



Terms and Conditions of Sale

(Products & Professional Services)

1. INTRODUCTION AND ACCEPTANCE OF PRODUCTS AND PROFESSIONAL SERVICES TERMS AND CONDITIONS OF SALE. PLEASE READ THESE TERMS AND CONDITIONS OF SALE (hereinafter the “**Terms of Sale**”) CAREFULLY, AS THEY ARE PART OF THE AGREEMENT BETWEEN CLIENT (AS HEREINAFTER DEFINED) AND CBI. For purposes of these Terms of Sale, “CBI” means Creative Breakthroughs, Inc., a Michigan corporation and/or its subsidiaries, and the term “Client” refers to the individual or company that is named in the Purchase Order (“**PO**”), Quotation (“**Quote**”), or Statement of Work (“**SOW**”) or any other routine document, by and between CBI and Client. CBI and Client are each referred to hereinafter individually as a “**Party**” and collectively as the “**Parties.**”

1.1 Order and Acceptance. Each PO, Quote or SOW issued by CBI (collectively “**CBI Offer Document**”) is an offer to sell software, hardware, and Services Sold by Part Number (collectively “**Products**”) and/or professional services (the “**Services**”) to Client for its own internal use and not for resale, and includes and is governed by these Terms of Sale. For the avoidance of doubt, the term “Services Sold by Part Number” refers to services, which, although ordered from CBI, are purchased from and supplied by a separate vendor (i.e., CBI does not directly perform or control the work) and are therefore considered Products. The CBI Offer Document and these Terms of Sale shall be deemed accepted by Client, upon CBI’s receipt from Client, of a PO, a signed Quote, or a signed SOW, or any other documentation or conduct that evidences the existence of a contract with respect to the Products and/or Services that are the subject of a CBI Offer Document. These Terms of Sale and the applicable CBI Offer Document, or other routine document shall not be construed in favor of or against either Party. Acceptance of a CBI Offer Document and these Terms of Sale are expressly limited to the terms contained in the applicable CBI Offer Document and these Terms of Sale. CBI rejects any terms and conditions contained in Client’s documents or terms and conditions that are additional to or different from those set forth in any CBI Offer Document or in these Terms of Sale.

1.2 Order of Precedence. These Terms of Sale shall govern in the event of any inconsistencies or ambiguities between these Terms of Sale and the terms of any CBI Offer Document. Subject to the last two sentences of Section 1.1 above, the Parties may specify in a CBI Offer Document that a particular provision of a CBI Offer Document is to supersede a provision of these Terms of Sale, in which case the superseding CBI Offer Document provision shall be applicable only to such CBI Offer Document, and shall be effective for such CBI Offer Document only, if such provision expressly references the applicable section of these Terms of Sale that is to be modified, and clearly states that such provision supersedes the conflicting, inconsistent or ambiguous provision in these Terms of Sale.

2. Terms for Product Sales.

2.1 Product Returns and Warranty Assistance. CBI does not manufacture the Products. Client acknowledges that CBI is reselling, and not itself providing, all Products purchased by Client, including without limitation, software and Services Sold by Part Number. No Products may be returned for credit, refund or adjustments without the prior written consent of CBI.

2.2 Assignment/Pass Through of Warranties - Third Party Products. For any third party products provided to Client or obtained by Client under these Terms of Sale or an applicable SOW, CBI will assign and pass through to Client all manufacturer end-user licenses, warranties and indemnities



relating to such third party products. To the extent that CBI is not permitted to assign any such end-user licenses, warranties and indemnities to Client, CBI shall enforce such third party product licenses, warranties and indemnities on behalf of Client to the maximum extent CBI is permitted to do so under the terms of the applicable third-party manufacturer agreement. The cost of such enforcement shall be paid by Client.

- 2.3 Acknowledgement of and Agreement to Manufacturer Product Terms and Conditions.** Client acknowledges and agrees to the terms and conditions governing the sale and use of the Products shall be solely between Client and the manufacturer, except as provided herein.
- 2.4 Prohibited Product Use.** Client will not use the Products sold by CBI for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. Client covenants and agrees that CBI and the manufacturer of Products shall not be liable, in whole or in part, for any claim or damage arising from such use. Client acknowledges and agrees that all Products and Services are sold with the understanding and agreement that it is the sole responsibility of Client to determine the suitability of the Products and Services for Client's intended use.
- 2.5 PRODUCT WARRANTY DISCLAIMER.** ON ALL PRODUCTS SUPPLIED BY CBI, THE MANUFACTURER'S WARRANTY SHALL APPLY AS PROVIDED, AND CBI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH REGARD TO PRODUCTS AND DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. IN NO EVENT SHALL CBI BE LIABLE OR RESPONSIBLE FOR DAMAGES FOR PERSONAL INJURY, DAMAGES FOR HARM TO PROPERTY, OR FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, LOST PROFITS, INTERRUPTION OF BUSINESS, OTHER ECONOMIC LOSS, OR ANY OTHER DAMAGES WHATSOEVER IN CONNECTION WITH THE MANUFACTURER'S WARRANTY SET FORTH ABOVE OR IMPLIED BY LAW, OR IN CONNECTION WITH ANY OTHER LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT OR TORT, INCLUDING, BUT NOT LIMITED TO, STRICT LIABILITY AND NEGLIGENCE.
- 2.6 Shipment and Risk of Loss for Product Sales.** All shipments of Products by CBI to Client will be FOB point of shipment. Insurance coverage, transportation costs and all other expenses applicable to shipment from CBI to Client's identified point of delivery will be the sole responsibility of the Client. Risk of loss will pass to the Client upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or the Client's representative at CBI's point of shipment. Shipping schedules are estimates. CBI will make commercially reasonable efforts to render delivery within the time specified. **IN NO EVENT SHALL CBI BE LIABLE FOR DAMAGES OF ANY KIND, LIQUIDATED OR UNLIQUIDATED, INCLUDING CONSEQUENTIAL DAMAGES OR DAMAGES FOR LOSS OF USE OR PROFITS, DUE TO FAILURE TO MAKE TIMELY DELIVERY OR FAILURE TO MEET SHIPPING SCHEDULES.**
- 2.7 Product Security Interest.** To secure Client's obligations to CBI, Client grants CBI a security interest in and to all present and future Products purchased, as security for payment in full of the purchase price. Client authorizes CBI to file and/or record any documents it deems necessary to perfect this security interest, including executing and filing one or more financing statements covering the Products.



- 2.8 Product Sales Compliance Permissions.** Client will obtain all licenses, permits and approvals required by any governmental agency, foreign or domestic, having jurisdiction over CBI's work orders and these Terms of Sale.
- 3. Terms for Professional Service Sales.**
- 3.1 Limited Warranty and Acceptance of Services and Deliverables.** CBI represents and warrants to Client that the Services shall be performed in a good, diligent, and workmanlike manner, by experienced and qualified employees or subcontractors of CBI, in accordance with generally accepted industry standards and applicable laws and government regulations to which the Services pertain. All Deliverables will be deemed accepted by Client if not rejected in a reasonably detailed writing within five (5) days of submission to Client, or as otherwise identified in the applicable SOW. In the event the Services provided by CBI are not in conformance with this limited warranty, CBI will take the steps necessary to correct the deficiency at no charge to the Client. **THIS IS CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR BREACH OF THIS LIMITED WARRANTY.** Client also acknowledges that, except as expressly provided in these Terms of Sale, no representative of CBI is authorized to give or make any other representation or warranty or modify the aforementioned limited warranty in any way.
- 3.2 Limited Warranty for Staffing.** CBI warrants that any consultant provided to Client will have the qualifications and hold the certifications represented to Client by CBI. CBI makes no other representations or warranties with respect to the Services to be provided and makes no representation or warranty that Services provided by a consultant will not interrupt Client's operations.
- 3.3 Designated Primary Contact.** Each Party shall designate an individual who will be the primary point of contact for that individual ("Primary Contact"). The Primary Contact of each Party will have the authority to act and make decisions for that Party hereunder. The Client shall make available to CBI's Primary Contact all technical matters, data, information, operating supplies, systems, etc., as reasonably required to perform the Services under any SOW. Either Party may change its designated Primary Contact by written notice to the other Party.
- 3.4 SERVICE WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 3, CBI MAKES NO WARRANTIES OF ANY KIND WITH REGARD TO THE SERVICES. CBI DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AS TO THE SERVICES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 3.5 CBI Property.** CBI software, equipment or consulting, programming, or management tools which may be furnished or utilized by CBI in the performance of the Services shall remain the property of CBI and shall be immediately returned to CBI upon its request or upon completion of the Services.
- 3.6 Service Work Assignments.** CBI retains the right to assign such personnel, including subcontractors, as it deems appropriate to the performance of Services under these Terms of Sale.
- 3.7 Penetration Study and Assessment Services.** Notwithstanding anything to the contrary hereunder, to the extent and only to the extent the Services include an ethical penetration study and assessment services, this Section 3.7 shall apply.
- 3.7.1 Scope.** CBI is hereby authorized to perform a penetration study and network vulnerability assessment on the network computer systems with the IP Addresses identified by Client (the "Systems"). CBI is not responsible for adverse consequences resulting from inaccurate information



regarding the IP Addresses furnished by Client. CBI will coordinate with Client regarding scripts and auditing tools so that Client can coordinate security access permissions.

3.7.2 Assumption of Risk. Client assumes all risk for, and releases, indemnifies and holds CBI harmless from and against, any and all damages, losses and liabilities relating to the Systems arising from the requested study and assessment (“Adverse Consequences”). Adverse Consequences may include, but are not limited to: (a) Systems down time; (b) loss of business; (c) connectivity loss; (d) degradation of bandwidth; (e) Systems loss and crashes; and (f) information and access loss. Client does not release CBI from Adverse Consequences arising from CBI’s acts or omissions that are found to be; (i) knowingly outside the scope of the Services; or (ii) reckless, wanton, malicious, illegal or otherwise involving gross negligence.

4. GENERAL TERMS AND CONDITIONS APPLICABLE TO PRODUCTS AND/OR SERVICES.

- 4.1 Confidential Information.** “Confidential Information” means any information furnished by either Party, whether before or after the effective date of these Terms of Sale, including without limitation, pricing, methods, processes, financial data, lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the Parties and/or their clients and suppliers; concerning past, present, or future business activities of either Party. Confidential Information shall be held in strict confidence and used only for the intended purposes of the Disclosing Party. Information provided orally will be considered Confidential Information only if a written memorandum of such information clearly designated and marked “Confidential Information” is delivered to a Party within thirty (30) days of the disclosure. As to any particular Confidential Information, the “**Disclosing Party**” means the Party disclosing the Confidential Information and the “**Receiving Party**” means the Party receiving the Confidential Information. All Confidential Information of the Disclosing Party shall remain the sole and exclusive property of the Disclosing Party.
- 4.2 Confidentiality Obligations.** The Receiving Party agrees that: (a) it will use the same degree of care and discretion to avoid Disclosure of any Confidential Information as it uses with its own similar information that it does not wish to Disclose; but in no event less than a reasonable degree of care; (b) except as otherwise expressly permitted in a writing by an authorized representative of the Disclosing Party, it will not use the Confidential Information of the Disclosing Party for any purpose other than for the purpose for which the Disclosing Party disclosed the Confidential Information; and (c) it will not Disclose or reveal Confidential Information of Disclosing Party to any person or entity other than its employees, officers, directors and representatives who have a need to know the Confidential Information to further the purpose of this Agreement, and are subject to legally binding obligations of confidentiality no less restrictive than those contained in these Terms of Sale.
- 4.3 Exceptions to Confidentiality.** The obligations set forth in Section 4.2 shall not apply to Confidential Information that: (a) before the time of its Disclosure was already in the lawful possession of the Receiving Party; (b) at the time of its disclosure to the Receiving Party was available to the general public or after disclosure to Receiving Party became available to the general public through no wrongful act of the Receiving Party; or (c) the Receiving Party can demonstrate to have been lawfully and independently developed by the Receiving Party without the use of or reliance upon any Confidential Information of the Disclosing Party and without any breach of these Terms of Sale.
- 4.4 Pricing and Payment Terms.** The prices set forth in any CBI Offer Document are exclusive of all applicable taxes, duties, licenses, and tariffs levied upon the sale, purchase or delivery of the Products and/or Services, which are the Client’s sole obligation, and Client shall promptly reimburse CBI for any



such taxes CBI is required to either pay or collect in connection with both the Products and Services. Prices quoted are firm for thirty (30) days unless otherwise provided in the CBI Offer Document. Payment for Products is due thirty (30) days from the date of the invoice issued to the Client and payment for Services is due thirty (30) days from the date of acceptance (“**Due Date**”). In the event Client chooses to finance the purchase of Products and/or Services from a third party leasing company, Client shall remain liable for payment to CBI for all Products and Services purchased until CBI receives complete payment from such leasing company. Where the CBI Offer Document includes the purchase of both Products and Services, the transactions shall be deemed to be separate for the supply of Products and the supply of Services. No default or delay in the delivery of Products shall relieve the Client’s payment obligation for Services delivered and accepted by Client, and no default or delay in the delivery of Services shall relieve the Client’s payment obligation for Products delivered and accepted by Client. All payments will be made in US currency. Out of pocket expenses will be charged as incurred. Unless expressly provided to the contrary, items designated as estimates are not binding commitments to sell at the estimated price or to deliver on the estimated schedule. If any sum payable to CBI is not paid in full by its Due Date, Client will pay interest in the amount of one and one half percent (1.5%) per month, or the maximum allowed by law whichever is lower, on any outstanding balance owed until such overdue sum is paid in full. Client shall also be responsible for all collection costs incurred by CBI in connection with all past due invoices. All Fees paid or payable for Services are non-cancelable and non-refundable.

4.5 Export Compliance. Client agrees to comply with all applicable export and re-export control laws and regulations as may be applicable to any transaction hereunder, including, without limitation, the Export Administration Regulations promulgated by the United States Department of Commerce. Client covenants that it will not, either directly or indirectly, sell, export (including without limitation any deemed export as defined by applicable law), re-export, transfer, divert, or otherwise dispose of any Product or Service deliverable to any country (or national thereof) subject to antiterrorism controls, U.S. embargo, encryption technology controls, or to any other person, entity (or utilize any such person or entity in connection with the activities listed above), or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Client certifies, covenants, represents and warrants that no Product or Service shall be used for any military or defense purpose, including, without limitation, being used to design, develop, engineer, manufacture, produce, assemble, test, repair, maintain, modify, operate, demilitarize, destroy, process, or use military or defense articles. Notwithstanding any provision of the Services, or designs by CBI, Client acknowledges that it is not relying on CBI for any advice or counseling on export control requirements. Client agrees to indemnify and hold harmless, to the fullest extent permitted by law, CBI from and against any fines, penalties, and attorney fees that may arise as a result of Client’s breach of Section 4.5 of these Terms of Sale.

4.6 LIMITATION OF LIABILITY. CLIENT IS NOT ENTITLED TO A MONETARY OR ANY OTHER TYPE OF RECOVERY FROM CBI FOR WARRANTY CLAIMS. IN ADDITION, IN NO EVENT WHATSOEVER WILL CBI’S LIABILITY TO CLIENT EXCEED THE PURCHASE PRICE PAID FOR THE PRODUCT OR SERVICE THAT IS THE BASIS FOR THE PARTICULAR CLAIM. CBI WILL NOT, IN ANY EVENT, BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUES, LOST OR DAMAGED DATA, AND LOSS OF BUSINESS OPPORTUNITY), HOWEVER CAUSED, ARISING OUT OF THE USE OF OR INABILITY TO USE THE PRODUCT OR SERVICE, OR IN ANY WAY CONNECTED TO THESE TERMS OF SALE, EVEN IF CBI HAS BEEN ADVISED OF SUCH DAMAGES AND EVEN IF DIRECT DAMAGES DO NOT



SATISFY A REMEDY. THE FOREGOING LIMITATION OF LIABILITY WILL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, INFRINGEMENT OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY, CONTRIBUTION, OR OTHERWISE. CLIENT UNDERSTANDS AND AGREES THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE ESSENTIAL ELEMENTS OF THESE TERMS OF SALE AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC POSITION OF ANY CBI OFFER DOCUMENT WOULD BE SUBSTANTIALLY DIFFERENT.

- 4.7 Indemnity.** Client shall defend, at its sole expense, and shall indemnify and hold harmless CBI from and against any and all liabilities, damages, costs and expenses, based on the claim that any Products, materials or documentation provided by CBI during this engagement infringes a patent, copyright or other intellectual property right of any third party.
- 4.8 Contractual Rights for Default.** If Client defaults in performance of any obligation under these Terms of Sale, including the obligation of payment of any amount due, CBI may, at its option, immediately suspend performance, require prepayment, or terminate its performance and collect payment for all Products and Services provided up to the date of termination, and pursue any and all other remedies allowed under applicable law.
- 4.9 Governing Law and Jurisdiction.** The validity, construction and interpretation of these Terms of Sale and the rights and duties of the Parties hereto, shall be governed by and construed in accordance with the laws of the State of Michigan, excluding its conflict of laws principles. Any legal action or proceeding arising under this Agreement will be brought either in the federal court in the Eastern District of Michigan or state courts located in Oakland County, Michigan and the parties hereby irrevocably consent to the personal jurisdiction and venue therein. The U.N. Convention On the International Sale of Goods (UNCISG) shall not apply to these Terms of Sale.
- 4.10 Attorney Fees.** Client shall reimburse CBI for any and all expenses including, without limitation, attorney fees and legal expenses that CBI pays or incurs in protecting and enforcing the rights of CBI under these Terms of Sale.
- 4.11 Cancellation of Order.** The purchase of Products and Services may be cancelled by Client only upon written approval of CBI and upon terms that indemnify and hold harmless CBI from and against any and all losses related to such cancellation.
- 4.12 Changes or Modifications.** CBI reserves the right to change, update, modify, suspend, continue or terminate all or any part of these Terms of Sale, either in an individual case or in general, at any time without prior notice in its sole discretion. Such revision shall be effective immediately upon notice thereof, and any such notice may be given through any means, including but not limited to posting of the revised Terms of Sale on CBI's website at <https://www.cbisecure.com/CBI-Terms-of-Sale-for-Products-Professional-Services.pdf>.
- 4.13 Notices.** All notices and other communications required to be given under these Terms of Sale or applicable SOW shall be in writing and deemed given: (a) immediately upon delivery in person; (b) immediately upon date of signed receipt if sent by a nationally recognized overnight courier service; or (c) three (3) business days after being sent certified U.S. mail, return receipt requested, postage prepaid and addressed to the address below, to the attention of the representative of the Party who signed this Agreement.



- 4.14 Waiver.** The failure of either Party to insist upon strict performance of any of the provisions of these Terms of Sale will not be deemed a waiver of any breach or default. The remedies provided to CBI hereunder are not a waiver of any other remedies of CBI under applicable law.
- 4.15 Severability.** If any provision of these Terms of Sale shall be declared by any court of competent jurisdiction to be illegal, void or unenforceable, the other provisions shall not be affected, but shall remain in full force and effect. If the non-solicitation provisions are found to be unreasonable or invalid, these restrictions shall be enforced to the maximum extent valid and enforceable.
- 4.16 Force Majeure.** The time for CBI to perform shall be extended proportionately as its ability to perform is materially affected by a Force Majeure Event (as hereinafter defined). Neither Party shall be liable to the other Party for any delay or failure to perform, which delay or failure is due to causes or circumstances beyond its control and without its fault or negligence, including acts of GOD, acts of civil or military authority, national emergencies, labor strikes, fire, flood or catastrophe, insurrection, war, riots of failure transportation or general and/or city-wide power failures (“Force Majeure Event”). Each Party shall use reasonable efforts to mitigate the extent of the aforementioned excusable delay or failure and their adverse consequences, provided however, that should any such delay or failure continue for more than thirty (30) days, these Terms of Sale may be terminated without liability by the non-delaying Party. Notwithstanding the foregoing, the occurrence of a Force Majeure Event shall not be a reason for the delay or non-payment of any sums due hereunder.
- 4.17 Assignment.** Neither Party shall have the right to assign any of its obligations or duties under these Terms of Sale, without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed.
- 4.18 Relationship of the Parties.** The relationship of the Parties, under these Terms of Sale, is that of an independent contractor and neither Party shall be deemed to be an agent, partner, employee, representative or joint venture of the other Party. In all matters relating to these Terms of Sale, each Party hereto shall be solely responsible for the acts of its employees and agents, and employees and agents of one Party shall not be considered employees or agents of the other Party. Except as otherwise provided herein, no Party shall have any right, power or authority to create any obligation, express or implied, on behalf of the other Party. Nothing in these Terms of Sale is intended to create or constitute a joint venture, partnership, agency, trust, or other association of any kind between the Parties.
- 4.19 Non-Solicitation.** Client agrees not to solicit for employment or to employ any CBI employee for a period of twelve (12) months following the last Product sold or the conclusion of the Services performed under these Terms of Sale; whichever occurs later.
- 4.20 Time for Bringing Claims.** The Parties stipulate and agree that any claim by Client against CBI arising from or in connection with CBI’s sales of Products or provision of Services may not be filed, made or maintained unless filed within six (6) months after CBI has shipped or provided the Products and/or Services in question.
- 4.21 Binding Obligation.** These Terms of Sale constitutes each Party’s legal, valid and binding obligation, enforceable against each Party in accordance with its terms.
- 4.22 Cooperation.** Client agrees to cooperate with CBI in connection with the performance of Services by CBI, including, but not limited to: (a) timely access to information or materials regulated by CBI; (b)



timely response to CBI's inquiries and requests for approvals and authorizations; and (c) obtaining all required consents requested by CBI.

- 4.23 Entire Agreement.** These Terms of Sale, any exhibits attached hereto, and all CBI Offer Documents, executed in accordance with its terms contain the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior oral or written agreements, commitments or understandings with respect to the matters provided for herein.
- 4.24 Survival.** All of the provisions of these Terms of Sale shall survive the completion of CBI's obligations hereunder without end date.
- 4.25 Use of Name and Publicity.** Neither Party shall, without the prior written consent of the other Party in each instance, use in advertising, publicity or otherwise the name of such Party or any of its affiliates, or any partner or employee of such Party or its affiliates, nor any trade name, trademark, service mark, logo or slogan of such Party or its affiliates.

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