



# Product / Services Terms of Sale

1. These Product / Services Terms of Sale, dated August 31, 2020, (hereinafter the “**Terms of Sale**”) provide the governing terms and conditions for the purchase of product and/or services from Creative Breakthroughs, Inc. (“**CBI**”) unless CBI expressly agrees otherwise. PLEASE READ THESE TERMS OF SALE CAREFULLY, AS THEY ARE PART OF THE AGREEMENT BETWEEN CLIENT AND CBI. For purposes of these Terms of Sale, the term “Client” refers to the individual or company that is named in the Quote, or Statement of Work or any other document setting forth the acquisition Products or Services by the Client from CBI. CBI and Client are each referred to hereinafter individually as a “**Party**” and collectively as the “**Parties.**”
  - 1.1 **Order and Acceptance.** Each Quote or SOW issued by CBI (collectively “**CBI Offer Document**”) is an offer to sell Products, Third-Party Services and/or Services to Client for its own internal use and not for resale, and includes and is governed by these Terms of Sale. 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 acceptance of the Products and/or Services that are the subject of a CBI Offer Document.
  - 1.2 **Controlling Terms of Product Sale.** Client acknowledges that CBI is a Reseller of Third-Party Services and Products, including without limitation, hardware and Software. As CBI does not provide Products or Third-Party Services on its own behalf, there is no consideration for the expansion of CBI’s obligations to Client based upon the terms of Client’s Purchase Order. Accordingly, the terms of this Terms of Sale and the Quote issued by CBI to Client will (a) control the sale of the Product and/or Third-Party Services by CBI to Client, and (b) supersede the terms of any Purchase Order issued by Client.
  - 1.3 **Order of Precedence.** This Terms of Sale shall govern in the event of a conflict or any inconsistencies between the terms of this Terms of Sale and the terms of any CBI Offer Document. A CBI Offer Document may expressly state that a specified provision of this Terms of Sale is modified and superseded by terms set forth in the CBI Offer Document; provided however, such modification will only apply to that CBI Offer Document.
2. **Terms for Product Sales.**
  - 2.1 **Product Returns.** No Products may be returned for credit, refund or adjustments without the prior written consent of CBI.
  - 2.2 **Assignment/Pass Through of Warranties.** For any Products obtained by Client under this Terms of Sale, CBI will assign and pass through to Client all End User licenses, warranties and indemnities provided by the manufacturer of the 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 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 agreement; provided, however, the cost of such enforcement shall be paid by Client.
  - 2.3 **Acknowledgement of, and Agreement to, Manufacturer Product Terms and Conditions.** Client agrees that the terms and conditions set forth by the manufacturer’s licenses for the Products governs Client’s use of the Products.



- 2.4 Prohibited Product Use.** Client will not use the Products 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 are sold with the understanding and agreement that it is the sole responsibility of Client to determine the suitability of the Products for Client's intended use.
- 2.5 PRODUCT WARRANTY DISCLAIMER.** ON ALL PRODUCTS, THE MANUFACTURER 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 OF ANY INTELLECTUAL PROPERTY RIGHTS.
- 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 Client. Risk of loss will pass to Client upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or 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 under a CBI Offer Document, 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 is responsible to obtain all licenses, permits and approvals required by any governmental agency, foreign or domestic, having jurisdiction over any Products purchased under any CBI Offer Document and this Terms of Sale.
- 3. Terms for Sale of Services.**
- 3.1 Designated Primary Contacts.** Each Party shall designate an individual who will be the primary point of contact for that Party ("**Primary Contact**"). The Primary Contact of each Party will have the authority to act and make decisions for that Party in all aspects of the Services and Deliverables to be provided hereunder. Either Party may change its designated Primary Contact by written notice to the other Party.
- 3.2 Cooperation.** Client shall make available to CBI all technical matter data, information, operating supplies and computer systems, as reasonably required by CBI to perform the Services or develop the Deliverables under an applicable CBI Offer Document. CBI or Client will be given access, including passwords, whether on-site or through remote facilities, to any computer or electronic data storage system of the other Party necessary to the performance of the scope of the CBI Offer Document.



- 3.3 Security.** Client shall use reasonable security precautions in connection with its use of the Services, including, but not limited to ensuring up-to-date virus scanning and operating system security patches and firewall protection for its systems and each User. Client shall not take any action or install any software that may preclude or impair CBI’s ability to access or administer its network or provide the Services.
- 3.4 Software.** Client authorizes CBI to determine whether or not Software specified in any CBI Offer Document is currently in place, operational, maintained and supported at the level required for CBI to perform the Services acquired under this Terms of Sale and/or any applicable CBI Offer Document. Client grants CBI, at no charge, the right and license to use any application software systems licensed, owned or developed by Client and required by CBI to provide the Services specified in any CBI Offer Document to Client.
- 3.5 Required Consents.** Client shall obtain and keep in effect all Required Consents necessary for CBI to perform all of its obligations as set forth in this Terms of Sale and any CBI Offer Document. Upon request, Client will provide to CBI evidence of any Required Consents. CBI will be relieved of its obligations hereunder to the extent that they are affected by Client’s failure to promptly obtain and provide to CBI any Required Consents. CBI shall not remove or alter any copyright or other proprietary notice on or in any Content without Client’s consent.
- 3.6 Work on Client Premises.** If and to the extent that the implementation, performance or delivery of the Services requires CBI to be present at Client’s premises, CBI will comply with Client’s information technology and physical security policies, which will be shared with CBI upon request.
- 3.7 Project Changes.** Any modification or change of any kind in the Services or Deliverables must be documented in a PCR signed by both Parties.
- 3.8 Ownership Rights.**
- 3.8.1 Client Ownership Rights.** Except as specifically provided in this Terms of Sale or a CBI Offer Document, Client shall own all Content, Client Components, Client Data and Deliverables, including but not limited to copyrights, trademarks, database rights and other intellectual property rights contained therein (collectively “**Client’s Intellectual Property**”). Client grants CBI an irrevocable and royalty-free license to store, record, transmit and display Client’s Intellectual Property solely as necessary to perform CBI’s obligations under this Terms of Sale or a CBI Offer Document.
- 3.8.2 CBI Ownership Rights.** All CBI Intellectual Property is the sole and exclusive property of CBI. Under no circumstances will CBI Intellectual Property be considered a work-for-hire. CBI grants to Client a royalty-free, paid up license to CBI Intellectual Property that will allow Client to use and otherwise exploit the Services and Deliverables provided by CBI.
- 3.9 WARRANTIES.**
- 3.9.1 SERVICES WARRANTIES DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 3.9, CBI MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND. THE WARRANTIES SET FORTH IN THIS SECTION 3.9 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WHETHER EXPRESS OR IMPLIED CONCERNING THE SERVICES AND DELIVERABLES, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF



MERCHANTABILITY AND, FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE SPECIFICALLY WAIVED AND DISCLAIMED BY CBI.

- 3.9.2 CBI's Representations and Warranties.** CBI represents and warrants to Client that: (a) its employees, consultants and subcontractors providing Services have the necessary knowledge, skills, experience, qualifications, certifications, and resources to perform the Services in accordance with the requirements of the applicable CBI Offer Document; (b) the Services shall be performed in a good, diligent and workmanlike manner in accordance with generally accepted industry standards, applicable laws and governmental regulations to which the Services pertain; (c) it either owns or otherwise has rights to license to Client all of the Deliverables furnished by CBI in connection with the Services; and d) the Services and Deliverables provided by CBI will meet the specifications defined in the applicable CBI Offer Document. These representations and warranties shall not apply to nonconformities in the Services arising from inaccurate or incomplete data or information provided by Client, or for failures or delays caused by Client's failure to perform its obligations under this Terms of Sale or any CBI Offer Document.
- 3.9.3 Client's Representations and Warranties.** Client represents and warrants to CBI that: (a) it shall cooperate with CBI in the performance of Services, including, but not limited to, providing CBI with complete and accurate information necessary for the provision of the Services; (b) Client shall take any and all actions reasonably necessary to enable CBI to perform the Services contemplated herein in an effective and efficient manner; (c) it owns, or is a licensee having the right to sublicense the Content it grants pursuant to this Terms of Sale; (d) CBI's possession or use of the Content or Client Data does not and will not infringe on, violate, or misappropriate any patent, trademark, copyright or other proprietary right of any third party; and (e) it will not use, nor will it allow any third parties under its control to use the Services for high risk activities, where the failure of the Services could lead to death, personal injury or environmental damage.
- 3.9.4 Assignment/Pass Through of Warranties – Third-Party Services.** For any Third-Party Services obtained by Client under this Terms of Sale or a CBI Offer Document, CBI will assign and pass through to Client all the services provider's licenses, warranties and indemnities relating to such Third-Party Services. To the extent that CBI is not permitted to assign any such licenses, warranties and indemnities to Client, CBI shall enforce such Third-Party Services 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 partner agreement. The cost of such enforcement shall be paid by Client. Client shall comply with any flow down terms and condition set forth in the CBI Offer Document relating to such Third-Party Services.
- 3.9.5 THIRD PARTY SERVICES WARRANTY DISCLAIMER.** ON ALL THIRD-PARTY SERVICES, THE THIRD-PARTY SERVICE PROVIDER'S WARRANTY SHALL BE THE ONLY WARRANTY PROVIDED. CBI MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH REGARD TO THE THIRD-PARTY SERVICES AND DISCLAIMS ALL WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.
- 3.10 Managed Services.** This Section 3.10 applies to the extent the Services include CBI Managed Security Services (MSS).
- 3.10.1 Fees and Payments.** Fees for MSS Services shall commence on the first day of CBI onboarding activities or date specified within the applicable CBI Offer Document (the "**Service Commencement Date**"). Each Offer Document will specify the frequency of invoicing for the MSS Service ("**Billing Cycle**"). Upon Service Commencement Date, CBI will invoice Client for onboarding specified in the CBI Offer Document and the



first Billing Cycle. CBI shall invoice Client for the MSS Services prior to the first day of each subsequent Billing Cycle.

- 3.10.2 Modification of Services.** CBI reserves the right to modify the terms of the CBI Offer Document at any time. Should such modification reduce the scope or level of the Services being delivered (e.g., eliminating previously provided Services or increasing the security incident response time), CBI will provide a minimum of 30 days prior written notice. If Client requests that CBI defer the change effective date until the end of the then-current contract period for the MSS Services within 30 days after CBI provides written notice, the modification will become effective when the MSS Service is renewed; provided, however, if the modification is the result of circumstances outside of CBI's control (such as technology changes or vendor service changes), CBI reserves the right to reject Client's request for deferment.
- 3.10.3 Automatic Contract Renewal.** After the end of the initial Term of MSS Services defined in the Offer Document, this Terms of Sale will automatically renew for a period of one (1) year, unless Client provides CBI written notice at least 30 days prior to the MSS Services end date (calculated as the Service Commencement Date plus the initial Term).
- 3.10.4 Equipment.** Except for equipment or hardware purchased by Client pursuant to a CBI Offer Document ("**Client Purchased Equipment**"), CBI will provide the equipment or hardware as necessary for Client to receive the MSS Services ("**CBI Equipment**"). The CBI Offer Document will specify whether such equipment or hardware is Client Purchased Equipment and/or CBI Equipment. Upon the earlier of the termination or expiration of this Terms of Sale and/or the applicable CBI Offer Document, Client will promptly return to CBI, all CBI Equipment, and/or shall erase, destroy and cease use of all Software used to provide MSS Services located on any Client Purchased Equipment. If such CBI Equipment is not returned by Client, Client will be responsible for the then current replacement cost of such CBI Equipment.
- 3.10.5 Remote Management.** If Client purchases any type of MSS Services, CBI requires the installation of a remote management agent or device to deliver the MSS Services. If Client refuses the installation of such agent or device, CBI reserves the right to modify the terms of the applicable CBI Offer Document.
- 3.10.6 CBI Security Measures.** CBI will maintain commercially reasonable security measures that are designed to (a) ensure the security of Client Data stored in the Hosting Environment; (b) protect against any anticipated threats or hazards to the security or integrity of Client Data stored in the Hosting Environment; and (c) protect against any unauthorized access to or use of Client Data as stored in the Hosting Environment.
- 3.10.7 Client Security Measures.** Client will maintain commercially reasonable security measures that are designed to (a) ensure Client's Users comply with the terms of this Terms of Sale and any Statement of Work; (b) protect against any unauthorized access to or use of the Software used by CBI in the provision of the Service ("**MSS Software**"); (c) ensure that the Services are not made available to anyone other than its Users; (d) ensure any security features or measures of the MSS Software are not circumvented or disabled, (e) notify CBI in writing upon a Client User's termination of employment or change in responsibilities such that their access to MSS Software or the Services should be modified or removed. CBI shall have five (5) business days from receipt of the written notification to affect the change. Client shall not, and will not permit or authorize third parties to: (a) attempt to copy, modify, duplicate, create derivative works from, download, republish, transmit or distribute all or any portion of the MSS Software, or attempt to reverse compile, reverse engineer MSS Software; or (b) license, sell, rent, lease, transfer, assign, or otherwise commercially exploit MSS Software.



- 3.10.8 Acceptable Use.** Client is responsible for all acts and omissions of its employees and Users in connection with receipt or use of the Services. Client agrees and will ensure its Users agree, to not use CBI's Services for any illegal or unauthorized purpose including but not limited to, hacking, phishing, spamming, financial fraud, e-mail spoofing, virus distribution, identity theft, network attacks, pirating software, harassment, using copyrighted text, sharing illegal software and unauthorized images. CBI has the right to investigate potential violations of this Section in cooperation with Client. If CBI determines that a breach of this Section 3.10.8 has occurred and has not been corrected by Client within thirty (30) days of the date Client receives notice of same, then CBI may in its sole discretion; (a) restrict Client's and its Users' access to the Services; (b) remove or require removal of any offending Content; (c) terminate this Terms of Sale for cause; and/or (d) exercise any other rights and remedies at law or in equity.
- 3.10.9 Notification and Prevention Obligations.** CBI shall promptly notify Client of any reasonably suspected security breach in the Hosting Environment that may result in the unauthorized access to or disclosure of unencrypted Client Data. This notification will state in reasonable detail any Client Data found to be at risk. CBI agrees to take all actions reasonably necessary under the circumstances to immediately prevent the continued unauthorized access of such information. CBI further agrees that in the event of a breach of confidentiality or security, it will work in good faith and cooperate with Client to address the breach. CBI shall not be responsible or liable for any security breach caused by Client, its employees, directors, officers or agents.
- 3.11 Standard Working Hours.** Unless otherwise expressly stated in the CBI Offer Document, CBI standard working hours are Monday – Friday from 8:00 AM to 6:00 PM ET. Any requested work outside of these standard hours must be pre-approved by both Parties and may incur an extra cost to be defined as part of the agreed upon request.
- 3.12 Penetration Testing and Assessment Services.** Notwithstanding anything to the contrary hereunder, this Section 3.12 shall apply to the extent and only to the extent the Services include ethical penetration testing and/or assessment services.
- 3.12.1 Scope.** CBI is hereby authorized to perform a penetration test and/or network vulnerability assessment on Client's network computer systems including the assets, e.g., IP addresses, URLs, APIs, etc., identified by Client (the "**Systems**"). CBI will coordinate with Client regarding scripts and auditing tools so Client can coordinate security access permissions.
- 3.12.2 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. CBI is not responsible for Adverse Consequences resulting from inaccurate information regarding Systems furnished by Client. 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.
- 3.12.3** Due to the inherent risks and limitations associated with these Penetration Test and/or Assessment Services, CBI cannot guarantee that all weaknesses, noncompliance issues or vulnerabilities will be discovered ("**Risks and Limitations**"). Client acknowledges and accepts these Risks and Limitations



#### 4. Fees/Expenses/Taxes.

- 4.1 Fees.** Client shall pay CBI the fees and prices set forth in the applicable CBI Offer Document, plus the costs of all materials listed on any bill of materials for the Services, hardware or Software set forth on the applicable CBI Offer Document or Client's quotation ("Fees"). Prices quoted are firm for thirty (30) days unless otherwise provided in the CBI Offer Document. 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.
- 4.1.1 Financing.** 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.
- 4.1.2 Product and Services.** 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 Client's payment obligation for Services delivered and accepted by Client, and no default or delay in the delivery of Services shall relieve Client's payment obligation for Products delivered and accepted by Client.
- 4.2 Reimbursable Expenses.** Except as may otherwise be stated in the applicable CBI Offer Document, Client agrees to reimburse CBI for all reasonable travel and customary out-of-pocket expenses incurred by CBI in connection with the performance of Services. Expenses are subject to CBI's Travel Policy, which is available to Client upon request.
- 4.3 Taxes.** Client shall pay or reimburse CBI, all sales, service and value added taxes, and any other tax of any kind whatsoever, (other than any tax imposed upon the income or profits of CBI or any franchise tax imposed on CBI), customs duties, import fees or other similar charges with respect to Product or Services or other items provided under this Terms of Sale and any CBI Offer Document. CBI shall bill applicable taxes as a separate item on Client's invoice and shall not include them in the Fees. If Client is exempt from tax, Client shall provide CBI with a valid exemption certificate or other evidence of such exemption in a form acceptable to CBI at the beginning of a transaction. If Client is required by law to withhold any tax from the payment of Fees, Client shall provide to CBI the original or certified copies of all tax payment receipts or other evidence of payment of taxes by Client with respect to transactions under the CBI Offer Document. If Client fails to provide CBI with such tax payment receipts, Client shall reimburse CBI for any fines, penalties, taxes and other governmental agency charges resulting from such failure.
- 4.4 Payment.** Payment for Products is due thirty (30) days from the date of the invoice issued to Client and payment for Services is due thirty (30) days from the date of invoice for Services and/or the date of acceptance of the Deliverables as specified in the CBI Offer Document ("Due Date"). Unless otherwise expressly stated in the CBI Offer Document, Client shall pay CBI all invoiced amounts in full, by the Due Date in accordance with this Section 4 (Fees/Expenses/Taxes) of this Terms of Sale. If any sum payable to CBI is not paid in full by the Due Date, CBI may, at its option, without prejudice to any other remedy: (a) charge interest on such overdue sum on a day to day basis from the Due Date until paid in full, the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law; (b) exercise its security interest in the Product; and/or (c) suspend the provision of the Services upon five (5) days prior notice, until such overdue sum is paid in full. Client shall also be responsible for all collection



costs incurred by CBI in connection with past due invoices. All Fees paid or payable for Services are non-cancellable and non-refundable.

5. **Delivery and Acceptance.** CBI shall perform the Services and provide the Deliverables according to the schedules set forth in the CBI Offer Document (“**Project Schedule**”). After CBI has completed the Deliverables pursuant to the Project Schedule, CBI shall notify Client in writing of the completion of such Deliverables, as applicable. Client may conduct reasonable acceptance tests as may be specified in the CBI Offer Document, to verify that the Deliverables conform, as applicable, to the CBI Offer Document (“**Testing Period**”); provided that if the CBI Offer Document does not specify a time period, then the Testing Period shall be five (5) days. “**Acceptance**” will occur upon successful completion of the Testing Period, as reasonably determined by Client and in accordance with the requirements of the applicable CBI Offer Document. If Client does not notify CBI of its Acceptance within such Testing Period, Client shall be deemed to have accepted CBI’s completion of the applicable Deliverable(s) under the CBI Offer Document. If Client reasonably believes a Deliverable has not been successfully completed, Client shall provide CBI with a written notice prior to the expiration of the Testing Period, including a detailed description of the reasons the Deliverable failed (“**Failure Notice**”). CBI shall have five (5) days following receipt of the Failure Notice to present a corrective plan (“**Corrective Plan**”) to Client that outlines CBI’s plan to correct the errors described in the Failure Notice. Upon completion by CBI of the Deliverables outlined in the Corrective Plan, Client shall have five (5) days to repeat the Testing Period.
6. **Term and Termination.**
  - 6.1 **Term of Agreement.** The term of this Terms of Sale shall commence on the date of acceptance of the offer by Client and shall remain in full force and effect until terminated in accordance with this Terms of Sale (the “**Term**”).
  - 6.2 **Term of the CBI Offer Document.** The Term of each CBI Offer Document shall be as specified in that CBI Offer Document.
  - 6.3 **Termination for Convenience.** Neither Party may terminate any CBI Offer Document for convenience.
  - 6.4 **Termination for Breach, Bankruptcy and Insolvency.** Unless otherwise set forth in any individual CBI Offer Document, either Party may terminate any CBI Offer Document immediately, if the other Party: (a) breaches this Terms of Sale or any CBI Offer Document, and does not cure such breach within thirty (30) days after written notice of the same; (b) becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation or similar action for the benefit of creditors as a consequence of debt; or (c) otherwise ceases or threatens to cease business operations.
  - 6.5 **Final Payment.** Subject to the termination of any individual CBI Offer Document, CBI will submit to Client a final itemized invoice for all Fees, expenses, and outstanding balances due and owing by Client to CBI for the Services and Deliverables provided up to the date of termination. Client shall promptly pay CBI, in accordance to Section 4 (Fees/Expenses/Taxes) of this Terms of Sale, for any and all Services or Deliverables performed on or before the effective date of such termination, including all claims for any outstanding payments for Services or Deliverables, Fees and expenses.
  - 6.6 **Effect of Termination.** Upon termination of any individual CBI Offer Document, and subject to Client’s payment of the final invoice described in Section 6.5, CBI will to the extent applicable: (a) exercise





reasonable efforts and cooperation to effect an orderly and efficient transition of Services to any successor provider identified by Client; (b) disclose to Client all relevant information regarding the equipment and software required to perform the Services; and (c) make reasonable efforts to effect a transfer or assignment of relevant licenses or agreements for software or any third party services utilized exclusively to provide the Services to Client. Any additional transition services requested by Client shall be provided by CBI on a time and material basis.

**6.7 Survival.** Sections 1, 2.2, 2.3, 2.5, 2.7,2.8, 3.8, 3.9, 3.10, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 24, shall survive the termination or expiration of this Terms of Sale and any CBI Offer Document.

## **7. LIMITATIONS OF LIABILITY.**

**7.1** IN NO EVENT, REGARDLESS OF THE LEGAL BASIS FOR THE CLAIM, WILL EITHER CBI OR CLIENT, OR THEIR AFFILIATES, OR ANY OF THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS, BE LIABLE TO THE OTHER, WHETHER IN CONTRACT OR IN TORT OR UNDER ANY OTHER LEGAL THEORY (INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY AND NEGLIGENCE), FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOSSES, EXPENSES OR COSTS OF ANY KIND, NOR, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUES, LOSS OF USE, LOSS OR CORRUPTION OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, MULTIPLE, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, ANY CBI OFFER DOCUMENT, QUOTE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**7.2** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL CBI'S OR ITS AFFILIATES', OR THEIR SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES' OR AGENTS', LIABILITY UNDER THE AGGREGATE CLAIMS MADE BY CLIENT EXCEED AN AMOUNT EQUAL TO (A) THE TOTAL AMOUNT OF FEES ACTUALLY PAID OR OWED FOR THE PRODUCT UNDER THE CBI OFFER DOCUMENT GIVING RISE TO THE CLAIM; OR (B) THE TOTAL AMOUNT OF FEES ACTUALLY PAID FOR THE PRIOR TWELVE (12) MONTH PERIOD FOR THE SERVICES UNDER THE CBI OFFER DOCUMENT GIVING RISE TO THE CLAIM.

**7.3** CLIENT UNDERSTANDS AND AGREES THAT THE FOREGOING LIMITATIONS OF LIABILITY ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS THE MATERIAL AND ECONOMIC POSITION OF THE CBI OFFER DOCUMENT WOULD BE SUBSTANTIALLY DIFFERENT.

**8. Indemnification.** Client shall indemnify, hold harmless, and defend CBI and its officers, directors, shareholders, employees, agents, affiliates, successors and permitted assigns (collectively the "**CBI's Indemnified Parties**") from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of any kind, including reasonable attorney fees (collectively, "**Losses**"), sought by a third party against CBI's Indemnified Parties, arising out of or resulting from any: (a) breach by Client of any of its representations, warranties or covenants pursuant to this Terms of Sale or applicable CBI Offer Document; (b) real property damage or personal injury, including death, directly caused by Client or its employees or contractors; (c) any breach by Client of Section 11 (Confidential Information), but only with respect to the disclosure of Confidential Information and to the extent the disclosure is the result of actions predominantly attributable to Client; and (d) any claim that CBI's possession, storage, or transmission of the Content or possession or use of Client Components infringes on, violates, or misappropriates any patent, copyright,



trademark, service mark, trade secret or other intellectual property or proprietary rights of such third party issued in the United States, as of the Effective Date of the CBI Offer Document.

9. **Extension Policy.** Client caused delays to the timeline agreed to in a CBI Offer Document or in a project plan will result in a Project Change Request. Resources cannot be “reserved” and may be reassigned to other projects. Any additional costs associated with the turnover of work to new resources will be the responsibility of the Client.
10. **Use of Name and Publicity.** Except for the use of the Client’s logo in CBI’s list of representative clients, neither Party shall, without 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.
11. **Confidential Information.**
  - 11.1 **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 Confidential Information; 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 Disclosing Party for any purpose other than for the purpose for which the Disclosing Party disclosed the 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 Terms of Sale and are subject to legally binding obligations of confidentiality no less restrictive than those contained in this Terms of Sale and the CBI Offer Document.
  - 11.2 **Exceptions.** The obligations set forth in Section 11.1 above, 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 became available to the general public after Disclosure to Receiving Party through no wrongful act of the Receiving Party; or (c) Receiving Party can demonstrate to have been lawfully and independently developed by Receiving Party without the use of or reliance upon any Confidential Information of the Disclosing Party and without any breach of this Terms of Sale and the CBI Offer Document.
  - 11.3 **Disclosures Required by Law.** If the Receiving Party becomes legally compelled (by deposition, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, then Receiving Party shall notify the Disclosing Party of the requirement promptly in writing so that the Disclosing Party may seek a protective order or other appropriate remedy. If a protective order or other remedy is not obtained, or if Disclosing Party waives in writing compliance with the terms hereof, then the Receiving Party shall furnish only that portion of the information which the Receiving Party is advised by written opinion of counsel that is legally required and to exercise reasonable efforts to obtain confidential treatment of such information.
  - 11.4 **Systems.** If a Party is given access, whether on-site or through remote facilities, to any computer or electronic data storage system of the other Party, such access and use shall be limited solely to the performance within the scope of the CBI Offer Document, and the Party being provided access, shall not knowingly access or attempt to access any computer system, electronic file, software or other electronic



Services, other than those specifically required to fulfill its obligations under the CBI Offer Document. All User identification numbers and passwords shall be deemed to be Confidential Information.

- 11.5 Ownership.** All Confidential Information of the Disclosing Party shall remain the sole and exclusive property of the Disclosing Party.
- 11.6 Injunctive Relief.** Both Parties agree that violation of any provision of this Section 11 would cause the Disclosing Party irreparable injury for which it would have no adequate remedy at law, and that, in such circumstances, the Disclosing Party is entitled to seek immediate injunctive relief prohibiting such violation, in addition to any other rights and remedies available to it.
- 11.7 Return or Disposal of Confidential Information.** Upon termination of this a CBI Offer Document or upon Disclosing Party's request at any time, the Receiving Party agrees to promptly return to Disclosing Party all copies of Disclosing Party's data and/or Confidential Information. If return is impossible in whole or in part, then the Receiving Party shall certify to the Disclosing Party promptly that all of the Disclosing Party's data and/or Confidential Information, including all copies thereof, has been totally and permanently destroyed. The Receiving Party will return to the Disclosing Party all data in its possession at the date of termination in its then existing format and on Disclosing Party's supplied media; however, the Receiving Party may keep a copy in accordance with its record retention policy. Any conversion of format or media performed by Disclosing Party in order to discharge its obligations under this Terms of Sale or a CBI Offer Document shall be at Receiving Party's expense.

## **12. Definitions.**

### **12.1 Definitions as used in this Terms of Sale:**

- (a) **"CBI Intellectual Property"** means data, know-how, processes, techniques, concepts, methodologies, specifications, tools and other technology that CBI owns or develops and uses in performing any Services.
- (b) **"Client Components"** means Client's hardware, software, products, and other Content, including, but not limited to those specified in any CBI Offer Document as being provided by Client.
- (c) **"Client Data"** means all data and information about Client's businesses, customers, employees, operations, facilities, products, markets, assets, or finances that CBI obtains, creates, generates, collects or processes in connection with its performance of Services.
- (d) **"Confidential Information"** as used herein shall mean any information furnished by a Party, whether before or after the Effective Date, 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 said entities; and information that given the nature or circumstances surrounding its disclosure that a reasonable person would understand to be Confidential Information. All other Confidential Information must be clearly designated and marked as "Confidential." Information provided orally will be considered confidential only if, within thirty (30) days of the Disclosure, a written memorandum clearly designating such information as "Confidential" is delivered to the other Party. 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.

- (e) **“Content”** means Client data, information, software and other data including, without limitation HTML files, scripts, programs, recording, sound, music, graphics and images that Client or any of its Users create, install, upload or transfer in or through the Hosting Environment.
- (f) **“Deliverables”** means all documents, work product, and other materials that are delivered to Client hereunder or prepared by or on behalf of CBI in the course of performing the Services, including any items identified as such in CBI Offer Document.
- (g) **“Disclosure”** means the release, publication, or dissemination of Confidential Information by a Party but excludes the release, publication, or dissemination of Confidential Information by a third party.
- (h) **“End User”** means a person or entity that acquires Products or Services from CBI or a Reseller for its own internal use and not for further resale.
- (i) **“Hosting Environment”** means the application hosting environment for the delivery of Services, consisting of, but not limited to, network, storage, and server devices, software programs, and applications network management devices specified in any CBI Offer Document.
- (j) **“Managed Security Services”** or **“MSS Services”** means security monitoring and threat management services as defined in the applicable CBI Offer Document.
- (k) **“Products”** means the products, materials, deliverables, Software or other items manufactured and/or provided by a third party and delivered by CBI to Client in accordance with an applicable Quote.
- (l) **“Project Change Request”** or **“PCR”** means a project change request or change order signed by both Parties authorizing a change in the scope of the Services or Deliverables under any CBI Offer Document.
- (m) **“Purchase Order”** means a written authorization from Client indicating its intention to purchase the Product, Services or Third-Party Services outlined therein.
- (n) **“Quote”** means CBI’s written offer issued to Client detailing the quantities and purchase price of Product and/or Third-Party Services.
- (o) **“Required Consents”** means any consents, licenses, or approvals required to give CBI, or any person or entity acting on behalf of CBI, the right or license to access, use and/or modify in electronic form and in other forms, including, without limitation, derivative works, Client Components and Content, without infringing the ownership or intellectual property rights of the providers, CBI, or the owners of such Client Components and Content.
- (p) **“Reseller”** means an entity that acquires Products directly from the manufacturer or through a distributor (**“Distributor”**), pursuant to a valid and binding reseller agreement between Reseller and Distributor of the manufacturer, for purposes of reselling such Products to End Users, and not for Reseller’s own internal use.



- (q) **“Service Level Terms of Sale” or “SLA”** means the description of the Services (hereinafter defined), provided by CBI to Client, defining the Services, including the project scope, quality, delivery time, and responsibilities of the Parties.
- (r) **“Services”** means the information technology services to be delivered by CBI to Client, under this Terms of Sale, as specified in any CBI Offer Document.
- (s) **“Software”** means the various set of programs, procedures and related documentation associated with Client’s computer systems.
- (t) **“Statement of Work” or “SOW”** – means the document provided by CBI to Client defining the work activities, Deliverables, SLAs and timelines of delivery of the Services.
- (u) **“Third-Party Services”** refers to services ordered from CBI but supplied by a partner of CBI, so that CBI does not directly perform or control the work.
- (v) **“User(s)”** means any entity or individual that receives or uses the Services or Products or the results of the Services through Client.

**13. Non-Solicitation and Contracting.** Each Party agrees that during the Term of the CBI Offer Document and for a period of twelve (12) months after the termination or expiration of the CBI Offer Document or any CBI Offer Document, it will not without the other Party’s prior written consent, solicit to hire or engage as an employee, consultant, contractor, or any personnel employed by the other Party that was involved in the sale or delivery of the Services or Deliverables under the CBI Offer Document or became known to the soliciting Party through the relationship established pursuant to this CBI Offer Document. If either Party hires or engages any such personnel prior to the expiration of the twelve (12) month period, the Party soliciting or hiring the personnel shall pay to the other Party, within thirty (30) days of the hiring or engagement date, an amount equal to the person's annual compensation at the time of his or her departure from the other Party. Absent direct solicitation and/or recruitment, this provision will not apply to job opportunities posted on recruiting websites or in other publications in which one Party seeks to find candidates for open positions.

**14. Notices.** All notices and other communications required to be given under this Terms of Sale or any applicable CBI Offer Document, 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 Client at its address on the CBI Offer Document and to CBI at Creative Breakthroughs, Inc., Attn: Legal Services/Finance, 1200 Woodward Heights, Ferndale, MI 38220.

**15. 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 shall be solely responsible for such compliance with respect to Client Data and the Content that it provides to CBI.

16. **Insurance.** Each Party, at its own expense and during the Term of this Terms of Sale or any CBI Offer Document, shall maintain insurance in commercially reasonable amounts, calculated to protect itself and its business operations, from any and all claims of any kind or nature, for damages to property or personal injury, including death, made by anyone, that may arise from activities performed or facilitated by this Terms of Sale, whether these activities are performed by that Party, its employees, agents, or anyone directly or indirectly engaged or employed by that Party or its agents.
17. **Governing Law.** This Terms of Sale and any CBI Offer Document shall be governed by, and construed and enforced in accordance with, the laws of the State of Michigan, without regard to conflicts of law principles. Exclusive jurisdiction for any lawsuit or claim in connection with this Terms of Sale or any SOW issued hereunder shall be in courts within County of Oakland or the Federal District Court for the Eastern District of Michigan.
18. **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 may not be filed, made or maintained unless filed within six (6) months after CBI has shipped or provided the Products. Further, the Parties stipulate and agree that any claim by Client against CBI arising from or in connection with CBI's provision of Services may not be filed, made or maintained unless filed within one (1) year after CBI has provided the Services in question.
19. **Waiver.** No forbearance, failure or delay in exercising any right, power or privilege is a waiver thereof, nor does any single or partial exercise preclude any other or future exercise of any other right, power or privilege. No waiver of any provision shall be effective unless made in a writing signed by both CBI and Client.
20. **Severability.** If any provision of this Terms of Sale or any CBI Offer Document 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.
21. **Force Majeure.** 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, the CBI Offer Document 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 non-payment of any sums due hereunder.



22. **Assignment and Amendment.** Neither Party shall have the right to assign any of its obligations or duties under this Terms of Sale or any CBI Offer Document, without the prior written consent of the other Party, which consent shall not unreasonably be withheld or delayed. This Terms of Sale and any CBI Offer Document may be amended or modified only by a writing executed by both Parties.
23. **Relationship of the Parties.** The relationship of the Parties 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 this 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 this Terms of Sale is intended to create or constitute a joint venture, partnership, agency, trust, or other association of any kind between the Parties.
24. **Entire Agreement.** This 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.
25. **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>.
26. This Terms of Sale and the applicable CBI Offer Document shall not be construed in favor of or against either Party.