

## **CREATIVE TECHNOLOGIES**

### **SOFTWARE SUPPORT POLICY**

#### **FOR EL DORADO UTILITY BILLING SOFTWARE**

Creative Technologies El Dorado Utility billing software is licensed (not sold) as per the End User License Agreement (EULA) provided with the software. The software comes with a 30 day warranty from date of purchase. Extended product support requires a 1-year; 2-year or 3-year limited maintenance or upgrade protection plan extension. To determine which maintenance plan came with your software product, see your invoice.

Self-help technical support is available at no charge to registered users of current versions of our software through built-in help manual found in the program help files or access to on-line support frequently asked questions on our web page. Registered users that are currently enrolled in a software support agreement have access to telephone assistance and remote PC diagnostic support.

#### **1. Policy for Current Versions**

Creative Technologies provides new product installation support for 30 days after software purchase. Technical support for installation is limited to the software and database functioning in a single user Windows PC environment or in a client server Windows networking environment. Support includes instructions on system setup through the installation wizard, system programming and design limited to the contract agreement. Creative Technologies provides optional professional services for complete turn-key installation customization services, professional installation services are not included as part of the standard installation support. New software purchases require a pre-paid annual support agreement to be purchased with the software.

Current products/versions that are supported:

#### **Name Version Platform/OS**

- El Dorado versions 7.x- 8.x Windows XP, Vista, Windows 7, Windows 8 Professional 32 and 64 bit versions and Windows Server 2003-2008
- ELDSOFT2006 1.0-2.0 Windows XP, Vista and Windows 7
- Handheld Interface Module 1.0-2.0 Windows XP, Vista and Windows 7, Win 8
- Meter PC 1.0-2.7 Pocket PC
- Crystal Reports Module 1.0-2.6 Windows XP, Vista and Windows 7, Win 8

Note: These software products are on an annual release cycle and version numbers may change during the support agreement.

### **What is covered by this limited software warranty?**

- This limited software warranty covers defects in materials and workmanship in the software product to maintain customer records, calculate utility bills, store customer payments / account balances, generate utility bill statements and system reporting as advertised.
- Telephone support Monday – Friday during normal business hours of 8am – 5pm Pacific.
- Remote PC diagnostic support Monday – Friday during normal business hours (requires customer to provide internet connection, remote diagnostic software provided by Creative Technologies).
- Product patches, service release, bug fixes – customers registered in a support agreement will receive access to software updates to any new updates available to their current version.
- System restore CD – customers under the program are eligible to receive a system restore CD in the event of a PC failure. The restore CD will contain the main product program and associated modules. Customer databases, customer lists and rate tables are the responsibility of the customer.

### **2. Policy for Out-of-Date Versions**

Out-of-date older products/versions will be support under our best effort program. If your version is listed below, your software is out of date and technical support may be limited. Creative Technologies will endeavor to fix reported issues and answer feature functionality questions as best we can. Due to technology changes, end of life of Windows operating systems and upgrades to 3rd party hardware and software products there are limitations to the repairs we can provide.

#### **Name Version**

DOS Versions:

- El Dorado Billing System 6.0
- El Dorado Billing System 8.0-8.5
- El Dorado Billing System 9.0-9.54
- El Dorado Billing System 10.0

Windows 95, 2000, ME, XP Versions:

- El Dorado M+3 –M+3.5

### **What is not covered by this limited software warranty?**

This limited software warranty does not cover:

- It is the customer's obligation to verify all billing calculations including utility rates, late fees and taxes calculated by the software are correct.
- Installation of software services release / patches provided by Creative Technologies that require extensive system reprogramming, database modifications, changes to rate tables, modifications to 3rd party devices or customer records. Services for product upgrades and modifications will be billed on a time and materials basis or pre negotiated fixed price.
- Operating system, third-party software, or the reloading of operating system software.
- Network setup, multi-user file sharing, data base software or 3rd party products which this product may integrate to.
- Support for new releases, product updates by 3rd party manufactures to which the product may integrate to.
- Related computer hardware, Internet connectivity, printers or 3rd party meter reading devices or customer provided accounting software.
- Product changes or modifications that are not in compliance with the intended use of the product.
- Products for which Creative Technologies has not received payment for.
- Disputes for incorrect billing, taxes, postage, or incorrect ACH or electronic payments charged.
- Changes to utility rates modification / calculations or tax rate modifications.

### **3 SUPPORT SERVICES / SERVICE LEVELS**

3.1 Creative Technologies Support Services. Creative Technologies shall render the following services during Normal Working Hours:

- (a) Maintain a Product support center to receive, by telephone or network transmission, operator reports of product support issues.
- (b) Maintain a telephone number for customer to report errors and receive assistance in operation of the Product(s), and an Internet website to provide an electronic link between Creative Technologies and customer.
- (c) Maintain a trained staff capable of rendering the services set forth herein.
- (d) Provide Customer with one copy of any new releases issued without additional charge to its customers generally, including Error Corrections, Support Releases and, in certain instances in Creative Technologies sole discretion, New Releases, and provide any assistance reasonably necessary for Customer to install and operate each such release.

### **3.2 Service Level Agreement.**

- (a) Best effort to respond either by phone or e-mail to all support calls within 2 business hours.
- (b) Best effort to close all level 1 basic support calls with 8 business hours
- (c) Provide on-going communications to all severity 2 calls to meet customers' business requirements.
- (d) Provide on-going communications on all project work for program updates and fixes to meet customers' business requirements.

### **3.3 Customer's Support Obligations. During the Support Term, Customer shall:**

- (a) At all times maintain one (1) appropriately qualified person as its Support Representative and keep Creative Technologies informed of their identity.
- (b) Ensure that its Support Representative receives and maintains such training in the implementation and operation of the Product(s) as shall be reasonably necessary to enable the efficient delivery by Creative Technologies of the foregoing Support Services.
- (c) Handle all communications with Creative Technologies regarding Support Services through the dedicated Support Representative.

## **4 FEES, OTHER CHARGES AND PAYMENT**

4.1 Support Fees. Customer shall pay Creative Technologies Support Fees in accordance with Creative Technologies then-current price schedule. Creative Technologies reserves the right to change its Support Fees from time to time by written notice to Customer, provided that no such change will be effective until the beginning of the following annual Support Term (if any) or sixty (60) days after such notice, whichever is later.

4.2 Taxes. Support Fees do not include sales, use, value added or other excise tax. Customer shall pay for all such taxes based on this Support Policy where required by law.

4.3 Other Charges. Customer assumes and agrees to pay all export and import duties, fees and other similar charges, but not expenses related to exporting from the United States. Customer shall be responsible for all travel and living expenses, shipping and delivery charges, telephone line use and similar expenses necessary for the delivery of Support Services hereunder; provided however that any travel or living expenses shall be approved in advance by Customer and shall be in accordance with Customer's travel expense policies applicable to its own employees.

#### **4.4 Invoices and Payment.**

All software purchases, implementation and training labor costs are considered non-refundable. An evaluation copy of the software is provided at no charge prior to purchase for customer review.

If notice of termination has not been given, Creative Technologies shall invoice Customer for the annual Support Fee not more than sixty (60) days prior to the beginning of the Support Term. Creative Technologies shall invoice Customer for all other fees and charges accrued and all reimbursable expenses incurred, during the previous week or month. All invoiced amounts shall be due and payable immediately after receipt of invoice.

Amounts not paid when due shall be subject to interest at ten percent (10%) per month or, if less, the maximum rate of interest allowed by law, computed from the invoice date.

5 DISCLAIMER OF WARRANTY EXCEPT AS EXPRESSLY STATED IN THIS SECTION, THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, RELATING TO PRODUCTS OR SERVICES FURNISHED TO CUSTOMER HEREUNDER. CREATIVE

TECHNOLOGIES SPECIFICALLY DISCLAIMS AND EXCLUDES ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION THAT OF FITNESS FOR A PARTICULAR PURPOSE. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, WHETHER MADE BY CREATIVE TECHNOLOGIES EMPLOYEES OR OTHERWISE, WHICH IS NOT CONTAINED IN THIS SUPPORT POLICY SHALL BE DEEMED TO BE A WARRANTY BY CREATIVE TECHNOLOGIES FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF CREATIVE TECHNOLOGIES WHATSOEVER.

#### **6 LIMITATION OF LIABILITY**

Except with respect to claims of infringement of United States patents, copyrights or trade secrets (to the extent otherwise specifically provided herein), and regardless of the form of action (whether in contract, tort, breach of warranty or otherwise), IN NO EVENT (i) SHALL CREATIVE TECHNOLOGIES 'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED ACTUAL DIRECT DAMAGES CAUSED BY THE SPECIFIC PRODUCT OR SERVICE COMPLAINED OF, (ii) SHALL EL DORADO SOFTWARE'S MAXIMUM LIABILITY FOR ALL DAMAGES EXCEED THE TOTAL AMOUNT OF FEES PAID HEREUNDER FOR THE SPECIFIC PRODUCT OR SERVICE WHICH DIRECTLY CAUSED SUCH DAMAGE, AND (iii) SHALL CREATIVE TECHNOLOGIES BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT DAMAGES (INCLUDING BUT NOT LIMITED TO LOST BUSINESS PROFITS AND LOSS, INCORRECT BILLING OR CUSTOMER PAYMENT CALCULATIONS DAMAGE OR

DESTRUCTION OF DATA) EVEN IF CREATIVE TECHNOLOGIES HAS BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

## **7 TERMINATION**

7.1 Renewals. The Support Term will be renewed only upon Creative Technologies consent.

7.2 Termination of License. Creative Technologies Support Services and the Support Term shall terminate automatically upon termination of Customer's license to use the Product(s) under the License Agreement.

7.3 Termination by Customer. Customer may terminate for breach of contract with Creative Technologies Support Services by written notice to Creative Technologies, which may be given at any time and shall be effective as of the last day of the Support Term in which it is given. Once terminated by Customer, Support may be resumed with Creative Technologies approval by Customer's payment of the then-current annual Support Fee plus a resumption charge in accordance with Creative Technologies then-current resumption policy. Termination by Customer of multi-year support plan not paid will be billed at the current support rate not to exceed 12 months of the remaining contract.

7.4 Termination by Creative Technologies. If Customer fails to pay when due any amount payable hereunder or is in material breach of any other obligation under this Support Policy, Creative Technologies may terminate the Support Services and the Support Term by written notice to Customer, effective thirty (30) days after receipt unless Customer cures such breach within the 30-day period. Creative Technologies may also terminate Support for superseded releases after a reasonable time.

## **8 MISCELLANEOUS**

8.1 Entire Policy; Modifications. This Support Policy is the complete and exclusive statement of Creative Technologies and Customer's obligations with respect to the subject matter hereof and supersedes all other oral or written representations, understandings, proposals or other communications between the parties. This Support Policy may be modified by Creative Technologies from time to time in its sole discretion, except that any changes will not be effective for the current Support Term.

8.2 Governing Law. This Support Policy shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its choice of law provisions. In the event of any conflict between foreign laws, rules and regulations and those of the United States, the laws, rules and regulations of the United States shall govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Support Policy. Exclusive jurisdiction and venue for any litigation arising under this Support Policy is in the

federal and state courts located in Orange County, California, USA, and Customer and Creative Technologies hereby consent to such jurisdiction and venue for this purpose.

8.3 Notice. All notices given under this Support Policy shall be in writing and shall be effective on delivery to the address of the other party set out at the beginning of this Support Policy or to any replacement address of which the party giving notice has been given notice in accordance with this Section.

8.4 Force Majeure. In no event shall either party be liable for any delay or failure to perform under this Support Policy which is due to causes beyond the reasonable control of such party.

8.5 Severability. In the event that any provision of this Support Policy is for any reason void or unenforceable in any respect, such provision shall be without effect to the extent of the validness or unenforceability without affecting such provision in any other respect and without affecting any other provision.

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