

ENTERPRISEWIZARD SUPPORT AND UPGRADE AGREEMENT

This Agreement is between EnterpriseWizard, Inc., a California Corporation, ("Provider") whose principal place of business is 460 Seaport Court, Suite 200, Redwood City, CA, USA 94063 and _____, ("Customer"). This Agreement supplements the End User License Agreement for EnterpriseWizard and hereby incorporates the limitations of liability and general provisions of that Agreement. The Customer has purchased the standard annual support/upgrade contract for its license of EnterpriseWizard.

1. INTRODUCTION

This Agreement covers standards for the provision of software support and upgrades by Provider to Customer, in connection with that End User License Agreement dated as of _____ between Customer and Provider (the "License Agreement"). This Agreement terminates twelve months from the start date and may be renewed for additional twelve-month periods.

In accordance with the License Agreement, Provider has granted to Customer a license to use the Licensed Software (as defined in the License Agreement). Customer will operate the Licensed Software at its location in _____ (the "Customer Facility", which shall include any other location to which Customer may move its operations center in the future).

Customer may have purchased licenses for just staff users ("Staff User", typically, technicians and other high-level employees) or both staff users and end users ("End User") (typically external customers and internal end users).

2. SUPPORT AND UPGRADE SERVICES

2.1 SCOPE OF SERVICES

- a) The following are the Support and Upgrade Services that will be offered by Provider in connection with the Licensed Software:

Provider shall:

(i) develop and provide corrections, changes, or workarounds ("Corrections") for any defects, errors, or malfunctions in the Licensed Software (collectively, "Defects"), discovered by Customer or Provider, on a timely basis, given the nature and scope of the Defect;

(ii) provide to Customer all improvements, modifications and enhancements to the Licensed Software which Provider shall make from time to time and which Provider makes available to its Customers generally in the form of new releases; and

(iii) provide Customer with any upgrade releases ("Upgrade Releases") to the Licensed Software and all new Versions and Releases of the Licensed Software, which Provider makes available to its Customers generally; provided, however, that if any such Version or Release contains significant new or improved functionalities, Provider shall have the right to make such Version or Release available to Customer only upon the payment of additional license fees, or upon such other terms, as the Provider requires of its Customers generally therefor.

(iv) provide Customer with release notes that identify any impact an upgrade may have on existing customizations. Generally, upgrades have no impact at all on customizations, but there are occasionally corrections that change current program behavior in a way that may require minimal changes to configuration. Release notes will detail any such changes and corrections that are part of an upgrade.

- b) Customer shall be responsible for implementing all Corrections that do not materially alter or diminish the functionality of the Licensed Software as described in the applicable Documentation and Specifications. Customer's failure to do so within 90 days after receipt of notice from Provider regarding the availability of such Corrections shall eliminate Provider's obligation to provide Support Services until such Corrections are implemented. In addition, any modifications to Provider's recommended use of configuration options shall eliminate Provider's obligation to provide Corrections or other Support Services for that portion of the software affected thereby, unless such modifications by Customer were occasioned, following consultation between Customer and Provider, by Provider's failure to modify or correct the Licensed Software as required hereunder or under the License Agreement. Corrections may necessitate upgrading the server with a patch or new release, and such upgrades will be the responsibility of Customer. Customer may request that Provider perform such patches and upgrades to Customer server, and if so, such work will be done at Provider's standard consulting rates.
- c) Provider will make available to Customer any revisions to the existing Documentation developed to reflect all Corrections, Improvements, Upgrade Releases, Versions or Releases for the Software.
- d) All computer programs delivered pursuant to the Support Services shall be considered "Licensed Software" and subject to all the terms and conditions of the License Agreement.
- e) Provider shall provide Support Services directly to Customer's Staff Users but not to Customer's End Users.
- f) Provider shall provide a revised license key as needed if the installation is moved to another server or if an upgrade requires it.
- g) Provider shall at all times provide Support Services for at least the current and one (1) previous Release of the Licensed Software; provided, that Provider's obligation to maintain a previous Release will terminate 120 days after the current Release was made available to Customer.

2.2 SUPPORT SERVICE LEVELS

- a) The Provider shall maintain a technical support telephone number in Redwood City, California, US, which will be staffed by knowledgeable employees capable of providing technical assistance regarding the Licensed Software, its functionality, operations, and supporting documentation. Such telephone assistance will be available to the Customer Monday-Friday, 5:00am to 5:00pm PST except holidays.
- b) The Provider will also offer 24 hour / 7 day Web-based customer support. The Customer will be provided with logins and passwords to Provider's support knowledgebase and may submit inquiries and search for answers to FAQs at the Provider website at http://www.EnterpriseWizard.com/support_login.htm. Customer will be notified via email or telephone as support tickets move through the process to resolution.
- c) Telephone calls from Customer may be logged in Provider's Web-based customer support system, depending upon the content of the call and whether or not an immediate resolution is provided.
- d) Customer's personnel may be permitted to view all support tickets from all of Customer's employees or just to view tickets submitted by them individually.

2.3 PROBLEM CLASSIFICATION

Support tickets from Customer are placed into three general categories as follows:

- Support Issue - a question about standard EW (EnterpriseWizard) functionality that does not involve changes to the core Software Product, although it may involve changes to the Customer's configuration made by the administrator using their browser
- Enhancement Request - request to add functionality to the core Software Product
- Bug - a defect in the core Software Product

Support Issues can generally be resolved by the custom administrator within a few hours of submission based on advice provided by the support staff. Enhancement requests may be scheduled at Provider's discretion, based on the perceived usefulness of the request for other Customers. Note that enhancement requests may also be performed as custom development at Customer's request, should Provider choose not to incorporate them as a general enhancement.

Provider shall respond to and use its reasonable commercial efforts to resolve issues deemed to be Bugs in accordance with the priority levels indicated below, which priority levels shall be determined in good faith by Customer. Because it is usually possible to accomplish the same task in more than one way in EnterpriseWizard, Provider is generally able to provide reasonable workarounds to any functional bugs.

Priority	Description	Investigation Response Time	Target Resolution/ Workaround Time
1 - System Down	The production system is rendered inoperable due to a system software failure	30 minutes	30-60 minutes – we will assign as many engineers and/or support staff as needed 24/7 until the problem is resolved
2 - Critical	A major program function is affected by a software failure, so that customers are adversely affected	60 minutes	1-2 hours – we will assign as many engineers and/or support staff as needed
3 - High	A minor program function is affected by a software error, resulting in diminished productivity, or a problem occurs infrequently, or a workaround has been provided.	4 hours	If a workaround can be provided, the correction will be scheduled for the next regular upgrade. If not, a correction will typically be provided within a week.
4 - Medium	Some desired new functionality is not working as expected, or a problem occurs that is not readily reproducible, or a workaround has been provided.	8 hours	If a workaround can be provided, any correction will be scheduled for the next regular upgrade. If not, a correction will typically be provided within a month.
5 - Low	An issue with negligible impact or a documentation or how-to question	24 hours	If a workaround or answer can be provided, the correction may be made at discretion of Provider, based on its relevance to other customers.

Unless the customer has purchased a Premium support contract with 24/7 Phone Access as detailed at <http://www.enterprisewizard.com/support-plans.htm>, the response times and problem resolution targets (i.e., the hours during which Provider will be obligated to work on problem resolution) are restricted to normal working hours (5:00 am to 5pm PST, Monday through Friday), with the exception that if a priority 1 issue is submitted during normal working hours, we will continue working on it outside of those hours.

Provider shall use its best commercially reasonable efforts to meet the response times and resolution targets set forth in this Section.

For timely resolution, particularly of Level 1 or 2 issues, Customer is requested to provide admin login access and root access, to the Customer system. The refusal to provide such access will negate Provider's obligation to meet the expected resolution times, since in our experience, most problems are caused by a specific configuration on a specific server, and may not be reproducible elsewhere.

2.4 EXCLUSIONS

Standard Support is intended to cover standard functionality and software defects, it does not include the provision of customization advice and consulting services. If the issue is specific to the particular configuration of the customer knowledgebase or requires that we access and review the customer knowledgebase in order to provide a solution, it is classified as Consulting and is not covered under the support contract. (In much the same way, Microsoft support covers generic Word functionality, but does not include advice on plot changes to a novel written using Word). Consulting may be purchased separately at the current price quoted at Provider's website at <https://www.enterprisewizard.com/consulting.htm>.

Problems caused by or arising from the following will not be considered "problems" for the purposes hereof and will not be subject to Provider's obligation to provide Support Services:

- a) failure of server hardware or equipment;
- b) failure of telecommunications or internet hardware or equipment;
- c) failure resulting from errors made by the Customer system administrator;
- d) irreversible destruction of data caused by direct actions taken by Customer;
- e) Force Majeure (as defined in Section 3.4).

3. GENERAL PROVISIONS

3.1 DESIGNATED ACCOUNT MANAGERS

Customer and Provider shall each appoint an account manager ("Account Managers") who shall be responsible for all administrative matters pertaining to this Agreement. The Account Managers will serve as primary point of contact for the other party for any matter regarding this Agreement.

The Account Managers will initially be the following individuals:

For Provider:

For Customer:

Either party may replace the appointed Account Manager upon delivery, prior to such change, to the other party of written notice of such change.

3.2 TERM

The term of this Agreement will commence as of _____ and will terminate on _____ unless renewed before the termination date.

3.3 COVERAGE AND ADDITIONAL USERS

This Agreement, to remain valid, must include all licensed users purchased by Customer. As new licenses are purchased, the fee of 20% of the license price must be pro-rated for those users to the end of the current contract period, and such fees must be paid within the standard payment terms for this Agreement to remain in effect.

3.4 FORCE MAJEURE

Provider will not be responsible or liable for, and will be excused from, any non-performance or delay in the performance of any of its obligations under this Agreement if and to the extent that such non-performance or delay (i) is caused by an act of God, natural disaster, civil disturbance, war, fire, earthquakes, changes in law, regulation or government policy, or non-performance by any third party (including vendors or suppliers), or any other factor beyond the control of Provider, whether or not foreseeable ("Force Majeure"), and (ii) could not have been prevented by Provider's taking normal and customary precautions. In the event that Provider is excused from the performance of its obligations pursuant to this Section 7.4, then Provider will use its best commercial efforts that are practicable under the circumstances to resume performance of its obligations as soon as feasible.

3.5 EXCLUSIVITY OF REMEDIES

The provisions of this Agreement and the License Agreement constitute the exclusive provisions applicable to Provider's maintenance and support of the Licensed Software and the provision and support of data and operations therefor. Provider disclaims any and all warranties, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose, except as specifically set forth herein.

3.6 NOTICES

Any notices given hereunder shall be given pursuant to and as provided in the License Agreement.

3.7 LIMITATION OF LIABILITY

The parties' limitations of liability set forth in the License Agreement shall apply to this Agreement.

3.8 MISCELLANEOUS

- a) If any provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other provision hereof.
- b) This Agreement, together with the End User License Agreement, represents the entire agreement of the parties with respect to the subject matter hereof and any other previous understanding, commitments, or agreement, oral or written, between Customer and Provider with respect to the subject matter hereof.
- c) No failure by either party to insist upon the strict performance of any covenant, term or condition of this Agreement, or to exercise any right or remedy, shall constitute a waiver of such right or remedy on any subsequent occasion.
- d) The validity, construction, scope and performance of this Agreement shall be governed by the laws of the State of California, United States, exclusive of its choice of law provisions.
- e) This Agreement may not be amended except in writing executed by duly authorized representatives of both Provider and Customer.
- f) This Agreement may not be assigned by either party except in connection with and under the circumstances permitted under the License Agreement. Subject to the foregoing, this Agreement will be binding on the parties and their respective successors and permitted assigns.
- g) This Agreement may be signed in one or more counterpart copies, all of which together shall constitute one Agreement and each of which shall constitute an original.

IN WITNESS WHEREOF, the parties have executed this Agreement:

Customer

Company: _____

EnterpriseWizard

Signature: _____

Signature: Bridget Conrad

Name: _____ (print)

Name: Bridget Conrad

Title: _____

Title: Director of Professional Services

Date: _____

Date: _____