



HOSTING SERVICES TERMS AND CONDITIONS

1. DEFINITIONS.

1.1. "Agreement" means the Hosting Services Agreement consisting of these Hosting Terms and Conditions, the General Terms and Conditions, the SoW, WA, Change Order or Amendment.

1.2. "Commencement Date" means the date that the servers and supporting infrastructure is set up and available for Customer's use. This date may be prior to the Epicor 'go-live' date.

1.3. "Hosting" and "Hosting Agreement" means Cre8tive's, or its third-party vendor's hosting of Customer's Epicor and/or Developed Software at a data center as provided in the Cre8tive Hosting Agreement.

1.4. "Services" includes Hosting Services.

1.5. "Termination Date" means either (i) the date that is the last day of the third calendar month following Customer's written notice of intent to terminate which must be accompanied by payment of all remaining Monthly Fees and outstanding Upfront Fees, or (ii) the date that is thirty (30) days after Customer's written notice of intent to terminate for cause and Cre8tive's inability to cure.

1.6. "Upfront Fees" means those one-time fees charged by Cre8tive to initiate Customer's hosted environment.

2. HOSTING SERVICES.

Cre8tive agrees to provide Hosting Services described in the SoW to which these Hosting Terms and Conditions are attached. You will pay us at the rates specified in the SoW. A Service Level Agreement is set forth in the SoW. Cre8tive agrees to use reasonable efforts to implement the Hosting Services at the Service Levels stated. Customer agrees to provide, and to cause its third-party vendors and agents to provide, Cre8tive will all information, access, and good faith cooperation required to enable Cre8tive to provide the Hosting Services. The Hosting Services may include Services provided by or through a third party.

3. TERMS AND CONDITIONS APPLICABLE TO HOSTING AND MANAGED SERVICES.

These Hosting Services Terms and Conditions will govern the rights and obligations of Cre8tive and Customer in relation to the Hosting Services described in any related Statement of Work ("SoW"), Work Authorization, ("WA"), Change Order (CO), Amendment, or other document(s) (referred to herein collectively as "SoW"). The SoW sets forth the Hosting Services to which you are entitled. Your right to receive the Hosting Services you subscribe to is conditioned upon your acceptance of the following Hosting Terms and Conditions and acceptance of the General Terms and Conditions, which you affirm you have read and by which you are agreeing to be bound.

4. BILLING COMMENCEMENT DATE.

Billing for Hosting Services commences on the Commencement Date. Note, the Customer may not be live on their Epicor ERP software. Cre8tive shall notify the Customer in writing of the billing Commencement Date for this SoW.

5. CONTRACT TERM.

The initial term of this Agreement is for 12 months from the billing commencement date. These Terms and Conditions are binding upon the Parties as of the effective date of the SoW.

6. CONTRACT RENEWAL.

After the initial 12-month term this Agreement will automatically renew yearly on the anniversary of the billing commencement date until one or both parties provide 90 days prior written notice of cancellation.

7. FEES AND BILLING.

7.1 Upfront Fees. On signing the Agreement the Customer agrees that all Upfront Fees are due and payable.

7.2 Monthly Fees. All monthly fees are invoiced on the 1st of the month for the current month and are due within fifteen (15) days of the invoice date. Invoices are for entire months and no rebate will be provided for partial months.

7.3 Fees for Additional Services. Any additional Services requested by Customer will be billed at Cre8tive's standard time and materials rates in effect at the time of the request.

7.4 Taxes. Upfront Fees and Monthly Fees do not include taxes. Customer shall pay all taxes assessed upon or related to the Hosting Services (except for taxes based on Cre8tive's net income).

8. TERMINATION.

8.1 Convenience. The customer may terminate the Hosting Agreement, with or without cause, by giving 90 days' notice of the intent to terminate to Cre8tive accompanied by payment of all outstanding Upfront Fees and the remaining Monthly Fees due up to the Termination Date.

8.2 For Cause. For terminations for cause, Customer shall provide Cre8tive with the details of such cause and Cre8tive shall have the right to cure following notice. In the event Cre8tive is unable to cure within thirty (30) days of written notice, the Agreement shall terminate. Customer is responsible for payment of all Upfront Fees and Monthly Fees prior to the Termination Date.

9. ACCEPTABLE USE AND PRIVACY POLICY.

Customer's use of the Site is subject to Cre8tive's Acceptable Use Policy, and Privacy Policy, both of which may be found at www.ctnd.com/legal. Cre8tive has no obligation to monitor use of its Site, however, Cre8tive reserves the right to review and remove any materials from any source in its sole discretion. Cre8tive reserves the right to limit or terminate your access to any or all its Services or web sites at any time without notice for any reason whatsoever in addition to all other rights and remedies. Cre8tive reserves the right at all times to disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request, or to edit, refuse to post or to remove any information or materials, in whole or in part, in Cre8tive's sole discretion and in accordance with Cre8tive's Privacy Policy and Acceptable Use Policy.

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 Limitation. Customer is responsible for securing and maintaining its own Internet connectivity to access the Hosting Services. Cre8tive shall use commercially reasonable efforts to comply with the SLA, however any failure of Cre8tive to satisfy the uptime goals of the SLA shall not constitute a breach of the Agreement. Cre8tive does not warrant or guaranty the performance of any third-party software including Epicor.

10.3. 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.

10.4. 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.