

TimeClock Plus Service Level Agreement - Addendum

This Service Level Agreement is an addendum to the Master Licensing Agreement or Perpetual Licensing Agreement – EULA, 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. Solely for these purposes, TCP reserves the right to modify, elaborate, remove or add to some or all of the provisions of these Service Level Agreement terms at TCP’s sole discretion and without further notice, provided that any such improvement or adaptation shall not result in a diminution of the overall level of service. All Support and Maintenance will be provided in accordance with applicable data protection laws and the Privacy Policy which can be found at www.timeclockplus.com/privacy.

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

1.3 “Major Release” means a release in which the version number to the left of the first decimal point increases (e.g., 7.0 to 7.1).

1.4 “Minor Release” means a release of the Software in which the version number to the right of the first decimal point increases (e.g., 7.0 to 7.1).

1.5 “On Premise” means an installation of TCP’s software application(s) in Client’s data center, whether at Client’s physical location or in Client’s private hosted cloud.

1.6 “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.

1.7 “Software” means the certain software program(s) purchased by Client. Software includes both On Premise and cloud hosted (“TCP Services as defined in the Licensing Agreement”) software programs.

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 CST and 7:00 pm CST, 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 in accordance with purchased Hardware and/or Software Support and Maintenance Agreement. All Support and Maintenance will be provided to Client in accordance with the terms of the Hardware and/or Software Support and Maintenance Agreement and the terms of this Service Level Agreement.

1.11 “Support Plan” means the specific Software and/or Hardware Support and Maintenance Agreement that has been purchased by Client.

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

1.13 "Updates" means service packs, patches, hot fixes, or workarounds for a particular version of the Software. "Updates", includes Minor Releases but excludes any Major Releases or other releases of the Software or any other products that TCP, in its sole discretion, licenses separately for an additional fee. Major Releases will be provided according to the Support Level the Customer purchases from Service Provider. All Updates and Major Releases are licensed to Customer and subject to the terms and conditions of the License Agreement. If there is no such agreement, then the terms accompanying the Software will govern.

1.14 "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 Client selected Support Plan(s), Service Provider agrees to provide Support and Maintenance for the duration of the Term, and solely for the Software and/or Supported Hardware.

3. Software Support and Maintenance.

3.1 Software Maintenance. 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 Minor Releases, Major Releases, and 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.

4. Hardware Support and Maintenance.

4.1 Hardware Maintenance. TCP shall use commercially reasonable efforts to maintain the Supported Hardware so that it operates without Issues. Hardware maintenance include the Updates that TCP generally makes available to its Client base during the applicable Term. Hardware maintenance also includes replacement services as defined in the Hardware Support and Maintenance Agreement.

4.2 Hardware Support. Support Services include:

4.2.1 Information gathering and analysis of Supported Hardware to identify Issues;

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

4.2.3 Configuration changes for the Supported Hardware;

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

4.3 Severity Classification and Response Time Goals. Issues are classified according to severity of impact on the use of the Supported Hardware, 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.	<p>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.</p> <p>Level 1 Issues qualify for 24/7 Support for Clients who have purchased this Support Plan.</p>
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.	<p>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.</p> <p>Level 2 Issues qualify for 24/7 Support for Clients who have purchased this Support Plan.</p>

Level 3	General product questions relating to development, feature issues, or Documentation.	<p>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.</p> <p>Level 3 Issues do not qualify for 24/7 Support for Clients who have purchased this Support Plan.</p>
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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 fromTCP, 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, including all Software and Supported Hardware, 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. On Premise Clients will be solely responsible for instituting and maintaining proper security safeguards to protect Client’s systems and data.

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; (iv) fails to install an Update to the Software if such Update would have resolved the Issue; or (v) 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 an 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 **Release Support Period.** TCP shall support a release of the Software if such release (i) was made generally available during the previous twenty-four (24) months. TCP may extend Support and Maintenance to prior Major Releases and Minor Releases at its sole discretion.

6.3 **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.

6.4 Data.

6.4.1 **On Premise Clients** are encouraged to backup data often and to always do so prior to installing any Update. TCP will have no responsibility for loss of or damage to On Premise Client's data, regardless of the cause of any such loss or damage.

6.4.2 **On Demand Supplemental Terms** shall apply to Clients who have purchased TCP Services under a Licensing Agreement

7. Termination; Effects of Termination

7.1 TCP will provide Support and Maintenance services for the Term of the Hardware and/or Software Support and Maintenance Agreement as defined by the applicable Order Form. For clarity, TCP will provide Client with an option to select a single year or multi-year period of coverage; upon selecting such period of coverage, the period selected shall constitute the Term of the Support and Maintenance Agreement. Client shall be contractually obligated to pay the fees for the full length of the Term and, unless terminated in accordance with the terms herein prior to the expiration of the Term, TCP shall be obligated to provide the selected Support Plan to the Client for the duration of the Term.

7.2 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:

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

7.2.2 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

7.2.3 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. **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.

On Demand Supplemental Terms

1. On Demand Services Level Agreement. In the event that Client experiences any of the service performance issues defined in Sections 2.1 and 2.2 as a result of TCP's failure to provide TCP Services, TCP will, upon Client's request in accordance with Section 3, credit Client's account as described below. The Service Credit shall not apply to performance issues (i) caused by factors outside of TCP's reasonable control; (ii) that resulted from any actions or inactions of Client or any third parties; or (iii) that resulted from Client equipment or third party equipment that is not within the sole control of TCP.
2. Definitions. For purposes of this Agreement, the following definitions shall apply only to the TCP Services. References to Section numbers in these Supplemental Terms shall apply to Sections in these Supplemental Terms, unless expressly provided otherwise.
 - 2.1 "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 TCP 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 TCP Services.
 - 2.2 "Performance Problem" shall mean a material deterioration in the performance of the TCP Services excluding any Downtime.
 - 2.3 "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 TCP Services.
3. 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.
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.
5. 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 TCP 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.
6. 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.
7. 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.

8. 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.

9. 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.

10. 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.