to create a product, service or database that competes with CCH SFS, the Software or Deliverables;
 - 7.2.4. Customer will comply with all applicable rules, regulations and procedures of the United States government and all applicable state and foreign authorities, including, without limitation, all rules, regulations and procedures of the Internal Revenue Service;
 - 7.2.5. Customer has all rights necessary to legally transmit any data or information to CCH SFS' networks or servers, and the possession, storage and use by CCH SFS of such data or information will not infringe or misappropriate the intellectual property rights, or other rights, of any third party;
 - 7.2.6. Customer will be solely responsible for compliance with this Agreement by the Authorized Users;
 - 7.2.7. Customer is not prohibited by a third-party agreement from entering into the terms and conditions 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 rules and regulations as will be in effect from time to time.
 - 7.3.2. Customer acknowledges and agrees that Customer will be solely responsible for any direct deposit option which Customer elects in accordance with Form 8453 (as well as any successor(s) thereto) and that Customer will be solely responsible for providing all complete, correct and necessary information directly to the IRS with respect to the same.
 - 7.3.3. Customer acknowledges and agrees that CCH SFS cannot guarantee that taxing authorities will accept all returns due to circumstances that are beyond CCH SFS' reasonable control. Customer agrees to review the electronic filing and acknowledgment report and 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 SFS, 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, but not limited to, the United States government and state taxing authorities) relating to: (a) Customer's breach of any of its obligations, representations and/or warranties under this Agreement; or (b) except for claims for which CCH SFS is liable under Section 8 below, Customer's use of the Software, the Deliverables and/or third party software.

8. CCH SFS WARRANTIES

- 8.1. **CCH SFS' General Warranties.** CCH SFS represents and warrants that it has title to the Software and the right to grant Customer the rights granted hereunder. CCH SFS further represents and warrants that the Software does not violate any third party's United States intellectual property rights. Customer's sole and exclusive recourse and remedy for a breach of this warranty by CCH SFS will be the exercise of its indemnity rights under subsection 8.2 below.
- 8.2. **Indemnification by CCH SFS.**
- 8.2.1. Subject to the other terms and conditions set forth herein, CCH SFS agrees to defend Customer at CCH SFS' sole cost and indemnify Customer (by paying for damages finally awarded against Customer or any amounts payable in any settlement entered into by Customer in compliance with this Agreement) from and against any claims, demands, actions or proceedings by any third parties alleging that the Software hereunder infringes or violates any third party's United States intellectual property rights; provided that: (i) CCH SFS is notified promptly in writing of the claim; (ii) CCH SFS controls the defense, settlement and approval of the claim; and (iii) Customer cooperates reasonably, assists and gives all

necessary authority to CCH SFS and reasonably required information in connection with the defense or settlement of the claim.

- 8.2.2. CCH SFS' 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 SFS hereunder and as required to be used by Customer hereunder; (ii) the modification of the Software by Customer or any third party not authorized in writing by CCH SFS to do so; (iii) the use of the Software in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH SFS or approved by CCH SFS in writing; or (iv) any data or information, or other intellectual property, supplied by Customer or an Authorized User or third party (other than CCH SFS).
- 8.2.3. If any Software becomes, or in CCH SFS' opinion, is likely to become, the subject of a third party claim covered by CCH SFS' indemnification obligations under subsection 8.2.1, then CCH SFS 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 SFS reasonably determines that none of the foregoing is commercially practicable, then CCH SFS may elect to terminate this Agreement and grant Customer a refund of all prepaid but unused portions of the Fees previously paid to CCH SFS related to the Software in question. This Section 8.2.3 states CCH SFS' entire liability and the sole and exclusive remedy of Customer and any Authorized User for any claim of infringement.
- 8.3. **Limited Warranty.** EXCEPT AS STATED IN SUBSECTION 8.1, THE SOFTWARE, THE DELIVERABLES AND ANY THIRD PARTY SOFTWARE ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CCH SFS DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES INCLUDING, BUT NOT LIMITED TO, 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 SOFTWARE AND THE DELIVERABLES. CCH SFS DOES NOT WARRANT THAT THE SOFTWARE OR DELIVERABLES WILL BE UNINTERRUPTED 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 SFS WILL HAVE NO LIABILITY THEREFORE. NO EMPLOYEE OR AGENT OF CCH SFS OR ANY OF ITS SUBSIDIARIES OR AFFILIATES IS AUTHORIZED TO MAKE ANY STATEMENT THAT ADDS TO OR AMENDS ANY OF THE WARRANTIES OR LIMITATIONS CONTAINED IN THIS AGREEMENT.
- 8.4. **Limitation of Liability and Damages.** NEITHER CCH SFS NOR ITS SUPPLIERS OR LICENSORS WILL HAVE ANY LIABILITY TO CUSTOMER OR ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, ANY CONTRACTOR, AGENT OR AFFILIATE 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, AND/OR DELIVERABLES. THE TOTAL LIABILITY OF CCH SFS AND ITS SUPPLIERS AND LICENSORS TO CUSTOMER OR ANY THIRD PARTY RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE SOFTWARE, AND/OR DELIVERABLES FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES WILL NOT EXCEED THE TOTAL FEES PAID OR PAYABLE FOR THE SOFTWARE HEREUNDER BY CUSTOMER. CCH SFS is not an insurer with regard to performance of the Software or Deliverables. Customer agrees to assume the risk for: (a) all liabilities disclaimed by CCH SFS 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 SFS' 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.** Some documentation, products, and the Software itself may contain code, content, features, functionality, and components that are provided by third-parties. Furthermore, some Software may require data and information from third-parties in order to work properly. These third-party products may or may not have additional licensing requirements independent of CCH SFS. It is agreed that any additional licenses required to access said third-party products will be negotiated solely between Customer and any third-party unless otherwise specified by CCH SFS. ANY CCH SFS-PROVIDED THIRD-PARTY PRODUCTS WILL BE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND BY CCH SFS. ALL RIGHTS AND OBLIGATIONS WITH RESPECT TO SAID CCH SFS PROVIDED THIRD-PARTY PRODUCTS WILL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS OF AGREEMENTS PROVIDED BY SUPPLIERS OF SAID THIRD-PARTY PRODUCTS AND CUSTOMER HEREBY RELEASES CCH SFS FROM ALL LIABILITY AND RESPONSIBILITY WITH RESPECT THERETO.

9. DISPUTE RESOLUTION

- 9.1. **Force Majeure.** Except for payment obligations, neither party hereto will 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, but not limited to, failures or delays caused by the act or omission of any governmental authority, fire, flood, or other event beyond such party's reasonable control.

- 9.2. **Licensing Audit.** Upon CCH SFS' written request, Customer will furnish CCH SFS with a signed certificate verifying that Customer's version of the Software is being used (a) pursuant to the terms of this Agreement, (b) only at the Designated Office(s) and (c) only by Authorized Users. At its expense, CCH SFS may audit Customer's compliance with the requirements of this Agreement. Any such audit will be conducted during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. During any such audit CCH SFS will be allowed to interview any of Customer's employees and contractors. If CCH SFS determines that Customer has not paid appropriate license or other fees for use of the Software or Deliverables at any location, Customer will be invoiced for such license and other 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). CCH SFS will recoup and Customer will pay 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 will not limit or preclude any additional remedies available to CCH SFS provided by law or equity.
- 9.3. **Time Limit on Claims.** Except for collection actions which may be brought by CCH SFS at any time and without limiting claims for indemnification hereunder, no action arising out of any claimed breach of this Agreement or transactions under this Agreement may be brought by either party more than one (1) year after the event which gives rise to the specific cause of action.
- 9.4. **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 this Agreement. Customer agrees that this Agreement will be interpreted and enforced according to the laws of the State of Georgia, without any regard to conflicts of law rules, and will be treated as if executed and performed in Fulton County, State of Georgia. All disputes surrounding the performance of this Agreement and/or Deliverables will be instituted and prosecuted exclusively in Fulton County, State of Georgia, 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 will not apply in any respect to this Agreement or to the parties in general.
- 9.5. **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 AND THE TRANSACTIONS IT CONTEMPLATES.
- 9.6. **Enforcement.** Customer will pay all of CCH SFS' attorneys' fees and costs and expenses incurred in the enforcement of any of the provisions of this Agreement.
- 9.7. **Remedies.** Customer acknowledges that the Software and other proprietary information of CCH SFS are unique and that, in the event of any breach of this Agreement by Customer, CCH SFS may not have an adequate remedy at law, and will be entitled to seek enforcement of its rights hereunder by an action for damages and/or specific performance and/or 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 will 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.
- 9.8. **Notices.** All notices, demands, consents or requests given by a party hereto will be in writing and sent by delivery via a third party, nationally recognized overnight express mail service or by United States certified mail, postage prepaid, addressed to either Customer's billing address or CCH Small Firm Services, Attn: Legal Department, 6 Mathis Drive, Rome GA 30165. If such notice, demand, consent or request is given by mail, such notice will be conclusively deemed given five (5) days after deposit thereof in the United States mail.
- 9.9. **Enforceability.** In the event that any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions and portions thereof of this Agreement will not be affected thereby.
- 9.10. **Waiver.** CCH SFS' failure or delay to require compliance with the conditions of this Agreement, or to exercise any right provided herein, will not be deemed a waiver by CCH SFS of such condition 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, will operate as a waiver or legally bar CCH SFS from enforcing any right, remedy or condition. A waiver made in writing 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 SFS agree that during the term hereof and for four (4) years after termination or expiration of this Agreement, or for such longer period as required by law in the case of PII (see [subsection 10.2](#)), all information furnished or disclosed to the other pursuant to this Agreement, including, without limitation, the terms of Customer's Order Confirmation, proprietary information within the Software, and any discussions between the parties regarding other potential business relationships (the "Confidential Information"), will be held in strict confidence by the other party, and will not be used, 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 SFS to transmit the personally identifiable information ("PII") of the taxpayer clients of Customer as submitted to CCH SFS by Customer to certain taxing authorities, as well as to certain third-party service providers that CCH SFS 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 in, or subsequently enters, the public domain through means other than disclosure of a party hereto in breach of the terms of this Agreement; (ii) is lawfully obtained from a third party without binder of secrecy; (iii) is independently developed by such party without reference to the Confidential Information 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 will notify the disclosing party of any such requirement prior to disclosure (except where the disclosing party is being investigated for criminal activity by a state or federal agency and such agency specifically requests that prior disclosure not be made by the recipient) 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.** Upon termination or expiration of this Agreement, both parties agree to destroy all copies of written Confidential Information, including, without limitation, all electronically stored copies. However, each party will be entitled to retain copies of the other party's Confidential Information preserved or recorded or saved automatically to standard back-up or archival systems. Moreover, CCH SFS may retain a copy of such Confidential Information for the sole purpose of and to the extent necessary for CCH SFS to comply with applicable and legal, regulatory, and/or reasonable internal archival policies and requirements (with such Confidential Information otherwise remaining subject to the terms and conditions of this Section 10). The disclosing party will retain all proprietary rights to the information it discloses hereunder, regardless of the expiration of the obligations under this Section 10.

11. MISCELLANEOUS

- 11.1. **Entire Agreement.** This Agreement, along with the Order Confirmation and any other terms referenced by this Agreement but otherwise published by CCH SFS outside of this Agreement, constitutes the entire and exclusive agreement, understanding and representation, express or implied, between Customer and CCH SFS with respect to the Software and Deliverables to be furnished hereunder; 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). In the event of a conflict, this Agreement will control, then the Order Confirmation, and then any other terms provided by CCH SFS, unless CCH SFS explicitly acknowledges and upholds the particular conflict in such other document. Oral statements made by CCH SFS' representatives about the Software and/or Deliverables do not constitute warranties, will not be relied on by Customer, and are not part of this Agreement. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by CCH SFS and Customer after reasonable opportunity to accept or reject such supplement, modification or amendment. CCH SFS reserves the right to revise, in its discretion, this Agreement for future versions, Updates, renewals and/or upgrades of the Software.
- 11.2. **Evaluation Copies of Software.** If Customer is installing an evaluation version of any of the Software, then this Agreement will govern Customer's use except as modified by this subsection 11.2. Software licensed to Customer for evaluation purposes will 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. Any evaluation or demonstration copies of the Software must be removed from any and all Customer equipment upon the conclusion of the evaluation or demonstration and such copies must be destroyed or promptly returned to CCH SFS. If Customer wishes to use the Software for commercial purposes then Customer must purchase a license from CCH SFS. The following sections of this Agreement will not apply to Customer's use of an evaluation version of the Software: subsections 2.1, 2.2, 8.1 and 8.2, and Sections 3, 4 and 5.
- 11.3. **Contact Information.** Customer agrees to always provide CCH SFS with Customer's most current contact information, including Customer's address, phone number, fax number and e-mail address. Customer also agrees to provide CCH SFS with Customer's most current EFIN, as well as proof of the EFIN holder's name and address, as requested by CCH SFS, if Customer will be using the Software to electronically file tax returns.
- 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 but not limited to those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Customer agrees not to 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/Deliverables.** CCH SFS reserves the right, in its sole discretion and without first consulting with Customer, to discontinue or modify the Software or Deliverables for any reason. CCH SFS may choose to replace any discontinued product, in which case CCH SFS will provide Customer with the opportunity to purchase such replacement product. If Customer purchases software that is discontinued prior to its shipment to Customer, CCH SFS will provide Customer with a refund of the Fees paid toward such software.
- 11.6. **Data Transmission Notification.** CCH SFS' tax preparation software may also transmit to CCH SFS' internal servers certain tax records that Customer has created while using the Software but that Customer did not otherwise transmit. CCH SFS may use this transmitted data for internal quality assurance and software error checking, as well as to assist users with multiple offices. Transmitted data is limited to records created with or by the Software only and is not transmitted to the IRS. CCH SFS does not attempt to access any other information on Customer's computer that is not related to the Software.
- 11.7. **Assignment.** Neither the License granted hereunder nor the Software may be sublicensed, assigned, sold, hypothecated, or transferred by Customer without the prior written consent of CCH SFS. Any attempt to sublicense, assign or transfer any of the rights, duties or obligations under this Agreement without the prior written consent of CCH SFS will terminate the License automatically and will be void and of no effect. Customer agrees that CCH SFS' retention of these contractual and other legal rights is an essential part of this Agreement.
- 11.8. **Delivery.** Delivery of the Software to Customer will take place when it becomes available to the entire client base of CCH SFS. Customer acknowledges that the Software and all Updates thereof are pre-written software of general application. All Deliverables will be delivered to Customer remotely via interstate means from CCH SFS' offices.

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