

## CREATIVE COMPLIANCE SOFTWARE SOLUTIONS, LLC

### ORDER FORM TERMS AND CONDITIONS

1. **Definitions.** For purposes of the Order Form and these Terms and Conditions, the following terms shall have the following meanings:

- (A) **“Affiliate”** shall mean an entity controlling, controlled by or under common control with Customer, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. For purposes of this definition, the meaning of Affiliate shall also include employees, agents, subcontractors and consultants (including attorneys, financial advisors and accountants) of the Affiliate.
- (B) **“Agreement”** shall mean the inextricably linked combination of a duly executed Order Form and these Terms and Conditions.
- (C) **“Business Day”** shall mean Monday through Friday, not including Federal holidays, between the hours of 8am and 5pm Eastern Time.
- (D) **“Customer”** shall mean an entity more thoroughly identified on an Order Form which, by virtue of executing one or more Order Forms, has duly engaged Creative Compliance to perform certain Services and/or to provide Licensed Products.
- (E) **“Customer Data”** shall mean any information or data provided, or made available, to Creative Compliance by Customer relating to the Customer’s employees, Producers, or businesses of Customer in connection with the performance of Services.
- (F) **“Customer Property”** shall mean information, data and materials prepared by, acquired by or under control of Customer and subsequently provided by Customer to Creative Compliance for use by Creative Compliance in providing the Services, including but not limited to Customer Data and Customer’s trademarks, service marks and logos.
- (G) **“Confidential Information”** shall mean information, data, technology, training products and content, customer, business or technical information that is not generally known to the public and at the time of disclosure by the disclosing party is identified as or would reasonably be understood by the receiving party to be, proprietary or confidential.
- (H) **“Creative Compliance Property”** shall mean the following tangible and intangible property (whether owned by Creative Compliance or a third party) delivered by Creative Compliance to Customer or used by Creative Compliance in providing the Services to Customer: (i) software, object code, source code, hardware designs, algorithms, software tools, data, information, user interface designs, architecture, objects and documentation (both printed and electronic), network designs, and all improvements, software upgrades, enhancements, modifications and extensions thereof; (ii) Licensed Products and (iii) Creative Compliance’s other content and technology.
- (I) **“Expiration Date”** shall mean the latter of the End Date set forth in the Order Form or the last day of any Renewal Term.
- (J) **“Licensed Products”** means the Creative Compliance products to be licensed to Customer as described in one or more Order Forms.

- (K) **“Minimum User Requirements”** means those certain minimum user requirements published by Creative Compliance at: <https://www.creativecompliance.com/creative-compliance-hub-minimum-user-requirements> as may be modified, restated or otherwise updated from time to time at Creative Compliance’s sole discretion.
- (L) **“National Insurance Producer Registry”** or **“NIPR”** shall mean the nonprofit Affiliate of the National Association of Insurance Commissioners (NAIC). The NIPR administers the Producer Information Network and Producer Database.
- (M) **“NIPR Property”** shall mean the Producer Database, the NIPR Gateway, the NIPR Transactional Layout Documents, the NIPR Requirements, NIPR Marks together with any modifications, additions, enhancements or updates to any of the foregoing and any new property or products developed by or for the NIPR
- (N) **“Order Form”** shall mean each mutually agreed upon written description of Services to be provided by Creative Compliance to Customer including the licensing of Licensed Products to Customer. Each Order Form shall reference, incorporate, and be governed by these Terms and Conditions.
- (O) **“Producer”** shall mean an individual who sells, solicits, or negotiates insurance.
- (P) **“Producer Database”** or **“PDB”** is a central repository of Producer licensing information.
- (Q) **“Renewal Term”** shall mean the twelve (12) month period commencing immediately upon expiration of the Initial Term and each successive twelve (12) month period thereafter, unless otherwise stated in the Order Form.
- (R) **“Representatives”** means, as to any person, such person’s Affiliates (including its parent and its and their respective subsidiaries) and its and their respective directors, officers, employees, shareholders, partners, members and other owners, contractors, agents and consultants (including attorneys, financial advisors and accountants).
- (S) **“Services”** shall mean any services or products related to insurance licensing activities, including Customer use of Licensed Products, to be provided by Creative Compliance to Customer or User as more specifically described on the Order Form, or, Services ordered via the Creative Compliance Hub platform shopping cart.
- (T) **“Third Party Products”** means application software products and integrated services provided by third party vendors, including operating system and application software and services with which the Creative Compliance Hub interfaces and which provides certain functionality essential to the operation of the Creative Compliance Hub. Third Party Products are licensed to Creative Compliance for incorporation and use in the hosted environment as part of the Services as set forth in the Order Form.
- (U) **“User”** shall mean Customer employees or Affiliates, or any other persons who use Licensed Products for the purposes of obtaining a new insurance license or renewing their individual insurance license.
- (V) **“Vendor”** or **“Creative Compliance”** shall mean Creative Compliance Software Solutions, LLC, a Delaware Limited Liability Company with its principal office at 1201 N. Orange Street, Suite 710, Wilmington, DE 19801-1186.

## 2. Payment Terms.

- (A) Customer will pay Creative Compliance for the Services in accordance with the schedule set forth in the applicable Order Form. Except as otherwise provided herein or otherwise stated within an Order Form, Customer will pay invoices within thirty (30) days of submission. To the extent applicable, Customer will reimburse Creative Compliance for reasonable out-of-pocket, travel, lodging and incidental expenses incurred in providing the Services. All amounts not paid in full within thirty (30) days of presentation of the invoice therefore will be subject to a late payment charge equal to the lesser of 1% per month (12% per annum) or the highest rate permitted by law calculated daily on a prorated basis from the date of the presentation of such invoice. Creative Compliance reserves the right, in its sole and unfettered discretion, to suspend access to the Licensed Product for non-timely payment.
- (B) Customer will establish and maintain in good standing an account with the NIPR, or an escrow account with Creative Compliance, solely for the purpose of paying all fees, including state license fees and NIPR transaction fees (each individually a “Fee” and collectively, the “Fees”). In the event that Customer’s account with the NIPR is not in good standing, all Creative Compliance Hub transactions requiring a Fee will be unavailable until such time as such account has been restored to good standing. Customer will inform Creative Compliance immediately upon changing its NIPR password. Customer understands that its failure to do so will result in all NIPR functionality being disabled. In such circumstances, functionality will be restored, following written notice of such change, no later than the end of the following Business Day.
- (C) Creative Compliance reserves the right to increase service fees upon providing not less than thirty (30) days prior written notice to Customer. Notwithstanding anything herein to the contrary, Creative Compliance reserves the right to increase third-party Fees at any time upon notice to Customer if such third-party increases the Fees charged for such services and such increase shall be proportionate to the increase assessed by any such third-party provided, however, that an increase in state regulatory Fees shall be passed through to Customer without the requirement of prior written notice.
- (D) Fees for Services ordered via the Creative Compliance Hub platform shopping cart will be payable as referenced therein or as subsequently agreed to pursuant to verification of the order by the customer order fulfillment team.
- (E) Unless otherwise provided in this Agreement, Customer shall pay all sales, consumer, use and similar taxes, including state and local taxes, in connection with any and all service fees charged (other than taxes on Creative Compliance’s net income).
- (F) All payments by credit card will be subject to a 3% transaction fee.

## 3. Confidential Information.

- (A) Each party (in such context, a “**Receiving Party**”) will keep confidential and not disclose to any other party or use (except as expressly authorized in these Terms and Conditions and pursuant to fulfilling the Service obligations in the Order Form) Confidential Information obtained from the other party (in such context, a “**Disclosing Party**”), regardless of form (written, verbal,

electronic, visual, or by any other medium).

- (B) The Receiving Party may disclose Confidential Information of the Disclosing Party to its Representatives who have a need to know such Confidential Information and who agree to keep such Confidential Information confidential as set forth herein and in connection with an audit, review or examination by a governmental, regulatory or self-regulatory authority or auditor.
- (C) Notwithstanding anything contained herein, the confidentiality obligations under the Agreement shall not apply to information that is at any time: (i) already known to the Receiving Party at the time it is disclosed to the Receiving Party; (ii) publicly known through no wrongful act of the Receiving Party; (iii) rightfully received from a third party without, to the Receiving Party's knowledge, restriction on disclosure and without breach of the Agreement; (iv) independently developed by the Receiving Party without the use of Confidential Information; (v) approved for release by written authorization of the Disclosing Party; (vi) furnished by the Disclosing Party to a third party without written restriction on disclosure; or (vii) disclosed pursuant to a requirement of a governmental agency or of law, provided, however, that in the case of the foregoing subclause (vii), to the extent reasonable under the circumstances and permitted by law, the party subject to the disclosure requirement has notified the Disclosing Party in advance of such disclosure and the Disclosing Party has had an opportunity to seek, at the Disclosing Party's sole cost and expense, a protective order or other appropriate remedy and the party subject to the disclosure requirement has reasonably cooperated with such efforts.
- (D) Upon the effective date of termination or expiration of the Agreement, each party shall cease use of the other's Confidential Information, and if the Disclosing Party so requests, either: (i) return to the Disclosing Party all Confidential Information of the Disclosing Party that is in the Receiving Party's possession or control; or (ii) destroy all Confidential Information of the Disclosing Party that is in the Receiving Party's possession or control and, at the Disclosing Party's request, send a written confirmation of destruction to the Disclosing Party. Notwithstanding the foregoing, it is understood and agreed that (i) information in an intangible or electronic format containing Confidential Information cannot be removed, erased or otherwise deleted from archival systems (also known as "computer system back-ups") and that such computer system back-ups shall be protected under the confidentiality requirements contained in the Agreement and not violate the Agreement and (ii) the Receiving Party and its Representatives may keep a copy of any Confidential Information (including in electronic or paper form) for record and compliance purposes pursuant to an internal document retention policy implemented in order to comply with applicable law, professional standards or reasonable business practices (including, without limitation, any defense the Receiving Party or its Representatives may raise to any claim made by or on behalf of the Disclosing Party that the Receiving Party or its Representatives violated the Agreement).
- (E) The parties agree that money damages may not be an adequate remedy if this Paragraph 3 is breached and, therefore, either party may, in addition to any other legal or equitable remedies, seek an injunction or other equitable relief against such breach or threatened breach.

#### **4. Ownership of Creative Compliance Property.**

- (A) Creative Compliance shall hold all right, title and interest, including, but not limited to, copyrights, trade secrets, patents, other intellectual property and proprietary rights and similar

protections, in and to Creative Compliance Property. No ownership rights in Creative Compliance Property, or any modifications or copies thereof, are transferred by the Agreement, and nothing herein shall be deemed to create a work for hire relationship between Customer and Creative Compliance.

(B) Customer will not, during the term of the Agreement or thereafter, contest the validity of any copyright, trade secret, patent and/or other intellectual property right in Creative Compliance Property or Creative Compliance's exclusive ownership thereof.

**5. Ownership of Deliverables and Customized Deliverables.** Creative Compliance will own all rights in any reports, data, plans, documentation, software (including source code and object code) and other materials developed under the Agreement (the "**Deliverables**"), excluding any Customer Property or Customer Confidential Information imbedded therein (which Customer expressly reserves all rights thereto). Creative Compliance grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable and limited license to use the Deliverables during the term of the Agreement solely as necessary to provide Customer with the right to use the Services as contemplated therein.

**6. Ownership of Customer Property.**

(A) Customer shall hold all right, title and interest, including, but not limited to, copyrights, trade secrets, patents, other intellectual property and proprietary rights and similar protections, in and to Customer Property. No ownership rights in Customer Property, or any modifications or copies are transferred by the Agreement.

(B) Creative Compliance will not, during the term of the Agreement or thereafter, contest the validity of any copyright, trade secret, patent and/or other intellectual property right in Customer Property, or Customer's exclusive ownership thereof.

**7. License Provisions.**

(A) Creative Compliance License.

(i) With respect to each Licensed Product and related print and electronic documentation that Creative Compliance provides under the Agreement, Creative Compliance grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable and revocable license to use such Licensed Product and related documentation solely in the manner authorized by the Agreement. Customer shall not make any print, Thumb Drive, CD-ROM or other tangible copies of any part of a Licensed Product without Creative Compliance's express written consent.

(ii) The rights granted Customer hereunder are restricted exclusively to Customer and may not be assigned, sub-leased, sublicensed, sold, or otherwise transferred except as provided herein. Customer may not reverse engineer, disassemble, decompile or modify any Creative Compliance Property.

(B) Customer License.

(i) Customer grants to Creative Compliance a limited, non-exclusive and non-transferable license to use the Customer Property in providing any Service pursuant to the terms of the Agreement.

- (ii) The rights granted Creative Compliance hereunder are restricted exclusively to Creative Compliance and may not be assigned, subleased, sublicensed, sold or otherwise transferred except as provided herein. Creative Compliance may not reverse engineer or decompile any Customer Property.
- (iii) Creative Compliance shall be free to use, without restriction, both during the term of the Agreement and after its termination, any information or materials supplied by Customer that do not constitute Customer Property.

## **8. Term and Termination.**

- (A)** This Agreement is effective as of the Effective Date set forth in the Order Form, for the Initial Term as indicated thereon, and shall then be automatically renewed for successive twelve (12) month periods, unless otherwise stated in the Order Form (each a “Renewal Term”) or, canceled, by written notice, no later than thirty (30) days prior to the expiration of the Initial Term or the next Renewal Term. Services shall commence on the date and year set forth in the Order Form and unless modified by mutual agreement of the parties, or terminated earlier pursuant to the terms hereof, shall continue until the Expiration Date.
- (B)** In the event that either party hereto fails to substantially perform any material obligation specified in the Agreement, the non-breaching party shall notify the other party hereof in writing and, if such breach is not remedied within thirty (30) days from the date of receipt of such notice, then the non-breaching party shall have the right to terminate the Agreement immediately. Customer’s failure to pay undisputed amounts owed to Creative Compliance in accordance with the payment provisions set forth in Paragraph 2 above shall be deemed to be a failure in the substantial performance of a material obligation of Customer under the Agreement.
- (C)** The termination of the Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall termination relieve Customer of its obligation to pay to Creative Compliance all charges that accrued prior to such termination.
- (D)** Within thirty (30) days of termination of the Agreement, Creative Compliance shall submit to Customer an itemized invoice for any fees and expenses theretofore accrued pursuant to the provision of Services as provided by Creative Compliance under the Agreement through the date of termination, including, but not limited to, all costs incurred by Creative Compliance in connection with any non-cancellable commitments undertaken by Creative Compliance in rendering the Services, and such invoice shall be due and payable immediately by Customer upon receipt.
- (E)** If the Agreement is terminated for any reason, Customer shall, and shall cause its respective employees and contractors to, promptly return any User documentation provided by Creative Compliance (including, but not limited to, User guidelines) under the terms of the Agreement, as applicable, and, if requested by Creative Compliance, shall certify in writing that no copies of such documentation have been retained. Customer acknowledges that in the event of such termination, Customer’s access to the Licensed Product(s) will be disabled within five (5) days following such termination.
- (F)** Following termination of the Agreement, Creative Compliance will use commercially reasonable efforts to return Customer Data to Customer in Creative Compliance’s universal file layout, or such other format as Customer may reasonably request, within five (5) Business Days of such

termination. Creative Compliance reserves the right to invoice Customer for its time and any expenses incurred related to providing Customer Data. Creative Compliance will provide a non-binding quote to Customer that will detail the work to be performed and the estimated number of hours, along with the hourly fee, for the completion of such programming efforts.

9. **Warranties; Disclaimer.**

**(A) Creative Compliance Solutions, Representations, and Warranties.** Creative Compliance represents and warrants that: (i) it has the legal right to execute the Order Form and perform its obligations thereunder; (ii) it has the legal right and authority, and will continue to have and maintain the legal right or authority during the term of the Agreement, to use and allow Customer to use Creative Compliance Property in conjunction with the Services; and (iii) the performance of its obligations and delivery of the Services to Customer will not violate the rights of, or cause a breach of any agreements with, any third parties.

**(B) Data Backup and Disaster Recovery.** Creative Compliance performs backups in accordance with industry practices. Creative Compliance has established disaster recovery procedures that address circumstances and/or events that cause a substantial portion of the capabilities and systems at Creative Compliance's facilities to be unavailable for an extended period of time. In the event that a substantial portion of the Services utilized by Customer under the Agreement become unavailable for an extended period of time, Creative Compliance will use commercially reasonable efforts to restore such services as promptly as practicable with the objective of restoring operations within seventy-two (72) hours of declaring a disaster. For the avoidance of doubt, such a disaster shall not constitute a breach in the substantial performance of any material obligation specified herein.

**(C) Customer Representations and Warranties.** Customer represents and warrants that: (i) it has the legal right to execute the Order Form and perform its obligations thereunder; (ii) it has the legal right and authority, and will continue to have and maintain the legal right and authority during the term of the Agreement, to use and allow Creative Compliance to use the Customer Property and/or Third Party Products in conjunction with the Services; (iii) the performance of its obligations under the Agreement will not violate the rights of, or cause a breach of any agreements with, any third parties and (iv) Customer and Users shall comply with the Minimum User Requirements.

**(D) Services Warranty.** Creative Compliance represents and warrants that it will perform the Services: (i) in a good, timely, efficient, professional and workmanlike manner using then-current technology, processes, procedures and equipment (as applicable) as are equal to or higher than the accepted industry standards applicable to the performance of the same or similar services; (ii) using personnel who are fully familiar with the technology, processes, procedures and equipment (as applicable) to be used to deliver the Services; and (iii) in accordance with all applicable specification, including functional, performance and operational characteristics described in the Agreement.

**(E) Disclaimer.** Creative Compliance is not responsible for verifying the accuracy or validity of any data, information or documentation provided by Customer, any Producer or any other party unaffiliated with Creative Compliance ("**Non-Creative Compliance Parties**"). Furthermore, Customer agrees to hold harmless Creative Compliance and its employees and Affiliates for any

damages such parties may incur from reliance on, or use of, the data, information, documentation or signatures provided by a Non-Creative Compliance Party.

Customer acknowledges that neither Creative Compliance nor NIPR make any representation or warranty with respect to the NIPR Property or the completeness or accuracy of the data in the NIPR Property. Customer shall not, and shall not have the right to, directly or indirectly offer, sell, make available or otherwise distribute all or any portion of the information from the NIPR Property to any person, entity or organization whatsoever, provided however, that such information may be used by a majority owned subsidiary of Customer, or an agent, consultant or contractor of Customer, but only to the extent necessary to allow such subsidiary, agent, consultant or contractor to directly perform services on behalf of Customer, which the Customer has the right to perform itself using such information and only if such subsidiary, agent, consultant or contractor represents and warrants to Customer that such information shall not be used for any other purpose. Customer shall be responsible for the breach of the foregoing by any such subsidiary, agent, consultant or contractor.

Customer further acknowledges that Creative Compliance has no control over Third Party Products including but not limited to the NIPR, and that disruption in service associated with all Third Party Products available to Customer in the Creative Compliance Hub environment shall not constitute a breach in the substantial performance of any material obligation specified herein or in any Order Form.

CREATIVE COMPLIANCE DISCLAIMS ALL WARRANTIES WITH RESPECT TO INACCURATELY COMPLETED SERVICES ARISING FROM EVENTS OUTSIDE OF CREATIVE COMPLIANCE'S REASONABLE CONTROL OR IF CUSTOMER OR CUSTOMER'S EMPLOYEES, PRODUCERS OR INDIVIDUALS ASSOCIATED WITH A PRODUCER:

- (i) provide inaccurate or incomplete data to Creative Compliance;
- (ii) request a specific transaction be completed and said request was made in error; or
- (iii) misinform Creative Compliance concerning Customer's policies or Customer's authorization to do business within any state jurisdiction.

EXCEPT AS SET FORTH IN THE AGREEMENT, CREATIVE COMPLIANCE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE.

Customer acknowledges that Customer, and not Creative Compliance, is responsible for:

- (i) misuse, modifications or other actions taken (or failure to act) by individuals identified by Customer as administrators of the Licensed Products or any Producer or other Users of the Licensed Products authorized or permitted by Customer or a Producer;
- (ii) any wrongful, improper or unauthorized actions taken by Customer, any Producer, employee or other persons connected with the Customer with respect to the Licensed Products, any Customer (including its Producers' and any other Users') data processed through the Licensed Products or any other similar matters beyond the reasonable control of Creative Compliance; and
- (iii) any other connectivity and other technical problems, failure by any Customer User to satisfy any of Customer or Customer's Producers' regulatory requirements or obligations except with respect to the specific matters provided under the Agreement unless specifically stated herein and only to the extent under the reasonable control of Creative Compliance.



## 10. Indemnification.

- (A) Each party (in such context, an “**Indemnifying Party**”) will indemnify, defend and hold the other party and its Representatives and its and their respective successors and assigns (in such context, collectively, the “**Indemnified Party**”) harmless from and against any and all damages, losses, out-of-pocket expenses, liabilities, obligations, taxes, judgments, interest, awards, penalties, fees, cost to enforce indemnification or other damages, including reasonable and documented attorneys’ fees (collectively, “**Losses**”) resulting from any claim, suit, action, or proceeding (each, an “**Action**”) brought by any third party against the Indemnified Party which arises out of or is based on: (i) any representation or warranty made by the Indemnifying Party herein being untrue; (ii) personal injury or tangible property damage caused by the Indemnifying Party; (iii) any grossly negligent, willful or reckless acts or omissions of the Indemnifying Party; or (iv) a claim that the Indemnifying Party’s Property infringes or otherwise violates any rights of a third party with respect to any valid patent, trade secret, copyright, trademark, service mark, trade name or similar other proprietary or intellectual property right. Furthermore, if Customer requests for Creative Compliance to set up email notifications from a Licensed Product and such notifications include Customer’s producers’ personal information, Customer agrees to indemnify, defend and hold Creative Compliance and its Representatives harmless against any Losses incurred as a result of a third party claim arising out of unauthorized access to such notifications.
- (B) Each party’s indemnification obligations hereunder shall be subject to: (i) receiving prompt written notice of the existence of any Action; (ii) being able to, at its option, control the defense and/or settlement of such Action, with the cooperation of the Indemnified Party, provided, however, that: (a) the Indemnified Party will have the right to approve any settlement or compromise that will impose any obligation upon it or which may adversely affect its rights under the Agreement or its rights to any materials subject to copyright, patent, trade secret or trademark protection, and (b) the Indemnified Party may, at its own cost, obtain separate counsel to represent its interests; and (iii) receiving the reasonable cooperation of the Indemnified Party (at the Indemnifying Party’s sole cost and expense) in the defense thereof.

## 11. Limitation of Liability.

- (A) NEITHER PARTY SHALL HAVE ANY LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THE AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, EVEN IF IT HAS BEEN ADVISED OF OR COULD FORESEE THE POSSIBILITY OF SUCH DAMAGES. In no event shall either party’s liability to the other party (including liability to any person whose claims are based on or derived from a right or rights that such other party claims) exceed the amount received by Creative Compliance under the Agreement with respect to which such claim relates during the twelve (12) month period immediately preceding the filing of the first damages claim.
- (B) In the event that any Creative Compliance Property is held, or Creative Compliance believes that it is likely to be held, to have infringed the intellectual property or proprietary right of a third party, Creative Compliance shall have the option at its sole discretion to: (i) substitute or modify the Creative Compliance Property so that it is not infringing; or (ii) obtain for Customer a license to continue using the Creative Compliance Property. If Creative Compliance exercises either of the afore-mentioned remedies, such remedy, together with Creative Compliance’s indemnification obligations under Paragraph 10 hereof, shall constitute Customer’s sole and

exclusive remedies for intellectual property infringement by Creative Compliance.

- (C) The limitation of liability set forth in this Paragraph 11 will not apply: (i) to the gross negligence or willful misconduct of a party; or (ii) a breach of the confidentiality provisions hereunder.

## 12. Electronic Transfer of Data.

- (A) Each Customer sending data to Creative Compliance will be responsible for providing and maintaining its own Internet connections. Customer acknowledges and agrees that Creative Compliance shall not be responsible for any damages due to the loss or corruption of data due to errors in transmission or otherwise. Additionally, Customer acknowledges that Creative Compliance shall not be obligated to maintain continuous connectivity to support its licensing obligations under the Agreement, but that Creative Compliance shall use reasonable commercial efforts to support such functions. Customer acknowledges further that Creative Compliance shall not be responsible for any damages or loss of data due to problems originating with Customer's applications or a third-party application.
- (B) Creative Compliance will check the Licensed Products for viruses by using commonly accepted commercial anti-virus programs. Customer acknowledges that Creative Compliance cannot warrant that the software used to maintain the Licensed Product will be virus-free. If any such software is found by Customer to contain an undetected virus, Creative Compliance will promptly, upon receipt of notice from Customer, use commercially reasonable efforts to eliminate the virus or to reduce the effects of the virus. No other warranty is implied or intended. Any file that Customer attempts to upload to the Licensed Product determined to have a virus may be deleted without notification. Customer will be held solely liable for damages resulting from any file found to have been uploaded to the Licensed Product by Customer which contains a virus or malicious code. In such an instance Customer will indemnify and hold Creative Compliance harmless as against all third party claims and economic loss suffered by Creative Compliance as a result of such virus.

## 13. Miscellaneous.

- (A) **Entire Agreement.** References herein to "the Agreement" shall, unless the context clearly otherwise requires, include these Terms and Conditions and all Order Forms either attached hereto or hereafter executed by the parties. The Agreement constitutes the complete agreement between the parties regarding the subject matter hereof and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of the Agreement.
- (B) **Relationship of Parties.** The parties will at all times be independent contractors and the relationship created by the Agreement shall not be deemed to constitute either party as an employee, partner, joint venturer, or agent of the other party.
- (C) **Compliance with Fair Credit Reporting Act.** Customer acknowledges that Customer is responsible for complying with the Fair Credit Reporting Act ("FCRA") when requesting and using a consumer report from the PDB. Customer further acknowledges that Creative Compliance is not responsible for any actions by Customer or those under its control outside of Creative Compliance's reasonable control. A copy of the required FCRA notice to users of

consumer reports is appended hereto.

**(D) Arbitration and Governing Law.** The parties acknowledge that the Agreement evidences a transaction involving interstate commerce. Any controversy or claim arising out of or relating to the Agreement, or the breach of the same, shall be settled through consultation and negotiation in good faith and a spirit of mutual cooperation for up to fifteen (15) days commencing on the date when one party gives written notice to the other party of any controversy or claim. However, if those attempts fail, the parties agree to submit to, and that all misunderstandings or disputes arising from the Agreement shall be decided by, binding arbitration which shall be initiated by written request of either party and conducted in New York, New York, before one (1) arbitrator designated by the American Arbitration Association (the “AAA”) in accordance with the terms of the Commercial Arbitration Rules of the AAA and, to the maximum extent applicable, the United States Arbitration Act (Title 9 of the United States Code). Notwithstanding these arbitration procedures, either party may apply to, and the parties hereby irrevocably submit to the jurisdiction of for such purposes, any state or federal court located in New York, New York, to: (i) enforce the Agreement to arbitration; (ii) seek provisional injunctive relief so as to maintain the status quo until arbitration; (iii) avoid the expiration of any applicable limitation period; (iv) preserve a superior position with respect to creditors; or (v) challenge or vacate a final decision or award of an arbitration panel that does not comport with the express provisions of this Paragraph 13(D).

The Agreement will be governed and interpreted by the internal laws of the State of New York excluding any conflict of laws, rules, or provisions of the State of New York which would refer to and apply the substantive laws of another jurisdiction.

**(E) Notices.** All notices required or permitted to be sent hereunder shall be in writing and delivered personally, by certified mail postage pre-paid and return receipt requested, or by a nationally recognized overnight delivery service, to the respective addresses listed above. Notices will be effective upon: (i) three (3) days after mailing as provided for above; or (ii) receipt, if delivered personally or sent by overnight delivery.

**(F) Force Majeure.** If a party is prevented from performing, or is unable to perform, any of its obligations hereunder, other than a payment obligation, due to any cause beyond its reasonable control, such party’s performance shall be extended or delayed for the period of delay or inability to perform due to such occurrence.

**(G) Publicity.** Customer agrees that Creative Compliance may use the name, logo or brand of Customer and its Affiliates and may disclose that Customer and/or any Affiliate is a licensee of Creative Compliance’s products or services in any Creative Compliance advertising, news release, promotion, presentation, social media and other similar public disclosure with respect to the Services with Customer’s prior written approval and further that such advertising, news release, promotion, presentation, social media or other similar public disclosure shall not indicate that Customer endorses any Creative Compliance products without the prior written permission from Customer. Customer agrees that the receipt by Creative Compliance of any written testimonial or endorsement from any employee, officer, director, other personnel or Affiliate of Customer shall be deemed written permission of Customer for Creative Compliance to publicly disclose such testimonial or endorsement.

Customer further agrees that Creative Compliance may use any photos of any employee, officer, director, other personnel or Affiliate of Customer taken by or on behalf of Creative Compliance during any trainings, demonstrations or other presentations for use in any Creative Compliance advertising, news release, promotion, presentation, social media and other similar public disclosure with respect to the Services with Customer's prior written approval, and Customer hereby represents that it has necessary permission from any such employees, officers, directors and other personnel or Affiliate of Customer to grant Creative Compliance such rights.

**(H) Assignment.** The Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each party hereto. Neither Creative Compliance nor Customer may assign or transfer the Agreement without the prior written approval of the other party; provided, however, that either party may, without any approval, assign the Agreement in connection with the sale of all or substantially all of the assets of such party or such party's acquisition by or merger into another company. Any assignment made in violation of this Paragraph 13(H) shall be void.

**(I) Amendment and Waiver.** Any modification of the Agreement must be in writing signed by a duly authorized representative of each party. No waiver of any breach of any provision of the Agreement will constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

**(J) Insurance Coverage.** Creative Compliance will, at its own expense, maintain the following insurance coverage during the term of the Agreement: (i) Comprehensive General Liability Insurance with a limit of not less than \$2,000,000, per occurrence / \$2,000,000 aggregate; (ii) Professional Liability Insurance with a limit of not less than \$2,000,000 per occurrence; and (iii) Workers' Compensation Coverage with statutory limits.

As of the commencement of Services pursuant to the Agreement, Creative Compliance warrants that Creative Compliance maintains coverage with insurers with AM Best ratings of no less than A, XV. Furthermore, Creative Compliance will use reasonable efforts to maintain coverage with such insurers during the term of the Agreement. Evidence of such coverage shall be provided to Customer upon request.

**(K) Audit Right.** During the term of the Agreement (and for a reasonable period of time thereafter with respect to compliance during the term of the Agreement), Creative Compliance, directly or through its representatives, may audit Customer's and its Users' compliance with the Minimum User Requirements, including an inspection of Customer's policies, procedures and records that relate to the subject matter thereof. If Creative Compliance or its representatives shall discover any noncompliance with the Minimum User Requirements, Customer shall undertake to correct such noncompliance within a reasonable period of time thereafter and confirm to Creative Compliance the action taken to correct any such noncompliance.

**(L) Cumulative Remedies.** Except as specifically provided herein, the rights and remedies provided for herein will be cumulative and in addition to, and not in lieu of, any other right or remedy available to either party at law, in equity or otherwise. Neither asserting a right nor employing a remedy shall preclude the concurrent assertion of any other rights or the employment of any other

remedy.