

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

Licensee Number: \_\_\_\_\_

Support Level – Initial Term: Standard Premium (Circle One)

### **Software Support Agreement**

This Software Support Agreement (“SSA”) is made effective as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ between eWorkplace Apps, LLC. (EWPA), a California LLC with an office at 34 Anacapa Ln, Aliso Viejo, CA 92656 and \_\_\_\_\_ (Licensee) with offices at \_\_\_\_\_. This agreement defines the terms and conditions that govern support services provided to Licensee.

#### **1. Definitions**

##### **a. Agreement**

Shall mean this Software Support Agreement and all exhibits hereto

##### **b. Support Services**

Services as defined in this Agreement

##### **c. Software Products**

Shall mean the software products that appear on EWPA’S published price list

##### **d. Software**

Shall refer to Software Products

##### **e. Mainstream Version(s)**

Major releases of Software for which EWPA is providing support.

##### **f. Current Release**

The current release of the Software as defined by EWPA

**g. Maintenance Releases**

Shall mean corrections and enhancements to Software Products, including hot fixes, patches, workarounds and updates, and upgrades. Maintenance Releases do not include new products or add-ons to Software Products which include new features for which EWPA charges a separate fee to its licensees

**2. Support Services**

During the Initial Term and any Renewal Term of this Agreement, as defined in Section 3, EWPA will provide to Licensee Support Services as defined this Section 2 for all Software Licensee has licensed from EWPA.

**a. General Description of Support Services:**

EWPA will provide Licensee Standard or Premium Level Support Services as defined in Attachment A, which EWPA reserves the right to change at any time.

Attachment A defines

- i. The severity of the issue, acknowledgement and response time, response time and expected resolution
- ii. Support Services provided under Standard and Premium

Support Services, in connection with Cases (as hereinafter defined) shall include direct response to Licensee with respect to a specific issue ("**Issue**") related to the Software.

Case is each instance in which Licensee contact EWPA for Support Services. Each Case will be assigned a unique Case number. Licensee must have an active SSA to be eligible to register a Case with EWPA and receive Support Services.

A CASE MUST be open in order to for EWPA to provide Support Services as outline in this Agreement.

Each Case will relate to one Issue

An issue is when the results produced by the Software do not appear to be in compliance with the Software as provided to Licensee under terms and conditions of the End User Software License Agreement.

EWPA receipt and acceptance of a Case and related Issue does not imply in any manner that EWPA has deemed the Software to not be in compliance with the terms and conditions of the End User Software License Agreement for the related Software Product.

Support Services do not include or replace professional or implementation services and is not intended as a replacement for training as suggested by EWPA or an EWPA partner. Training and other services provided by EWPA are covered by the Master Service Agreement and any Statement of Work (s) the licensee has signed.

The parties agree that EWPA shall have no obligation to provide any professional, training or implementation services under this Agreement.

Support Services are intended only for licensee's that are past the implementation phase, are operational and using the system in a live environment.

**b. Case Response**

EWPA shall use its reasonable commercial efforts to respond to Cases reported by Licensee. Attachment A provides details on how EWPA will respond to a case based upon the problem severity.

Notwithstanding anything herein to the contrary, EWPA makes no guarantee that

- i. all Issues will be resolved
- ii. that any version of the Software will be error free
- iii. it will correct or attempt to correct all Issues

The decision whether to correct any particular Issue shall be made in EWPA'S sole discretion.

The Software is designed to work with Acumatica and other certain third party software products. In cases where EWPA has isolated an Issue as being caused by Acumatica or a third party product, EWPA may require that Licensee work with the support personnel of Acumatica or such third party software vendor.

In the resolution of certain Issues, Licensee may be required to

- i. Provide EWPA a listing of output and other data, including databases and backup systems, that EWP may need in order to reproduce operating conditions similar to those present when the Issue occurred
- ii. Assist by eliminating any hardware, operating system software, and application software deficiencies or conflicts
- iii. Provide any requested diagnostic information to allow EWPA to further diagnose the Issue
- iv. Implement recommended corrective or workaround procedure(s).

**c. Methods of Assistance**

Licensee will have access to Support Services to open a Case through email, phone or EWPA website. Support Services are available during EWPA published support hours. The terms for after-hours support are noted on Attachment A

**d. Supported Versions**

EWPA provides Support Services for Mainstream Releases. Other releases are not supported under this Agreement.

**e. Service Limitations**

EWPA promotes mutually respectful dialog between our employees and our licensees. Repeated verbal abuse of EWPA employees and contractors may be deemed as cause to immediately terminate this Agreement and deny Licensee any future Support Services.

**f. Online Resources; Disclaimer**

Licensee access to Support Services under this Agreement shall also include access to EWPA'S support knowledgebase, online documentation, and related material

EWPA EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING INFORMATION IN THE IN THESE NOTED AREAS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

g. **Licensee Support Contacts**

Licensee will designate authorized support contact(s) for Support Services (the "**Support Contact**") who is trained and knowledgeable in the use of the Software and to whom all Support Services shall be delivered.

- i. One (1) authorized Support Contract is included with Standard Support.
- ii. Three (3) authorized Support Contacts are included with Premium Support.

Licensee can change the identity of the Support Contact from time to time.

h. **Remote Support**

In certain cases, where EWPA is unable to diagnose or resolve a Case reported by Licensee, EWPA may request access to Licensee server or computer(s) experiencing issues in order to continue providing Support Services.

In order to provide such support services, Licensee will need to have Remote Desktop ("RDP") capabilities on the systems that need to be accessed. In such cases, Licensee authorize EWPA to remotely access Licensee systems and data solely for the purpose of providing Support Services with respect to the Case and Licensee agrees to backup all of Licensee data prior to providing EWPA access to Licensee's applicable computer(s).

3. **Term and Termination.**

- a. The initial term of this Agreement commences the date this agreement is signed and ends on the last day of the calendar year (December 31<sup>st</sup>) in which the agreement is signed.

Unless Licensee renews this Agreement for an additional term (each a "Renewal Term"), this Agreement will expire at the end of the Initial Term or any Renewal Term.

Licensee will renew by returning an invoice denoting the Support Level desired which will be sent to Licensee 90 days before the termination of this Agreement. Such return shall be prior to the termination date.

- b. In addition to expiration of this Agreement as described in Section 3.a, this
  - i. Agreement may be terminated by either party if the other party commits a material breach or default of any obligation described in this Agreement or other related agreements the Licensee has entered into with EWPA, that include but are not limited to End User Software License Agreement and Master Service Agreement or failure to pay invoices issued pursuant to this Agreement pursuant to EWPS'S standard terms and conditions for such payment.
  - ii. Immediately in the event that Licensee becomes the subject of a petition of bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors
  - iii. It is Licensee responsibility to contact EWPA or EWPA Partner regarding any potential expiration that Licensee deem inappropriate.
- c. If this Agreement is terminated, EWPA reserves the right to refuse to provide access to the EWPA Support Services in the future.
- d. EWPA is not liable for any damages or costs incurred in connection with expiration of this Agreement.

#### **4. Fees and Billings.**

##### **a. Charges for Support Services:**

The fee for the Initial Term and any Renewal Terms shall be governed by EWPA'S standard published price list and the amount invoiced Licensee by EWPA partner or direct by EWPA

##### **b. Out-of-Pocket Expenses:**

Licensee will also pay Licensee's EWPA partner or EWPA all reasonable out-of-pocket expenses (including without limitation, travel expenses), if any, incurred by EWPS in the course of providing Support Services to you. EWPA will obtain prior approve from you for expenditures greater than \$250.

c. **Payment.**

Your EWPA Partner or EWPA will invoice Licensee for fees as set forth in Section 3a upon the commencement of the Initial Term and each Renewal Term.

All invoices are due upon receipt. Licensee shall be responsible for all taxes (including sales taxes) imposed as a result of the Support Services, excluding only taxes based on the net income of EWPA and EWPA Partner. Any amount not paid within thirty (30) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. EWPA reserves to terminate this agreement should amount remain unpaid for more than 90 days.

- d. Any charges not disputed by Licensee in good faith within ten (10) days of the receipt of an invoice therefore will be deemed approved and accepted by Licensee.

5. **Disclaimers; Limitation of Liability.**

a. **Disclaimer.**

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT EWPA DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

b. **Limitation on Consequential Damages.**

IN NO EVENT SHALL EWPA BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, OR WHETHER IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES

c. **Limitation on Cumulative Liability.**

EWPA'S CUMULATIVE LIABILITY TO YOU OR ANY PARTY RELATED TO LICENSEE FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE

AMOUNT OF FEES PAID TO EWPA BY LICENSEE UNDER THIS AGREEMENT FOR THE PAST 12 MONTHS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS.

All limitations on liability, damages and claims are intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

No third party is authorized by EWPA to make any representation or warranty to Licensee regarding the EWPA Support Services

## **6. Amendment to this Agreement**

EWPA reserves the right from time to time to modify the terms of this agreement. If EWPA makes a material change to this agreement, EWPA will inform Licensee. If the change has a material adverse impact on Licensee and Licensee does not agree to the change, Licensee will so notify EWPA in writing within thirty (30) days after receiving notice of such change. Based upon such notification, Licensee use of EWPA Software and Services will be governed by the Agreement as in effect immediately prior to change until the end of the then term of the current Agreement. At such time, EWPA and Licensee will make best efforts to amend the then current version to accommodate Licensee continued use of Software. Except as noted above, Licensee's continued use of the EWPA Services following any amendment to this MSA shall be conclusively deemed an acceptance of all such amendments.

## **7. Miscellaneous:**

### **a. Notices**

Any notices or communications required or permitted to be given regarding this Agreement shall be in English and in writing, and shall be sent via U.S. Certified Mail, Return Receipt Requested, or, by prepaid overnight or courier service, to the addresses above, or such other address as shall be designated in writing by either party to this Agreement to the other. Notices are deemed given on receipt or attempted delivery (if receipt is refused).



**b. Independent Contractor**

Each party, in rendering performance under this Agreement is acting solely as an independent contractor. In no way is either party to be construed as the agent of the other party in any respect, any other provisions of this Agreement hereunder notwithstanding.

**c. Entire Agreement; Amendments**

This Agreement constitute the entire agreement between the parties. This Agreement may not be amended except by the written agreement of the parties.

**d. Construction; Heading**

Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement or any of its provisions.

**e. Severability**

If any provision of this Agreement or its application to any person or circumstance shall be invalid, illegal, or unenforceable to any extent, the remainder of this Agreement and its application shall not be affected and shall be enforceable to the fullest extent permitted by law.

**f. Waivers**

No action or inaction taken pursuant to this Agreement shall be deemed to constitute a waiver of compliance with any covenant, condition or agreement contained herein. The waiver by any party hereto of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**g. Rights and Remedies Cumulative**

Unless otherwise specifically provided, the rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive the right to use any or all other

remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute or otherwise.

**h. Governing Law**

This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California without regard to principles of conflict of laws that would require application of the laws of any other jurisdiction.

**i. Assignment**

Neither party shall assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**j. Force Majeure**

EWPA shall not be responsible for failure to perform under this Agreement when its failure results from any of the following causes: Acts of God or public enemies, civil war, insurrection or riot, fire, flood, explosion, earthquake or serious accident, strike, labor trouble or work interruption or any cause beyond its reasonable control.

**By signing below EWPA and Licensee acknowledge and agree to the terms and conditions set forth in this Agreement.**

**eWorkplace Apps, LLC:**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_, 202\_

**Licensee:**

By: \_\_\_\_\_

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

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

Date: \_\_\_\_\_, 202\_