Cre8tive General Terms and Conditions

The following General Terms and Conditions and any Solution specific Terms and Conditions govern Agreements and Amendments between Cre8tive and its customers and are effective on the date set forth in the Statement of Work ("SoW"), Work Authorization ("WA"), Change Order, Amendment or Subscription. The Solution specific Terms and Conditions may be located at www.ctnd.com/legal/. These General Terms and Conditions and the Solution specific Terms and Conditions are incorporated into the applicable SoW, WA, Change Order or Amendment (individually or jointly the "Agreement").

1.   DEFINITIONS

1.1.   **"Affiliate"** means any entity or individual that directly or indirectly Controls, is Controlled by, or is under common Control with the applicable entity.

1.2.   **"Agreement" means a Statement of Work, Work Authorization, Change Order, Amendment or Subscription and these General Terms and Conditions and any Solution specific terms and conditions.**

1.3.   **"Cloud"** means information and resources retrieved from the internet through web-based tools and applications rather than a direct connection to a server.

1.4.   **"Control" or "Controlled,"** means direct or indirect ownership or control of more than fifty present (50%) of the voting interest in the applicable entity.

1.5.   **"Cre8tive"** means Cre8tive Technology and Design, a California corporation with headquarters located at 4660 La Jolla Village Drive, Suite 100, San Diego, CA 92122.

1.6.   **"Customer"** means the entity or individual named as the Customer on the signature page to an Agreement.

1.7.   **"Customer Data"** means all electronic information provided by Customer to Cre8tive, its employees or subcontractors, including electronic information submitted by Customer to and stored as part of those Software as a Service (SaaS), hosting, application management and/or other managed service's Products performed by Epicor or Cre8tive or their suppliers to process such information.

1.8.   **"Customization"** means Developed Software solutions owned by Cre8tive and utilized in connection with this Agreement and/or custom software code created by Cre8tive and used in connection with an Agreement and/or as specified in a Statement of Work.

1.9.   **"Customization Maintenance"** means the maintenance and support services Cre8tive provides for a Customization, when available, as described in a Customization Maintenance SoW.

1.10.   **"Deliverables"** means the Solutions and Documentation, and any tangible and intangible materials, including reports, studies, base cases, drawings, findings, manuals, procedures, and recommendations that are prepared by Cre8tive or its subcontractors in the course of furnishing the Solutions and Documentation.

1.11.   **"Developed Software"** means any custom developed software or modifications to the Software pursuant to a Statement of Work or Work Authorization for Customer.

1.12.   **"Documentation"** means Cre8tive's user documentation, standard read-me and online help and training materials, and if applicable, materials provided by Epicor in connection with a specific Product.

1.13.   **"Engagement"** means an agreement with a customer to provide a Service or Solution.

1.14.   **"Hosting" and "Hosting Agreement"** means Cre8tive Managed Services' hosting of Customer's Epicor and Customization software at a data center as provided in the Cre8tive Hosting and Managed Services Agreement.

1.15.   **"Malicious Code"** means a virus, worm, time bomb, Trojan horse or any other similar harmful or malicious code.

1.16.   **"Modification"** means a modification alteration, addition, derivative work, derivation, enhancement and/or improvement of any kind to or from or based on or related to the Deliverable, and/or any part thereof, in any form or format. Cre8tive does not modify the base Epicor Software.

1.17.   **"Product" means any product or service offered by either Cre8tive or Epicor to Customer under an Agreement or Epicor Order.**

1.18.   **"Services"** means the professional services to be furnished by Cre8tive to Customer in connection with an Agreement and/or as specified in a Statement of Work, Work Authorization, Change Order or Amendment but excludes Subscription Services.

1.19.   **"Site"** means the location connected to the Internet where Customer accesses software licensed from Cre8tive or Epicor.

1.20. **"Software"** means the specific application software products or modules licensed by Epicor to Customer and/or furnished as part of Subscription Services as set forth in a SoW, WA, Change Order or Amendment.

1.21. **"Software Update"** means a patch, workaround, improvement, correction, modification, or derivative to the Software that is made generally available by Epicor as part of a Support subscription or Subscription Services.

1.22. **"Solution"** means Software as a Service (SaaS), on-premises Software, Consulting Services, Customizations, Customization Support, Customer Care, and/or Hosting. "Solution specific" refers to an individual Solution purchased by a Customer under a SoW.

1.23. **"Specification"** means a document that provides the details of the functionality and specifications of the Developed Software.

1.24. **"Statement of Work" or "SoW"** means Cre8tive's standard form for ordering Solutions and Services and to which these Terms and Conditions are attached.

1.25. **"Subscription Services"** means software delivered on a "software as a service" (SaaS) basis and application management or similar services performed on subscription or recurring basis as set forth in a Statement of Work, Work Authorization, Change Order or Amendment.

1.26. **"Support" and "Support Contract"** means the maintenance and support services Cre8tive provides for the Software licensed hereunder or furnished as part of the Subscription Services as described in a "Software Support" SoW.

1.27. **"Support Fees"** are the fees charged for Support and are contained in the Statement of Work, Work Authorization, Change Order or Amendment.

1.28. **"Support Term"** is the amount of time set forth in the Software Support SoW.

1.29. **"Terms of Service" are the terms and conditions for SaaS solutions. It may also refer collectively to all terms and conditions.**

1.30. **"Third-Party Software"** means Software that is licensed by Customer directly from a third-party vendor under a separate license or similar agreement and/or maintenance and support agreement (as denoted on an SoW, WA, Change Order or Amendment) even if Epicor arranges for the license of such third-party software to Customer and invoices Customer for such third-party software.

1.31. **"Work Authorization" or "WA"** means the short-form document describing the Services and Fees which these Terms and Conditions govern.

2.   AMENDMENT AND CONFLICT.

In the event of any conflict with a SoW, WA, Change Order or Amendment, the General Terms and Conditions ("GTC") or the Solution specific Terms and Conditions, the following order of precedence will govern, with low numbers governing over higher numbers, (1) an Amendment that specifically states its intent to modify the GTC or the Solution specific Terms and Conditions and cites the section or sections amended, (2) the Solution specific Terms and Conditions,   (3) the Statement of Work, WA, Change Order or Amendment, with more recent SoW, WA, Change Order or Amendment taking precedence over earlier ones, and (4) the GTC. No SOW, WA, Change Order or Amendment or other attachment incorporated into an Agreement after execution will be construed to amend the Agreement unless it specifically states its intent to do so and cites the section or sections amended. Any modification to these GTC or Solution specific Terms and Conditions must be by an Amendment signed by an authorized representative of Cre8tive.

3.   ACCEPTANCE OF TERMS AND CONDITIONS.

Customer confirms that it understands that use of Cre8tive' Solutions is conditioned upon your acceptance of the General Terms and Conditions ("GTC") and specifically the Solution specific Terms and Conditions, and you agree to be bound by them. The GTC, the Solution specific Terms and Conditions and any Amendments are binding on Customer with respect to Customer's use of or access to Cre8tive's Solutions set forth below. Customer acknowledges and agrees that 1) when Customer orders SaaS provided by Cre8tive, the SaaS Terms of Service in addition to the GTC will apply, 2) when Customer orders Services provided by Cre8tive, the Service Terms and Conditions in addition to the GTC will apply, 3) when Customer orders Hosting provided by Cre8tive, the Hosting Terms and Conditions in addition to the GTC will apply, 4) when Customer orders on premises Software provided by Cre8tive, the Software Terms and Conditions in addition to the GTC will apply, and 5) when Customer is subscribed to the Customer Care Program the Customer Care Program Terms and Conditions in addition to the GTC will apply.

4.   FEES AND HOURLY RATE.

Fees and Hourly Rate shall be designated on the SoW, WA, Change Order or Amendment.

5.   PAYMENT TERMS.

Cre8tive utilizes a "block billing" system. Payment terms require an initial advance payment ("IAP") as set forth in a SoW, WA, or Change Order. For SoW, WA's and Change Orders for which the IAP is less than the full budgeted contract amount, all remaining consulting, implementation, development, and other services, or charges, required for implementation, customization, integration, support or maintenance of Customer's Epicor ERP system will be billed in advance in block billing segments ("Advance Payments"). The amount of the Advance Payment shall be set forth in a SoW, WA, or Change Order.

The IAP is due upon execution of the SoW, WA, or Change Order. No work will be scheduled until receipt of the IAP. The quoted hourly rate for Services will be billed against the IAP (and subsequent Advance Payments).

The IAP is nonrefundable in the event of project cancellation or delay greater than six (6) months in the implementation of the SoW, WA, or Change Order. Advance Payments are nonrefundable, but unused portions may be credited against other Cre8tive Services or products, including CCP, at Cre8tive's sole discretion.

Upon utilization of 60% of the IAP, or Advance Payment, Customer will be invoiced for an additional Advance Payment. The additional Services will only be scheduled upon receipt by Cre8tive of the Advance Payment (and executed Change Order, if required).

Travel time and expenses are not included in the budget, will be invoiced separately, and will not be billed against the IAP and Advance Payments.

All time related to an engagement is chargeable; this includes but is not limited to email communications, phone calls, research, and training.

All payments are due within fifteen (15) days following the date invoiced. Unless otherwise specified, all billings and payments are in United States currency.

6.   PROPRIETARY RIGHTS; OWNERSHIP; CUSTOMER LICENSE; REVERSE ENGINEERING

6.1.   Deliverables. If the Services deliverables include Developed Software, we retain full and exclusive rights and ownership in the Developed Software and all related intellectual or proprietary rights therein and hereby grant to you a non-exclusive, fully-paid license to use, copy and modify the Developed Software in connection with your use of the base software ("Software") licensed from Cre8tive or its affiliated companies pursuant to a valid End User License Agreement ("License Agreement") solely for your internal business purposes. The use of the Developed Software is subject to Software use restrictions contained in the License Agreement. Except as otherwise set forth in Section 7 below, the Developed Software is licensed on an "AS IS" basis. All Developed Software is supported by the Customer Care Program and is subject to the separate Customer Care Program Terms and Conditions located on the Website. Customer's decision to terminate the subscription to the Customer Care Program will result in all maintenance services being provided on a time and materials basis.

6.2.   Cloud Based Solution Offerings. If the Developed Software is a Solution developed by Cre8tive and placed in the Solution Offerings for the Cloud ("Cloud Solutions"), the Cloud Solutions environment are fully owned by Cre8tive and Cre8tive retains full and exclusive rights and ownership in the Cloud Solutions, the underlying code and all related intellectual or proprietary rights therein and Cre8tive hereby grant to Customer the right to access and use the Cloud Solutions in connection with your use of the Cloud Solutions licensed from Cre8tive or its affiliated

companies pursuant to a valid License Agreement. You may not modify, use for other purposes, or resell the Solutions.

6.3.   Enhancements. In the course of performing the Services, we may use enhancements, processes, methods, designs and know-how whether copyrightable or patentable that we conceived during the course of other engagements. Cre8tive shall be free to use and employ its general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of an Engagement or in connection with the delivery and installation of a Cre8tive Solution, so long as we acquire and apply such information without disclosure of any confidential information of Customer. In addition, we may independently develop enhancements, processes, methods, designs or know-how during the term of an Engagement, all of which shall be the property of Cre8tive, and you acknowledge that we may use such enhancements, processes, methods, designs and know-how in our business operations with other customers provided that such usage does not disclose any of your Confidential Information (defined below).

6.4.   Prohibited Actions-Reverse Engineering. You agree not to reverse engineer, modify, decrypt, extract, disassemble, copy, or decompile the Developed Software or Solution Offerings, or permit anyone else to do so, provided however that you may make as many back-up copies of the Developed Software as may be necessary for its lawful use and (a) in the case of de-compilation, you may incidentally de-compile the Developed Software only to the extent that it is essential to do so in order to achieve interoperability of the Developed Software with another software program; and (b) the information obtained by you during such de-compilation is only used under the terms of the Agreement and is not disclosed or communicated to any third party to whom it is not necessary to disclose or communicate such information without our prior written consent and is not used to create any software that is substantially similar to the expression of the Developed Software nor used in any manner that would be restricted by copyright. You also agree not to disclose the terms of any Solution or Service pricing, or Deliverables to any competitor of Cre8tive without Cre8tive's prior written approval, which may be withheld in Cre8tive's sole discretion.

6.5.   Trademark and Copyright Notices. Customer shall not remove, alter, or destroy any proprietary, trademark or copyright notices placed upon or contained within any Deliverables. Customer does not and shall not acquire any rights of any kind in or to any trademark, trade name, logo or product designation under which a Deliverable was or is marketed and may not make any use of the same for any purpose.

6.6.   Customer Data. Customer agrees that it will not share any Personally Identifiable Information, Sensitive Data or Customer Data, In the event Customer Data is supplied it must be approved in advance by Cre8tive. Customer agrees that Cre8tive and its Affiliates and subcontractors may use Customer Data anywhere in the world for the sole purpose of administering and performing Cre8tive's obligations and services under an Agreement and Cre8tive and its Affiliates and subcontractors will do so in accordance with all applicable laws. Customer is and shall be (a) responsible for its users' compliance with the Agreement, and (b) solely responsible for the accuracy, quality, integrity, and legality of the Customer Data and of the means by which Customer acquires the Customer Data.

6.7.   Usage Restrictions. Customer shall use the Deliverables only in accordance with the Documentation, and in the case of Subscription Services, any reasonable policies, and procedures and/or acceptable use policies communicated by Cre8tive or Epicor in writing (including by website link) as may be in effect from time to time. Customer shall not use the Deliverables for any purpose that may:

6.7.1.   menace or harass any person or cause damage or injury to any person or property;

6.7.2.   involve the publication of any material that is false, defamatory, harassing, or obscene;

6.7.3.   violate privacy rights or promote bigotry, racism, hatred, or harm;

6.7.4.   constitute unsolicited bulk email, "junk mail," "spam," or chain letters;

6.7.5.   constitute an infringement of intellectual property or other proprietary rights; or,

6.7.6. otherwise violate applicable laws, ordinances, or regulations. In addition to any other rights afforded to Cre8tive under this Agreement, Cre8tive reserves the right to remove or disable access to any material that violates the foregoing restrictions.

6.8.   High Risk Use. The Deliverables are not fault-tolerant and are not designed or intended for use in hazardous environments, including without limitation, in the operation of aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles or weaponry systems, or any other application in which failure of the Deliverables could lead to death or serious bodily injury of a person, or to severe physical or environmental damage (each, a "High Risk Use"). Cre8tive and its suppliers expressly disclaim any express or implied warranty or representation of fitness for High-Risk Use.

6.9.   Epicor ERP and Third-Party Applications. Customer's use of Epicor's ERP software is subject to Epicor's Order Form, Master Terms and Conditions, Software Subscription License Supplement or SaaS Services Supplement. Third-Party Applications, including Third-Party Applications furnished by Epicor, may be subject to separate or additional terms and conditions provided by the supplier thereof. Notwithstanding anything to the contrary otherwise specified herein, Cre8tive makes no warranties of any kind, express or implied, nor offers any indemnification with respect to Epicor and Third-Party Applications.

7.   WARRANTIES AND DISCLAIMERS

Additional Express Warranty. In addition to Solution or service specific warranties we warrant that (i) we have full power and authority to enter into the Agreement and perform the Services contemplated herein, (ii) each of our employees or contractors assigned to perform services hereunder shall have the proper skill, training, and background so as to be able to perform the Services in a competent and professional manner, and (iii) that all Services will be performed consistent with generally accepted industry standards.

8.   CONFIDENTIALITY

8.1.   Confidential Information. Because of this engagement the parties may have access to information that is confidential to one another ("Confidential Information"). Confidential Information shall mean and include any information and/or data, whether disclosed before or after the date of the Agreement, including, but not limited to any kind of business, commercial or technical information and data concerning the party's business prospects, strategy, business objectives, business transactions, financial arrangements, operations, systems and organization, deliverables, methods, standards, specifications, concepts, ideas, plans, projects, programs or procedures, trade secrets, know-how, lists, notes, drawings, reports, software, databases, development methods, system design or any other information of or relating to its business, in any tangible medium of expression, disclosed in connection with this Agreement. Confidential Information shall include copies or abstracts made thereof as well as any modules, samples, prototypes, or parts thereto. Confidential Information shall not include any information that (a) is already known to the recipient or its affiliates or received by any of them from a third party, free of any obligation to keep it confidential; (b) is or becomes publicly known through no wrongful act of the recipient or its affiliates; (c) is independently developed by the recipient or its affiliates; or (d) is approved for release by prior written authorization of the disclosing party.

8.2.   Protection. Each party agrees to maintain the confidentiality of the Confidential Information and to protect as a trade secret any portion of the other party's Confidential Information by preventing any unauthorized copying, use, distribution, or transfer of possession of such information. Each party agrees to maintain at least the same procedures regarding Confidential Information that it maintains for its own Confidential Information, but in no event will such procedures be less than commercially reasonable. Without limiting the generality of the foregoing, neither party will permit any of its personnel to remove any proprietary or other legend or restrictive notice contained or included in any material provided by the discloser and the recipient shall not permit its personnel to reproduce or copy any such material except as expressly authorized hereunder. One party's Confidential Information may only be used by the other party and its representatives to fulfill its obligations under the Agreement.

8.3.   Compelled Disclosure. Notwithstanding anything to the contrary in this Section 8, a party may disclose Confidential Information as required by law, including by a court of competent jurisdiction or government body or regulatory authority; provided however, that in the event of a proposed disclosure the recipient shall promptly notify

the discloser of its disclosure obligation, and shall work with the discloser to obtain an appropriate protective order to preserve the confidential nature of such information prior to making such disclosure, and the parties shall co-operate in good faith regarding the timing and the content of any such disclosure.

8.4.   Injunctive Relief. Both parties acknowledge that any use or disclosure of the other party's Confidential Information in a manner inconsistent with the provisions of the Agreement may cause the non-disclosing party irreparable damage for which remedies other than injunctive relief may be inadequate, and both parties agree that the non-disclosing party may request injunctive or other equitable relief seeking to restrain such use or disclosure. The terms and provisions of this Section 8 shall survive any termination of the Agreement for any reason until the Confidential Information ceases to be considered confidential under Section 8.1.

9.   TERM AND TERMINATION

9.1.   Term. The term of an Agreement shall commence on the date signed by us and, unless earlier terminated as provided below, shall continue until completion of the Services or delivery of the Solution. The Agreement will terminate automatically upon our written notice to you if you present a petition or have a petition presented by a creditor for your winding-up or you convene a meeting to pass a resolution for voluntary winding-up, or enter into any liquidation (other than for the purposes of a bona fide reconstruction or amalgamation), or have a receiver of all or any of your undertakings or assets appointed, or are deemed by the relevant statutory provisions under the applicable law to be insolvent or unable to pay your debts.

9.2.   Cancellation for Breach. In the event of any breach of any material term or provision of the Agreement by either party, the other party may cancel the Agreement by giving 30 days prior written notice thereof; provided, however that the Agreement shall not terminate at the end of the 30-day notice period if the party in breach has cured the breach to the reasonable satisfaction of the other party prior to the expiration of the 30-day period.

9.3.   Termination for Convenience. For services other than the Customer Care Program and Managed Epicor Solution Program ("MESP") and the Managed PLM Support Program ("MPLMSP") P and Support Services, you may terminate the Agreement without cause upon 90 days prior written notice to us. In such case, you are responsible for payment of all Services rendered prior to the date of termination.

9.4.   Cessation of Services for Non-payment. For services other than Managed Services and Support Services, we may terminate the Agreement without notice or stop rendering Services to you if any undisputed invoice is unpaid for a period greater than 30 days following its due date.

9.5.   Maintenance and Support Services Termination. Please see the Solution specific Terms and Conditions.

9.6.   Customer Care/ MESP, MPLMSP Program Termination. Please see the Customer Care Program Terms and Conditions.

9.7.   Survival of Provisions After Termination. Termination or expiration of the Agreement will not affect the provisions of the Agreement relating to the payments of amounts due or the provisions of Sections 6, 7, 8, 9, 10, 11, 12 and 14 of these Terms and Conditions, all of which survive termination or expiration of the Agreement, regardless of reason.

10.   LIMITATION OF LIABILITY; INDEMNIFICATION

10.1.   Exclusion of Certain Damages. THE PARTIES AGREE THAT, TO THE FULLEST EXTENT PERMISSIBLE UNDER LAW, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER FOR ANY DIRECT OR INDIRECT LOSS OF PROFITS OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOST SAVINGS, LOSS OF USE OR LOSS OF DATA) ARISING OUT OF THE AGREEMENT OR WITH RESPECT TO THE SERVICES, SUBSCRIPTION SERVICES OR DEVELOPED SOFTWARE, WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHER FORM OF ACTION EVEN IF THE PARTY HAS BEEN APPRISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS

SECTION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10.2.   Limitation of Liability. The parties hereto specifically agree that except for the amounts properly payable to Cre8tive hereunder, the total liability of either party to the other for damages under the Agreement will not exceed the sum of the fees paid by you to us hereunder for the (a) Services or Subscription Services paid by Customer to Cre8tive during the immediately preceding 12-month period; (b) maintenance and support fees paid by Customer to Cre8tive for the then current Support term, or, (c) Hosting fees paid by Customer to Cre8tive for the then current Hosting term.

10.3.   Exceptions. The limitations described in Sections 10.1 and 10.2 shall not apply with respect to (a) losses resulting from death or personal injury due to a party's negligence, (b) a party's breach of its obligations under Section 6 (Proprietary Rights; Ownership; Customer License; Reverse Engineering), Section 8 (Confidentiality), or Section 14.7 (Export).

10.4.   Reliance. Cre8tive and Customer have not relied upon and agree they will have no remedy arising from any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether a party to an Agreement or not) other than as expressly set out in an Agreement.

11.   SCHEDULING.

You acknowledge that we schedule our consultants in advance and that we would incur significant expenses, including downtime of those consultants, if we are not able to reschedule them as a result of your cancellation of Services scheduled to be performed. **Therefore, you agree that if both parties agree to a scheduled date, you will not cancel that date without giving us written notice at least 15 business days prior to the scheduled date**. We reserve the right to bill against the IAP or Additional Payment an amount equal to 50% of the daily rate of the scheduled consultants that were to begin on the scheduled date for the number of days cancelled to the extent the consultants are not able to be redeployed by us. All non-reimbursable travel expenses or change fees will be invoiced. Any such invoice is payable in accordance with Section 5 above. You will also be responsible for any additional reasonable out of pocket and travel expenses incurred as a result of such cancellation that could not be avoided or reduced by us.

12.   NON-SOLICITATION.

Each party acknowledges that the other provides a valuable service by identifying and assigning personnel to the consulting engagement contemplated by this Agreement and would be deprived of the benefits of its work force if the other party were to hire away its personnel after having been introduced as a consequence of the engagement. Accordingly, to the extent permissible under applicable law, during the course of the consulting engagement and for 1 year after completion of the Services, neither party will directly or indirectly through a third party solicit, recruit, or offer employment as an employee, independent contractor or consultant, to the other party's personnel that performed work in connection with the engagement without the written consent of the other. This provision does not restrict the right of a party to conduct non-targeted job searches or recruitment generally in the media or online, or to hire an employee or independent contractor who, as conclusively demonstrated in writing by the hiring party, (i) responds to such searches, (ii) voluntarily applied for hire or engagement without having been initially personally solicited by or on behalf of the party, or (iii) has not been an employee or subcontractor of the other party or its Affiliates or subcontractors for six or more months. I If a party hires personnel of the other party in contravention of this Section, the hiring party shall pay the other party promptly following such hiring, an amount equal to 50% of the total first-year compensation to be paid by the hiring party to such personnel as a fee for the additional benefit obtained by the hiring party such amount being a genuine pre-estimate by the parties of liquidated damages and not a penalty.

13.   YOUR RESPONSIBILITIES (INCLUDING ITAR COMPLIANCE).

13.1.   You will make available, in a timely manner at no charge to us, all technical data, computer facilities, programs, files, documentation, test data, sample output, and suitable office accommodation reasonably required

by us to perform the Services. The workplace shall be open during ordinary business hours and business days. You will be responsible for, and assume the risk of, any problems resulting from the content, accuracy, completeness, and consistency of all such data, materials, and information you supply. We do not warrant the success of your software implementation but agree to use commercially reasonable efforts to ensure success. You acknowledge that a successful software implementation requires your cooperation, the cooperation of your employees, the devotion of sufficient internal resources with appropriate skill levels, adherence to the schedule and a detailed implementation work plan (which addresses such topics as data migration, and user education and training). You also acknowledge that you are responsible to test all Developed Software deliverables within 5 business days of receipt to validate they are functioning correctly.

You will be responsible to supply the following material and services:

13.1.1. Remote access via Remote Workstation, to a workstation that has all necessary software loaded on it to perform any of the listed tasks.

13.1.2. Full Administrative access to all Software necessary for completion of the Scope of Work.

13.2. International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR). If Customer is a U.S. company that engages in the business of either manufacturing or exporting defense articles or furnishing defense services, Customer hereby certifies that it has registered with the U.S. Department of State Directorate of Defense Trade Controls and understands its obligations to comply with International Traffic in Arms Regulations and the Export Administration Regulations. Customer shall be responsible for the control of, disclosure of, and access to technical data, regulated information and other items received under an Agreement in accordance with ITAR and EAR. Customer agrees that no technical data, regulated information or other items provided by Customer in connection with the Agreement to which these General Terms and Conditions apply shall be provided to any foreign persons or to a foreign entity, including without limitation, a foreign subsidiary of either Customer or Cre8tive, without the express written authorization of Cre8tive. Customer acknowledges that they are solely responsible for obtaining the appropriate export license, technical assistance agreement or other requisite documentation for ITAR-controlled technical data or items. It shall be the sole responsibility of Customer to determine whether the information provided by Customer is technical data as outlined in the ITAR (22 CFR 120-130) prior to any release to Cre8tive or Cre8tive's agents or subsidiaries. Customer shall indemnify Cre8tive for all liabilities, penalties, losses, damages, costs, or expenses that may be imposed on or incurred by Cre8tive in connection with any violations of such laws and regulations by Customer.

14. MISCELLANEOUS.

14.1. No Waiver. Any failure by either party to enforce at any time or for any period of time the provisions of these General Terms and Conditions or an Agreement shall not be construed as a waiver of such provision, or of the right to enforce that provision.

14.2. Injunctive Relief. Each of us agrees that any material breach of an Agreement may cause the other party irreparable harm, and that such non-breaching party may seek injunctive relief.

14.3. Severability. In the event any part of an Agreement is held to be unenforceable, that shall not affect the enforceability of the remaining provisions.

14.4. Binding on Successors. An Agreement will be binding on and will inure to the benefit of the heirs, executors, administrators, successors, and assignees of the parties hereto, but nothing in this sentence will be construed as consent to any assignment of the Agreement except as provided below.

14.5. Assignment. Neither party may assign or otherwise transfer an Agreement without the other party's prior written consent. However, a party may, without the other party's consent, (a) assign an Agreement to a subsidiary or affiliate, provided the assigning party remains liable for such entity's performance, and (b) assign an Agreement to another entity pursuant to a merger, consolidation or acquisition of all or substantially all of the assigning party's

assets; provided that in each case the assigning party notify the other party of the assignment in writing and the assignee agrees to be bound by the terms of the Agreement.

14.6.   Taxes. All prices are exclusive of all applicable country, provincial, state, county and local sales, use, value added, excise, privilege, franchise, and similar taxes ("Tax or Taxes"). Customer shall be responsible for all Taxes however designated or levied, against the sale, licensing, delivery, or use of the Solutions (other than Taxes based upon Cre8tive's net income). Taxes shall not be deducted from the payments made to Cre8tive, except as required by law, in which case Customer shall increase the amount payable as necessary so that after making all required deductions and withholdings, Cre8tive receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made.

14.7.   Export. The Services and other deliverables we make available, and derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. You agree to comply with all applicable laws and regulations restricting import, export, re-export, transfer or release of the Services and deliverables to certain entities or destinations, including not using or otherwise permitting access to the Deliverables in or from a US-embargoed country or in violation of any U.S. Export law or regulation. Each party represents that it is not named on any U.S. government denied-party list. If you breach this Section, we may terminate an Agreement and all licenses granted thereunder immediately upon written notice to you.

14.8.   Anti-Corruption. You have, and you shall have, not received, or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you will use reasonable efforts to promptly notify us.

14.9.   Notice(s). Any notice or other communication required or permitted in the Agreement shall be in writing and shall be deemed to have been duly given on the day of service if served personally or by overnight courier or by facsimile transmission with confirmation, or 5 days after mailing if mailed by First Class mail, registered or certified, postage prepaid, and addressed to the respective parties at the addresses set forth elsewhere in the Agreement or at such other addresses as may be specified by either party pursuant to the terms and provisions of this paragraph.

14.10.   Force Majeure. Neither party shall be responsible for failure to perform in a timely manner under the Agreement when its failure results from any of the following causes: acts of God or public enemies, civil war, delay of carriers, terrorism, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

14.11.   UN Convention on Contracts Not Applicable. The Agreement to which these General Terms and Conditions govern is not to be governed by the United Nations Convention on Contracts for the International Sales of Goods.

14.12.   Conflict. To the extent the specific terms of a Statement of Work, Work Authorization, Change Order or Amendment incorporated into an Agreement state they intend to modify or conflict with the terms of Paragraphs 1 through 14 herein, the specific provision contained therein shall modify these paragraphs to the extent of the modification or conflict.

14.13.   Independent Contractor. We are acting as an independent contractor under the Agreement. Neither party is, or shall be deemed for any purpose to be, an employee or agent of the other and neither party shall have the power or authority to bind the other party to any contract or obligation. We retain the right to perform work for others during the term of the consulting engagement, Services, Hosting or Subscription term.

14.14.   Choice of Law; Venue. This Agreement shall be governed and construed in accordance with the laws of the State of California, without regard to its conflict of laws and principles. All suits arising out of or related to an Agreement for which these General Terms and Conditions govern shall be filed in the Superior court or Federal court in San Diego County, California, and the party's consent to the jurisdiction of such court.