

## TCP SERVICE LEVEL AGREEMENT (SLA)

This Service Level Agreement is an addendum to the Master Licensing Agreement, hereafter referred to as the "Licensing Agreement", made and entered into by and between TimeClock Plus, LLC ("TCP") and Client. TCP reserves the right to continuously improve the Support and Maintenance and to adapt such services to changes in technology and to TCP's business environment. All Support and Maintenance will be provided in accordance with applicable data protection laws and the Privacy Policy which can be found at [www.tcpsoftware.com/legal](http://www.tcpsoftware.com/legal).

1. **Definitions.** Capitalized terms herein, but not included in this Section 1, shall have the meaning set forth in the Licensing Agreement and/or attached Addendums.

1.1 "24/7 Support" means continuous service is provided for twenty-four hours per day, seven days per week, and throughout the year.

1.2 "Downtime" shall mean "unplanned" network unavailability within TCP's United States network for thirty (30) consecutive minutes due to the failure of TCP to provide services for such period. Downtime shall not include any packet loss or network unavailability during TCP's scheduled maintenance of the Internet Data Center(s), network and software services.

1.3 "Issue" means a failure of the Software to substantially conform to the functional specifications set forth in TCP published documentation.

1.4 "Performance Problem" shall mean a material deterioration in the performance of Services excluding any Downtime.

1.5 "Response Time" means the time period in which the assigned support resource shall provide Client with an initial technical response as a result of an Issue reported by Client.

1.6 "Service Credit" shall mean an amount equal to the pro-rata monthly recurring connectivity charges (i.e., all monthly recurring bandwidth-related charges) for one (1) day of software services.

1.7 "Software" means the certain software program(s) purchased by Client. Software includes TCP Services as defined in the Licensing Agreement.

1.8 "Standard Support" means the Standard support level of Support and Maintenance as set out in Section 3.

1.9 "Standard Support Hours" means the hours between 7:00 am PST and 7:00 pm PST, excluding Saturday, Sunday, and TCP recognized employee holidays.

1.10 "Support and Maintenance" means the support and maintenance services to be provided by TCP to the Client. All Support and Maintenance will be provided to Client in accordance with the terms of this Service Level Agreement.

1.11 "Term" has the same meaning as defined in the Order Form or Licensing Agreement.

1.12 "Updates" means service packs, patches, hot fixes, or workarounds for a particular version of the Software. All Updates are licensed to Customer and subject to the terms and conditions of the License Agreement.

1.13 “Workaround” means a modification or “patch” for a particular version of the Software, which may be of a temporary or interim nature, to help cure or avoid an Issue.

2. **Support and Maintenance Services.** In consideration of the Client's payment of the applicable fees related to the TCP Services, TCP agrees to provide Support and Maintenance for the duration of the Term, and solely for the Software.

3. **Software Support and Maintenance.**

3.1 Software Maintenance. TCP will provide 24/7 Support to Client via both telephone and electronic mail. Client may report an Issue during Standard Support Hours by calling 888-973-6030 or any time by emailing [support@tcpsoftware.com](mailto:support@tcpsoftware.com). TCP shall use commercially reasonable efforts to maintain the Software so that it operates without Issues. Software maintenance includes the Software features that TCP makes generally available to its Client base during the applicable Term. These Software features, include Updates to the Software.

3.2 Software Support. Support Services include:

3.2.1 Information gathering and analysis of Software to identify Issues;

3.2.2 Chat, email, or telephone consultation regarding the use and operation of the Software that does not rise to the level of training;

3.2.3 Configuration changes for the Software;

3.2.4 Repair or replacement of open source software with functionally equivalent software; and

3.2.5 Issue correction in accordance with the Support Response Time Goals below.

3.3 Severity Classification and Response Time Goals. Issues are classified according to severity of impact on the use of the Software, according to the Support Response Time Goal chart below. All disputes regarding severity classification will be resolved by TCP in its sole discretion.

### Support Response Time Goals

Severity	Impact	Response Time Goal
Level 1	Production system is down, impacting all applications and associated business systems. No Workaround exists.	A Level 1 Issue will immediately be assigned to a TCP Support Technician who will contact Client within one (1) business hour with an initial response. The support technician will then work without interruption on the Issue until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 2.
Level 2	Production system performance is degraded, but operational; Issue affects essential functions and no Workaround exists; or Issue is blocking critical systems tests or deliverables.	A Level 2 Issue will immediately be assigned to a TCP Support Technician who will contact Client within two (2) business hours with an initial response. The support technician will then work without interruption during standard support hours until a resolution is reached, either in the form of a complete fix, or an interim Workaround solution that will cause the level of urgency to drop to Level 3.
Level 3	General product questions relating to development, feature issues, or Documentation.	A Level 3 Issue will be assigned to a TCP Support Technician who will contact Client within one (1) business day with an initial response. The support technician will work on the issue during Standard Support Hours.

4. **Performance Problem.** In the event that TCP discovers or is notified by Client that Client is experiencing a Performance Problem, TCP will take all commercially reasonable actions necessary to determine the source of the Performance Problem.

4.1 **Discovery of Source; Notification of Client.** Within four (4) hours of discovering or receiving notice of the Performance Problem, TCP will use commercially reasonable efforts to determine whether the source of the Performance Problem is limited to the Humanity Services or whether the Performance Problem arises from the Client equipment or Client's connection to the Internet. TCP will notify Client of its findings regarding the source of the Performance Problem promptly after the additional four (4) hour period.

4.2 **Correction.** If the source of the Performance Problem is within the sole control of TCP, then TCP will use commercially reasonable efforts to remedy the Performance Problem within four (4) hours of determining the source of the Performance Problem. If the source of and remedy to the Performance Problem reside outside of the sole control of TCP, then TCP will use commercially reasonable efforts to notify the party responsible for the source of the Performance Problem and cooperate with it to resolve such problem as soon as possible.

4.3 **Service Credits for Performance Problems.** In the event that TCP (i) is unable to determine the source of the Performance Problem within the time periods described in Section 5; or (ii) is the sole source of the Performance Problem and is unable to remedy such Performance Problem within the time period described in Section 6, TCP will deliver a Service Credit to Client for each four (4) hour period incurred in excess of the time periods for identification and resolution described above; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for a given calendar day.

4.4 **Client Must Request Service Credit.** Upon receipt of a written request from Client for a prior calendar month requesting information regarding a specific instance of Downtime or Performance Problem, TCP will provide Client with a related incident report from which Client may determine any Downtime and/or Performance Problems. In order to receive a Service Credit in connection with a particular instance of Downtime or a Performance Problem, Client must notify TCP within thirty (30) days from the time Client becomes eligible to receive a Service Credit. Failure to comply with this requirement will forfeit Client's right to receive a Service Credit for the applicable instance of Downtime or Performance Problem.

4.5 **Maximum Service Credit.** The aggregate maximum number of Service Credits to be issued by TCP to Client for any and all Downtime and Performance Problems that occur in a single calendar month shall not exceed seven (7) Service Credits. Any Service Credits owed shall be issued in the TCP invoice in the month following the Downtime or Performance Problem, unless the Service Credit is due in Client's final month of Service. In such case, a refund for the dollar value of the Service Credit will be mailed to Client.

## 5. **Obligations of Client**

5.1 **Support Contact.** All communications relating to Support and Maintenance will be supervised, coordinated, and undertaken by a primary Client contact unless additional contacts are designated as an approved contact persons by Client's primary contact. Issues related to the security of Clients Data, including but not limited to, password resets, may require approval of Client's primary contact.

5.2 **Pre-Call Procedures.** Prior to requesting support from TCP, Client shall comply with all published operating and troubleshooting procedures for the Software. If such efforts are unsuccessful in eliminating the Issue, Client shall then promptly notify TCP of the Issue. Client shall confirm that the following conditions are true before contacting Service Provider for support:

5.2.1 If possible, the situation giving rise to the Issue is reproducible in the Software;

5.2.2 The Client contact has the technical knowledge regarding the Software, any other software or hardware systems involved, and in the facts and circumstances surrounding the Issue;

5.2.3 The entire system is available to the Client contact during any communication with the assigned TCP support technician; and

5.2.4 If requested and required, Client must make available to TCP a technical representative during Standard Support Hours for all Issues. TCP reserves the right to suspend all work relating to any Issues during periods for which the Client does not provide access to Client's technical representative or requested data to continue to work on the Issue.

5.3 Remote Connection. If appropriate, Client will cooperate with TCP to allow and enable TCP to perform Support and Maintenance via remote connection using standard, commercially available remote control software.

5.4 Disclaimer. TCP shall not be responsible for providing Support and Maintenance, Updates, or any other support and maintenance to the extent that Issues arise because Client (i) misuses, improperly uses, mis-configures, alters, or damages the Software; (ii) uses the Software with any hardware or software not recommended or sold by TCP; (iii) uses the Software at any unauthorized location; or (iv) otherwise uses the Software in a manner not in accordance with the License Agreement.

## **6. Limitations of Support and Maintenance Services.**

6.1 Non-Compliance Problems. If Client notifies TCP of a problem and TCP correctly determines that the problem is due to Client's incorrect or improper use of the Software or failure to comply with the terms of the License Agreement or attached Addendums, the resolution of such problem is not covered by Support and Maintenance. However, TCP may provide additional services to correct the problem pursuant to a separate Statement of Work.

6.2 Third-Party Products. Support and Maintenance does not cover the operation or use of third-party hardware or software or Software modified by any party other than TCP or used in any manner in violation of the License Agreement or inconsistent with TCP published product documentation.

7. **Downtime Periods**. In the event Client experiences Downtime, Client shall be eligible to receive a one-time Service Credit for each Downtime period; provided, however, that in no event shall Client be entitled to more than two (2) Service Credits for any given calendar day. For example, if Client experiences one (1) Downtime period, then Client shall be eligible to receive one (1) Service Credit; if Client experiences two (2) Downtime periods, whether from a single event or multiple events, then Client shall be eligible to receive two (2) Service Credits.

## **8. Termination; Effects of Termination**

8.1 TCP will provide Support and Maintenance services for the Term of the Agreement as defined by the applicable Order Form.

8.2 Termination of Support Terms. If TCP or Client terminates the License Agreement in accordance with the terms provided therein, then the Support and Maintenance hereunder will also terminate. Further, TCP may terminate this Agreement upon the following conditions:

8.2.1 if Client fails to make any payments due hereunder within ten (10) days after TCP delivers notice of default to Customer;

8.2.2 by giving prior written notice to Client if Client fails to perform any material obligation required of it hereunder, and such failure is not cured within thirty (30) days from Client's receipt of TCP's notice to cure such non-performance of material obligation; or

8.2.3 if Client files a petition for bankruptcy or insolvency, has an involuntary petition filed against it, commences an action providing for relief under bankruptcy laws, files for the appointment of a receiver, or is adjudicated a bankrupt concern.

8.3 Termination Option for Chronic Problems. Client may terminate this Agreement and without liability or penalty to TCP by notifying TCP within ten (10) days following the occurrence of either of the following: (i) Client experiences more than five (5) Downtime periods in any three (3) consecutive calendar month period; or (ii) Client experiences more than eight (8) consecutive business hours of Downtime due to any single event. Such termination will be effective thirty (30) days after receipt of such notice by TCP.

9. **Warranty.** TCP warrants all services performed under this Agreement shall be performed in a workmanlike and professional manner. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT TCP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT.