

This CCH iFirm Application Standard Subscription Agreement (this “Agreement”) is made by and between Universal Tax Systems, Inc. d/b/a CCH Small Firm Services (“CCH SFS”), and “Customer” (as defined below), and governs Customer’s use of the Hosted Application (as defined below). This Agreement may be viewed at CCH SFS’ web site ([www.cchsfs.com/legal/](http://www.cchsfs.com/legal/) or <https://taxna.wolterskluwer.com/legal/>), during Customer’s initial access of the Hosted Application, or within the Hosted Application via a link. By accessing the Hosted Application or by otherwise indicating acceptance (electronically or otherwise) of this Agreement, Customer acknowledges agreement to the terms set forth below.

**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 who is authorized by Customer to access or use the Hosted Application. An Authorized User must be a full-time or part-time employee (but may be a contract/temporary employee) working for Customer primarily out of Customer’s office(s) (including remote users assigned to such office(s)) for the purpose of assisting Customer in its day-to-day business activities.
- 1.3. “**Client**” means any third party client of Customer that has entered into a direct agreement with Customer for accounting, payroll or tax services.
- 1.4. “**Customer**” means the person or entity identified in the “Customer Information” section of the Order Confirmation(s).
- 1.5. “**Customer Data**” means all data, information, records, or files that are uploaded to, entered in, or stored on the Hosted Application by or on behalf of the Customer. Customer Data does not include any Statistical Data (as defined below).
- 1.6. “**Fees**” means the amounts payable by Customer to CCH SFS under the Order Confirmation(s) and this Agreement.
- 1.7. “**Hosted Application**” means the cloud-based CCH iFirm application (such as, but not limited to, Practice Manager, Suite, Client Accounting or Client Portal) listed on the Order Confirmation, as such application(s) may be updated from time to time by CCH SFS in its sole discretion.
- 1.8. “**Named Users**” means the total number of Authorized Users for which Customer has paid the applicable fees, as specified on the Order Confirmation. For example, if Customer purchases a Hosted Application for 1-3 users, then up to three (3) Authorized Users may access the Hosted Application.
- 1.9. “**Online Account**” means the authorized access into the Hosted Application as established by CCH SFS for use by any particular Authorized User, and includes the controls, permissions and data unique to such user.
- 1.10. “**Online Account Access Information**” means the private access information (for example, username and password) used by each Authorized User of the Hosted Application to access his/her individual Online Account.

- 1.11. **“Order Confirmation”** means a written confirmation of order from CCH SFS that documents Customer’s acquisition of a Subscription to the Hosted Application. All Order Confirmations incorporate and are subject to the terms and conditions of this Agreement.
- 1.12. **“Statistical Data”** means any and all information reflecting the access or usage patterns of the Hosted Application by or on behalf of Customer or any Authorized User, general and demographic information about its Customers and general information about Customer’s and its Authorized Users’ computer system from which the Hosted Application is being accessed (for example, system configuration, type of internet connectivity, RAM, CPU, operating system, browser version), including any statistical or other analysis, information or data based on or derived from any of the foregoing.
- 1.13. **“Subscription”** means the rights granted to Customer by CCH SFS to access and use the Hosted Application as set forth in subsection 2.1 of this Agreement.
- 1.14. **“Subscription Term”** means the period beginning on the date of the Order Confirmation and expiring either one (1) month or one (1) year thereafter as indicated on the applicable Order Confirmation. The use of the word “including” means “including without limitation.”

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

### **2.1. Right to Use.**

- 2.1.1. **CCH iFirm Client Accounting.** If Customer purchases a Subscription to CCH iFirm Client Accounting, then subject to the terms and conditions of this Agreement, CCH SFS grants to Customer a limited, nontransferable, nonexclusive right to access and use, and to permit the applicable number of Named Users to access and use, the Hosted Application solely for Customer’s internal use and for the purpose of performing accounting, payroll or tax services for Clients within the United States, without any further right to access or use the Hosted Application in any manner.
- 2.1.2. **CCH iFirm Practice Manager.** If Customer purchases a Subscription to CCH iFirm Practice Manager, then subject to the terms and conditions of this Agreement, CCH SFS grants to Customer a limited, nontransferable, nonexclusive right to access and use, and to permit the applicable number of Named Users to access and use, the Hosted Application solely for the purpose of Customer’s internal business use within the United States, without any further right to access or use the Hosted Application in any manner.
- 2.1.3. **CCH iFirm Client Portal.** If Customer purchases a Subscription to CCH iFirm Client Portal, then subject to the terms and conditions of this Agreement, CCH SFS grants to Customer a limited, nontransferable, nonexclusive right to access and use, subject to the storage/volume limitations and parameters set forth on the Order Confirmation, the Hosted Application solely for Customer’s internal use and for the purpose of performing accounting, payroll or tax services for Clients within the United States, without any further right to access or use the Hosted Application in any manner.
- 2.1.4. **CCH iFirm Suite.** If Customer purchases a Subscription to CCH iFirm Suite, then subject to the terms and conditions of this Agreement, CCH SFS grants to Customer a limited, nontransferable, nonexclusive right to access and use, and to permit the applicable number of Named Users to access and use, the Hosted Application solely for Customer’s internal use and for the purpose of performing accounting, payroll or tax services for Clients within the United States, without any further right to access or use the Hosted Application in any manner.
- 2.1.5. **Reservation of Rights.** CCH SFS reserves all rights in and to the Hosted Application not expressly granted in this Agreement. The right to access and use the Hosted Application granted herein does not include the right to access (a) any underlying components of the Hosted Application, (b) CCH SFS’ underlying application engines, (c) other applications published by CCH SFS, CCH Incorporated or Wolters Kluwer, or (d) the operating environment within which the Hosted Application operates that is not intended by CCH SFS for access by any Authorized User.
- 2.1.6. **Clients.** Certain Applications may include functionality that is documented and intended to allow Clients to access Customer’s Online Account to view data specific to such Client. Customer may provide such limited access to its Clients.

**2.1.7. Condition of Rights.** Customer shall not permit any person other than an Authorized User to use or access the Hosted Application. Customer shall cause each Named User to comply with the terms and conditions of this Agreement. The rights granted to Customer under this Agreement are conditioned upon Customer's compliance with the terms of this Agreement and the Order Confirmation(s), including the timely payment of all applicable Fees.

**2.2. Restrictions.** Customer must not do or attempt to do, or permit others to do or attempt to do, any of the following: (a) possess, download, copy or print the Hosted Application or any part of the Hosted Application, including any component which comprises the Hosted Application; (b) view, read, modify, port, adapt or create derivative works of the Hosted Application; (c) reverse compile, reverse assemble, disassemble or print the Hosted Application's source code or object code or other runtime objects or files related to the Hosted Application or otherwise reverse engineer, modify or copy the look and feel, functionality or user interface of any portion of the Hosted Application; (d) rent, lease, distribute (or redistribute), provide or otherwise make available the Hosted Application, in any form, to any third party (including in any service bureau or similar environment); (e) share use or access of the Hosted Application with other practitioners (including outsourcers performing work for Customer) who are not Authorized Users in Customer's practice, even if Customer shares office space or equipment; (f) share any Online Account or Online Account Access Information with third parties; (g) create any "links" to or "frame" or "mirror" the Hosted Application or any portion thereof; (h) defeat, disable or circumvent any protection mechanism related to the Hosted Application; (i) use the Hosted Application to process the data of clients of a third party (whether on an outsourcing, service bureau, or other basis); or (j) publish, distribute (or redistribute) or sell any document retrieved through the Hosted Application (even if in the public domain) to any individual or entity outside of Customer's own firm, except for documents prepared for Clients within the scope of the normal and intended use of the Hosted Application. In addition, Customer shall not violate or attempt to violate the security of CCH SFS or its Affiliates' networks or servers, including (x) accessing data not intended for Customer or log into a server or account which Customer is not authorized to access; (y) attempting to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without proper written request and authorization; or (z) attempting to interfere with, damage or adversely affect service or access to any user, host or network, including by means of submitting or installing a virus, malware, trojan horses, overloading, flooding, spamming, mail bombing or crashing.

### **2.3. Customer Data and Statistical Data.**

**2.3.1. Authorized Use.** As between CCH SFS and Customer, Customer is and shall remain the sole and exclusive owner of all right, title, and interest in and to the Customer Data. CCH SFS and its subcontractors will only use Customer Data as (a) necessary to provide the Hosted Application and Services (as defined below) to Customer; (b) expressly authorized pursuant to the terms of this Agreement; and (c) otherwise authorized by Customer in writing (each use an "**Authorized Use**"). Customer hereby grants to CCH SFS and its subcontractors a limited license to use Customer Data for each Authorized Use.

**2.3.2. Disclosure.** CCH SFS may disclose Customer Data to taxing authorities and 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. Except as otherwise set forth in this Agreement or required by law, CCH SFS shall not disclose Customer Data to any third party without Customer's written consent.

**2.3.3. Data Retention.** CCH SFS will use reasonable efforts to retain the Customer Data that Customer has properly submitted to CCH SFS's online servers for at least one (1) year following the year in which Customer submitted any such Customer Data. Such access may not be available to Customer, in CCH SFS' sole discretion, if Customer has otherwise materially breached any term of this Agreement. CCH SFS will then maintain such Customer Data in accordance with its internal business practices. Customer acknowledges and agrees that Customer Data may be stored with a cloud provider (such as, but not limited to, Amazon Web Services, Azure, IBM SoftLayer or other) for which different terms may govern the management of and access to the Customer Data. CCH SFS is not, and will not, be responsible for any data loss or errors, omissions or violations of applicable laws or regulations by any such cloud provider. It is Customer's

responsibility to backup on Customer's own local system all Customer Data that Customer submits to CCH SFS. Upon Customer's request, and subject to payment of any fees charged by CCH SFS therefor, CCH SFS shall use commercially reasonable efforts to make available for retrieval by Customer, all Customer Data then in CCH SFS' possession or control per CCH SFS's customary internal business practices. CCH SFS 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.

2.3.4. **Statistical Data.** As between CCH SFS and Customer, CCH SFS is and shall remain the sole and exclusive owner of all right, title, and interest in and to the Statistical Data. CCH SFS may use Statistical Data for its own business purposes, including, but not limited to, market and sales related analysis, the support, improvement, and development of the Hosted Application or other CCH SFS products.

2.3.5. **Security.** CCH SFS shall implement and maintain reasonable information security measures and policies intended to: (a) safeguard the security of Customer Data, (b) protect against known or anticipated threats to the security of such Customer Data and (c) investigate and react to any known or suspected unauthorized access to or loss of such Customer Data. HOWEVER, CUSTOMER ACKNOWLEDGES THAT SECURITY MEASURES, POLICIES AND SAFEGUARDS BY THEIR NATURE ARE CAPABLE OF CIRCUMVENTION AND THAT CCH SFS DOES NOT AND CANNOT GUARANTEE THAT CUSTOMER DATA WILL NOT BE ACCESSED BY UNAUTHORIZED PERSONS CAPABLE OF OVERCOMING SUCH MEASURES, POLICIES AND SAFEGUARDS. CCH SFS SHALL HAVE NO LIABILITY FOR ANY BREACH OF CCH SFS' NETWORK SECURITY THAT RESULTS IN ANY LOSS OR UNAUTHORIZED DISCLOSURES OF CUSTOMER DATA, SO LONG AS CCH SFS HAS NOT MATERIALLY BREACHED ITS OBLIGATIONS REGARDING SECURITY OF SUCH CUSTOMER DATA. For avoidance of doubt, the parties acknowledge and agree that unauthorized access to or loss of Customer Data shall not constitute a breach by CCH SFS of its confidentiality obligations under this Agreement.

2.4. **Protection of Online Account Access Information.** CCH SFS will supply Customer with the means to create private Online Account Access Information for its Named Users so that such Named Users may log into their respective Online Accounts within the Hosted Application. Online Accounts are designed for private use and should only be accessed through Authorized User's Online Account Access Information. Customer is fully responsible for the protection and confidentiality of its Authorized Users' Online Account Access Information. Customer acknowledges and agrees that Customer is responsible for all use of the Hosted Application as made through Customer's and its Authorized Users' Online Accounts by any person and for ensuring 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 SFS 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 SFS.

2.5. **Additional Online Terms.** CCH SFS may post duplicative and/or additional relevant terms, conditions and/or policies ("**Online Terms**") at the online location where Authorized Users access the Hosted Application. Authorized Users will be subject to all such Online Terms from and after the date on which such Online Terms are first posted. Cancellation of the Subscription is Customer's sole remedy in the event that Customer does not agree with Online Terms.

2.6. **Compliance Mechanisms.** The Hosted Application may contain technological copy protection or other security features designed to prevent unauthorized use of the Hosted Application, including features to protect against use of the Hosted Application: (a) beyond the scope of the license granted to pursuant to subsection 2.1; or (b) prohibited in subsection 2.2. Customer shall not, and shall not attempt to, remove, disable, circumvent or otherwise create or implement any workaround to, any such copy protection or security features. **Unauthorized Acquisition.** CCH SFS expressly prohibits the use of any product or service from CCH SFS that has been improperly obtained and/or accessed. For purposes of illustration, but not limitation, examples include any product or service that: (a) is acquired from an unauthorized reseller or distributor; (b) is pirated, cracked or hacked, including through the use of Online Account Access Information established for use by another individual; (c) has been acquired with the

intent or for the purpose to use in a manner that is illegal, fraudulent, in violation of this Agreement or otherwise outside the normal, stated and/or reasonably understood purpose of such product or service; or (d) is acquired with the use of false or inaccurate statements and/or information (e.g., false name, contact information, or payment information; or false declaration of the total number of end users).

**2.7. Reservation of Rights & Ownership of Developed Materials.** CCH SFS and its Affiliates and any applicable licensors, retain all intellectual property and other proprietary rights, including all patent, copyright, trade secret, trade name, trademark, and other proprietary rights, related to the Hosted Application which are protected under United States intellectual property laws and international treaty provisions. Any unauthorized use of the Hosted Application will result in cancellation of this Agreement as well as possible civil damages and criminal penalties. Customer is not permitted to use “CCH,” “iFirm” or any other trade or service marks of CCH SFS 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 SFS. Customer acknowledges and agrees that CCH SFS and its Affiliates and any applicable licensor’s retention of contractual and intellectual property rights is an essential part of this Agreement. CCH SFS and its Affiliates and any licensor (as applicable) will own and Customer hereby assigns to CCH SFS all rights in (a) any copy, translation, modification, adaptation or derivative work of the Hosted Application, including any improvement or development thereof, whether provided as part of Support (as defined below), Services (as defined below) or otherwise, and whether or not developed by or for the Customer, and (b) any suggestions, ideas, enhancement requests, feedback, or recommendations provided by or on behalf of Customer.

**2.8. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Hosted Application is provided with RESTRICTED RIGHTS. Any use, duplication or disclosure of the Hosted Application by the United States Government is subject to restrictions as set forth in FAR 12.212 or DFARS 227.7202-1(a), 227.7202-3(a) and 227.7202-4 (1995) and, to the extent required under U.S. federal law, the minimum restricted rights as set out in FAR 52.227-19 (DEC 2007) or FAR 52.227-14 (DEC 2007). To the extent any Technical Data is provided pursuant to the Agreement, such data is protected per FAR 12.211 and DFARS 227.7102-2 and to the extent explicitly required by the U.S. Government, is subject to limited rights as set out in DFARS 252.227-7015 (NOV 1995) and DFARS 252.227-7037 (SEPT 1999). In the event that any of the above referenced agency regulations are modified or superseded, the subsequent equivalent regulation will apply. The name of the manufacturer is Universal Tax Systems, Inc. d/b/a CCH Small Firm Services, 225 Chastain Meadows Ct. NW, Suite 200, Kennesaw, GA 30144. 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 Hosted Application from public disclosure and to consider the Hosted Application exempt from any statute, law, regulation, or code, including any Sunshine Act, Public Records Act, Freedom of Information Act, or equivalent, which permits public access and/or reproduction or use of the Hosted Application.

### **3. FEES, PAYMENT AND ACCOUNT ACTIVITY**

**3.1. Fees.** Customer must pay to CCH SFS the Fees for the Hosted Application (a set-up/implementation fee and subscription fees) as set forth on the Order Confirmation(s). Additional Fees as documented on an Order Confirmation may be charged (e.g., for additional Hosted Application modules, for optional features or services, or for use by additional Authorized Users). Customer is obligated to keep Customer’s contact information, billing information and credit card and/or ACH bank account information (where applicable) current and complete. Customer agrees to pay all such Fees in accordance with the Order Confirmation or as otherwise specified, and, in furtherance of that requirement, Customer agrees to keep a valid credit card and/or ACH bank account with sufficient funds or credit on account with CCH SFS in order to pay all Fees when due. CCH SFS reserves the right to increase a Fee at any time with at least thirty (30) days’ notice provided to Customer prior to any such Fee increase. Customer hereby authorizes CCH SFS to charge any overdue Fees to Customer’s credit card or bank account on file. In addition, 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 thirty (30) day period or portion thereof in which Fees are overdue and not paid in full. If

Customer does not pay any Fees in accordance with the applicable Order Confirmation or as otherwise specified, or if Customer does not notify CCH SFS promptly when payment-related information is outdated or inaccurate, then CCH SFS, in its discretion, may suspend sending any updates to the Hosted Application, or deny access to the Hosted Application. All refund requests shall be subject to, and administered in accordance with, the Software Refund Policy, which may be found at [www.cchsfs.com/legal/](http://www.cchsfs.com/legal/) or <https://taxna.wolterskluwer.com/legal>.

- 3.2. **Insufficient Funds and Subscription Term Lapse.** In the event Customer's credit card is declined for any reason, CCH SFS will suspend Customer's and Authorized Users' Online Accounts immediately following the then-current Subscription Term (for which Customer has paid all applicable Fees) until such time as Customer updates its credit card information and pays all arrears up to the date of reactivation of service. If Customer fails to pay within 90 days of any such suspension, then this Agreement shall automatically terminate and Customer will remain liable for the aforementioned arrears and may be required to pay a reactivation fee prior to any future access to any Hosted Application or other CCH SFS products.
- 3.3. **Taxes.** Fees are exclusive of any taxes, assessments or duties that may be assessed upon the Hosted Application or any Support (as defined below) or Services (as defined below) provided under this Agreement or on third-party fees disclosed in an Order Confirmation, 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 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 address and/or the address(es) on the Order Confirmation. Tax exemption certificates, if any, must be submitted at the time of order. Customer acknowledges that the Hosted Application is pre-written software of general application.

#### **4. TERM; TERMINATION; SUSPENSION**

##### **4.1. Termination of Agreement for Cause by CCH SFS.**

- 4.1.1. This Agreement, including all rights provided hereunder, may be terminated by CCH SFS for cause, in its sole discretion, (a) immediately upon notice to Customer if Customer commits an incurable breach of the terms or conditions of this Agreement or (b) in the case of any other breach of the terms or conditions of this Agreement, if such breach remains uncured 30 days after CCH SFS has provided written notice to Customer of such breach.
- 4.1.2. 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. Effect of Expiration or Termination of Agreement.** Upon any expiration or termination of this Agreement, all rights granted to Customer hereunder will immediately terminate and CCH SFS will have the right to immediately and indefinitely terminate Customer's access to and use of the Hosted Application. The following sections will survive the expiration or termination of this Agreement: subsections 2.3, 2.7, 2.8, 4.2, 5.2, 8.3, 8.4, 8.5, and 8.7, and Sections 1, 7, 9, 10 and 11.

##### **4.3. Renewals.** The Subscription Term will automatically renew for an additional Subscription Term unless (a) Customer provides written notice of termination more than: (i) 15 days prior to the end of the then-current Subscription Term (if on a monthly basis) or (ii) 30 days prior to the end of the then-current Subscription Term (if on an annual basis) or (b) any Fees are outstanding at the end of any Subscription Term.

##### **4.4. Suspension of Access.** In addition to any other suspension or termination rights of CCH SFS pursuant to this Agreement, CCH SFS may suspend or terminate Customer's access to and/or use of, or otherwise

modify, the Hosted Application and/or any component thereof, and/or any Online Account or any Online Account Access Information without notice (a) in the event Customer (including any Authorized User, Named User, Client or other person or entity acting through or on behalf of Customer) is determined by CCH SFS, in CCH SFS' sole judgment, to have or attempted to have damaged, harmed or misused CCH SFS' software, server, network or other systems; (b) as necessary or appropriate to comply with any law, regulation, court order, or other governmental request or order or otherwise protect CCH SFS from potential legal liability or harm to its business, or (c) if Customer has obtained unauthorized access to the Hosted Application as set forth in subsection 2.8. 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 unless such action is due to subsection (a) hereof. In the event of a suspension (other than due to subsection (a) hereof), CCH SFS will promptly restore Customer's access to the Hosted Application 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. CCH SFS will not be responsible for any loss or damages incurred by Customer as a result of any termination or suspension of access to or use of the Hosted Application as set forth in this Agreement.

## 5. SUPPORT

5.1. **General.** During the Subscription Term, CCH SFS will provide such remote telephone support services, if any, as CCH SFS provides generally to customers as part of its then current Hosted Application support program as set forth on the website for the applicable Hosted Application ("**Support**"). Support shall not include, and CCH SFS will not provide, any tax, accounting, legal or other professional or expert advice of any kind, including any advice regarding the appropriate handling of tax and accounting issues, or otherwise. Support may include automatic updates to the Hosted Application in CCH SFS' discretion, as appropriate. 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 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 Support if it determines that Customer is committing acts that are disruptive to CCH SFS' 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 SFS customer Support lines, etc.).

5.2. **Support Waiver.** Customer agrees that by contacting CCH SFS for Support, Customer will be authorizing CCH SFS to access and perform work on its Online Account, computer(s) and/or network(s), including but not limited to software, hardware, peripherals and memory (the "**Computer System**"). CCH SFS will not be responsible for the loss of any information or data from Customer's Computer System (whether related to the Hosted Application or otherwise) or any malfunction or failure of the Computer System. It is Customer's responsibility to ensure that the Computer System has been backed up.

## 6. SERVICES

6.1 **General.** CCH SFS may offer certain additional services related to the Hosted Application. Such services may include, but are not limited to: (a) set-up/implementation services; (b) training for Customer personnel; (c) file conversion services; and (d) any other services specifically identified in an Order Confirmation (hereinafter referred to as "**Services**"). CCH SFS will provide Services, at Customer's election and following Customer's signature and CCH SFS' acceptance of an Order Confirmation describing the nature, scope, project assumptions, fees, duration, location(s) of the covered Services, in each case in accordance with such Order Confirmation and subject to the terms and conditions of this Agreement.

6.2 **Services Performance.** In performing Services, CCH SFS may assign CCH SFS 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 SFS as necessary or appropriate to the performance of any Services. Customer shall advise CCH SFS of any hazards to the health and safety of CCH SFS' personnel on the Customer's premises and provide CCH SFS' personnel with appropriate information

regarding applicable safety and security procedures.

- 6.3 **Services Pricing.** Unless otherwise provided in the applicable Order Confirmation, all Services shall be provided on a time and expense/materials basis at CCH SFS' then current rates. CCH SFS 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 SFS for all reasonable travel and other out-of-pocket expenses incurred in connection with CCH SFS' 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 Hosted Application does not relieve Customer of responsibility for the preparation, content, accuracy (including computational accuracy), and review of work product generated by Customer while using the Hosted Application;
- 7.1.2. Customer will neither inquire nor rely upon CCH SFS for any tax, accounting, payroll, 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 SFS; and
- 7.1.4. Customer is fully and solely responsible for: (a) selection of adequate and appropriate applications to satisfy Customer's business needs and achieve Customer's intended results; (b) use of the Hosted Application; (c) all results obtained from the Hosted Application; (d) selecting, obtaining and maintaining all hardware, software, computer capacity, Internet service, program and system resources and other equipment and utilities needed for access to and use of the Hosted Application, and for all costs associated therewith; and (e) selection, use of, and results obtained from any other programs, computer equipment or services used with the Hosted Application.

- 7.2. **Customer's Representations.** Customer represents, warrants and covenants that:

- 7.2.1. Customer has full power and authority to enter into this Agreement and all Order Confirmations hereunder and to perform its obligations under this Agreement and such Order Confirmations, and that this Agreement and all such Order Confirmations have been duly authorized and constitute valid and binding obligations of Customer;
- 7.2.2. Customer is accessing and using the Hosted Application solely for Customer's own internal use and/or to provide accounting, payroll or tax services to Clients in accordance with section 2.1 of this Agreement;
- 7.2.3. Customer will not access or use the Hosted Application to create a product, service or database that competes with CCH SFS or the Hosted Application;
- 7.2.4. Customer is responsible for complying with all rules, regulations and procedures of local, state, federal and foreign authorities applicable to Customer and its business;
- 7.2.5. Customer will be solely responsible for compliance with this Agreement by the Authorized Users, and to the extent applicable, all Clients;
- 7.2.6. Customer will not otherwise violate the rights of any third party while accessing or using the Hosted Application;
- 7.2.7. Customer has sole responsibility for the accuracy, quality, integrity, reliability, and appropriateness of all Customer Data; and
- 7.2.8. Customer will not upload or transmit any Customer Data: (a) that Customer does not have the lawful right to copy, transmit, distribute, and display (including any Customer Data that would violate any confidentiality or fiduciary obligations that Customer might have with respect to the Customer Data); (b) for which Customer does not have the consent or permission from the owner of any personally identifiable information contained in the Customer Data; (c) that infringes, misappropriates or otherwise violates any intellectual property or other proprietary rights or violates any privacy rights of any third party (including any copyright, trademark, patent, trade secret, or other intellectual property right, or moral right or right of publicity); or (d) that otherwise violates, or encourages any conduct that would violate, any applicable



- law or regulation or would give rise to civil or criminal liability;
- 7.2.9. Customer will not use the Hosted Application to transmit, route, provide connections to or store any material that violate or promote the violation of any of the restrictions of subsection 7.2.8 above; and
- 7.2.10. CCH SFS' use of the Customer Data in compliance with subsection 2.3.1 shall not infringe, misappropriate or otherwise violate any intellectual property rights, or other rights, of any third party.
- 7.2.11. To the extent Customer needs to upload or transmit to CCH SFS's servers any Customer Data subject to the General Data Protection Regulation (EU) 2016/679, Customer shall first contact CCH SFS at [TCPPrivacySecurity@wolterskluwer.com](mailto:TCPPrivacySecurity@wolterskluwer.com) and CCH SFS shall provide Customer with an addendum to this Agreement setting forth the terms and conditions of CCH SFS's processing of such Customer Data pursuant to this Agreement.

## **8. WARRANTIES; INDEMNIFICATION; AND LIMITATIONS OF LIABILITY**

8.1. **CCH SFS' General Warranties.** Subject to subsection 8.2.2, CCH SFS represents and warrants that: (a) it has title to the Hosted Application or the right to grant Customer the rights granted hereunder; and (b) Customer's use of the Hosted Application in accordance with the terms of this Agreement will not violate any third party's United States patent, copyright or trade secret rights.

### **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, its employees, officers and directors, 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 in compliance with this Agreement) from and against any claims, demands, actions or proceedings by any third parties alleging that Customer's use of the Hosted Application as provided and permitted herein infringes or violates such third party's United States patent, copyright or trade secret rights; provided that: (a) CCH SFS is notified promptly in writing of the claim; (b) CCH SFS controls the defense, settlement and approval of the claim; and (c) Customer provides reasonable cooperation and assistance to CCH SFS (including all necessary authority and required information in connection with the defense or settlement of the claim).
- 8.2.2. CCH SFS' warranty obligations of subsection 8.1 or indemnity obligations under subsection 8.2.1 hereof will not apply if and to the extent that they arise from or relate to: (a) the access or use of the Hosted Application in violation of the terms of this Agreement; (b) the use of the Hosted Application in combination with any intellectual property, services, reports, documentation, hardware, software, data or technology not supplied by CCH SFS; or (c) any data or information, or other intellectual property supplied by Customer, an Authorized User or any third party.
- 8.2.3. If Customer has a warranty claim pursuant to subsection 8.1 or any Hosted Application 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: (a) procure for Customer the right to continue using such Hosted Application; or (b) replace the infringing portion of the Hosted Application 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 the Fees paid for the affected Subscription Term less an allocation for use made by Customer prior to the termination.
- 8.2.4. Subsection 8.2.3 states CCH SFS' entire liability and the sole and exclusive remedy of Customer, its employees, officers, directors and Affiliates and any Authorized User with respect to any warranty claim pursuant to subsection 8.1 or actual or claimed infringement or other violation of any third party's intellectual property rights.

8.3. **Indemnification by Customer.** 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 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 (which shall include, but not be limited to, breaches by its representatives, agents and Affiliates); or (b) except to the extent of claims for which CCH SFS is liable under this Section 8, Customer's use of the Hosted Application and/or any third party software, application or service.

- 8.4. Limited Warranty.** EXCEPT AS STATED IN SUBSECTION 8.1, THE HOSTED APPLICATION, SUPPORT AND SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED. CCH SFS DISCLAIMS AND EXCLUDES ANY AND ALL OTHER WARRANTIES INCLUDING ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IRRESPECTIVE OF ANY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE OF TRADE. CUSTOMER BEARS THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE HOSTED APPLICATION. CCH SFS DOES NOT WARRANT THAT THE HOSTED APPLICATION OR ANY COMPONENT THEREOF WILL BE UNINTERRUPTED, THAT THEIR USE OR OPERATION WILL BE ERROR OR DEFECT FREE, THAT THE HOSTED APPLICATION OR ANY COMPONENT THEREOF WILL ALWAYS BE ACCESSIBLE OR AVAILABLE, OR THAT ALL HOSTED APPLICATION DEFECTS WILL BE CORRECTED. CUSTOMER WILL BE SOLELY RESPONSIBLE FOR THE SELECTION, USE AND SUITABILITY OF THE HOSTED APPLICATION AND CCH SFS WILL HAVE NOT HAVE ANY LIABILITY RELATED THERETO.
- 8.5. Limitation of Liability and Damages.** NEITHER PARTY (AND, IN THE CASE OF CCH SFS, 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 HOSTED APPLICATION, SUPPORT AND/OR SERVICES. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO ANY VIOLATION OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS AS SET FORTH HEREIN. THE TOTAL LIABILITY OF CCH SFS AND ITS AFFILIATES, CONSULTANTS, DISTRIBUTORS, AGENTS, SUBCONTRACTORS AND LICENSORS TO CUSTOMER OR ANY THIRD PARTY RESULTING FROM OR ARISING OUT OF THIS AGREEMENT, THE HOSTED APPLICATION, SUPPORT AND/OR SERVICES FOR ANY AND ALL CLAIMS OR TYPES OF DAMAGES SHALL NOT EXCEED THE TOTAL FEES FOR THE HOSTED APPLICATION OR SERVICES PAID HEREUNDER BY CUSTOMER IN THE TWELVE-MONTH PERIOD PRECEDING THE DATE SUCH CLAIM OR CAUSE OF ACTION FIRST AROSE. CCH SFS is not an insurer with regard to performance of the Hosted Application. 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.
- 8.6 Internet Connectivity; Disclaimer.** CCH SFS (either itself or through a third party) will make the Hosted Application available for access via the Internet. Customer shall provide, at Customer's own expense, all necessary hardware, applications and Internet connectivity necessary to access the Hosted Application. Customer acknowledges that the Internet is known to be unpredictable in performance and may, from time to time, impede access to the Hosted Application or performance hereunder. Customer agrees that CCH SFS is not in any way responsible for any interference with Customer's use of or access to the Hosted Application arising from or attributable to the Internet and Customer waives any and all claims against CCH SFS in connection therewith.
- 8.7 Third Party Products.** "Third Party Product" means software, content, features, functionality and components, including related documentation, that are owned by third parties; or electronic filing and/or other products or services used in connection with the Hosted Application and offered through CCH SFS but provided by third parties. The Hosted Application may contain or be used in connection with Third Party Products. ALL RIGHTS AND OBLIGATIONS WITH RESPECT TO THIRD PARTY PRODUCTS SHALL BE

GOVERNED BY THE AGREEMENTS PROVIDED BY SUPPLIERS OF SUCH THIRD PARTY PRODUCTS. ALL THIRD PARTY PRODUCTS ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND BY CCH SFS. CUSTOMER HEREBY RELEASES CCH SFS FROM ALL LIABILITY AND RESPONSIBILITY WITH RESPECT TO THIRD PARTY PRODUCTS.

## **9. DISPUTE RESOLUTION**

- 9.1. **Audit.** Upon CCH SFS' written request, Customer must furnish CCH SFS with a signed certificate verifying that the Hosted Application is being accessed and used in compliance with all of the terms and conditions of this Agreement, including being accessed and used only by Authorized Users and to the extent permitted herein, by Clients. At its expense, CCH SFS, itself or by its third party agents, may audit Customer's compliance with the requirements of this Agreement. Any such audit will be conducted not more than once per calendar year and during regular business hours at Customer's facilities and will not unreasonably interfere with Customer's business activities. During any such audit CCH SFS 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 SFS determines that Customer has not paid the Fees required pursuant to this Agreement for Customer's access or use of the Hosted Application, Customer will be invoiced for such Fees, plus an additional 1.5% monthly interest rate, or the maximum lawful amount, of the unpaid Fees (dating back to the time when such fees should have been paid). Customer shall pay (directly or by reimbursing CCH SFS) 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 SFS provided by law or equity.
- 9.2. **Limitations Period.** Except for collection actions which may be brought by CCH SFS 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 Confirmation, or the subject matter hereof or thereof, whether based on contract, tort (including negligence) or otherwise, must be commenced within one (1) year from the date such claim or cause of action first arose.
- 9.3. **Jurisdiction.** This Agreement will be governed in all respects by the laws of the State of New York, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring the legal action or proceeding in a state or federal court located in New York, New York. Each Party waives, to the fullest extent permitted by law, (a) any objection which it may now or later have to the laying of venue of any action or proceeding arising out of or relating to this Agreement brought in the in a state or federal court located in New York, New York, and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
- 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 CONFIRMATION OR THE SUBJECT MATTER HEREOF OR THEREOF.
- 9.5. **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.
- 9.6. **Remedies.** Customer acknowledges that the Hosted Application 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 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 Attn: Legal Department, Universal Tax Systems, Inc. d/b/a CCH Small Firm Services, 225 Chastain Meadows Ct. NW, Suite 200, Kennesaw, GA 30144. 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.
- 9.8. **Severability.** If any provision of this Agreement is held to be invalid, illegal or unenforceable, such provision shall be, to the maximum extent permitted by applicable law, construed or limited, and/or deemed replaced by a revised provision, to the extent (and only to the extent) necessary to render it valid, legal and enforceable and, as nearly as possible, to reflect and achieve the parties' intentions in agreeing to the original provision. If it is not possible to so construe, limit or reform any such provision, then the invalid, illegal or unenforceable provision shall be severed from this Agreement. In any event, the remaining provisions of this Agreement shall be unaffected thereby and shall continue in full force and effect.
- 9.9. **Waiver.** A party's failure or delay to require compliance with any term of this Agreement, or to exercise any right provided herein, shall not be deemed a waiver by such party of such term or right. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition set forth in 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 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 may be required by applicable law or regulation, all non-public information furnished or disclosed to the other pursuant to this Agreement (excluding Customer Data which shall be governed by subsection 2.3 of this Agreement), including the terms of Customer's Order Confirmation(s) and proprietary information within the Hosted Application (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 set forth in this Agreement. Each party will be deemed to have fulfilled its confidentiality obligations of 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. **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. CCH SFS will use information and data submitted to CCH SFS or developed in the course of providing the Hosted Application and/or Services to compile statistical data in a de-identified aggregate manner with data of third parties. This statistical data shall be the property of CCH SFS and not deemed Confidential Information of Customer. Moreover, CCH SFS will have

the right to use, sell and distribute such statistical data in other areas of the Hosted Application, including and not limited to, any benchmarking features that may be available in the Hosted Application.

10.3. **Expiration.** Upon termination or expiration of this Agreement, both parties agree to destroy all copies of written Confidential Information. Notwithstanding any of the foregoing, CCH SFS shall be entitled to keep copies of Confidential Information (a) 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 (b) 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 set forth in this Section 10.

## 11. MISCELLANEOUS

11.1. **Entire Agreement.** This Agreement, along with the Order Confirmation(s) and any other terms 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 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 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 about the Hosted Application, Support and/or Services will not constitute warranties, will not be relied on by Customer, and will not be binding or enforceable. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by CCH SFS and Customer after reasonable opportunity to accept or reject such supplement, modification or amendment, provided that CCH SFS may supplement this Agreement if such supplement is a clarification or is otherwise not adverse to Customer. CCH SFS reserves the right to revise this Agreement from time to time in its discretion, provided that any such revisions shall not be effective with respect to Customer until the commencement of Customer's next renewal term, if any.

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

11.3. **Force Majeure.** CCH SFS shall not be held liable for the failure to perform any obligation, or for the delay in performing any obligation, arising out of or connected with this Agreement if such failure or delay results from or is contributed to by any cause beyond its reasonable control including failures or delays caused by the act or omission of any governmental authority, fire, flood, failures of third party suppliers, acts or omissions of carriers, transmitters, providers of telecommunications or Internet services, vandals, hackers or other event beyond its reasonable control.

11.4. **Export Restrictions.** Customer is advised that the Hosted Application may be subject to access and export controls under United States laws and regulations, including the U.S. Export Administration Regulations, and diversion contrary to U.S. law and regulation is prohibited. Customer agrees to not directly or indirectly access, export, import or transmit the Hosted Application from or to any country, end user or for any end use that is prohibited by any applicable U.S. regulation or statute (including

those countries embargoed from time to time by the U.S. government or the United Nations). Additionally, Customer agrees to not directly or indirectly access, export, import, transmit or use the Hosted Application contrary to the laws or regulations of any other governmental entity that has jurisdiction over such access, export, import, transmission or use. Customer represents and agrees that neither the United States Bureau of Industry and Export Administration nor any other governmental agency has issued sanctions against Customer or otherwise suspended, revoked or denied Customer's export privileges.

**11.5. Modification/Replacement of Hosted Application.** CCH SFS reserves the right, in its sole discretion and without first consulting with Customer, to discontinue or modify the Hosted Application or any component thereof for any reason.

**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 SFS and Customer shall be the only parties entitled to enforce the terms of this Agreement.

**11.7 Assignment.** Neither this Agreement, the rights granted hereunder nor the Hosted Application may be sublicensed, assigned, sold, hypothecated, or transferred by Customer without the prior written consent of CCH SFS, 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 set forth in this Agreement without the prior written consent of CCH SFS shall automatically terminate the rights granted hereunder and shall be void and of no effect. CCH SFS may assign this Agreement or delegate its duties, in whole or in part, without any consent of Customer. Customer agrees that CCH SFS' retention of these contractual and other legal rights is an essential part of this Agreement.

**11.8 No Construction Against Drafter.** Each of the parties hereto acknowledges that it has had the opportunity to be represented by independent counsel of its choice prior to entering into this Agreement. As a consequence, the parties agree that in construing this Agreement, no provision hereof shall be construed in favor of one party on the ground that such provision was drafted by the other.

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