

MAINTENANCE AND SUPPORT TERMS AND CONDITIONS

These Maintenance and Support Terms and Conditions (the "Terms and Conditions") set forth the terms and conditions under which SlickEdit Inc. ("SlickEdit") will provide You ("Licensee") with maintenance and support services ("Services") for SlickEdit's products indicated on Licensee's invoice for which Licensee has purchased Services (the "Software").

1. Obligations of SlickEdit.

1.1 Scope of Services. SlickEdit shall use commercially reasonable efforts to correct or replace the Software or provide the services necessary to remedy any Software function that does not operate in substantial conformance to the applicable documentation (an "Error"). SlickEdit's technical support staff shall provide Licensee with "hotline" telephone and email consultation during the hours of 9:00 a.m. through 6:00 p.m. US Eastern Time, Monday through Friday, except observed SlickEdit holidays. Please refer to the SlickEdit web site for holiday listing. Such consultation shall include technical advice concerning the use and operation of the Software, including clarification of functions and features of any Software, and clarification of documentation, as well as Error verification, analysis, corrections and work-arounds.

1.2 Updates. SlickEdit shall make available to Licensee on its web site any new releases, revisions, corrections, and upgrades of the Software with version numbers that are incremented either by whole integers or in the tenths and patches that are made available by SlickEdit to its other licensees free of charge ("Updates"). Licensee may download Updates by following SlickEdit's then-current procedures set forth on its web site. Updates do not include new software that (i) port Software to new hardware or software platforms, or (ii) which provide significant new functionality on new hardware or software platforms.

2. Obligations of Licensee. Licensee shall provide SlickEdit with sufficient documentation, information, assistance, support and test time on Licensee's computer system as necessary, to duplicate the problem, certify that the problem is with the Software, and certify that the problem has been corrected. Licensee shall perform Error definition activities, and any remedial or corrective actions, as described in the Software user manuals and other system documentation provided to Licensee by SlickEdit, prior to seeking assistance from SlickEdit.

3. Excluded Services and Software.

3.1 Exclusions. SlickEdit will not be required to perform any Services where an Error relates to (a) incorporation or attachment of a feature, program or device to the Software or any part thereof; (b) accident, transportation, neglect, misuse, alteration, modification or enhancement of the Software; (c) the failure to provide a suitable installation environment; (d) use of the Software for other than the specific purpose for which the Software is designed; (e) use of the Software on any systems other than the specified hardware platform for such Software; or (f) failure to incorporate any Updates previously provided by SlickEdit. Corrections for difficulties or defects traceable by SlickEdit to the foregoing may, in SlickEdit's sole discretion, be billed to Licensee at SlickEdit's then standard time and material charges. In addition, SlickEdit shall not be responsible for services relating to: (i) any hardware or peripheral devices; (ii) recreation or reentry of data lost for any reason whatsoever; (iii) performance of the generalized duties of a network administrator; or (iv) performance of the generalized duties of a software developer engaged to create miscellaneous software applications.

3.2 Supported Versions. The Services provided by SlickEdit hereunder shall be limited to the current version of the Software and the immediately preceding major release. A major release is generally denoted in the version number by a change to the number to the left of the first decimal point (e.g., a change from 2.x to 3.x).

4. Service Fees And Payment.

4.1 Service Fees. In exchange for the Services, Licensee will pay to SlickEdit an annual maintenance and support fee equal to 20% of the then-current list price for the Software licensed by Licensee ("Support Fees"). SlickEdit shall invoice Licensee for the Support Fees on the Effective Date. All Support Fees and other fees hereunder are due and payable in accordance with the payment terms listed on the invoice. Licensee shall, in addition to the other amounts payable for Services, pay all sales and other taxes, Federal, state, or otherwise, however designated, which are levied or imposed by reason of the transactions set forth in these Terms and Conditions, excluding only taxes based on SlickEdit's income, according to the terms and conditions contained herein.

4.2 Late Payments. Any late payments will be subject to a late fee that will accrue at a monthly rate equal to the lesser of one and one-half percent (1½%) of the outstanding balance, or the maximum rate allowable under applicable law. In the event that Licensee fails to pay amounts due hereunder on a timely basis, SlickEdit reserves the right to suspend the provision of all Services under these Terms and Conditions until such outstanding Service Fees (including applicable late fees) have been paid in full.

5. Term. The obligation of SlickEdit to provide Services will be for the term set forth in the applicable purchase order or invoice, unless earlier terminated pursuant to these Terms and Conditions. Upon the breach by Licensee of these Terms and Conditions or the License Agreement for the applicable Software, SlickEdit may, without payment or penalty, terminate its obligation to provide Services hereunder if such breach is not cured within 14 days of notice from SlickEdit. Reinstatement of Services following termination of the provisions of Services shall only be upon the mutual written agreement of the parties on terms and conditions determined by SlickEdit in its sole discretion.

6. LIMITED WARRANTY. SLICKEDIT WARRANTS THAT THE SERVICES WILL BE PERFORMED IN A WORKMANLIKE MANNER WITH THE ORDINARY DEGREE OF SKILL PREVALENT IN THE INDUSTRY. LICENSEE'S SOLE AND EXCLUSIVE REMEDY, AND SLICKEDIT'S ENTIRE LIABILITY, FOR SLICKEDIT'S BREACH OF THIS WARRANTY IS FOR SLICKEDIT TO PERFORM THE SERVICES IN A MANNER CONSISTENT WITH THIS WARRANTY. EXCEPT AS SPECIFICALLY SET FORTH IN THE PREVIOUS PARAGRAPH, THE SERVICES ARE PROVIDED "AS IS" WITHOUT WARRANTIES OF ANY KIND. WITHOUT LIMITING THE FOREGOING, SLICKEDIT DISCLAIMS ANY AND ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT. BOTH PARTIES ACKNOWLEDGE THAT THEY HAVE NOT ENTERED INTO THESE TERMS AND CONDITIONS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION OTHER THAN THOSE SET FORTH ABOVE IN THE IMMEDIATELY PRECEDING PARAGRAPH.

7. LIMITATION OF LIABILITY. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR LOST PROFITS OR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS (WHETHER FROM BREACH OF CONTRACT, BREACH OF WARRANTY, OR FROM NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER FORM OF ACTION), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY SHALL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. IN NO EVENT WILL SLICKEDIT'S AGGREGATE, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS EXCEED THE SUM OF ALL SUPPORT FEES ACTUALLY PAID TO SLICKEDIT BY LICENSEE UNDER THESE TERMS AND CONDITIONS DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THIS LIMITATION OF LIABILITY IS CUMULATIVE, WITH ALL LIABILITY PAYMENTS BEING AGGREGATED TO DETERMINE SATISFACTION OF THE LIMIT. THE PARTIES ACKNOWLEDGE THAT THE PRICING SPECIFIED IN THESE TERMS AND CONDITIONS REFLECTS THE ALLOCATION OF RISK SET FORTH IN THESE TERMS AND CONDITIONS AND THAT

SLICKEDIT WOULD NOT ENTER INTO THESE TERMS AND CONDITIONS WITHOUT THE FOREGOING LIMITATIONS OF ITS LIABILITY AND THE WARRANTY DISCLAIMERS CONTAINED HEREIN.

8. General Provisions.

8.1 Governing Law. These Terms and Conditions and the provision of Services will be governed in all respects by the laws of the State of North Carolina, without regard to North Carolina's principles of conflict of laws. Both parties consent to jurisdiction in North Carolina and further agree that any cause of action arising out of or relating to these Terms and Conditions or the Services may be brought only in a state court in Wake County, North Carolina, or in a federal court in the Eastern District of North Carolina.

8.2 Independent Contractors. Each party will perform its obligations hereunder as an independent contractor and, except as expressly provided to the contrary in these Terms and Conditions, will be solely responsible for its own financial obligations. Nothing contained herein shall be construed to imply a joint venture or principal-agent relationship between the parties, and neither party will have any right, power, or authority to create any obligation, express or implied, on behalf of the other in connection with performance of its obligations hereunder.

8.3 Severability; Waiver. If any provision of these Terms and Conditions is held to be invalid or unenforceable for any reason by a court of competent jurisdiction, the remaining provisions will continue in full force without being impaired or invalidated in any way. The failure of either party to insist upon strict performance of any provision of these Terms and Conditions, or to exercise any right provided for herein, shall not be deemed to be a waiver of the future enforcement of such provision or right, and no waiver of any provision or right shall affect the right of the waiving party to enforce any other provision or right herein.

8.4 Notices. Any notice or communication permitted or required hereunder will be in writing and will be delivered by facsimile transmission with confirmation of receipt, in person or by courier, or mailed by certified or registered mail, postage prepaid, return receipt requested, and addressed to such facsimile number or address as either party may provide from time to time to the other. If notice is given in person, by courier, or by facsimile, it will be effective upon receipt; and if notice is given by mail, it will be effective three (3) business days after deposit in the mail.

8.5 Force Majeure. If performance of these Terms and Conditions, or any obligation hereunder (other than the obligation to pay) is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party (including without limitation the failure of any suppliers to perform), the party so affected, upon giving prompt notice to the non-affected party, will be excused from such performance to the extent of such prevention, restriction, or interference.

8.6 Assignment. No right or obligation of Licensee under these Terms and Conditions will be assigned, delegated, or otherwise transferred, whether by agreement, operation of law, or otherwise, without the express prior written consent of SlickEdit. Any purported assignment, delegation, or transfer in violation of this paragraph will be null and void. Subject to the foregoing, these Terms and Conditions in its entirety will bind each party and its permitted successors and assigns.

8.7 Amendments. Any amendments, modifications, supplements, or other changes to these Terms and Conditions must be in writing and signed by duly authorized representatives of each party.

8.8 Entire Agreement. These Terms and Conditions and the applicable purchase order and invoice constitute the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous representations, understandings, agreements, communications, or purchase orders between the parties, whether written or oral, relating to the subject matter hereof.