



# Product Support and Maintenance Agreement

This guide outlines Prism Software and Customer responsibilities in providing support and maintenance for your Prism products



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## How We Provide Support and Maintenance

This document (“Agreement”) defines product support and maintenance for Prism Software Corporation. Additionally, terms and conditions, contract lengths and definitions are offered. This Agreement specifically pertains to the Prism product(s) specified in the Customer Purchase Order Agreement(s) and, if applicable, a Statement of Work (SOW) of which Prism Software is a signatory.

The purpose of product support and maintenance is to provide customers with technical assistance that will help resolve problems pertaining to the operation of Prism Software products (“Software”).

Support and maintenance is for Software problem resolution and is not meant to be a substitute for Software installation, configuration, and/or training either through familiarity gained from the Users Guide or more formal training provided by Prism.

Support and maintenance is provided by Prism only to customers that are on an Active Maintenance program. A Customer is defined to be on an Active Maintenance program either during the Initial Term of maintenance following the purchase of Software products or during any subsequent fully-paid renewal period.

All customers who are under an active Maintenance program are eligible to receive both incremental Software updates (x.1 to x.2) and full Software upgrades (3.x to 4.x) released during the active maintenance term.

Software changes, corrections, and/or bug fixes are always performed on the latest shipping version. No such changes are performed on non-current and non-shipping Software versions.

Support and maintenance is provided on all “active” Prism Software product releases. Prism will regularly obsolete earlier versions of software in order to maintain an installed base of current product releases. Most often, but not always, Prism will obsolete two past upgrade versions; for example, if the then current version is v4 then v3 would be supported and v2 would become obsolete. Maintenance support is available on obsoleted or discontinued products. However, customer may have to upgrade to a newer product version in order to receive current product corrections, features, and/or bug fixes. Any professional services and/or training required for such upgrade are not part of the maintenance support agreement and will be billed separately.

The objective of this Agreement is to provide: [a] clear guidelines in the terms and conditions of customer product service and maintenance activities provided by Prism Software, and [b] an outline and listing of activities that are expected by both Prism Software and the Customer. Headings are for ease of reference only and do not affect the construction of this Agreement. Unless otherwise stated, a reference to a clause is a reference to a clause of this Agreement.

Unless otherwise specified in this Agreement or any applicable SOW, Prism shall have no obligations to make changes or corrections, and/or add features, within the Software within a specific time duration. And, Prism’s non-performance of these items shall not impact this Agreement.

## Obtaining Software Support and Maintenance

Support and maintenance is available from Prism through:

**Email:** support@prismsoftware.com  
**Web site:** <http://www.prismsoftware.com/support>  
**Phone:** 949-855-3100, prompt 1

An effort will be made to resolve your Software problem while you are on the phone or to your initial email. Very often, this is not possible as additional information is required. In such cases, a Prism service technician will promptly respond to you and assist in your problem resolution.

Additionally, the operational criticalness of your Software problem will be assessed by the Prism technician and a “Severity Level” will be assigned. These Severity Levels – Critical, Serious, Intermediate and Minor – have corresponding response time objectives. This Severity Level assignment will allow us to provide a service focus to our customers’ most critical problems. Please see the section entitled Severity Levels and Response Times for more details.

**Prism Service Hours:** Monday through Friday;  
6 AM through 5 PM Pacific Time;  
normal business days; excluding weekends and holidays.  
*The above hours may be reasonably changed by Prism from time to time at Prism’s sole discretion. Prism shall not be responsible for communicating such changes to any Customer except on its corporate website.*

## Severity Levels and Targeted Response Times

All response and other times and hours cited throughout this Support and Maintenance Agreement are based on Prism normal business hours.

### Critical

*Denition:* The Software is inoperable

*Response time objective:* < 2 business hours

*Issue resolution objective:* < 8 business hours to resolve or provide workaround

*Defect resolution objective:* Next patch available

### Serious

*Denition:* The Software is operational, but its functionality is seriously affected.

*Response time objective:* < 4 business hours

*Issue resolution objective:* < 2 business days to resolve or provide workaround

*Defect resolution objective:* Future patch or next minor release / update

### Intermediate

*Denition:* The Software is operational, but a problem has been identified and a specific portion of the Software either provides incorrect results or is not operating as documented.

*Response time objective:* < 8 business hours

*Issue resolution objective:* < 2 weeks to resolve or provide workaround

*Defect resolution objective:* Future patch or next major release

### Minor

*Denition:* A general question about the Software is made; doesn't cause a disruption of work.

*Response time objective:* < 24 hours

*Issue resolution objective:* < 4 weeks to resolve or provide workaround

*Defect resolution objective:* Future scheduled release determined by Prism

THE FOREGOING "RESPONSE TIME OBJECTIVES", "ISSUE RESOLUTION OBJECTIVES" AND "DEFECT RESOLUTION OBJECTIVES" STATE PRISM'S ENTIRE LIABILITY AND LICENSEE'S SOLE AND EXCLUSIVE REMEDY CONCERNING PRISM'S OBLIGATION TO CORRECT ANY ERRORS IN THE LICENSED PROGRAM MATERIALS.

## What We Need From You

In order to provide you with the best possible support and maintenance we need certain items from you. The following are items that are important to help us provide you with resolution to your Software problem. You should:

- > Possess required personnel
- > Possess the necessary technical knowledge and expertise – pertaining to software, hardware, and networks – required to assist us with troubleshooting your support issue(s).
- > Be able to provide us with a copy of the necessary file(s) as requested by the Prism technician.
- > Be able to provide instructions to us on how to replicate the problem(s) that you are experiencing.
- > Be able to perform diagnostic test(s) on your software/hardware/network environment
- > Provide technical assistance to help resolve the Software problem(s).
- > Client shall designate Technical contact(s) for network issues
- > Client shall designate Technical contact(s) for database issues
- > Client shall designate individual(s) authorized to contact Prism for support and maintenance services
- > Prism requires Client to co-operate with Prism to resolve any reported error(s)
- > Use reasonable efforts to check that the problem(s) relates to Software
- > Use reasonable efforts to determine what occurred operationally just before the error(s) arose and to identify any associated error code(s)
- > Use reasonable efforts to duplicate the error(s)
- > Instruct Prism how to duplicate error(s)
- > Perform diagnostic test(s)
- > Provide all reasonably requested network hardware and software access during normal business hours to correct reported problem(s).
- > Use reasonable efforts to assist to resolve problem(s)

## Items Covered by Software Support and Maintenance

- > Software error correction
- > Support to custom-coded apps<sup>1</sup>
- > Software point updates to Software (x.1 to x.2)
- > Software full upgrades / major versions (3.x to 4.x)
- > All error correction services exclusively from Irvine, CA office

## Items Not Covered by Software Support and Maintenance

### > **Software Training**

Unless otherwise stated in the SOW and/or provided as part of the original Software installation and configuration, all Software training is considered “professional services” and is available from Prism for a fee. Please consult Prism Sales for the charges for this.

### > **“How To” Questions**

These are covered extensively in the Software documentation. Prism Software User Guides are very detailed and provide this type of information. Additionally, these types of questions are covered in Software training sessions that are available for a fee.

### > **Professional Services Not Part of the Original SOW**

These are services that are associated with implementing or customizing a Software implementation. Professional services are available for an extra fee. Please consult Prism Sales for the charges for this.

### > **Network / IT Assistance**

Any technical or configuration issue, configuration, or how-to questions that involve your network or IT structure is outside the scope of Prism Software Support and Maintenance. You need to be able to provide support for your IT network independent of Prism.

### > **Database Assistance**

No support [including but not limited to questions, how-to inquiries, and configuration issues] or maintenance [including but not limited to changes, corrections, fixes, and modifications] of any third-party database(s) [including but not limited to those provided from Microsoft, Oracle, and others] unless configured by Prism for use by Prism-provided Software or unless specifically outlined in the purchase agreement or Statement of Work, with such support and maintenance then limited to said Prism configurations.

### > **Third-Party Software & Hardware Assistance**

No support or maintenance of any third-party software or hardware shall be provided unless specifically outlined in the purchase agreement or Statement of Work.

### > **On-site Services**

Any on-site service are separate costs and available by quote.

### > **Correcting Errors**

No correction of errors or omissions caused by malfunctions of any equipment, or that result from the Customer’s failure to follow Prism Software’s instructions or advice, or as a result of unauthorized use or modifications to the Software, or on the Customer’s premise.

### > **Software Configuration**

No additions or modifications to existing Software configurations shall be made unless made under normal maintenance support due to Software errors or other problems. Additions or modifications to existing Software configurations may be available from Prism for a fee. Please consult Prism Sales for the charges for this.

### > **Custom Engineering**

No custom engineering. Such engineering MAY be available by separate quote, such quote available upon request.

### > **Other Vendors**

No support or maintenance of other vendor’s products and/or services unless specifically outlined in the purchase agreement or SOW.

### > **Feature Requests**

All requests for Software features or enhancements are not covered.

### > **Disaster Recovery**

It is the sole responsibility of the Customer to setup and maintain a disaster recovery plan for all Prism Software, products and configurations.

> **Customer Generated Scripts**

Where applicable, custom scripting and filters developed by the Customer that interact with the Prism Software, shall NOT be troubleshooted.

- > **Correcting errors or omissions caused by customer changes to or malfunctions of hardware equipment.**
- > **Correcting errors or omissions that result from Client's failure to follow Prism Software's instructions or advice.**
- > **Correcting errors as a result of unauthorized use or modifications to the Software.**
- > **Support requests that require Software training.**
- > **Support requests that require changes to initial Software configuration<sup>2</sup>.**
- > **Maintenance does not include on-site services<sup>3</sup>. On-site maintenance MAY be available for an additional fee. Please consult Prism Sales for this fee.**
- > **Building or modification to Software configuration.**
- > **Custom engineering to either Software or customer's network environment.**
- > **Software and product training (above and beyond initial Software orientation included with Software installation).**

<sup>1</sup> Changes to custom-coded apps and professional service fees will be incurred and will increase yearly maintenance fees

<sup>2</sup> Professional Services contracts are available at prevailing rates

<sup>3</sup> Separate costs are available by quote from Prism Software Professional Services

# Other Terms and Conditions

## 1. Definitions

- 1.1 "Prism" refers to Prism Software Corporation.
- 1.2 The terms "Customer", "Client", "End User", and "Licensee" are used interchangeably.
- 1.3 In this Agreement "Software" shall mean all Prism software products and accompanying User Documentation licensed to Customer.
- 1.4 Prism and Customer may be referred to individually as "Party" or collectively as "Parties."
- 1.5 The term "Affiliate" of Prism shall mean any legal entity directly or indirectly controlled by, controlling, or under common control with Prism.
- 1.6 "Initial Purchase" is the Customer's first purchase of Software from Prism.
- 1.7 "Initial Maintenance" and "Initial Term" both refer to the first year or term of service on any purchase of Software from Prism that is subject to the terms of this Maintenance Agreement. The Initial Term shall begin 30 days from the shipment of the software from Prism or upon software license registration whichever occurs first.
- 1.8 "Error" means a material failure of the Software to conform as described in the applicable Software User Guide, which failure (a) is demonstrable in the environment for which the Software was designed and (b) causes the Software to be inoperable, to operate improperly in the environment for which it was designed, or produces results different from those described in the applicable User Documentation. Failures resulting from Licensee's negligence or improper use of the Software, modifications or damage to the Software by Licensee, and Licensee's use of the Software on third-party hardware, or software not identified and certified to Licensee as compatible by Prism, are not considered Errors.
- 1.9 "Error Correction", "Correction", and "Bug Fix", mean either (a) a modification or addition that, when made or added to the Software, brings the Software into material conformity with the User Documentation or (b) a procedure or routine that, when observed in the regular operation of the Software, avoids the practical adverse effect of such nonconformity.
- 1.10 "Update" means an updated revision of the Software that includes Error Corrections and minor Software revisions (e.g., x.1 to x.2)
- 1.11 "Upgrade" means a new Software version that contains major feature changes and/or enhancements (e.g., 3.x to 4.x).

## 2. Maintenance Fees

- 2.1 An Initial Maintenance fee for each Prism Software product Software is mandatory and shall entitle Customer to support and maintenance services for the Initial Term, pursuant to this Agreement. Nonpayment of this Initial Maintenance fee will result in immediate termination of this Agreement.
- 2.2 The Maintenance fee for any renewal maintenance term is payable in advance and will be calculated on the basis of the then-prevailing retail fees, plus any applicable third-party royalties or fees, for the same or superseding services, maintenance and Software.
- 2.3 Prior to the end of the current service term, Prism will invoice Licensee for the following year's or applicable Term fees at the then-prevailing Prism rates. Payment must be received prior to the end of the current service term in order to maintain uninterrupted service under the terms of this Agreement; nonpayment will result in immediate termination of this Agreement. After termination, maintenance coverage under this Agreement can be reactivated by mutual agreement upon payment by Licensee of all fees due retroactive to the termination date.
- 2.4 The termination of this Maintenance Agreement shall have no effect on the remainder of the separate Software licensing agreement, the terms of which shall remain in full force and effect. Termination shall not relieve either Party of any obligation or liability incurred under this Maintenance Agreement prior to termination.
- 2.5 In the event that multiple Software(s) are covered by this Maintenance Agreement, the termination of maintenance for any individual Software product shall not affect maintenance for the other Software product(s) that remain covered by this Maintenance Agreement.

## 3. Miscellaneous

- 3.1 Neither Party will be liable for delay in performing obligations or for failure to perform obligations if the delay or failure results from circumstances beyond the control of either Party, including but not limited to force majeure, Acts of God, refusal of license, other government acts, fire, explosion, accident, civil commotion, industrial dispute or impossibility of obtaining materials.
- 3.2 This Agreement shall be construed by and interpreted in accordance with the Laws of the State of California without giving effect, however, to California's choice of law rules, and any action related hereto shall be brought exclusively in the State or Federal Courts of the State of California, USA
- 3.3 No waiver of any breach of any provision of this Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provisions hereof, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving Party.
- 3.4 If a court or other lawful authority of competent jurisdiction declares any provision of this Agreement to be invalid, illegal or unenforceable, this Agreement will continue in full force and effect with respect to all other provisions and all rights and remedies accrued under such other provisions will survive any such declaration.

- 3.5 Prism reserves the right to change the non-substantive terms (such as, but not limited to, support hours) of this Maintenance Agreement with at least ninety (90) days written notice. Any changes to the substantive terms of this Agreement shall require the written approval of both Parties.
- 3.6 The Parties agree that the termination provisions herein, in terms of both notice and default events, are reasonable and agree not to contest same by way of wrongful termination proceedings or otherwise. Neither Party shall be liable, by reasons of any termination of this Agreement, for compensation, reimbursement or damages on account of the loss of prospective profits on anticipated orders or on account of expenditures, investments, leases or commitments whatsoever in connection with the business or goodwill of the other Party.
- 3.7 Customer is deemed to have accepted the terms of this Agreement upon the earlier of: 1) submitting written acceptance documentation to Prism (e.g., purchase order, letter, fax, e-mail or similar documentation); 2) remitting payment to Prism; or 3) licensing of the Software.
- 3.8 This Agreement - and any other accompanying documents such as, but not limited to, a SOW, purchase agreement, accompanying terms and conditions, and other such accompanying written and agreed-upon specifications - constitute the entire and only agreement of the Parties as to the subject matter hereof, and supersedes any and all prior oral or written understandings and agreements as to such subject matter. Any amendments, modifications or alterations to this Agreement must be made in writing and signed on behalf of both Parties by their respective duly authorized representatives.

## 4. Transferability

- 4.1 Maintenance is non transferable between companies unless Prism Software grants written permission. This does not limit the Customer from moving the Software from one hardware server, Client desktop, and/or department to another within the same company. In such case, the Customer may need to obtain from Prism, and Prism shall not withhold, a new license key for such permitted transferred Software.

## 5. Confidentiality

- 5.1 During the term of this Agreement a Party may, from time to time, communicate other confidential, business and technical information ("Confidential Information") to the other Party, or a Party may learn or acquire such Confidential Information from the other Party in order to enable it to effectively perform its obligations hereunder. The receiving Party shall treat all Confidential Information as confidential, whether or not so labeled or identified, and shall not disclose any part thereof without the prior written consent of the disclosing Party. The receiving Party shall limit the use and circulation of Confidential Information, even within the receiving Party's own organization, to the extent necessary to perform its obligations under this Agreement.
- 5.2 The confidentiality obligations recited herein shall not apply to any information which:
  - 5.2.1 has been developed by either Party completely independent of any disclosure of Confidential Information under this Agreement;
  - 5.2.2 has been disclosed in publicly available sources of information;
  - 5.2.3 is, through no fault of the receiving Party or its employees or agents, hereafter disclosed in publicly available sources of information;
  - 5.2.4 is, as of the start of this Agreement, in the possession of the receiving Party or its employees without any obligation of confidentiality;
  - 5.2.5 has been or is hereafter rightfully disclosed to the receiving Party or its employees by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party;
  - 5.2.6 is disclosed by either Party to its accountants, auditors or attorneys, or is required to be disclosed by applicable law, regulation or judicial authority, if the disclosing Party takes reasonable measures to seek confidential treatment to the extent permitted; or
  - 5.2.7 is disclosed by Prism to a third party for the purpose of assisting Prism in fulfilling its obligations under this Agreement, provided that Prism takes reasonable measures to seek confidential treatment to the extent permitted (e.g., to a third party that provides a product that Prism resells or licenses for use as part of its own product(s)).
- 5.3 Healthcare Records and Compliance with Health Insurance Portability and Accountability Act (HIPAA)
  - 5.3.1 Prism reserves the right to require Customer to enter into a separate Healthcare Confidentiality Agreement or Business Associate Agreement (BAA) in the event that Prism has access or exposure to any healthcare records of the Customer. Such separate Healthcare Confidentiality Agreement or BAA shall be in compliance with the privacy requirements of the Health Insurance Portability and Accountability Act (HIPAA) and other applicable federal and/or state laws.
  - 5.3.2 Prism reserves the right not to provide maintenance to the Customer in the event that Customer does enter into such Healthcare Confidentiality Agreement or BAA. Such refusal by Prism to provide such maintenance shall 1) not construe default of this Agreement by either Prism or Customer, 2) be cause for termination of this Agreement by either Prism or Customer, and 3) Customer shall not be entitled to any partial or complete refund of maintenance fees paid or owed by Customer to Prism.