



## MAINTENANCE AND SUPPORT SERVICES TERMS AND CONDITIONS

### 1. DEFINITIONS.

- 1.1 **“Agreement”** means the Statement of Work, Work Authorization, all Change Orders and Amendments and includes the General Terms and Conditions, the Solution specific Terms and Conditions including these Maintenance and Support Services Terms and Conditions.
- 1.2 **“Anniversary Date”** means that date that is the calendar date one year after the Commencement Date and each calendar date one year thereafter.
- 1.3 **“Commencement Date”** means either: (i) the earliest date a valid Pre-Permanent or Permanent License Key for the Software is provided by Cre8tive to Customer; or (ii) where applicable, a date that is specifically defined in an agreement governing an engagement between Cre8tive and Customer.
- 1.4 **“License Agreement”** means an End User License Agreement for software which the Customer has purchased.
- 1.5 **“Software”** means the specific application software products or modules licensed by Epicor to Customer and/or furnished as part of Subscription Services as set forth in an Order.
- 1.6 **“Solutions”** means Cre8tive developed software solutions such as the Cre8tive A&D Solution placed in the Epicor Multi-Tenant Cloud offering or sold separately and integrated into Customer’s Epicor platform.
- 1.7 **“Statement of Work” and “SoW”** means Cre8tive’s standard form for ordering Solutions and Services and to which these Terms and Conditions and the General Terms and Conditions apply.
- 1.8 **“Support”** means the maintenance and support services Cre8tive provides for the licensed Software, and/or furnished as part of the Subscription Services as described in a SoW, Work Authorization, Change Order, or Amendment.

### 2. TERMS AND CONDITIONS APPLICABLE TO MAINTENANCE AND SUPPORT SERVICES AGREEMENTS.

These Terms and Conditions will govern the rights and obligations of Cre8tive and Customer in relation to the Software Maintenance and Support Services (“Services”) described in any related Statement(s) of Work (“SoW”), Work Authorization (“WA”), Change Order or Amendment (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 and specifically these Maintenance and Support Terms and Conditions, and you are agreeing to be bound by them.

### 3. TERM AND TERMINATION.

- 3.1. Support Agreements are provided as subscriptions for a twelve (12) month period.
- 3.2. The term of this Agreement shall begin on the Commencement Date.
- 3.3. Maintenance and Support Services requested by Customer during a period preceding the Commencement Date will be charged to the Customer at the standard Cre8tive time and materials rates in force at the time of the request.
- 3.4. Unless renewed in accordance with this agreement, the term of this agreement shall end on a Termination Date that is either: (i) an Anniversary Date; (ii) the date a notice of cancellation by Customer is received by Cre8tive pursuant to 4 below; (iii) the date a related License Agreement is terminated for any reason; or (iv) The date designated in a notice of termination from Cre8tive to the Customer.
- 3.5. All Maintenance and Support Services for a given client will expire on the same date.
- 3.6. This agreement may be renewed for a twelve (12) month period (“Renewal Period”) beginning with the currently scheduled Anniversary Date at the request of the Customer, provided the Customer prepays all fees applicable to the Renewal Period and maintains valid software licenses pursuant to a License Agreement.

#### **4. FEES.**

**4.1.** Fees for Maintenance and Support Services are subject to payment in advance for a minimum of a full twelve (12) month period ("Support Fees").

**4.2.** All Maintenance and Support Services will cease if applicable Support Fees are not received by Cre8tive by the stated payment terms extended to the Customer.

**4.3.** If additional Maintenance and Support Services are purchased during an ongoing subscription period, fees for the additional Maintenance and Support Services will be prorated.

**4.4.** Support Fees for renewal periods are payable in advance. Cre8tive will invoice Customer for the next renewal period at least sixty (60) days prior to the Anniversary Date. Payment must be received by Cre8tive prior to the beginning of a renewal period to maintain continuous Maintenance and Support coverage. Services requested by Customer during a period of lapsed coverage will be charged to the Customer at the standard Cre8tive time and materials rates in force at the time of the request.

**4.5.** Cre8tive may increase the Support Fee with at least thirty (30) days prior written notice to Customer. Such increases may apply to subsequent additional Services purchased during an ongoing subscription period as well as subsequent twelve-month Renewal Periods.

#### **5. MAINTENANCE AND SUPPORT SERVICES TERMINATION.**

Customer may cancel this Agreement at any time by providing written notice to Cre8tive and payment to Cre8tive of the remaining Support Fees due under the Agreement. Cre8tive may either suspend or terminate the Agreement, at its option: (i) upon Customer's failure to pay the Support Fees when due and after notice to Customer and Customer's failure to cure within 15 days thereof, or (ii) Customer's breach of Customer's Obligations under this SoW. Cre8tive may also cancel this Agreement for any reason by notifying Customer in writing of the cancellation at least sixty (60) days prior to the date of cancellation.

#### **6. OBLIGATIONS OF CRE8TIVE.**

Provided that Cre8tive has received applicable Support Fees, Cre8tive will perform the following Maintenance and Support Services for Customer: (i) Cre8tive will use reasonable efforts to remedy defects (programming errors attributable to Cre8tive) in the Software that significantly affect the functionality of the Software as used by the Customer subject to any applicable End User License Agreement ("EULA"), (such services will be provided subject to Customer's fulfilling obligations described in Paragraph 7), (ii) Cre8tive will provide reasonable telephone support for problems, discrepancies or errors that, in the judgment of Cre8tive, may most effectively be resolved through such support, subject to exceptions and conditions described in this Agreement, (iii) for problems relating to the underlying Epicor code or functionality, Cre8tive will assist Customer in contacting the appropriate Epicor personnel to resolve the problem.

#### **7. OBLIGATIONS OF CUSTOMER.**

**7.1** Customer shall take the following actions to assist Cre8tive in providing the Support Services. (1) Prior to seeking assistance from Cre8tive, Customer will perform problem definition activities and any remedial or corrective actions described in the system documentation provided to Customer by Cre8tive. (2) If directed to do so by Cre8tive and before any problem reported by the Customer is addressed, Customer will install and implement updates, improvements and modifications to the most recent version of the Software, at Customer's sole cost and expense. (3) Customer will provide Cre8tive with sufficient documentation, information, assistance, support and test time on Customer's computer system to duplicate the problem, certify that the problem is with the Software, and certify that the problem has been corrected. (4) facilitate Cre8tive remote-access diagnostics capability. (5) Make backup copies of any operating software and data as these may be lost or damaged in the repair process.

**7.2** Failure of Customer to fulfill any obligation described in paragraph 7.1 will release Cre8tive from any obligation related to the problem reported.

## **8. OTHER SERVICES.**

At Customer's request, Cre8tive may provide technical, operational or other assistance or consulting to Customer in addition to the Services covered by this Agreement. Such services will be charged to the Customer at the standard Cre8tive time and materials rates in force at the time of the request and shall be bound by the Cre8tive Consulting Services Terms and Conditions.

## **9. EXCLUDED SERVICES AND SOFTWARE.**

**9.1.** Cre8tive shall not be responsible for maintaining Customer or third party modified portions of the Software or portions of the Software affected by such modifications. Corrections for difficulties or defects traceable to Customer's or a third party's errors or system changes may be billed to Customer at a rate to be determined at the time the services are requested (usually the standard Cre8tive time and materials rates in force at the time of the request).

**9.2.** Cre8tive shall not be responsible for support or maintenance services relating to: (i) Any hardware or peripheral devices; or (ii) Re-creation or re-entry of data lost for any reason whatsoever; or (iii) Performance of the generalized duties of a network administrator; or (iv) Performance of the generalized duties of a software developer engaged to create miscellaneous software applications at Customer's discretion.

**9.3.** Under the terms of this Agreement, even if the service request is about a problem related to a Cre8tive product, Cre8tive reserves the right to charge Customer for services provided to Customer if: (i) A reasonable solution for the problem is described in manuals or other documentation provided by Cre8tive to Customer; or (ii) The problem has previously been addressed and Customer has been informed how to deal with it; or (iii) The service request does not come from a "Designated Contact" (an individual specifically authorized to deal with Cre8tive about service requests on behalf of the Customer).

**9.4.** Under the terms of this Agreement, if a service request is presented to Cre8tive and it is the opinion of the Cre8tive technical staff that the problem is not caused by software provided by Cre8tive (i.e., not covered by this agreement), the following terms apply: (i) Cre8tive may bill Customer for any and all services performed to debug and identify the problem at the standard Cre8tive time and materials rates in force at the time of the request; and (ii) Cre8tive may bill Customer for such services even if Cre8tive is unable to solve the problem, provided that Cre8tive can present reasonable evidence that the problem is not caused by software provided by Cre8tive. If Customer believes that the requested service is covered by this agreement, the Cre8tive sales representative who manages Customer's account will mediate the issue.

## **10. RESPONSE TIMES.**

For covered support items, Cre8tive's support staff shall provide Customer with "hotline" telephone and email consultation during the hours of 8:00 a.m. through 5:00 p.m. US Eastern Time, Monday through Friday, except holidays recognized by the United States federal government unless specified otherwise in the Agreement. Such consultation shall include technical advice concerning the use and operation of the Software, including clarification of functions and features of any Software, and clarification of documentation, as well as error verification, analysis, corrections and work-around. Cre8tive shall use reasonable efforts to provide the maintenance and support services in accordance with commercially reasonable response times.

## **11. ACCEPTABLE USE AND PRIVACY POLICY.**

Customer's use of the Site is subject to Cre8tive's Acceptable Use Policy and the Privacy Policy both of which may be found at [www.ctnd.com/legal/](http://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 of its 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.