

# ENTERPRISEWIZARD HOSTED SERVICE LEVEL AGREEMENT

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This Agreement is between EnterpriseWizard, Inc., ("Provider") whose principal place of business is 654 Bair Island Road, Suite 300, Redwood City, CA 94063 and \_\_\_\_\_, (Customer).

This Agreement gives each party certain rights and responsibilities. Please read this Agreement carefully.

## 1. DEFINITIONS

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**Agreement** – the terms and conditions in this EnterpriseWizard Hosted Service Level Agreement;

**Hosted Service** – Provider's EnterpriseWizard hosted service provided to Customer and consisting of software license, single knowledgebase, and user documentation, all of which are proprietary to Provider;

**Hosted Server** - the server on which the Hosted Service and EnterpriseWizard KB is located;

**Shared Server** – a server on which more than one customer's KB is hosted;

**Dedicated Server** – a server dedicated to the hosting of a single customer's KB(s);

**Proprietary Information** – the proprietary data of Provider that is made available as part of the Hosted Service;

**Customer Data** - all data created or submitted by Customer and/or Customer's Users and held in Customer's KB;

**Staff User** – any person who has express or implied authorization from Customer to access the Service through the staff interface;

**End User** – any person who has express or implied authorization from Customer to access the Service as a member of an End User group, through the end user interface;

**Users** – staff users and end users collectively;

**KB** - the EnterpriseWizard knowledgebase and associated data, tables, and login pages that are created for customer's use as part of the Hosted Service.

**Attachment A** – the attachment to this Agreement which describes the payment and fees for the service to which Customer is subscribing;

## 2. LICENSE GRANT AND USE RESTRICTIONS

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Subject to the terms and conditions of this Agreement, Provider grants Customer and each User a limited, non-exclusive, non-sublicensable, non-transferable license to use and to electronically access the proprietary software that is a part of the Hosted Service, only in conjunction with the Hosted Service and in accordance with this Agreement and any specific additional agreement, which we may require you to accept prior to granting access to specific portions of the Hosted Service.

Customer is prohibited from and shall not condone or assist any User in modifying, translating, decompiling, disassembling or reverse engineering or otherwise attempting to determine the source code for the operation of the Hosted Service, or creating derivative works based on the Hosted Service or any part of the Hosted Service or Proprietary Information. For purposes of this Agreement, "reverse engineering" shall mean the examination or analysis of the Hosted Service or Proprietary Information to determine its source code, sequence, structure, organization, internal design, algorithms or encryption devices, and "Proprietary Information" shall mean all data, material, text, photographs, music, video, software, sound, graphics, other information or materials or portions thereof that are built into the default Hosted Service KB.

In no event shall Customer use the Hosted Service or Proprietary Information to provide services similar to the Hosted Service in competition with Provider. In order to protect Provider's confidential information and trade secrets, Customer shall not develop, provide, sell, rent, or resell any product or service which competes with the Hosted Service, or create or implement any such product or service for the purpose of competing with the Hosted Service provided hereunder while this Agreement is in effect and for a period of one (1) year following termination of this Agreement.

The number of staff users and end users who may access the Hosted Service under individual logins is specified in Attachment A.

### 3. INTERNET ACCESS

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In order to access and use the Hosted Service, Customer must obtain access to the Internet, either directly or through devices that access Web-based content, and pay any service fees associated with such access. In addition, Customer must provide all equipment necessary to make such connection to the Internet, including a computer and modem or other access device.

All access to the hosted server is over SSL using the EnterpriseWizard SSL certificate.

### 4. OPTIONAL SERVICES

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#### A. DEDICATED SERVER

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Standard Hosted service is provided on a shared server that is also used by other customers. Customers may elect to sign up for a dedicated server instead, at a cost of \$950/month or \$9500/year. The dedicated server service includes:

- Double the storage space per staff user (200 MB/named user instead of 100 MB/named user – see details below)
- Control over the timing of upgrades and maintenance
- SFTP or FTP access to the server
- Access to the Admin console of EnterpriseWizard to control certain features, such as backup times, frequency of timed searches, etc.
- Company domain URL access and SSL certificate configuration at no additional charge (i.e. your own company URL to access the server – see below)
- Ability to directly upload and download custom scripts, login pages, and to store files on the server
- Reduced cost to enable Rest or Web Services API

#### B. CUSTOMER'S OWN DOMAIN NAME FOR ACCESS

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When a customer signs up for standard hosted service, we create a custom domain name as a prefix to enterprisewizard.com, such as <https://uswidgets.enterprisewizard.com>. All access to the server is handled via this URL so that the customer's KB may be easily moved if desired onto another server without having to redirect its customers to a different URL.

Hosted customers may request that their server be accessed instead via their company domain name, such as <https://support.uswidgets.com>. This kind of access is provided to customers on a dedicated server at no additional cost, as it is included in the dedicated server fee.

For customers on shared servers, there is an additional setup charge of \$500 plus an additional \$50/month to cover the costs of configuring the web server to support multiple SSL certificates and installing and testing appropriate certificates when they expire or when the knowledgebase is moved to a different server.

## C. EXTENDED ENTERPRISE SERVICE - WEB SERVICES AND REST INTEGRATION

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Integration of EnterpriseWizard with backend systems may be accomplished using the API's for Web Services or REST. Using such API's does place an extra burden on the server, and we encourage customers who intend to do substantial integration with multiple backend systems to sign up for a dedicated server. In either case, there is an additional license fee to enable these services.

Enabling REST and/or Web Services on a dedicated server carries an additional cost of 10% of the hosted license price or \$100 per month, whichever is greater.

Enabling Web Services and/or REST on a shared server carries an additional cost of 35% of the hosted license price or \$250 per month, whichever is greater. Web services/REST calls on a shared server are subject to a delay of at least 5 seconds between calls to prevent their activity from adversely affecting other customers on the server.

## 5. OWNERSHIP, STORAGE SIZE OF DATA AND CUSTOM SCRIPTS

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All data created by Customer or Customer's Users in Customer's EnterpriseWizard KB is fully owned by Customer. Customer may export all or part of its data at any time to store it locally or create backup copies.

On a Shared Server, Customer's data may reach a maximum storage size of 100 MB per licensed staff user with no extra charge. The storage size is based on the compressed nightly backup file rather than the actual space of the live KB. Typical customer backups of KBs with thousands of records may be around 100MB in size. The size may be greatly increased if numerous large files (bmp files, other graphic files, etc.) are attached to tickets. If Customer requires additional storage space, it will be provided at an additional cost of \$50 per 500 MB/month. On a Dedicated Server, Customer's data may reach a maximum storage size of 200 MB per licensed staff user with no extra charge.

On a Shared Server, if Customer wishes to add custom programming scripts to its KB, such scripts must be approved by Provider as non-damaging to the Hosted system prior to uploading, and if Customer has not contracted with Provider to write the scripts, after one free upload, there may be a \$50 charge for reviewing and uploading each script. Customer is fully responsible for any scripts that Provider has not written, and troubleshooting, revising, and testing Customer-written scripts is not included in the standard hosted service support contract. Any custom script writing, testing, or troubleshooting will be done by Provider at Customer's request at Provider's normal hourly consulting rate. On a Dedicated Server, Customer may request sftp access to the server to be able to upload and download its own custom scripts as needed.

## 6. CUSTOMER CONDUCT

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A. Customer is responsible for all activity relating to or arising from its EnterpriseWizard KB.

B. Customer agrees not to knowingly use the Hosted Service or any facilities provided to the Customer in connection with the Hosted Service to:

1. Upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate any information that (or the transmission, distribution, publication or dissemination of which):

(a) Is unlawful; harmful; threatening; abusive; harassing; tortious; defamatory; vulgar; obscene; or libelous or promotes such activity;

(b) Infringes any proprietary rights of any party or otherwise violates the legal rights (such as rights of privacy and publicity) of others;

(c) Violates any contractual or fiduciary relationships;

(d) Contains: software viruses or any other computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protect" devices; or, any other harmful or disruptive program.

2. Provide materially misleading Company information; create a false identity or manipulate identifiers to mislead others or to disguise the origin of any information stored in the KB or transmitted through the Hosted Service; impersonate any person or entity; or, otherwise deliberately misrepresent any affiliation with a person or entity;

3. Attempt to gain unauthorized access to other Customers' KBs located on the Hosted Server, to other Customers' Account Information, or other computer systems, servers or networks connected to the Hosted Services or any portion thereof; or

4. Violate (intentionally or unintentionally) any applicable local, state, national or international law or regulation.

5. Use Provider's or EnterpriseWizard's name, the Hosted Service, or any portion of either to: (a) promote any business, product or service, through the sending of unsolicited e-mail; or, (b) send the same or substantially similar unsolicited e-mail message, whether commercial or not, to a large number of recipients (collectively, "Spam"); or (c) harass others by sending more than ten (10) similar messages to the same e-mail address or more than 10MB of data to a newsgroup ("Bombing"); or (d) use the EnterpriseWizard mail server to generate any of the foregoing.

We will determine, acting reasonably, whether any of the messages you send violate this Agreement. We may remove the offending KB - without the time periods required under the "Termination" section hereof - and immediately terminate your rights if we become aware of any material violation of the Anti-Spam Policy in Section 5 by you or your Users. We reserve the right to take legal and technical action to prevent use of e-mail in violation of this Agreement.

## 7. CANCELLATIONS AND TERMINATION

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The Agreement shall continue in effect with automatic renewal and billing for the same term as the term specified in the latest version of Attachment A, unless:

(a) terminated by either party with or without cause, with 30 days notice;

(b) terminated by Provider, if Customer has breached any material term of this Agreement;

(c) terminated by Provider, if Customer fails to pay any amount due hereunder within 60 days of invoice receipt or violates any of the restrictions set forth in Sections 2, 4, 5, 7, 11, or 12 hereof with respect to the use of the Hosted Service or the disclosure of Proprietary Information;

(d) terminated by Provider, if Provider discontinues the Hosted Service for any reason, with 30-day notice;

(e) terminated by Customer, if Provider breaches any material term of this Agreement;

(f) terminated by Customer without advance notice, as a result of purchasing the product to move it in-house;

(g) terminated by Customer within the first 90 days of service, in which case all fees will be refunded.

Termination notification by Customer must be in writing and delivered by hand, or by mail, return receipt requested, to EnterpriseWizard, Inc., 654 Bair Island Road, Suite 300, Redwood City, CA 94063. Sections 2, 5, 6, 7, 9, 10, 11, and 12 shall survive any termination or expiration of this Agreement.

Termination by Provider under provisions (b) or (c) and by Customer under provision (f) or (g) will be immediate.

In the event of Service termination under subsections (a) or (d), Provider shall reimburse Customer for any pro-rata portion of fees (after disallowing any discount offered for a long term contract) paid in advance for any period that succeeds the 30 day notice period. If termination occurs under section (e), Provider will reimburse customer for the pro-rata portion of fees paid in advance as of the date of Notice.

If termination occurs under provision (f), Customer will receive a credit towards the purchase price of all fees for service not yet provided and of the fees for the preceding 30 days of hosted service. The date used for calculation of the preceding 30 days will be the date upon which a Purchase Order or payment is received for the purchase of the Product.

## 8. FEES AND PAYMENT REQUIREMENTS

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An initial, one-time setup fee of \$250 is charged for new customers and provides up to one hour of consulting to cover creation of the KB, set up of custom login pages and URL. The setup fee may be waived if consulting hours are purchased at the same time as the hosted service.

Customer agrees to pay the fees stated in the current or any renewal Attachment A within 30 days of receipt of invoice or immediately if payment is made by credit card. All invoices which are not paid in full within 30 days of receipt will incur a late charge of 1.5% per month (18% annum). Failure to pay invoices within 60 days may result in immediate termination of service under section 7 c above. If Customer defaults on payment, Customer agrees to pay Provider for all collection expenses, including attorney and collection agency fees.

Any future price increases for service will be documented in a new Attachment A and will never apply to any billing period that has been prepaid.

## 9. SATISFACTION GUARANTEE

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If Customer is not fully satisfied with the Hosted Service, Customer may cancel such service within the first 90 days of the commencement of the service and receive reimbursement for any monthly service and consulting charges paid.

## 10. LIMITED WARRANTY

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(a) Provider warrants that it has the right to license Customer to use the Hosted Service and Proprietary Information.

(b) THE SERVICE AND APPLICABLE USE INSTRUCTIONS ARE PROVIDED TO CUSTOMER "AS IS" AND WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

## 11. LIMITATION OF LIABILITY

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TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL PROVIDER OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT OR THE FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, PROVIDER'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR 2 (TWO) MONTHS OF THE HOSTED SERVICE OR U.S.\$5.00; BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

## 12. PROTECTION OF CONFIDENTIAL OR PROPRIETARY SOFTWARE AND INFORMATION

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Customer acknowledges that the Hosted Service made available to Customer by Provider constitutes copyrighted or proprietary property of substantial value to Provider. Customer agrees to take reasonable

security measures to prevent the unauthorized duplication, distribution, or use of the software and Proprietary Information, and in no event shall such measures be less than Customer uses to protect its own proprietary information. In addition, Customer agrees to honor and comply with reasonable requests submitted by Provider in order to protect their respective rights in the Hosted Service.

## 13. INDEMNIFICATION BY CUSTOMER

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Customer shall indemnify and defend Provider and hold it harmless from and against any loss, damage, or expense, including reasonable attorneys' fees, arising out of (i) claims by third parties relating to Proprietary Information or analysis provided to third parties by Customer from Customer's use of the Hosted Service (unless such use is due to Provider's gross negligence and/or willful misconduct), or (ii) unauthorized use of the Hosted Service by Customer as described in Section 2 and 5 and/or the failure of Customer to meet any of its obligations as described in Section 5 and 11.

## 14. OBLIGATIONS OF PROVIDER

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Provider will host Customer's EnterpriseWizard KB on a server with a minimum configuration of a dual core Intel processor with 6GB ECC RAM, co-located at the world class Santa Clara facility of Bay Area Internet Solutions. Details of the hosted facilities are provided at [www.bayarea.net](http://www.bayarea.net). Provider may choose to relocate the Hosted Server at some later date. If such relocation becomes necessary, Customer will be notified at least 30 days in advance, and will have the right to cancel service or choose from all locations currently used for Provider Hosted Servers.

Provider will regularly install upgrades of EnterpriseWizard to the Hosted Servers as soon as they become generally available, so that Customer receives the benefit of all enhancements and improvements to the product. Provider will notify Customer by email of any upgrades that affect the program functionality.

Provider guarantees 99.9% uptime of the Hosted Server, except during maintenance and upgrades, which will be performed, when necessary, between 9pm and 4am on weekends. In any month that uptime outside these maintenance periods is less than 99.9%, Customer may request a credit of 50%. If uptime is less than 99.5%, Customer may request a full refund for that month's fee. To receive these credits, Customer must send a request by e-mail within 5 business days of the end of the month to [support@enterprisewizard.com](mailto:support@enterprisewizard.com) or send written notice to Provider in the manner set out in section 16(b). Repetitive failure to achieve the above server uptime shall be deemed a material breach for which Customer may terminate this Agreement with no penalty or liability.

Provider will perform regular nightly backups of Customer data and will store these backups on at least two other drives or servers.

Customers are given full administrative access to their KB and, after the initial setup by Provider, are responsible for customizing and maintaining their own KB. Customers on a Dedicated Server may also request sftp access to the server.

## 15. CUSTOMER SUPPORT

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Provider shall provide product support to Customer consistent with its standard support contract, which is generally described at <http://www.enterprisewizard.com/supplans.htm>. Provider will respond to Customer's telephone inquiries regarding the Hosted Service during normal business hours, 5:00am to 5:00pm PST. (note: hours may vary in countries outside the US, where Provider or its authorized designee may provide local telephone support).

Customer will be provided with a login and password to Provider's support knowledgebase and may submit questions and search for answers at the Provider website 24 hours a day, 7 days a week, at [http://www.enterprisewizard.com/support\\_login.htm](http://www.enterprisewizard.com/support_login.htm). Customer will be notified via email when resolution is made.

Customer may call our 24 hour emergency support line at 650-587-8615 x717 to report server or KB outages 24 hours a day, 7 days a week.

Should Customer require a higher level of service, the Premium Service Contract may be purchased at additional cost, the fees and provisions of which are described at <http://www.enterprisewizard.com/supplans.htm>.

## 16. GENERAL

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- (a) Customer may assign the Agreement only with the written consent of Provider.
- (b) Notices shall be deemed given on the date delivered, if delivered by hand, and 3 days after the date of mailing, if mailed. Notices shall be given to EnterpriseWizard, Inc., 654 Bair Island Road, Suite 300 Redwood City, CA 94063 Attention: Hosted Service Group, and to Customer at the address stated below.
- (c) This Agreement, terms and conditions on the EnterpriseWizard website, and all Attachment As, when executed, shall comprise the exclusive statement of Agreement between Customer and Provider, and shall supersede all preceding agreements and proposals, whether oral or written.
- (d) Neither Provider nor its suppliers shall be responsible for delays or performance failures caused from acts beyond their reasonable control.
- (e) The Agreement, all intellectual property issues, and rights and obligations shall be governed by the laws of the United States of America and the State of California governing contracts wholly entered into and which are intended to be wholly performed within the State of California, and shall be subject to the exclusive jurisdiction of the courts located in the State of California.
- (f) Terms and conditions of the Agreement are severable. If any provision is deemed illegal or unenforceable, all other provisions shall remain in effect.
- (g) The Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- (h) Terms and conditions of the Agreement herein shall prevail in any conflict with terms of Customer's purchase order.

Customer

Company: \_\_\_\_\_

EnterpriseWizard

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_ *(please print)*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT A

### ENTERPRISE WIZARD HOSTED SERVICE FEES AND PAYMENT PROVISIONS

<b>Company</b>		<b>Start Date of Service</b>	
<b>Billing Address</b>		<b>Payment Terms</b>	Due on receipt
<b>City, State, Zip</b>		<b>KB Name</b> <b>Maximum Backup Size</b>	
<b>Phone</b> <b>Fax</b> <b>URL</b>		<b>Number of Staff Users</b>	
<b>Main Contact</b>		<b>Email</b> <b>Direct Phone</b>	
<b>Billing Contact</b>		<b>Email</b> <b>Direct Phone</b>	
<b>Technical Contact</b>		<b>Email</b> <b>Direct Phone</b>	

### Optional Services

Note: all monthly charges may be converted to discounted annual fees for customers on an annual contract by multiplying by 10.

- Dedicated Server (\$950/month or \$9500 per year)
  - Dedicated Server Rest or Web Services API (highest of 10% of license or \$100/month)
- Custom Domain Name (yourcompany.com) (\$500 setup plus \$50/month)
- Rest or Web Services API (highest of 35% of license or \$250/month)
- Consulting Hours at \$200/hour: \_\_\_\_\_ hours
- Extra Storage space at \$50/500MB/month: \_\_\_\_\_ GB

**Monthly Billing (requires credit card)**

Initial Amount to Start Service:

One-time Fees	Initial Service Period	Pro-rated Fee	Total

Monthly Fee: \_\_\_\_\_

**Quarterly Billing (payment by credit card or check)**

Initial Amount to Start Service:

One-time Fees	Initial Service Period	Pro-rated Fee	Total

Quarterly Fee: \_\_\_\_\_

**Annual Billing (paid in advance)**

One-time Fees	Monthly Fee x 12	Discount	Service Period	Total Due

Initial: \_\_\_\_\_

**Method of Payment:**

To start service:

P.O. – Check      Purchase Order # \_\_\_\_\_

Credit Card

For recurring fees:

Invoice/Check

Credit Card

**Credit Card Information:**

Visa	MC	Amex	Credit Card Number	Exp. Date
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

**Credit Card Name and Billing Address:**

I authorize EnterpriseWizard to bill my credit card for the charges detailed above.

\_\_\_\_\_  
Cardholder Signature