



## CONSULTING SERVICES TERMS AND CONDITIONS

### 1. TERMS AND CONDITIONS APPLICABLE TO CONSULTING SERVICES.

These Consulting Services Terms and Conditions will govern the rights and obligations of Cre8tive and Customer in relation to the Consulting Services described in any related Statement of Work ("SoW"), Work Authorization ("WA"), Change Order (CO), Amendment, or other document (referred to herein collectively as "SoW"). The SoW sets forth the Services to which you are entitled. Your right to receive the Services offered under the SoW is conditioned upon your acceptance of the General Terms and Conditions ("GTC") and, specifically, the following Consulting Services Terms and Conditions ("Consulting T&C"), and you are agreeing to be bound by them. The SoW, the GTC and the Consulting T & C are hereafter collectively referred to as the Agreement.

### 2. GRANT OF LICENSE IN THE DELIVERABLES.

Subject to the terms and conditions herein, the GTC and any limitations set forth in a SoW, if the Services Deliverables include Developed Software described in a SoW, Cre8tive grants Customer, and Customer accepts from Cre8tive a non-exclusive, revocable, limited, personal, non-transferable license to:

**2.1.** Install, copy and use the Developed Software in connection with your use of the base software ("Software") licensed from Cre8tive or its affiliated companies pursuant to a valid Epicor End User License Agreement ("License Agreement").

**2.2.** Permit its Authorized End Users Access, upon their agreement to be bound under the terms of the License Agreement, to use the Developed Software for Client's and Affiliates' internal business wherever located, subject to Cre8tive's right to terminate in accordance with this Agreement.

**2.3.** Internal Use. The License purchased herein is granted solely to Customer for its internal data processing and data management needs. Customer shall not: (i) use the Software for a timesharing or service bureau application, (ii) provide access to the Developed Software or Documentation to third parties without Cre8tive's prior written consent, which may be withheld in its sole discretion, or (iii) lease, license, sublicense, sell, distribute, encumber or otherwise transfer the Developed Software and Documentation except as otherwise expressly permitted herein.

**2.4.** Reservation of Rights. All rights not expressly granted hereunder are reserved to Cre8tive.

### 3. FEES.

Cre8tive ("us", "we", "our") agrees to provide the consulting services ("Services") described in the SoW to which these Consulting T & C are attached. You will pay us for the Services on either: (i) a time and materials basis, (ii) a Fixed Fee, or (iii) a Subscription Fee, at the rate or rates specified in the SoW,

**3.1. Time and Materials Billing.** The minimum charge for on-site consulting services shall be 1 day and the minimum charge for off-site consulting services shall be 2 hours unless otherwise agreed. We will invoice you periodically in arrears for fees incurred for performing the Services. The Services will be provided during normal business hours. Any work performed at your request on a holiday, weekend, after 6:00 pm, local time, or more than 10 hours in a single day will be charged at 150% of the rates specified in the applicable Agreement. Where possible we will advise you before we begin incurring any such overtime charges.

**3.2. Fixed Fee Billing.** Fixed Fee billing shall be those amounts set forth in the SoW and shall be paid according to its terms. Work outside the scope of the Fixed Fee agreement shall be quoted separately by Cre8tive and any such work shall be subject to Sections 3.1 and 5 unless expressly excluded.

**3.3. Subscription Fee Billing.** Subscription Fee Billing shall be those amounts set forth in the SoW and shall be paid according to its terms. Work requested by Customer, whether related to the Subscription or not, shall be quoted separately by Cre8tive, and any such work shall be subject to Section 3.1 above unless expressly excluded.

#### **4. TRAVEL EXPENSES.**

Rates and terms applicable to consultant travel time to/from a Cre8tive office to the Customer site may be addressed in the SoW, WA or CO including applicable per diem expense rates. Travel time begins on the departure from the Consultant's office or residence to begin the travel to the Customer Site. You will reimburse us for all reasonable out-of-pocket expenses incurred by us to perform the Services, which include but are not limited to travel expenses, per diem and mileage as specified in the SoW. Cre8tive shall use reasonable efforts to secure the lowest practically available rates on travel, and reasonable rates on lodging, given any applicable location, timing and availability constraints. The parties shall confer from time to time as needed during the engagement to discuss and agree upon any reasonable expense parameters.

#### **5. 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 because of your cancellation of scheduled Services 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 ten (10) business days prior to the scheduled date. If you cancel scheduled Services without such notice on more than one (1) occasion, we reserve the right to invoice you 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, however all non-reimbursable travel expenses or change fees will be invoiced. Any such invoice is payable in accordance with Section 9 below. As a result of such cancellation, You will also be responsible for any additional reasonable out of pocket and travel expenses that could not be avoided or reduced by us.

#### **6. ESTIMATED FEES.**

Unless otherwise specifically noted therein, a SoW may include an estimate of the fees necessary to perform the Services. Although the estimate is believed to be reasonable based upon a variety of factors, including our understanding of the scope of services to be provided and our experience with such services, you understand that this is only an estimate, and that the actual fees incurred for such Services may vary. However, prior to exceeding 120% of the initial estimated amount for the engagement, you will be notified with a request for approval to proceed.

#### **7. FIXED FEE EXCEPTIONS.**

Notwithstanding the foregoing, if Cre8tive has agreed to perform the Services on a fixed fee basis as set forth in the SoW, then the following conditions shall also apply, provided that any fees for the Customer Care Program are in addition to any fixed fee price. The fixed fee price has been determined based on specific assumptions regarding the modules to be implemented, the scope of the services to be performed, your staffing requirements, and performance of your responsibilities and obligations, all as set forth in the SoW. If at any time during the engagement Cre8tive reasonably determines that (i) You are not fulfilling your responsibilities and obligations as described in the SoW; or (ii) Your staffing and/or resources dedicated to the implementation do not meet the requirements set forth in the SoW, then Cre8tive shall provide written notice that details these exceptions. You will have ten (10) business days from receipt of the notice to remedy the exceptions to Cre8tive's reasonable satisfaction. If you do not remedy the exceptions to our reasonable satisfaction or do not have the ability to remedy the exceptions, then we will perform all remaining Services on a time and materials basis. If the scope of the services to be performed changes for any reason, the parties will use good faith efforts to agree on a revised cap; and failing such agreement, all additional Services will be performed on a time and materials basis.

## **8. CONSULTING EXPENSES.**

Except as otherwise set forth in a SoW, all reasonable travel expenses shall be billed in addition to the Time and Materials, Fixed Fee or Subscription Fee billings. Travel expenses shall be commercially reasonable based upon the time frame and dates such travel occurs and shall include air, train, bus, taxi, car service, rental car, baggage charges, hotel, laundry, meals (either actual or per diem), gasoline, tolls, parking, internet, telephone or fax, tips and miscellaneous expenses related to the SoW. Rescheduling or cancellation of scheduled Services shall result in the charges identified in Section 5.

## **9. PAYMENTS.**

Please see Cre8tive's General Terms and Conditions for Payment Terms. Unless otherwise specified all billings are in United States currency.

## **10. WARRANTIES AND DISCLAIMERS.**

**10.1. Additional Express Warranty.** In addition to product 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.

**10.2. Developed Software Warranty.** Before we commence development of the Developed Software, both parties will create the Specification which provides the details of the functionality and specifications of the Developed Software and which must be agreed to and signed by each party. If the Developed Software has undergone a complete professional services development cycle, Cre8tive will warrant for 90 days from delivery of the Developed Software that it will perform substantially in accordance with the Specification. If the Developed Software fails to conform to this warranty, our sole obligation to you will be to correct the Developed Software so that it performs substantially in accordance with the Specification. Except as otherwise set forth in the SoW, a professional development cycle includes complete design analysis, quality assurance/unit testing and final system testing (including completion of a Cre8tive Software Test Plan).

**10.3. Limitation.** All Developed Software will be delivered to a "single" environment (database). It is your responsibility to test all customization deliverables, or portions thereof, as they are delivered, within 5 business days of receipt to validate they are functioning correctly. Failure to notify Cre8tive of issues immediately after testing shall be deemed Your acceptance of the Deliverables and any future changes shall be billed time on a time and material basis in addition to the original budget proposed in the SoW or WA. All "Warranty" claims against a Developed Software Delivery must be reproducible in this originally delivered-to environment. It is your responsibility to move the delivered Developed Software to other environments in your system as you see fit. Cre8tive will not be responsible for "Warranty" claims in these different environments. In no event will Cre8tive be liable for damages for issues related to a Developed Software Delivery or Deliverables unless Cre8tive has been timely notified of the issue and has been provided with a reasonable opportunity to rectify the issue.

**10.4. Subscription Disclaimer.** CRE8TIVE DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. CUSTOMER ACKNOWLEDGES THAT CRE8TIVE DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, THAT SUBSCRIPTION SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS OR OTHER PROBLEMS INHERENT IN THE USE OF COMMUNICATIONS FACILITIES, AND THAT CRE8TIVE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**10.5. General Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED IN SECTIONS 10.1, THE SERVICES ARE PERFORMED, AND THE DEVELOPED SOFTWARE PROVIDED "AS IS", AND TO THE FULLEST EXTENT PERMITTED BY LAW, WE EXCLUDE ALL OTHER EXPRESS AND IMPLIED TERMS, WARRANTIES OR REPRESENTATIONS REGARDING THE SERVICES AND DEVELOPED SOFTWARE

ARISING BY LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.