



## Master Services Agreement

This MASTER SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between Creative Breakthroughs, Inc (“**CBI**”) and “**Client**” as defined within the applicable Statement of Work, proposal, or similar instrument (each an “**SOW**”) referencing this Agreement. This Agreement is effective upon the date of Client’s acceptance of such SOW (the “**Effective Date**”) whether by issuance of a purchase order, signature, or other manifestation of Client’s assent. CBI and Client may hereinafter individually referred to as a “**Party**” and collectively referred to as the “**Parties**.”

**1. Term; Termination.** The term (“**Term**”) of this Agreement will begin on the Effective Date and continue until its termination as described herein. This Agreement may be terminated at any time by either party: (i) upon 30 days’ prior written notice without cause or (ii) upon written notice if the other party breaches any material term of this Agreement and such breach remains uncorrected for 15 business days following written notice from the other party. Upon any termination, CBI shall be entitled to be paid for all work performed, all deliverables provided, all accrued charges and all costs incurred up to and including the effective date of termination. Client may additionally be liable to CBI for payment of an early termination fee if specified within the applicable SOW(s).

**2. Statements of Work.** During the Term, CBI and Client may agree upon SOWs defining (i) services (“**Services**”) and deliverables (“**Deliverables**”) to be provided by CBI, (ii) CBI’s compensation, (iii) the period during which the Services will be provided (if applicable) (the “**Service Period**”), and (iv) any additional terms and conditions. Each SOW shall be incorporated into and governed by this Agreement. Any changes to an SOW shall be agreed upon in writing by the parties. The parties agree that this Agreement and the applicable SOW(s) for Services or Deliverables shall govern and supersede any terms and conditions stated on any purchase order submitted by Client for such Services or Deliverables. In the event of any conflict between this Agreement and an SOW, the SOW will control. Whenever used herein or in any SOW, the term “**Agreement**” shall mean and include this Master Services Agreement and all SOWs executed in connection herewith.

**3. Services; Warranty; Acceptance.**

(a) In consideration of the fees stated in the SOW (“**Fees**”), CBI will provide the Services and Deliverables (collectively, the “**Work Product**”) described in the SOW.

(b) CBI warrants that at the time of performance all Services will be performed in a good and workmanlike manner and in accordance with generally accepted industry standards. EXCEPT FOR THE FOREGOING, CBI MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, AND CBI SPECIFICALLY DISCLAIMS ALL OTHER SUCH WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR USE. FURTHER, CBI DOES NOT WARRANT THAT CLIENT WILL NOT EXPERIENCE INADVERTENT OR DELIBERATE BREACHES OF SECURITY FROM THREATS OUTSIDE CBI’S DIRECT CONTROL DUE TO THE INTERNET BEING INHERENTLY INSECURE.

(c) Client shall accept or reject the Work Product in writing within fourteen (14) business days from receipt of Deliverables (if any) and upon completion of the Services. If Client does not accept or reject in writing as set forth above, that Work Product shall be deemed accepted by Client. Client shall clearly state in writing the reasons for any rejection. Client may not reject any Work Product if the grounds for rejection are based, in whole or in part, on (i) Client’s use of a Deliverable other than in accordance with applicable documentation or instructions provided by CBI, (ii) modification of any Deliverable other than by CBI, (iii) the use or combination of any Deliverable with materials not supplied by CBI (iv) information supplied by Client to CBI that is included in or relied upon to provide any Service or Deliverable or (v) Client’s negligence, breach or willful misconduct. Within five (5) business days of a notice of a proper rejection, CBI shall present a commercially reasonable corrective plan of action to Client. CBI, at no additional expense to Client, shall then make the corrections (and Client shall permit CBI to make such corrections) at CBI’s reasonable expense and, where applicable, CBI shall resubmit the corrected Deliverable or Service to Client.

**4. Fees; Payment; Taxes.** Client shall pay CBI the Fees for the Services and Deliverables as set forth in the fee schedule contained in the applicable SOW. Unless otherwise indicated in the SOW, Client shall also pay the reasonable travel and living expenses of CBI’s employees that are incurred in the course of CBI’s performance of Services. Client payment terms shall be net cash thirty (30) days from the invoice date. Client shall also be responsible for taxes applicable to Client arising out of this Agreement, except for taxes imposed on CBI’s income or arising from the employment relationship between CBI and its personnel.

**5. Confidentiality.** To the extent that confidential and proprietary information of each party (“**Confidential Information**”) is exchanged or received in connection with the Services, each party agrees not to use the other party’s Confidential Information except in the performance of, or as authorized by, this Agreement, and not to disclose, sell, license, distribute or otherwise make available such information to third parties without the other party’s prior written consent. Use by affiliates and third party contractors may be permitted so long as such affiliate or contractor has a need to know and is required to maintain the confidentiality of such information as required by this Section 5. Confidential Information includes, without limitation, CBI Information (as defined in Section 6(b) hereof), but does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information already known by the receiving party independent of the Confidential Information as evidenced by written records, (iii) information developed by the receiving party independent of the Confidential Information, and (iv) information that the receiving party rightfully obtains without restrictions on use and disclosure. Further, in the event the receiving party becomes legally compelled to disclose any Confidential Information, the receiving party shall notify the disclosing party so that the disclosing party may seek a protective order or other remedy. At any time after the Effective Date, each party shall be entitled to request the return or, at its discretion, the destruction of its Confidential Information in the possession of the other party.

Nothing in this Agreement shall be construed to obligate either party to disclose its Confidential Information to the other party. THE PARTIES MAKE NO WARRANTY EXPRESS OR IMPLIED AS TO THE ACCURACY, COMPLETENESS OR ADEQUACY OF ANY CONFIDENTIAL INFORMATION DISCLOSED HEREUNDER. ALL SUCH INFORMATION SHALL BE DISCLOSED ON AN "AS IS" BASIS. The obligations set forth in this Section 5 shall continue for two (2) years after the termination of this Agreement.

#### 6. Rights in Work Product.

(a) Subject to Sections 6(b) and (c) below, and except for materials that CBI acquires under license from a third party, all Deliverables created specifically for and provided to Client by CBI under an SOW shall be the property of Client for Client's internal use.

(b) Any CBI proprietary or Confidential Information used to perform the Services, included in any Deliverable, or acquired, conceived, or developed at any time independent of CBI's work under any SOW, including but not limited to software, appliances, methodologies, code, templates, tools, policies, records, working papers, knowledge, data, know-how, architectures, concepts, techniques, templates, works of authorship or other intellectual property, written or otherwise (collectively, "CBI Information"), shall remain the exclusive property of CBI. To the extent that CBI incorporates any CBI Information into the Deliverables, CBI hereby grants to Client a royalty-free, non-exclusive, non-transferable license to use such CBI Information solely for Client's internal business purposes and as part of the Deliverables, in accordance with the limitations set forth in this Agreement and any applicable SOW.

(c) Client acknowledges that CBI provides similar services to other clients and that nothing in this Agreement shall be construed to prevent CBI from carrying on such business or from acquiring, licensing, marketing, distributing, developing for itself or others or having others develop for it similar products, services or materials performing the same or similar functions as the Services and Deliverables contemplated by this Agreement or any SOW. Therefore, notwithstanding Section 6(a), CBI has the right to retain and use internally copies of the Deliverables, *provided, however*, that the foregoing does not include rights to distribute, disclose or create derivative works from Client's Confidential Information that is incorporated into the Deliverables. Similarly, notwithstanding Section 6(a), Client acknowledges that the Work Product is not a work for hire and that Client shall not sell, transfer, publish, disclose, display or otherwise make available the Work Product or any CBI Information except as expressly permitted herein.

#### 7. Indemnification.

(a) CBI shall defend and indemnify Client against any costs, liabilities or damages (including attorney's fees) arising from a claim that Client's authorized use of any Deliverable other than materials that CBI acquires under license from a third party infringes any patent, copyright, trademark or trade secret, provided that Client promptly notifies CBI in writing of any such claim or suit. Notwithstanding the foregoing, Client's failure to so notify CBI shall not diminish CBI's indemnity obligations hereunder except to the extent such delay

prejudices CBI's defense of such matter. CBI shall have sole control of any such suit (including without limitation the right to settle on behalf of Client), and Client shall cooperate with CBI in connection with its defense at the reasonable expense of CBI. If Client is enjoined from using any Deliverable, or if CBI believes that any Deliverable is likely to become the subject of an infringement claim, CBI shall (i) obtain the right for Client to continue to use such Deliverable or (ii) replace or modify the Deliverable so as to make it non-infringing and substantially comparable in functionality. If after using commercially reasonable efforts CBI is unable to do either (i) or (ii) above, such Deliverable shall be returned to CBI and CBI's sole liability shall be to refund Client the amount paid to CBI for such item or portion thereof. Notwithstanding the foregoing, CBI will have no liability to indemnify Client hereunder based on (i) use of a Deliverable other than in accordance with applicable documentation or instructions provided by CBI, (ii) modification of any Deliverable other than by CBI, (iii) the use or combination of any Deliverable with materials not supplied by CBI (iv) information supplied by Client to CBI that is included in any Service or Deliverable (v) Client's use of a superseded version of the Deliverable if the infringement could have been avoided by using the latest version of the Deliverable provided by CBI (vi) Client's failure to comply with the terms of any license agreement or other licensor or manufacturer requirements applicable to any software or other products provided by CBI or (vii) Client's negligence, breach or willful misconduct.

(b) In the event that any willful misconduct or negligent act or omission of either party or its employees during the performance of Services on Client's premises causes or results in the (i) loss, damage to or destruction of physical property of the other party or third parties, and/or (ii) death or injury to any person, then such party shall indemnify, defend and hold the other party harmless from and against any and all resulting claims, damages, liabilities, costs and expenses (including reasonable attorney's fees).

#### 8. Limitation Liability.

(a) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR INDIRECT DAMAGES, LOST BUSINESS PROFITS OR LOST DATA ARISING OUT OF THIS AGREEMENT OR ANY SERVICES, DELIVERABLES OR WORK PRODUCT.

(b) CBI'S TOTAL AGGREGATE LIABILITY UNDER THIS AGREEMENT, INCLUDING IN CONNECTION WITH ANY SERVICES, DELIVERABLES OR WORK PRODUCT PROVIDED BY CBI, SHALL BE LIMITED TO THE FEES THERETOFORE PAID BY CLIENT TO CBI UNDER THIS AGREEMENT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE CLAIM.

(c) IN NO EVENT SHALL CBI BE LIABLE FOR ANY CLAIM MADE BY CLIENT OR ANY OTHER PERSON TO THE EXTENT SUCH CLAIM ARISES OUT OF MATERIALS PROVIDED BY CLIENT TO CBI TO USE IN DEVELOPING, PERFORMING OR CUSTOMIZING ANY SERVICES OR DELIVERABLES.

**9. Employee Solicitation.** During the term of this Agreement and for one (1) year thereafter, Client agrees not to solicit or recruit for employment any current employee of CBI contacted in connection with this Agreement without CBI's prior written consent. Notwithstanding the foregoing, nothing in this Agreement shall prohibit Client from making solicitations which are directed to the general public in the ordinary course of business and which do not specifically target CBI's employees.

**10. Force Majeure.** Neither party will be liable for any loss, damage or delay resulting from any event beyond such party's reasonable control (a "**Force Majeure Event**") and delivery and performance dates will be extended to the extent of any delays resulting from a Force Majeure Event. Each party will promptly notify the other upon becoming aware that any Force Majeure Event has occurred or is likely to occur and will use its best efforts to minimize any resulting delay in or interference with the performance of its obligations under this Agreement.

**11. Miscellaneous.** CBI will ensure that its personnel obey all reasonable instructions and directions issued by Client when on Client's premises. CBI is an independent contractor and shall not be deemed an employee or agent of Client. This Agreement, including all exhibits and any SOWs, contains the complete agreement between

the parties relating to the subject matter hereof and supersedes all prior negotiations, representations and understandings. Any and all different or additional terms and conditions contained on Client's ordering instrument, whether printed or written, shall be of no force or effect. Sections 4, 5, 6, 7, 8, 9 and 10 shall survive the termination of this Agreement. This Agreement shall be governed by the laws of the State of California. In case any one or more of the provisions contained in this Agreement should be invalid, illegal, or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby. CBI reserves the right to modify this Agreement at any time by sending written notice to Client. Any notices sent under this Agreement shall be delivered by reliable means to the addresses specified by authorized representatives of the Parties.