



PO Box 165  
Odessa DE 19730-0165  
[www.dirwiz.com](http://www.dirwiz.com)

## empass License Agreement

This empass License Agreement (the "Agreement" or "License Agreement") is entered into as of the date that the last party hereto executes the Agreement, either by signature below or through electronic means (the "Effective Date"), between Directory Wizards Inc. ("DirWiz"), having its principle offices at PO Box 165, Odessa DE 19730-0165, and "User" who has executed this agreement. DirWiz grants a non-exclusive, non-transferable, limited use license to the end-user, "User", subject to the terms and conditions of this Agreement.

### ***DirWiz SOFTWARE LICENSE***

1. **Grant of License:** This license applies to DirWiz software called empass and any replacements or revisions thereof ("Software" or "Licensed Software"). DirWiz grants to User the following rights to this Software.
  - a. **Number of copies:** User (and any subsidiaries, affiliates or related entities) may license the number of copies of Software specified in the purchase order(s) placed with DirWiz.
  - b. **Number of Agents:** User is licensed to capture passwords from servers ("Agents"), as specified in the purchase order(s) placed with DirWiz.
  - c. **Installation:** User may install each licensed copy of the Software on a single computer (the computer running the Software shall be referred to as the "Server").
  - d. **Use of Software:** User may use one copy of the Software on one Server, which may then connect to and synchronize directory information between the number of directories specified in the purchase order.
  - e. **Other Transfer:** If User wishes to move any copy of the Software to another computer, it will provide the license information required and will certify that the original copy is no longer in use. There is no charge for this transfer.
  - f. **Notice to Users:** User shall inform all users of the Software of the terms and conditions of the DirWiz License Agreement.
  - g. **Duration:** Upon purchase User will receive a perpetual license key for the current version of the Software as specified in the purchase order(s) placed with DirWiz. The license granted hereunder shall continue unless and until terminated pursuant to Section 11 hereof and subject to Licensee's proper performance of its obligations hereunder.
2. **Enterprise License:** An Enterprise License authorizes User (but not its subsidiaries, affiliates or related entities) to install and operate Software on any server owned and operated by User, and to synchronize with any servers or other data sources.
3. **Payment:** User shall pay, prior to delivery of the Software, the license fee or subscription fee per the terms of the invoice for purchase. The purchase invoice is hereby expressly incorporated into this agreement. The terms are subject to change upon notice by DirWiz to User thirty days prior to the expiration of the annual subscription or expiration of the Software Maintenance Agreement for Licensees. The fee for the renewal of the subscription fee or Software Maintenance Agreement must be paid prior to the annual renewal date which is one year from the date of this agreement and will continue for subsequent years.
4. **Other Rights and Limitations:** User may not reverse engineer, decompile or disassemble the Software. User may not transfer or sub-license the Licensed software to any third party, in whole or in part, in any form whether modified or unmodified. This Agreement and the licenses granted by it may not be assigned, sub-licensed, or otherwise transferred by User without the prior written consent of DirWiz.
5. **Upgrades:** As described in more detail in the accompanying Software Maintenance Agreement, eligibility for Server Software upgrades requires the User have current (not expired) Server Software Maintenance coverage. An upgrade must be used to replace the existing product.



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6. **Technical Support:** As described in more detail in the accompanying Software Maintenance Agreement (Exhibit A), eligibility for technical support requires the User have current (not expired) Server Software Maintenance coverage. The Software Maintenance Agreement is expressly incorporated into this document. Subscription Users will be entitled to the benefits of the Software Maintenance Agreement as part of their subscription service while the Subscription license is in effect.
7. **Copyright:** The Software is licensed, not sold. Title and copyrights in and to the Software (including any images, applets, and text incorporated into the Software), accompanying printed materials, including any and all manuals, training materials, guides, or other materials provided by DirWiz to User as part of the Software download ("Licensed Material"), and any copies User is permitted to make are owned or licensed by DirWiz and are protected by United States Copyright laws and international treaty provisions. Therefore User must treat the Software like any other copyrighted material and may not use, copy, distribute or publish the Software except as provided in this Agreement. User may make a copy of the Software solely for backup or archival purposes.
8. **Patent and Copyright Indemnification:** DirWiz will defend at its own expense any action brought against Licensee to the extent it is based on a claim that the Licensed Programs used within the scope of the license granted hereunder infringe a United States patent, copyright or other proprietary right of a third party. DirWiz will pay any costs, damages or attorney fees finally awarded against Licensee in such action which are attributable to such claim, provided DirWiz is promptly notified in writing of such claim, may control the defense and/or settlement of such claim, and is provided with all requested assistance, information and authority. In the event that a Licensed Program becomes, or in DirWiz's opinion is likely to become, the subject of a claim of infringement of a United States patent, copyright or trade secret, DirWiz may at its option either secure Licensee's right to continue using the Licensed Programs, replace or modify the Licensed Programs to make them not infringing, or provide Licensee with a refund of the license fee less depreciation on a 5 (five) year, straight-line basis. DirWiz shall have no liability for any claim of patent, copyright or trade secret infringement based on the use of a Licensed Program in any form other than the original, unmodified form provided to Licensee or the use of a combination of the Licensed Programs with hardware, software or data not supplied by DirWiz where the used Licensed Programs alone in their original, unmodified form would not constitute an infringement. The foregoing states Licensee's entire liability for infringement or claims of infringement of patents, copyrights or other intellectual property right
9. **LIMITATION OF LIABILITY: DIRWIZ'S LIABILITY TO LICENSEE UNDER ANY PROVISIONS OF THIS AGREEMENT FOR DAMAGES FINALLY AWARDED SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID HEREUNDER BY USER TO DIRWIZ. IN NO EVENT SHALL DIRWIZ BE LIABLE FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, LOSS OF PROFITS OR INTERRUPTION OF BUSINESS, HOWEVER CAUSED OR ON ANY THEORY OF LIABILITY.**
10. **Software Maintenance Coverage:** As part of this License Agreement, DirWiz will provide User with one (1) year of Software Maintenance coverage, as described in more detail in the accompanying Software Maintenance Agreement.
  - a. The Software Maintenance coverage expiration date is set to one year following the Effective Date or the date that the purchase price is paid in full to DirWiz, whichever is earlier.
  - b. **Renewal:** User has the option to renew Software Maintenance coverage yearly. Users may choose not to renew the Software Maintenance coverage upon its expiration. However, DirWiz reserves the right to impose a Reinstatement Fee upon any User who wishes to resume Software Maintenance after any lapse in coverage.
11. **TERMINATION:** DirWiz may terminate this Agreement if Licensee is in default of any of the terms and conditions of this Agreement and fails to correct such default within ten (10) days after written notice thereof from DirWiz. In the event of termination, User will immediately discontinue use of the Licensed Programs. Within one (1) month after termination of this Agreement, User will furnish to DirWiz a certificate which certifies with respect to each of the Licensed Programs that, through its best effort and to the best of its knowledge, the original and all copies, in whole or in part and in any form, of each of the Licensed Programs have been destroyed. DirWiz retains the right and ability to disable or deactivate any program used by User after the termination of the Agreement. The



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provisions of Sections 4, 7, 9, 11, 13, 14, and 20 hereof shall survive any termination of this Agreement.

**Termination for Subscription Users:** The subscription shall terminate one year from the date of this agreement unless payment for the subsequent year is received by the renewal date. DirWiz will disable or deactivate any program used by User after the termination of this Agreement on the day after the renewal date. The renewal date for subsequent years shall be one year from the renewal of the agreement. User acknowledges the right of DirWiz to terminate the agreement remotely by disabling or deactivating the product and holds DirWiz harmless for any disruption of service of the software including any and all actual or consequential damages which may occur as a result of termination of the product.

12. **LIMITED WARRANTY:** DirWiz does not warrant that the functions contained in the Software will meet User's requirements or that the operation will be uninterrupted or error free. DirWiz warrants to the original purchaser of the Software that the Software is free from defects in materials and workmanship when given normal use for a period of 30 days from the date of receipt. This limited warranty is void if the failure of the Software or hardware has resulted from accident, abuse, or misapplication. DirWiz warrants that any upgrades to the Software by DirWiz will be compatible with, and will not materially diminish the features or functionality of the Software when used in accordance with the Licensed Material and all of the terms and conditions hereof. DirWiz warrants that so long as User complies with Section 1 of this Agreement, the Software does not contain any disabling code (defined as computer code designed to interfere with the normal operation of User's hardware or software) or any program routine, device or other undisclosed feature, including but not limited to, viruses, worms, trojan horses, or other malicious code that originates in the Software and may permit unauthorized access, or may delete, disable, deactivate, interfere with the operation of or otherwise harm the Software of User's hardware or software. User understands and agrees, however, that DirWiz retains the right and ability to disable or deactivate any use or copies of the Software not in accordance with the terms of this Agreement.
13. **NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DIRWIZ DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO THE SOFTWARE AND THE ACCOMPANYING LICENSED MATERIALS. THIS LIMITED WARRANTY GIVES YOU SPECIFIC RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.**
14. **NO LIABILITY FOR CONSEQUENTIAL DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DIRWIZ 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 OR THE INABILITY TO USE THIS DIRWIZ PRODUCT, EVEN IF DIRWIZ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**
15. **Confidential Information.** In the event that either party discloses or has access to, either in oral or physical form, confidential or proprietary information concerning the other party's business, products, customers, employees, services, policyholders and/or claimants ("Confidential Information"), it shall (i) use such Confidential Information solely for the purpose of this Agreement; and (ii) take reasonable precautions, no less than it would take to prevent the disclosure of its own similar Confidential Information, to ensure that it does not disclose Confidential Information to any third party without first obtaining the other party's prior written consent. For Confidential Information that does not constitute trade secrets under applicable law, these confidentiality obligations will expire three (3) years after the Effective Date of the Agreement. The recipient of such Confidential Information will be responsible for any breach of this section by its employees, representatives and agents. Confidential Information will not include any information that (i) was independently developed by a party without use of or reference to any Confidential Information belonging to the other party; (ii) was acquired by either party from a third party having the legal right to furnish same to the other party; or (iii) was at the time in question (whether at disclosure or



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- thereafter) generally known by or available to the public. Notwithstanding anything else in this paragraph, DirWiz's maximum liability under this paragraph shall be equal to the license fees paid by User under this License Agreement.
16. This License Agreement supersedes all license agreements prior to the version date at the bottom of this document, unless amended, in writing, by DirWiz. No amendments or alterations of this License Agreement shall be valid unless in writing signed by both parties hereto.
  17. Severability: In the event any provision of this Agreement is determined to be invalid or unenforceable, the remainder of this Agreement shall remain in force as if such provision were not a part.
  18. Notices: All notices in connection with this Agreement shall be in writing and may be given by certified, registered, or first class mail or personally delivered at the address set forth below. For purposes of this Agreement, a notice shall be deemed effective upon personal delivery to the party or if by mail five days after proper deposit in a mail box. Notices to DirWiz shall be sent to Directory Wizards, P.O. Box 165, Odessa, DE 19730-0165. Notices to User shall be sent to User at the address noted on the purchase invoice.
  19. Successors: This Agreement shall be binding upon and will inure to the benefit of the parties hereto and their respective representatives, successors and assigns except as otherwise provided herein.
  20. EXPORT REGULATIONS: Licensee understands that NEAR is subject to regulation by agencies of the U.S. Government, including the U.S. Departments of Commerce and State, which prohibit export or diversion of certain technical products to certain countries. Licensee warrants that it will comply in all respect with the export and re-export restrictions set forth in the export license for the Licensed Programs and all other applicable export regulations. Licensee agrees to indemnify and hold NEAR harmless from any loss, damages, liability or expenses incurred by NEAR as a result of Licensee's failure to comply with any export regulations or restrictions.
  21. This License Agreement shall include other terms and conditions described on DirWiz's website at <https://www.dirwiz.com/support>. The terms and conditions set forth at this web page are incorporated herein by reference and shall have the same force and effect as if set forth in full herein. In the event of any conflict between the written terms of the Agreement and those set forth on the web page, the terms set forth on the web page shall control.
  22. Use of Name or Publicity. Unless removed by separate written agreement between the parties, DirWiz shall be granted a limited, non-transferable, non-exclusive license to use User's trademarks, logos, service marks, or name in any advertising, promotional or marketing material or like communication, including but not limited to DirWiz's websites, to identify User as a licensee of the Software.
  23. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Arbitration shall be conducted in Wilmington, Delaware. This License Agreement shall be governed by the laws of the State of Delaware. Following arbitration, any controversy or claim arising out of or relating to this Agreement, or breach thereof, or arbitration of any such controversy or claim or the subject matter thereof shall be submitted exclusively to the State and Federal Courts located within New Castle County, Delaware, and the parties hereby submit to exclusive jurisdiction of these courts for any such disputes.
  24. Entire Agreement: This Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and merges and supersedes all prior agreements, discussions and understandings, express or implied, concerning such matters. This Agreement shall take precedence over any additional or conflicting terms which may be contained in User's purchase order or DirWiz's order acknowledgment forms.



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Company: Directory Wizards Inc.

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

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

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

Address: PO Box 165  
Odessa DE 19734-0165

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

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

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

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

Address: \_\_\_\_\_

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## Exhibit A: Software Maintenance Agreement

DirWiz offers software support for empass under this annual Software Maintenance Agreement (the “Agreement” or the “Maintenance Agreement”). The Maintenance Agreement provides for the following services:

- During the term of the Maintenance Agreement, DirWiz will provide unlimited phone and email support during regular business hours of 9 a.m. to 5 p.m. EST for any issues directly related to empass and any replacements or revisions thereof (the “Software”). A current Maintenance Agreement entitles the User to technical support and software upgrades as they become available during the term of the Maintenance Agreement and to purchase additional Software, Directory Licenses, and renewal of Software Maintenance without having to repurchase the base installation or pay a Reinstatement Fee. The services provided by DirWiz under this Agreement may be renewed by the User on an annual basis by payment of the applicable Software Maintenance Fee (the “Maintenance Fee”). Users may choose not to renew the Software Maintenance coverage upon its expiration. However, DirWiz reserves the right to impose a Reinstatement Fee upon any User who wishes to resume Software Maintenance after any lapse in coverage.
- During the term of the Maintenance Agreement, DirWiz will make all upgrades and new releases of the Software available at no additional cost to customers who have a current support contract. Upgrades and new releases will be available for download from the DirWiz web site. From time to time, DirWiz may create replacements or revisions to empass with functions, performance and other features equivalent or improved in comparison to empass. For maintenance and technical support reasons, it may be necessary to install such replacements or revisions in lieu of User's copy of empass during the term of this License Agreement (and without additional charge to User), and User agrees to cooperate reasonably with DirWiz in any such installation.
- Any log files or other information provided by Customer to DirWiz for use in problem solving will be treated as Confidential Information by DirWiz and will not be made available to any third party without the express written consent of the User.
- DirWiz will send a renewal notice with current Maintenance Fees to renew the Maintenance Agreement to User approximately 2 months before the current Agreement expires to insure the availability of continued coverage.
- Email and phone support information is available at <https://www.dirwiz.com/support>. Phone support is available from 9 am to 5 pm, EST, on normal working days. Response time to acknowledge receipt of email is usually 4 hours or less during normal working hours.
- In all cases of phone or email contact, DirWiz will attempt to reply as quickly as possible.
- Error Correction. DirWiz shall employ commercially reasonable efforts to correct any material failure of the Software to conform to specifications, functions, descriptions, standards and criteria set forth in this Agreement and the applicable specifications of the Software that has been or shall be delivered to User.
- End of Life. From time to time, DirWiz may notify Users that certain versions or revisions of the Software will no longer be supported through this Maintenance Agreement and that, in order to continue coverage under the Maintenance Agreement, the User may be required to install and use an updated version or revision of the Software or equivalent software.
- This Maintenance Agreement shall include other terms and conditions described on DirWiz's website at <https://www.dirwiz.com/maintenance>. The terms and conditions set forth at this web page are incorporated herein by reference and shall have the same force and effect as if set forth in full herein. In the event of any conflict between the written terms of the Agreement and those set forth on the web page, the terms set forth on the web page shall control.



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- The first one (1) year of Software Maintenance is included with the purchase of a License Agreement for the Software. The annual fee in subsequent years shall not exceed fifteen percent (15%) percent of the then-current purchase price for a License Agreement for the Software. The Software Maintenance Agreement shall be effective for one (1) year following the Effective Date of the License Agreement or following the payment of the Maintenance Fee, as applicable.
- Termination: This Software Maintenance Agreement will terminate upon the expiration of ten days following the annual renewal date of the Agreement if payment of the annual fee is not received. DirWiz reserves the right to require a reinstatement fee of an amount equal to the Software Maintenance fees for the entire term of the lapse in service prior to reinstating Software Maintenance. DirWiz may terminate this Agreement if Licensee is in default of any of the terms and conditions of this Agreement or the License Agreement and fails to correct such default within ten (10) days after written notice thereof from DirWiz. In the event of termination, User will immediately discontinue use of the Licensed Programs. DirWiz expressly reserves the right not to renew this Software Maintenance Agreement for any reason after the end of any annual term.

Company: Directory Wizards Inc.

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

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

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

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

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

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

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

Address: PO Box 165  
Odessa DE 19734-0165

Address: \_\_\_\_\_  
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