

ENTERPRISE OPEN BUSINESS SUPPORT AGREEMENT (“BSA”)

Updated 15 April 2020

This Business Support Agreement (“Support Agreement”) describes the support and maintenance services (“Support”) and the terms and conditions under which Enterprise Open will provide the Support to the entity purchasing Support (“you” or “Customer”) from Enterprise Open or an authorized reseller. “Enterprise Open” shall mean the legal entities affiliated with Enterprise Open authorized to license the software for which Support is purchased under this Support Agreement (“Software”) in the country in which Support is provided. This Support Agreement applies to all Software products for which Support commences on or after 15 April 2020.

These Terms and Conditions will govern the rights and obligations of Enterprise Open and Customer in relation to the Support described in any related Order Form(s), Statement(s) of Work, Contract(s) or other document(s) between Enterprise Open and Customer.

1. Support

Subject to the Customer’s payment of the applicable Support Fees set forth in the Invoice, Enterprise Open shall provide the Support Tier purchased by Customer and identified in the Invoice in accordance with the Support Tier descriptions set forth below.

Support Services include the resolution of Support Requests and provision of other services according to the Support Tier purchased by Customer and identified in the Invoice. Support only covers Support Requests related to the Software provided to Customer by Enterprise Open.

Support Fees shall be due and payable according to the Invoice. Without limiting the foregoing, Enterprise Open shall notify the Customer of the then-current Support Fee for the agreed Support Tier in each renewal Invoice. Support Fees shall be non-refundable once paid.

Support Requests are handled based on case priority levels as described in Section 1.3.2. When submitting a Support Request, Customer selects the priority by submitting the case online, in accordance with the priority guidelines set forth in the same Section. When the case is received, Enterprise Open may change the priority if the Support Request does not conform to the criteria for the selected priority. Enterprise Open shall respond to a Support Request and shall provide workarounds or fixes in accordance with terms set in Section 1.2 for each specific Support Tier. A Support Request is considered to be closed upon Customer’s reception of a proper solution from Enterprise Open.

When the Customer submits a Support Request, Enterprise Open may require that the following information or artefacts are provided (if applicable):

- general description of the operating environment;
- description of all hardware, software, operating system and networking components;
- reproducible test cases;
- any log files, traces and system files which may be relevant to the troubleshooting process.

If the Customer fails to provide any of this information, Enterprise Open may be prevented from identifying and correcting the reported problem or defect.

Enterprise Open shall have no obligation of any kind to provide support for problems in the operation or performance of the provided Software caused by any of the following:

1. modifications to the Software not made by Enterprise Open or a party expressly authorized by Enterprise Open;
2. use of the Software other than as intended, as specified by its requirements, definition and by common sense;
3. accident, unusual physical, electrical or electromagnetic stress; neglect; misuse; failure of electric power, air conditioning or humidity control; failure of rotation media not furnished by Enterprise Open; operation of the Software with other media not in accordance with the manufacturer's specifications; or causes other than ordinary use;
4. any issue not covered by the Support Services.

Customer may request assistance from Enterprise Open for such problems, for an additional fee.

Customer is solely responsible for the use of the Software by its personnel and will properly train its personnel in the use and application of the Software. Customer is solely responsible for protecting and backing up the data and information stored on the devices on which the Software is used, and should confirm that the data and information is protected and backed up in accordance with any internal or regulatory requirements as applicable before contacting Enterprise Open for Support Services. Enterprise Open is not responsible for lost data or information in the event of errors or other malfunction of the Software or devices on which the Software is used. Customer is solely responsible for maintaining procedures external to the Software for reconstruction of lost or altered files, data, or programs to the extent that it deems necessary and for performing any such reconstruction. Customer is responsible for obtaining and maintaining appropriate equipment and ancillary services needed to connect to, access or otherwise use the Software, including, without limitation, computers, computer operating systems, data storage, network devices, web browsers and other devices.

1.1. Support Tier Summary

		Bronze	Silver	Gold	Platinum	Enterprise
Number of requests		4	8	Unlimited	Unlimited	Unlimited
Number of authorized support contacts		1	1	2	4	5
Support availability times (h x d)		8 x 5	8 x 5	8 x 5	24 x 7	24 x 7
Available Priorities (response time)	High (4 hours)	–	–	✓	✓	✓
	Medium (1 business day)	–	✓	✓	✓	✓
	Low (2 business days)	✓	✓	✓	✓	✓
Online case submission		✓	✓	✓	✓	✓
Live technical support		–	✓	✓	✓	✓
Remote troubleshooting		–	–	✓	✓	✓
Environment Certification		–	–	–	✓	✓

1.2. Support Tier Description

Bronze – support provided through Enterprise Open’s web-based portal; includes 4 Support Requests; 1 authorized support contact; support is available on the “8 x 5” time span; includes access to the Low priority; doesn’t include access to emergency response times; doesn’t include remote troubleshooting; doesn’t include access to environment certification;

Silver – support provided through Enterprise Open’s web-based portal and live support; includes 8 Support Requests; 1 authorized support contact; support is available on the “8 x 5” time span; includes access to the Low and Medium priorities; doesn’t include remote troubleshooting; doesn’t include access to environment certification;

Gold – support provided through Enterprise Open’s web-based portal and live support; includes an unlimited number of Support Requests; 2 authorized support contacts; support is available on the “8 x 5” time span; includes access to the Low, Medium and High priorities; includes remote troubleshooting; doesn’t include access to environment certification;

Platinum – support provided through Enterprise Open’s web-based portal and live support; includes an unlimited number of Support Requests; 2 authorized support contacts; support is available on the “24 x 7” time span; includes access to the Low, Medium and High priorities; includes remote troubleshooting; includes access to environment certification;

Enterprise – support provided through Enterprise Open’s web-based portal and live support; includes an unlimited number of Support Requests; 3 authorized support contacts; support is available on the “24 x 7” time span; includes access to the Low, Medium and High priorities; includes remote troubleshooting; includes access to environment certification. Additionally, the Enterprise support tier includes:

- assigned primary support contact;
- 5 business day visit to a customer office by a leading Enterprise Open engineer (for consultations, tuning, installation, delivery of additional training, etc.);
- 1 to 2-day training at a customer location for up to 5 customer’s employees (according to a customer request a standard program can be adjusted to cover selected topics);
- upgrade to the latest version, if applicable;
- environment reviews;
- personalized builds, if applicable;
- development priority regarding the customer’s specific functionalities, if applicable.

1.3. Additional Support Information

1.3.1. Time Spans

There are two-time spans, which are defines as follows:

- **8 x 5** – support is available Monday to Friday, from 9:00 to 18:00; response times are counted solely during this time span.
- **24 x 7** – support is available all week, 24 hours per day.

All times are represented in the Coordinated Universal Time (UTC) time standard.

Customer must have dedicated resources available to work according to support time span.

1.3.2. Priority Levels

The following Support Request priorities are available (according to Customer’s purchased Support Tier, as described on Section 1.2):

- **High:**
 - incident impacts the whole business, a business unit, location or large number of users;
 - interferes with tasks which are mission critical to the business OR can cause critical data loss;
 - with high visibility OR high probability of damage to Customer’s reputation;
 - service interruption is occurring AND immediate action may solve the issue;
- **Medium:**
 - incident impacts a medium or small group of users;
 - interferes with tasks which are not mission critical to the business OR makes tasks which are mission critical to the business harder but not impossible to perform;
 - with low visibility OR low probability of damage to Customer’s reputation;
 - service interruption predicted in near future, with sufficient time to intervene;

- **Low:**
 - incident impacts a small group of users or a single individual;
 - interferes with recreational activities OR makes tasks which are not mission critical to the business harder but not impossible to perform;
 - with no visibility OR no probability of damage to Customer’s reputation;
 - service interruption can be avoided entirely or will occur in far future (eg. services with seasonal usage).

1.3.3. Authorized Support Contacts

Support shall be provided solely to the authorized support contacts. Enterprise Open strongly recommends your authorized contact(s) to be trained on the Software. The Customer shall be asked to designate the authorized support contacts, including full name, primary e-mail address and phone numbers. Enterprise Open will open a support account and assign access for the authorized support contacts to use the account.

Number of authorized support contacts is limited for each Support Tier according to table in Section 1.1 and description in Section 1.2. Customer may change its designated authorized support contacts at any time by providing written notice to Enterprise Open.

The authorized support contacts must have the access and authority to administer or configure the Software as required by the nature of the Support Request. Enterprise Open does not provide support directly to the end users of the Software.

1.3.5. Support Channels

The following support channels are available for Support Request submission:

- **Support portal** – a web-based portal which allows the Customer’s authorized support contact(s) to submit and track Support Requests, available at:
 - <https://support.enterpriseopen.com/>;
- **Support e-mail** – an e-mail address which allows the Customer’s authorized support contact(s) to submit Support Requests, which can then be tracked through e-mail or the Service Desk web site, available at:
 - support@enterpriseopen.com;
- **Live support** – voice-based support, through an automated system or live operator, available at:
 - +353 1 592 3647;
- **Assigned primary support contact** – direct contact of an Enterprise Open personnel assigned directly to a Customer which has purchased a Support Tier with that feature.

The usage of either the Live Support or the assigned primary support contact (if applicable) is required for submission of High priority Requests.

2. Ownership

Enterprise Open will own all rights, title and interest in and to any software programs or tools, utilities, technology, processes, inventions, devices, methodologies, specifications, documentation, techniques and materials of any kind used or generated by Enterprise Open in connection with performing its support obligations (collectively “Enterprise Open Materials”), including all worldwide patent rights (including patent applications and disclosures), copyright rights, moral rights, trade secret rights, know-how and any other intellectual property rights therein. Customer will have no rights in the Enterprise Open Materials except as expressly agreed to in writing by the parties.

Nothing in this Agreement will be deemed to restrict or limit Enterprise Open right to perform similar services for any other party or to assign any employees or subcontractors to perform similar services for any other party provided that Enterprise Open complies with its obligations under Section 3 with respect to Customer's confidential information.

3. Confidential Information

Confidential Information means any business or technical information of Enterprise Open or Customer that is designated by a party as "confidential" or "proprietary" at the time of disclosure or due to its nature or under the circumstances of its disclosure the party receiving such information knows or has reason to know should be treated as confidential or proprietary.

Confidential Information does not include information that:

- is or becomes generally known to the public through no fault or breach of this Agreement by the receiving party;
- is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality;
- is independently developed by the receiving party without use of the disclosing party's Confidential Information;
- is rightfully received by the receiving party from a third party without restriction on use or disclosure;
- is disclosed with the prior written approval of the disclosing party.

Each party will not use the other party's Confidential Information except as necessary for the performance or enforcement of this Agreement and will not disclose such Confidential Information to any third party except to those of its employees and subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of this Agreement; provided that each such employee and subcontractor is bound by a written agreement that contains use and nondisclosure restrictions consistent with the terms set forth in this Section. Each party will employ all reasonable steps to protect the other party's Confidential Information from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance.

The foregoing obligations will not restrict either party from disclosing the other party's

Confidential Information:

- pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement;
- to its legal or financial advisors;
- as required under applicable securities regulations;
- subject to customary restrictions, to present or future providers of venture capital and/or potential private investors in or acquirers of such party.

4. Term and Termination

Upon expiration of the initial service period, the service period shall renew automatically for successive one (1) year terms unless one party provides the other party with written notice of termination more than thirty (30) days prior to the expiration of the then current service period. Subsequent annual Support Fees shall be charged at Enterprise Open's then current standard rates. Within sixty (60) days prior to the expiration of the then current service period, Enterprise Open shall provide Customer with written notice (which may be in the form of an invoice) detailing the annual Support Fee for the subsequent renewal of such service period.

If Support Services have been terminated by Customer, Customer may reinstate such Support Services upon payment of the annual Support Fees in effect at the time, plus all unpaid annual Support Fees for periods subsequent to the date of termination or such alternate reinstatement fee, if any, as the parties mutually agree to accept in writing at the time of reinstatement.

Support Services may be terminated by Enterprise Open prior to the expiration of the Service Period upon the occurrence of any of the following events of default and the failure of Customer to cure such default within thirty (30) days after written notice of such default has been given by Enterprise Open to Customer:

1. if any undisputed sum of money owed by Customer is not paid when due;
2. if any breach occurs under any confidentiality provisions;
3. if any material breach by Customer occurs as to any other term hereof or any other agreement between Enterprise Open and Customer.

In the event of any such default and the continuance thereof beyond the applicable cure period, Enterprise Open shall have the option to terminate Support Services by giving written notice of termination to Customer. Upon such termination, all amounts owed by Customer and unpaid as of the date of such termination shall become immediately due and payable to Enterprise Open.

If either party goes into receivership, bankruptcy, or insolvency, or makes an assignment for the benefit of creditors, or ceases to operate its business, Support Services shall be immediately terminable by the other party by written notice, but without prejudice to any rights of the terminating party hereunder, such termination to be effective as of one day prior to such event.

Support Services may be terminated by Customer prior to the expiration of the Services Period in the event of a breach by Enterprise Open of any warranty expressly set forth herein or a material breach by Enterprise Open of any other term or condition hereof and Enterprise Open fails to cure such breach within thirty (30) days after written notice of such breach is given by Customer to Enterprise Open. In the event of any such default, Customer shall have the option to terminate Support Services by giving notice of termination to Enterprise Open immediately and receive a refund of any prepaid Support Fees for that portion of the services period subsequent to such termination.

Customer's payment obligations and any other provision hereof, which by its terms is intended to so survive, shall survive any expiration or termination of Support Services for any reason.

The rights and obligations of the parties contained in Sections 2, 3, 4, 5, 6 and 7 will survive the expiration or termination of this Agreement.

5. Limitation of Liability

Enterprise Open warrants that Support Services will be provided in a professional manner consistent with industry standards. Customer must notify Enterprise Open of any service deficiencies within thirty (30) days from performance of the defective services. Enterprise Open DOES NOT GUARANTEE THAT THE ARCHITECTURE WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT Enterprise Open WILL CORRECT ALL SOFTWARE ERRORS.

THE CUSTOMER IS RESPONSIBLE FOR THE RIGHT EXPLOITATION OF THE ARCHITECTURE. THE CUSTOMER IS OBLIGED TO MAKE BACKUP COPIES OF DATA AND THE ARCHITECTURE IMPLEMENTATION. IN NO EVENT WILL Enterprise Open BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS) OR FOR COSTS OF PROCURING SUBSTITUTE SERVICES, ARISING OUT OF OR IN CONNECTION WITH THIS SUPPORT AGREEMENT OR THE SERVICES OR ANY WORK PRODUCT PROVIDED BY Enterprise Open, HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF Enterprise Open HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Enterprise Open TOTAL LIABILITY TO COMPANY, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO Enterprise Open BY CUSTOMER UNDER THE ORDERS GIVING RISE TO ANY LIABILITY HEREUNDER.

6. Non-solicitation

During the term of this Agreement and for a period of twelve (24) months thereafter, Customer will not recruit or otherwise solicit for employment any Enterprise Open employees or subcontractors who participated in the analysis, design or implementation of any Enterprise Open architecture without Enterprise Open express prior written approval.

7. General Provisions

Assignment – Enterprise Open may assign this Agreement, without Customer’s consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of Enterprise Open assets or the sale of that portion of Enterprise Open business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties’ permitted successors and assignees.

Governing Law – This Agreement will be governed and construed in accordance with the laws of the Portuguese Republic. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state courts located in the Portuguese Republic and the parties hereby consent to personal jurisdiction and venue therein.

Attorney’s Fees – In the event of any legal action, arbitration, or proceeding brought by either party against the other arising out of this agreement, the prevailing party shall be entitled to recover reasonable attorneys’ fees and costs incurred in such action and such amount shall be included in any judgment or arbitration decision rendered in such proceeding.

Notices – All notices required or permitted under this Agreement will be in writing and delivered in person, or by registered or certified mail, postage prepaid with return receipt requested, and in each instance will be deemed given upon receipt. All communications will be sent to the addresses set forth in Invoice or to such other address as may be specified by either party to the other party in accordance with this Section.

Waiver – The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

Entire Agreement – This Agreement, including all Invoices, constitutes the entire and exclusive agreement of the parties regarding its subject matter and supersedes any and all prior or

contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. In the event of a conflict between the provisions of this Agreement and the provisions of a paid Invoice, the provisions of the Invoice will govern and control. This Agreement may only be modified or any rights under it waived by a written document executed by both parties.

Severability – If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

Customer Reference – Customer permits Enterprise Open to use the Customer’s name and logo to refer to the Customer as a user of the Software and a customer of Enterprise Open.

Force Majeure – Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labour disputes, strikes, lockouts, shortages of or inability to obtain labour, energy, raw materials or supplies, war, acts of terror, riot, acts of nature or governmental action.

Modifications – Enterprise Open may modify this Agreement at any time by posting a revised version on the Enterprise Open website. The modified terms will become effective upon posting. By continuing to use the Support Services after the effective date of any modifications to this Agreement, you agree to be bound by the modified terms. It is your responsibility to check the Enterprise Open website regularly for modifications to this Agreement. Enterprise Open last modified this Agreement on the date listed at the beginning of this Agreement.

Language – This Agreement has been agreed to only in the English language. This English language version will control regardless of whether any translations of this Agreement have been prepared or exchanged. Customer acknowledges and represents that it has carefully reviewed this Agreement with the involvement and assistance of your employees, advisors, and/or legal counsel fluent in the English language, that it has consulted with local legal counsel and counsel competent to render advice with respect to transactions governed by the law applicable to this Agreement, that it has no questions regarding the meaning or effect of any of this Agreement’s terms, and that it has obtained high-quality translations of this Agreement for use by Customer or any of Customer’s team who are not fluent in the English language, with the understanding that Customer alone will bear the risk of any misunderstandings that may arise as a result of such translation. All communications in connection with this Agreement will be in the English language.

8. Definitions

Enterprise Open means the applicable entities affiliated in Enterprise Open Consortium who own the intellectual property rights in Licensed Product.

Customer means the person or entity which is purchasing and using Support Services from Enterprise Open.

Effective Date refers to the earlier date that Customer accepts this Agreement or first uses Enterprise Open’s provided software or services.

Support Agreement refers to the agreement between Enterprise Open and Customer based on these Support Terms and Conditions.

Terms and Conditions refers to these Support Terms and Conditions.

Support Fees refer to support fees, related to the Support Services, set forth in Invoice for a period specified in Invoice.

Invoice is a commercial document issued to Customer, indicating the Support Tier to be provided, quantity, agreed prices for services, payment terms, and any special conditions. Payment of Invoice is regarded as an unambiguous confirmation of acceptance of all the terms of this Agreement. Upon receipt of payment, the Invoice becomes an integral part of the Agreement.

Support Request means a precise statement of a single question, problem or issue written by Customer, related to the provided Support Services, submitted to Enterprise Open using channels described in these Terms and Conditions.

Support Services means the provision of e-mail, live or web-based technical assistance by Enterprise Open to Customer's technical contact(s) with respect to service requests, at the corresponding Support Tier purchased by Customer.

Support Tier means the Support Services package purchased by Customer.