

myPay Solutions Terms

These myPay Solutions Terms ("Terms") govern the use of the myPay Solutions services.

"myPay" means Creative Solutions Software Corp., a Delaware corporation, dba myPay Solutions. "Firm" means the Company / Firm Name identified on the Order Form. "Client" means the party identified as Client on the Client Information Form. myPay, Firm, and Client are, as applicable, the "parties" and each a "party".

The "Client Information Form" identifies the Client's legal name, payroll profile, bank account number, routing and ABA number, and other Client details required in order to provide the services. The "Order Form" identifies payroll frequency, payroll services, quantities, charges and other details of the order.

The Client Information Form and the Order Form (collectively, the "Order Documents") may also refer to other documents which may apply to the services selected. These Terms are effective when incorporated by reference into the Client Information Form or the Order Form, as applicable. The Order Documents and any applicable referenced documents (such as product notes and operational documents), as updated by myPay from time to time, along with these Terms, constitute the complete agreement and supersede any prior discussions or representations regarding the order.

1. Rights and Restrictions. (a) **License.** myPay maintains all ownership, tangible or intangible, in its products, services, and data. myPay grants a non-exclusive, non-transferable, limited license to Firm to use the product or service identified in the Order Documents in the regular course of its business. The parties shall at all times act in accordance with applicable laws and regulations that apply to myPay in connection with the Terms, and with all orders or judgments of any court or other government agency with respect to the payment by direct deposit or payroll card services.

(b) **Restrictions.** Unless expressly permitted elsewhere in these Terms, Firm may not: (i) sell, sublicense, distribute, display, store, copy, modify, decompile or disassemble, reverse engineer, translate or transfer myPay property in whole or in part, or as a component of any other product, service or material; (ii) use myPay property to create any derivative works or competitive products; or (iii) allow any third parties to access, use or benefit from myPay property in any way whatsoever. Exercising legal rights that cannot be limited by agreement is not precluded.

(c) **No Advice.** myPay and its affiliates are not providing any professional advice, including any legal, tax, accounting, or investment advice, to Firm, Client, or any third party in connection with its products and services.

(d) **User IDs & Passwords.** Firm's access to certain products and services is password protected. Firm is responsible for assigning the passwords. Sharing passwords is strictly prohibited. The parties shall maintain industry standard computing environments to ensure that myPay's property is secure and inaccessible to unauthorized persons. Firm will update User IDs when there are changes to Firm's authorized personnel.

(e) **Unauthorized Technology.** Firm must not run or install any computer software or hardware on myPay's products, services or network; or use any technology to automatically download, text mine or index myPay's data without myPay's prior written consent. The parties shall not introduce any malicious software.

(f) **Usage Information.** myPay may collect non-personally identifiable information related to Firm's use of myPay's products, services and data. myPay may use this information to test and improve its products and services and to protect and enforce its rights under the agreement, and may pass this information to myPay's third party providers for the same purposes.

(g) **Documentation.** Firm may print or download PDF copies of myPay's documentation for use with myPay's products and services. Copies of

myPay's property must always include a copyright or proprietary rights notice.

2. Our Services. (a) **Scope.** myPay will perform the services described on the Order Documents and these Terms.

(b) **Conditions.** myPay's obligation to provide the services is subject to satisfactory passage of a background check of Firm or Client to be determined by myPay in its sole discretion. Client and Firm must also satisfy the obligations described in clause 3.

(c) **Funds.** myPay may commingle Firm or Client's impounded funds with its other customers, its funds, or its administered funds of a similar type. All amounts earned on such funds while held by myPay will be for its sole account.

3. Firm and Client Obligations. (a) **General.** Firm and Client, as applicable, will (i) send to myPay in a timely manner all documentation it requires to perform the services, including the documentation required to originate EFT transactions; (ii) review all payroll reports upon receipt to confirm accuracy; (iii) notify myPay immediately of any errors; (iv) supply sufficient funds in collectible form 48 hours prior to the payroll check date to cover all EFT transactions, or, at myPay's option, supply payment by wire transfer or such other payment method acceptable to myPay prior to the funding deadline; (v) provide myPay all information it requires, including any changes thereto, pertaining to authorized payroll contacts and any employees; and (vi) notify myPay promptly of any changes to Firm or Client's ownership or significant changes to Firm or Client's products or services.

(b) **Debits.** Firm and Client, as applicable, will be liable for debits properly initiated by myPay. Firm and Client, as applicable, promise to pay myPay the amount of any unfunded payroll file (including any debit returned to myPay because of insufficient or uncollected funds or any other reason), plus any associated bank fees or penalties. If a withdrawal from the account is returned unpaid, Firm authorizes myPay to make a one-time electronic fund transfer from the account to collect an administrative fee of \$100 for the first incident and \$250 thereafter, or, if lower, the maximum amount permitted under applicable law. myPay also reserves the right to charge interest on the unfunded payroll amount at the rate of 1% per month or the highest lawful rate (whichever is lower). If any debit to an employee's or other payer's account reversing or correcting a previously submitted credit(s) is returned for any reason, Firm and Client unconditionally promise to cooperate with myPay and pay the amount of such debit upon demand and interest thereon. Firm and Client agree to cooperate with myPay and any other parties involved in processing any transactions to recover funds credited to any employee as a result of an error made by myPay or another party processing a transaction on myPay's behalf.

(c) **Representations & Consents.** Firm and Client represent and warrant that myPay will not at any point in time have dominion or control over funds held in trust under this agreement. Firm represents, warrants, and covenants on its behalf and on behalf of Client that Firm or Client as applicable have obtained all necessary consents and authorizations from employees required for the payment by direct deposit or payroll card, including, without limitation, if an employee is overpaid due to erroneous or incomplete instructions, and have provided all notices to employees required under applicable law and regulation, and will obtain any necessary consents and authorizations and provide any such notices with respect to payment by such means of all future employees covered by this Agreement, including, without limitation, any notice required by the Electronic Funds Transfer Act and Regulation E (12 C.F.R. Part 1005), with copy to us.

4. Hosted Software. (a) **Usage Rights.** Firm may use myPay's hosted software only for its own internal business purposes or for the benefit of the Client designated on the Client Information Form. The Order Documents details other permissions, to the extent applicable.

(b) **Delivery.** myPay delivers its hosted software by providing Firm with online access to it. When Firm accesses the hosted software, Firm is accepting it for use in accordance with the agreement.

(c) **Content.** Firm and Client grant myPay permission to use, store and process the content uploaded into the hosted software in accordance with applicable law. Access and use of the content by myPay, its employees and contractors will be directed by Firm and limited to the extent necessary to deliver the hosted software, including training, research assistance, technical support and other services. myPay may delete or disable content if required under applicable laws or regulations and will use reasonable efforts to provide notice to Firm.

(d) **Security.** myPay will inform Firm in accordance with applicable law if myPay becomes aware of any unauthorized third party access to Firm's content and will use reasonable efforts to remedy identified security vulnerabilities. If the content is lost or damaged, myPay will assist Firm in restoring the content to the hosted software from Firm's last available back up copy.

5. Charges. (a) **Payment and Taxes.** Firm and Client, as applicable, must pay myPay's charges and reasonable expenses without deduction as stated on the Order Documents. myPay may levy a service charge of 1% per month or the highest lawful interest rate (whichever is lower) for late payment plus reasonable collection costs, including attorneys' fees. Firm and Client, as applicable, must also pay applicable taxes and duties (including, but not limited to value added taxes and other similar sales taxes), other than taxes on myPay's income, in addition to the price quoted unless Firm provides valid proof that it is exempt. Invoice disputes must be notified within 15 days.

(b) **Changes to Charges.** myPay reserves the right to increase pricing upon reasonable notice.

(c) **Automatic Charging & NACHA Operating Rules.** Firm and Client agree to automatic charging of all fees due to myPay under their billing accounts. Firm and Client authorize myPay to automatically charge fees under Firm or Client's order to the credit or debit card account provided, or via ACH debit as provided. Such charges may include one-time and other periodic charges under Firm or Client's agreement(s) with myPay. To the extent applicable, Firm and Client agree to be bound by the NACHA Operating Rules, including with respect to fee charges. Firm and Client authorize myPay to originate EFT transactions on their behalf to employees' accounts, agree not to originate EFT transactions that violate the laws of the United States, and agree to observe any restrictions we may impose on the types of EFT transactions that may be originated. Firm and Client agree that myPay may terminate or suspend providing the products and services to them under these Terms for a breach of the NACHA Operating Rules so as to permit myPay to comply with such rules. Firm and Client additionally agree that myPay may audit your compliance with myPay's Terms and the NACHA Operating Rules. The above described authorizations will remain in effect until revoked in writing and myPay receives such notice.

6. Records. During the term of the agreement and for 3 years thereafter, Firm and Client must maintain adequate records relating to use of the services, including the number of users, where services are used, and the associated charges. If reasonably requested, Firm and Client must provide myPay with this information.

7. Privacy. myPay may collect information about Firm and Client relating to its services including name, address, date of birth, payroll profile, tax filing identification, and bank account information. myPay may also collect personally identifiable information (PII) provided by Firm and Client and the parties will at all times process personally identifiable information (PII) provided in accordance with applicable law. Firm and Client confirm that it will only provide PII as permitted by applicable law. The parties will use reasonable efforts to assist one another in relation to the investigation and remedy of any claim, allegation, action, suit, proceeding or litigation with respect to alleged accidental, unauthorized or unlawful destruction, loss,

alteration, disclosure or access. The parties will maintain, and will require any third party data processors to maintain, appropriate physical, technical and organizational measures to protect the PII. Firm and Client consent to the transfer and processing of PII to the geographical regions necessary for myPay to fulfill myPay's obligations. PII includes any information relating to an identified living natural person or a living natural person who can be identified directly or indirectly by means reasonably likely to be used by the controller of the information, or any other natural or legal person.

8. Confidentiality. Confidential information received from each party will not be disclosed to anyone else except to the extent required by law or as necessary to perform the agreement. The parties will use industry standard administrative, physical and technical safeguards to protect the others' confidential information. If a court or government agency orders any party to disclose the confidential information of another, the other will be promptly notified so that an appropriate protective order or other remedy can be obtained unless the court or government agency prohibits prior notification.

9. Audit. (a) **Audit Right.** myPay or its professional representatives may audit compliance with the agreement, on at least 10 business days' notice and during normal business hours, provided that myPay will not audit more than once in every 12 months, unless myPay reasonably believes Firm or Client are in breach or as required by a third party provider.

(b) **Costs.** If an audit reveals that Firm or Client have breached the agreement, Firm and Client, as applicable, will pay (i) any underpaid charges and (ii) the reasonable costs and expenses of undertaking the audit if Firm has underpaid the charges by more than 5% or if those costs are imposed on myPay by a third party provider.

10. Warranties, Remedy, and Disclaimer. (a) **LIMITED WARRANTY.** MYPAY WARRANTS THAT IT PROVIDES THE SERVICES USING COMMERCIALY REASONABLE SKILL AND CARE. MYPAY DOES NOT OTHERWISE WARRANT UNINTERRUPTED OR ERROR-FREE PERFORMANCE OF SERVICES. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAWS, THESE WARRANTIES ARE THE EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS, INCLUDING OF PERFORMANCE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, COMPLETENESS AND CURRENTNESS.

(b) **REMEDY.** MYPAY WILL RECTIFY SERVICES IF FIRM GIVES MYPAY WRITTEN NOTICE OF A VALID WARRANTY CLAIM WITHIN 30 DAYS OF DELIVERY. IF MYPAY CANNOT RECTIFY ANY VALID WARRANTY CLAIM WITHIN A REASONABLE PERIOD, MYPAY WILL REFUND APPLICABLE CHARGES WITHOUT ANY FURTHER LIABILITY FOR BREACH OF WARRANTY AND MYPAY MAY TERMINATE THE AFFECTED SERVICES BY WRITTEN NOTICE TO FIRM.

(c) **DISCLAIMER.** MYPAY IS NOT RESPONSIBLE FOR THE PREPARATION, CONTENT, ACCURACY AND REVIEW OF ANY DOCUMENTS, DATA, OR OUTPUT PREPARED OR RESULTING FROM THE USE OF ANY PRODUCTS OR SERVICES. IN NO EVENT SHALL MYPAY BE LIABLE FOR ANY PENALTIES, INTEREST OR TAXES ASSESSED BY ANY GOVERNMENTAL OR REGULATORY AUTHORITY. FIRM IS RESPONSIBLE FOR ANY ERRORS MADE BY FIRM OR CLIENT, AND THE EMPLOYEES AND AGENTS OF EACH, USING OR RECEIVING THE BENEFIT OF MYPAY'S PRODUCTS, SERVICES, AND SYSTEMS.

11. Liability. (a) **Unlimited Liabilities.** No party excludes or limits liability where not permitted to do so under applicable laws and nothing in the agreement shall be interpreted to do so.

(b) **Excluded Losses.** No party will be liable for special, incidental or exemplary damages, indirect or consequential losses, anticipated savings, lost profits, lost business, lost revenue, lost data or lost goodwill.

(c) **Limitation.** The entire liability of each party (and of any of myPay's third party providers and affiliates) for all claims arising out of or in connection with the agreement, including for negligence, will not exceed the lesser of (i) the amount of actual damages incurred by Firm or Client or (ii) the average monthly charges for three (3) months for the affected product(s) or service(s) during the calendar year.

(d) **Claims Period.** Claims must be brought within 12 months of arising.

(e) **No Liability.** myPay will not be responsible if its product or service fails to perform because of (i) Firm, Client, or a third party's software, hardware or network; (ii) Firm or Client's actions or inaction (other than proper use of the product or service), such as failing to follow the usage instructions or adhering to the minimum recommended technical requirements; (iii) changes Firm or Client makes to myPay's product or service; (iv) Firm or Client's failure to implement and maintain proper and adequate virus or malware protection and proper and adequate backup and recovery systems; (v) Firm or Client's failure to install updates provided; or (vi) other causes not attributable to myPay. If myPay learns that its product or service failed for one of these reasons, myPay reserves the right to charge Firm for myPay's work in investigating the failure at myPay's then currently applicable rates. At Firm's request, myPay will assist Firm in resolving the failure at a fee to be agreed upon.

(f) **Third Party Intellectual Property.** If a third party sues Firm claiming that myPay's product or service infringes its intellectual property right and Firm's use of the product or service has been in accordance with the Terms, myPay will defend Firm against the claim and pay damages that a court finally awards against Firm or that are included in a settlement approved by myPay, provided that Firm (i) promptly notifies myPay in writing of the claim; (ii) supplies information myPay reasonably requests; and (iii) allows myPay to control the defense and settlement. myPay has no liability for claims to the extent caused by items not provided by myPay. myPay's liability for myPay's third party providers' data, software and other material is limited to their liability to myPay.

(g) **Indemnification.** Firm or Client as applicable will indemnify myPay for all liability arising from any violation of law or regulation, or violation of myPay's or any third party rights related to (i) Firm's material or instructions; (ii) Firm's combination of myPay's products, services or other property with any materials; (iii) Firm's modification of any of myPay's property; (iv) Firm's failure to install updates provided; or (v) Firm or Client's breach of the agreement. Firm is also responsible for claims brought by third parties receiving the benefit of myPay's products and services through Firm, except claims covered by clause 10(f). Firm must reimburse myPay if myPay suffers losses in the circumstances set out in this clause.

(h) **Error Correction Request.** Firm or Client as applicable will indemnify myPay for all liability arising directly or indirectly from (i) any request made by myPay to its bank to (A) correct an erroneous entry, (B) initiate a reversing entry or (C) initiating a reversing file or correcting file, (ii) any stop payment order provided by or on behalf of Firm or Client, (iii) any return of a debit entry, or (iv) any recrediting of the amount of a debit entry. Firm and Client hereby agree that myPay may use funds credited to its tax deposit account to reimburse it for indemnified amounts.

(i) **Records.** myPay does not serve as Firm or Client's record keeper and Firm or Client will be responsible for retaining all copies of all documentation received from or provided to myPay in connection with the services to the extent required by Firm or Client and applicable law.

(j) **Collections.** myPay may use a debt collection agency. If Firm or Client delay in paying the charges, myPay shall be entitled to receive the sum of all unpaid charges outstanding plus the fees of its collection agency.

12. Term, Termination. (a) **Term.** The agreement shall remain in force until it is terminated or suspended.

(b) **Suspension.** myPay may on notice suspend or limit Firm or Client's use of myPay's products, services or other property, or terminate the agreement, (i) if required to do so by a third party provider, court or regulator; (ii) if Firm

or Client become or are reasonably likely to become insolvent or affiliated with one of myPay's competitors; or (iii) if there has been or it is reasonably likely that there will be: a breach of security; a breach of Firm or Client's obligations under the agreement; or a violation of third party rights or applicable laws, rules or regulations. myPay's notice will specify the cause of the suspension or limitation and if the cause of the suspension or limitation is reasonably capable of being remedied, myPay will inform Firm or Client, as applicable, of the actions Firm or Client must take to reinstate the product or service. If Firm or Client do not take the actions or the cause cannot be remedied within 30 days, myPay may terminate the agreement. Charges remain payable in full during periods of suspension or limitation arising from Firm's action or inaction.

(c) **myPay Termination.** myPay may terminate the agreement immediately without notice for any reason, including if (i) Firm or Client are or are reasonably likely to become insolvent, subject to a receivership, or bankruptcy; or (ii) myPay determines in its sole discretion that a material adverse change has occurred in the financial condition of Firm, Client, or Firm's customers or that the products or services have been misused.

(d) **Firm Termination.** Firm may terminate the agreement immediately upon written notice if myPay commits a material breach and fails to cure the material breach within 30 days of being notified to do so.

(e) **Payment Services.** The parties agree that services that involve electronic or check payments being made by myPay to Client or third parties on Firm's behalf and Firm's discretion (collectively, "Payment Services") involve a credit risk to myPay. Payment Services may be immediately suspended or terminated by myPay without prior notice if: (i) myPay has not received timely funds from Firm or Client; (ii) a bank notifies myPay that it is no longer willing to originate debits from Firm or Client's account(s) and/or credits on Firm's or Client's behalf for any reason; or (iii) the authorization to debit Firm or Client's account is terminated and myPay believes Firm or Client no longer meet myPay's credit/financial eligibility requirements for the services. If Payment Services are not terminated despite the occurrence of the events described in this section, myPay may require Firm and Client to pay outstanding and all future third party payment amounts covered by Payment Services and/or myPay's fees and charges for Payment Services by (i) bank or certified check, (ii) wire transfer of immediately available funds, and/or (iii) as a condition of receiving further Payment Services.

(f) **Effect of Termination.** Upon termination or possible termination by myPay, all of Firm's usage rights end immediately. myPay shall be entitled to allocate any funds remitted or otherwise made available by Firm or Client to myPay in such priorities as myPay (in its sole discretion) deem appropriate (including reimbursing myPay for payments made by myPay on Firm's behalf to Client or third parties). If the products or services are terminated for any reason, Firm will immediately (i) become solely responsible for all Client and third party payment obligations then or thereafter due; (ii) reimburse myPay for all payments it has made on Firm's behalf to Client or third parties; and (iii) pay all of myPay's applicable fees and charges. Termination of the agreement will not terminate those parts of the agreement that by their nature should continue.

13. Force Majeure. Each party performs the agreement subject to interruption and delay due to causes that cannot be reasonably controlled by us, such as acts of God, acts of any government, war or other hostility, civil disorder, the elements, fire, explosion, power failure, equipment failure, industrial or labor dispute, inability to obtain necessary supplies, and the like.

14. Third Party Rights. myPay's affiliates and third party providers benefit from its rights and remedies under the agreement. No other third parties have any rights or remedies under the agreement.

15. General. (a) **Assignment.** Firm may not assign or transfer the agreement to anyone else without myPay's prior written consent. myPay will provide Firm with written notice if myPay assigns or transfers the agreement as part of its business reorganization.

(b) **Feedback.** Any comments, suggestions, ideas or recommendations Firm or Client provide related to any of myPay products or services are myPay's exclusive property.

(c) **Enforceability.** The agreement will always be deemed modified to the minimum extent necessary for it to be enforceable, unless modification fundamentally changes the agreement.

(d) **Headings and Summaries.** Headings and summaries shall not affect the interpretation of these terms.

(e) **Waiver.** No party waives its rights or remedies by delay or inaction.

(f) **Equitable Remedies.** Each party may seek immediate relief to restrain breaches of the agreement.

(g) **Governing Law.** The governing law of the agreement is the law of the State of the New York. The jurisdiction is the federal and state laws of the State of New York.

(h) **Precedence.** If the terms of the Order Documents or referenced documents are different from these Terms, sections 1 and 5 above will have priority. Otherwise, the Order Documents and referenced documents will have priority.