



## SUPPORT AND MAINTENANCE TERMS AND CONDITIONS

This following describes the annual Maintenance and Support Services that Swell Software, Inc. ("Swell") shall provide to its customers who have purchased Maintenance and Support Services from Swell pursuant to a separate written agreement. In the event that you (a Swell customer) elect not to renew annual Maintenance and Support Services, any reinstatement of such services shall be subject to payment to Swell of all fees that would have been payable from the time that you discontinued Maintenance and Support Services to the time of its reinstatement.

### 1. Definitions.

1.1 Documentation means the published and generally available user manuals and materials Swell delivers or makes available with the Software, including on-line help.

1.2 Software means the specific software licensed to you by Swell pursuant to the terms and conditions of a separate written agreement between you and Swell (or between you and an authorized Swell distributor, reseller or sales representative).

### 2. General Statement of Swell's Responsibilities

At all times while you have purchased Maintenance and Support Services, Swell shall, in accordance with the procedures set out below (a) correct any material failure of the Software to conform to the functional specifications set out in the current published Documentation applicable to such Software at the time that it was delivered to you (a "Defect"); and (b) perform the other obligations set out below.

### 3. Support - Allocation of Responsibilities Between You and Swell.

3.1 Unless otherwise agreed by Swell in writing, when a customer of your product that contains portions of the Software contacts you for support services, your support personnel will first work with such customer on problem identification and verification of known issues or problems before contacting Swell for support services.

3.2 Unless otherwise agreed by Swell in writing, you will be responsible for providing Level 1 and Level 2 Support to your customers. "Level 1 Support" shall mean telephone and email support provided in response to the initial inquiry placed by a customer regarding product operation generally or which identifies, troubleshoots and documents an error in the Software. "Level 2 Support" means technical support and on-site engineering services, beyond telephone and email support, which after using all reasonable efforts, is required due to your telephone and email support personnel having been unable to resolve a reported product failure or malfunction in accordance with your standard operating procedures. You shall have trained and maintain a sufficient number of capable technical personnel to carry out the Level 1 Support and Level 2 Support obligations and responsibilities hereunder.

3.3 If despite your reasonable efforts, you are unable to resolve a Defect after providing Level 1 and Level 2 Support then Swell shall provide you with Level 3 Support. For the purposes herein, Level 3 Support shall mean the service provided directly to you after your telephone and email support personnel have been unable to resolve a reported Defect. Pursuant to Level 3 Support, during the term of this Agreement, Swell shall use commercially reasonable efforts to cure any reported Defects in the Software, via its standard resolution procedures.

3.4 You shall ensure that your customers do not contact Swell directly for support questions or issues.

### 4. Problem Resolution.

Swell's standard problem resolution support includes telephone and email support. Swell shall provide telephone and e-mail assistance to you with respect to use of the Software and to resolve Defects at telephone numbers and e-mail addresses designated by Swell from time-to-time. Maintenance and Support will be available from 8:00am to 6:00pm ET, Monday to Friday, excluding any Swell-recognized holidays, a list of which may be obtained from Swell at your request.

### 4. Software Update Program.

Swell shall supply you with Enhancements generally released by Swell while you are enrolled and full paid-up under Maintenance and Support Services. Enhancements shall be developed and released at Swell's sole discretion. For purposes of this Section 4, "Enhancements" means any error corrections, modifications, revisions, enhancements or new releases to the Software that Swell elects to supply to its licensees that are receiving Maintenance and Support Services, but does not include any major upgrade, new version or new product that contains significant additional functionality or that is separately priced and licensed by Swell.

### 5. Limitation on Maintenance Services.

5.1 Swell's obligations to provide you Maintenance and Support Services shall apply only to (i) the current Major Release and (ii) for a period of twelve (12) months after the release of such Major Release, the preceding Major Release of the Software. For purposes of this Section 6.1, a "Major Release" is defined as a release in which the product version number's first positional digit (i.e. "left of the dot") is incremented. For example, an upgrade from version 1.98 to 2.0 would be considered a "Major Release."

5.2 Maintenance and Support does not cover products made, supplied or licensed by a third party, nor does it cover modifications or adaptations of the Software by any party other than Swell or its agents. If you notify Swell of a problem and it is established that the problem is due to the incorrect or improper use or modification of the Software (as opposed to a Defect in the Software), Swell shall have no obligation to take any action to correct the problem to the extent such problem is related to the preceding causes. Upon your written request and written authorization delivered to Swell that Swell should proceed with work on a time and materials basis, and at Swell's sole discretion, Swell may attempt to correct the problem, and you shall pay Swell the then current time and materials rate for all services provided and all expenses of Swell associated with performance of those services, whether or not the problem is eventually corrected. Swell may discontinue Maintenance and Support for any Software that Swell has discontinued. In such event, Swell will credit your account for a pro rata portion of any prepaid Maintenance and Support Services fees that you paid to Swell.