

## ScheduleBase Scheduling License Agreement

THIS TCP SCHEDULING LICENSE AGREEMENT FOR SCHEDULEBASE PRODUCTS (the "Agreement") is entered into as of \_\_\_\_\_ ("Effective Date"), by and between **TimeClock Plus, LLC**, a Delaware limited liability company with its principal office located at 1 Time Clock Drive, San Angelo, TX 76904 ("TCP"), and \_\_\_\_\_, with its principal office located at \_\_\_\_\_ ("Client").

WHEREAS TCP and Client (the "Parties") desire to enter into this Agreement for the provision of hosted services by TCP to Client, as provided herein.

NOW, THEREFORE, in reliance on the mutual covenants and promises, representations and agreements set forth herein, the Parties agree as follows:

### 1. **Definitions.**

1.1 "Active User" means any of Client's Employees that have not been disabled ScheduleBase Services.

1.2 "Affiliate" means any parent or subsidiary corporation, and any corporation or other business entity controlling, controlled by or under common control with a Party.

1.3 "Biometric Data" means any information based on an individual's retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry, including photographs as applicable, which is used to identify an individual, regardless of how it is captured, converted, stored or shared.

1.4 "Client Data" means all of Client's data processed or stored by or transmitted to TCP in connection with ScheduleBase Services, including, without limitation, all Personal Data contained therein.

1.5 "Designated User" means an individual Employee who is authorized by Client to use ScheduleBase Services on behalf of the Client, and whose Personal Data may be processed or stored by or transmitted to TCP in connection with ScheduleBase Services.

1.6 "Employee" means Client's individual employee, worker, consultant, substitute or contractor.

1.7 "Privacy Policy" means TCP's Global Data Privacy Policy located at <https://www.tcpsoftware.com/privacy>, as updated from time to time.

1.8 "Initial Term" has the meaning set forth in Section 11.

1.9 "Monthly User Fee" means TCP's then current fees applicable for each of Client's Active User based on the aggregated Permissions, to access and use ScheduleBase Services measured over the course of each calendar month, as outlined on an invoice or Order Form.

1.10 "Order Form" means a written document, including, but not limited to, a TCP issued invoice, a TCP-issued order form, or a TCP-issued email receipt, which has been mutually agreed upon and executed by the Parties for ordering products and/or services, and which expressly incorporates the terms of this Agreement.

1.11 "Permissions" means the permission(s) granted to Client's Active Users to access features within ScheduleBase Services, as outlined on an invoice or Order Form. Permissions are applied within ScheduleBase Services by Client's Designated Users.

1.12 “Personal Data” means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular Employee, whether active or inactive, or Designated User.

1.13 “Subprocessor” means any third-party entity that processes Personal Data on behalf of TCP and to which TCP discloses Personal Data for a business purpose pursuant to a written contract, provided that the contract prohibits such entity from retaining, using, or disclosing the Personal Data for any purpose other than for the specific purpose of performing the services identified in such contract.

1.14 “ScheduleBase Services” means ScheduleBase software application hosted by TCP in accordance with TCP’s then-current hosting environment, any associated documentation, and any ancillary services described in this Agreement or an invoice or Order Form. “TCP Technology” means the computer hardware, software and other tangible equipment and intangible computer code contained therein used by TCP in the provision of ScheduleBase Services.

1.15 “Term” has the meaning set forth in Section 11.

1.16 “Use Fees” means the fees set forth on the applicable invoice or Order Form, including, but not limited to, the Monthly Employee Fees.

## 2. **Delivery of Services.**

2.1 ScheduleBase Services. Subject to the terms and conditions of this Agreement and the Privacy Policy, TCP grants to Client, its Affiliates and their Designated Users a limited, non-transferable (except in compliance with 22), nonexclusive right and subscription license to use ScheduleBase Services during the Term only for the internal business purposes of processing, storing and maintaining Client Data. TCP shall provide to Client ScheduleBase Services during the Term in accordance with the terms and conditions of this Agreement, the Privacy Policy, Invoice, Order Form, or Hardware Support and Maintenance Agreement, as applicable.

2.1.1 Client’s use of ScheduleBase Services is subject to the terms of this Agreement, the Privacy Policy, and any additional terms outlined in an invoice or Order Form. Client is responsible for maintaining the confidentiality of Client’s account and password and for restricting access to its computer systems, and Client agrees to accept responsibility for all activities that occur under Client’s account or password, including but not limited to any acts or omissions by Designated Users. Client shall inform each Designated User of the terms and conditions governing such Designated User’s use of ScheduleBase Services as set forth herein and shall cause each Designated User to comply with such terms and conditions.

2.1.2 Client acknowledges and agrees that Client will not use ScheduleBase Services for the benefit of any third party. Client agrees not to, not to attempt to, nor allow any third party to: (i) use ScheduleBase Services in any manner that could damage, disable, overburden, or impair TCP’s servers or networks or interfere with any other party’s use and enjoyment of ScheduleBase Services; (ii) attempt to gain unauthorized access to any services, user accounts, computer systems, or networks through hacking, password mining, or any other means; (iii) copy, distribute, rent, lease, lend, sublicense or transfer ScheduleBase Services, make ScheduleBase Services available to any third party or use ScheduleBase Services on a service bureau or time sharing basis, (iv) decompile, reverse engineer, or disassemble ScheduleBase Services or otherwise attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of ScheduleBase Services, (v) create derivative works based on ScheduleBase Services; (vi) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on ScheduleBase Services or during the use and operation thereof; (vii) publicly disseminate performance information or analysis (including benchmarks) relating to ScheduleBase Services; or (viii) use ScheduleBase Services in a manner which violates or infringes any laws, rules, regulations, third party intellectual property rights, or third-party privacy

rights. Client may not use any automated means, including agents, robots, scripts, or spiders, to access or manage ScheduleBase Services, except solely to the extent as may be specifically enabled and authorized by TCP in writing. TCP may take any legal and technical measures to prevent this provision's violation and enforce this Agreement.

## 2.2 Third Party Services.

2.2.1 Client may require the TCP Services to interoperate with platforms other online services operated by third parties ("Third-Party Platforms") pursuant to an agreement between TCP and the operators of such Third-Party Platforms, an agreement between Client and the operators of such Third-Party Platforms, or through application programming interfaces ("APIs") or other means of interoperability which are generally made available by such operators.

2.2.2 As applicable, Client hereby grants TCP the limited right to access such Third-Party Platforms with Client's credentials and on behalf of the Client in connection with the performance of the TCP Services. Client acknowledges and agrees that TCP's agreements with the operators of such Third-Party Platforms and the terms governing the use of APIs may be modified, suspended or terminated at any time, and TCP shall have no liability with respect to any such modification, suspension or termination. Client is responsible for ensuring that its use of the TCP Services in connection with any Third-Party Platform, and TCP's access to such Third-Party Platforms on Client's behalf, complies with all agreements and terms applicable to such Third-Party Platform. Client Data.

2.2.3 Client hereby grants TCP a worldwide, royalty-free, non-exclusive, limited license to use, host, copy, transmit, display, modify and create derivative works of Client Data for the express purpose of providing ScheduleBase Services. Client acknowledges and agrees that it will determine the means and purposes of processing Client Data, and that TCP acts solely as a service provider that processes Client Data on behalf of and at the direction of Client for the sole purpose of performing ScheduleBase Services under this Agreement. Client is responsible for ensuring that all Designated Users who provide instructions to TCP on Client's behalf are authorized to do so. Client shall have sole responsibility for the accuracy, quality, content, legality and use of Client Data and the means by which any Personal Data is obtained from Designated Users and Employees and transferred to TCP, and Client is solely responsible for any transfer of Personal Data to any third-party data controller or data processor (e.g., human resources or payroll application), and TCP shall have no liability in connection therewith. Client agrees to implement data protection-related procedures that will not be less protective than those imposed on TCP by this Agreement and the Privacy Policy.

2.2.4 TCP is expressly prohibited from processing any Client Data for any purpose other than for the specific purpose of performing ScheduleBase Services, unless requested by Client or required by applicable law. TCP is expressly prohibited from selling Personal Data under any circumstances and for any purpose. No other collection, use, disclosure or transfer (except to Subprocessors in accordance with Section 2.2.5) of Client Data is permitted without the express prior written instruction of Client. TCP acknowledges and agrees that it understands and will comply with each of the restrictions and obligations set forth in this Section 2.2.4.

2.2.5 TCP has appointed Subprocessors for the purpose of providing data hosting and security services. Client acknowledges and agrees that Subprocessors may process Client Data in accordance with the terms of this Agreement, the Privacy Policy and any invoice or Order Form. TCP's agreements with its Subprocessors impose data protection-related processing terms on such Subprocessors that are not less protective than the terms imposed on TCP in this Agreement and the Privacy Policy. The Privacy Policy contains an overview of the categories of Subprocessors involved in the performance of the relevant ScheduleBase Services. The appointment of a Subprocessor to perform part or all of ScheduleBase Services hereunder shall not relieve TCP of any liability under this Agreement.

### 3. **Data Security.**

#### 3.1 Security Standards.

3.1.1 TCP shall implement reasonable security procedures consistent with industry standards to protect Client Data from unauthorized access, including without limitation (i) industry-standard encryption of data at rest within TCP's data centers; (ii) web application firewalls; (iii) virus detection and anti-virus software; (iv) authentication techniques, such as usernames and passwords, or authorization formats, which limit access to TCP personnel.

3.1.2 The Parties shall implement administrative, technical and physical security procedures consistent with industry standards and applicable data protection laws to protect Client Data from unauthorized access, including by adopting access policies that prevent the internal sharing or inadvertent communication of login credentials.

3.1.3 Client is responsible for reviewing the information made available by TCP relating to data security and making an independent determination as to whether ScheduleBase Services meet Client's requirements and obligations under applicable data protection laws. Client acknowledges that data security measures taken by TCP are subject to technical progress and development and TCP may update or modify such security measures from time to time, provided that such updates and modifications do not result in the degradation of the overall security of ScheduleBase Services.

3.2 Security Breach Notifications. TCP will promptly report to Client any unauthorized access to Client Data within TCP's or its Subprocessors' systems upon discovery and in accordance with applicable data breach notification laws. TCP will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. TCP's notification of or response to any security incident under this Section 3.2 shall not be construed as an acknowledgment by TCP of any fault or liability with respect to such security incident.

3.3 Data Backup and Retention. TCP shall undertake commercially reasonable efforts to backup Client Data with a restore point objective of twenty-four (24) hours. Client Data shall be backed up and retained in accordance with TCP's retention policy as set forth in the Privacy Policy.

4. **Data Privacy.** TCP will process Employee Personal Data in accordance with the terms of this Agreement, the Privacy Policy and all applicable data protection laws. Client must maintain its own data collection, disclosure, retention, and storage policies in compliance with applicable law.

4.1 Biometric Data. To the extent that Client collects, captures, stores, or otherwise uses Biometric Data relating to an individual, Client must (i) first inform the individual from whom Biometric Data will be collected, in writing and prior to collecting his or her Biometric Data, that Biometric Data is being collected, stored, and/or used; (ii) indicate, in writing, the specific purpose(s) (which may not be other than employment-related purposes) and length of time for which Biometric Data is being collected, stored, and/or used; and (iii) receive a written release from the individual (or his or her legally authorized representative) authorizing the Client, TCP, TCP's third-party service providers (who are subject to restrictions no less restrictive than those imposed on TCP herein) to collect, store, and/or use the Biometric Data and authorizing the Client to disclose such Biometric Data to TCP and TCP's third-party service providers.

4.2 Requests. Client agrees to adopt a commercially reasonable policy for managing data requests from Designated Users and Employees, which policy shall safeguard the rights of such data subjects and respect the original purpose of such data collection. Client, as the Party which determines the means and purposes for processing Client Data, shall be responsible for receiving, investigating, documenting, and responding to all Designated User and Employee requests for inspection or erasure of Personal Data.

4.3 Assistance. If Client receives a request from a Designated User or Employee to exercise such individual's rights under applicable data protection laws, and Client requires TCP's assistance to respond to such request in accordance with applicable data protection laws, TCP shall assist the Client by providing any necessary information and documentation that is under TCP's control. TCP shall be given reasonable time to assist the Client with such requests in accordance with applicable law.

4.4 Client's Privacy Policy. Where required by law, Client agrees to adopt a privacy policy in alignment with this Agreement and all applicable laws governing the collection, use, transfer and retention of Personal Data. Client agrees to provide TCP, upon reasonable request, Client's adopted privacy policy.

## 5. **Confidential Information.**

5.1 Each Party (the "Receiving Party") acknowledges that it will have access to certain confidential information of the other Party (the "Disclosing Party") concerning the Disclosing Party's business, plans, customers, software, technology and products, other information held in confidence by the Disclosing Party, and Personal Data. In addition, a Disclosing Party's confidential information will include (i) all information in tangible or intangible form that is marked or designated as confidential or that, under the circumstances of its disclosure, should be considered confidential, and (ii) the TCP Technology and related algorithms, logic, design, specifications, and coding methodology, and to the extent permitted by law, the terms and conditions of this Agreement, but not its existence (all of the foregoing being referred to as "Confidential Information").

5.2 The Receiving Party agrees that it will not use in any way, for its own account or the account of any third party, except as expressly permitted by, or required to achieve the purposes of, this Agreement, nor disclose to any third party (except as required by law or to that party's attorneys, accountants and other advisors as reasonably necessary), any of the Disclosing Party's Confidential Information, and will take reasonable precautions to protect the confidentiality of such Confidential Information in at least the same manner as is necessary to protect its own Confidential Information and in accordance with applicable data protection laws. To the extent that the Receiving Party is permitted to retransmit any Confidential Information it receives from the Disclosing Party, the mode of retransmission must be at least as secure as the mode by which the Disclosing Party transmitted the Confidential Information to the Receiving Party.

5.3 Information will not be deemed Confidential Information hereunder if such information: (i) is known to the Receiving Party prior to receipt from the Disclosing Party, whether directly or indirectly, from a source other than one having an obligation of confidentiality to the Disclosing Party; (ii) becomes known (independently of disclosure by the Disclosing Party) to the Receiving Party, whether directly or indirectly, from a source other than one having an obligation of confidentiality to the Disclosing Party; (iii) becomes publicly known or otherwise ceases to be secret or confidential, except through a breach of this Agreement by the Receiving Party; or (iv) is independently developed by the Receiving Party without use of or reference to the Confidential Information.

6. **Cooperation With Authorities**. If either Party is requested to disclose all or any part of any Confidential Information under a subpoena or inquiry issued by a court of competent jurisdiction or by a judicial or administrative agency or legislative body or committee, the Receiving Party shall (i) immediately notify the Disclosing Party of the existence, terms and circumstances surrounding such request; (ii) consult with the Disclosing Party on the advisability of taking legally available steps to resist or narrow such request and cooperate with the Disclosing Party on any such steps it considers advisable; and (iii) if disclosure of the Confidential Information is required or deemed advisable, exercise its best efforts to obtain an order, stipulation or other reasonably acceptable assurance that the Confidential Information or part thereof required to be disclosed shall retain its confidentiality and remain otherwise subject to this Agreement. Although TCP will not systematically monitor the Client Data, TCP reserves the right, upon prior written notice to Client,

to remove access to Client Data to comply with applicable law, provided, however, that access to such Client Data will be restored upon a mutual determination of the Parties that such Client Data complies with, or has been modified to comply with, applicable law.

**7. Supplemental Services; Master Agreement.**

7.1 TCP may provide to Client supplemental services in accordance with a Statement of Work or a separate services agreement.

7.2 Client may elect to purchase additional products and services via Order Forms from time to time. The Parties agree that this Agreement is a master agreement such that additional transactions will be governed by the terms and conditions hereof. Pricing for additional transactions shall be in accordance with TCP's then-current pricing schedule. Client agrees that absent TCP's express written acceptance thereof indicated by execution by an officer of TCP, the terms and conditions contained in any purchase order or other document issued by Client to TCP for the purchase of additional services, shall not be binding on TCP to the extent that such terms and conditions are additional to or inconsistent with those contained in this Agreement.

**8. Use Fees.**

8.1 In consideration for the performance of ScheduleBase Services, Client shall pay TCP the Use Fees. During the Term, Client will be billed in advance an amount equal to charges as indicated in the applicable invoice or Order Form. All other charges for ScheduleBase Services received and expenses incurred during a month will be billed at the end of the month in which ScheduleBase Services were provided. Payment by Client for all Use Fees is due upon receipt of each TCP invoice, and in no event shall such payment be received by TCP later than thirty (30) days after the invoice, except in cases where a Net Terms Agreement has been authorized by TCP.

8.2 ScheduleBase Services charges will be equal to the number of total Active Users multiplied by the Monthly User Fee which is based on the aggregated Permissions for each Active User. If Client signed up for a free trial account, Client's first 30 days for the Service are free. Subsequent billings (monthly, annual, etc.) will be billed based Client's prior month's average daily number of active employees. Client may add additional Employees or Permissions as desired each month, by paying the Monthly User Fees on the next billing cycle. Client agrees to promptly update the status in ScheduleBase Services for any Active User who has been terminated or deactivated.

8.3 Employees added at any time during a calendar month will be charged in full for that billing period. Because Client is billed in advance for ScheduleBase Services, if Client increases its Active User count or increases Permissions during a calendar month, Client will receive an invoice reflecting the increased Active User count with overage charges incurred from the previous month.

9. 8.4 Except as set for in Section 8.5 of this Agreement, Client agrees to pay the then-current fees associated with the Service. TCP reserves the right to modify its fees with or without notice. Client's first month for the Service is free, and Client will be billed monthly for subsequent months based on the number of active users. To subscribe to the Service, Client must enter its credit card information into the Billing Information section of the Admin tab. Client may cancel its ScheduleBase subscription at any time by removing its credit card information. Client may prepay greater than one (1) year of ScheduleBase Services, and in doing so suspend any increase in Use Fees until expiration of the Initial Term. All payments are nonrefundable. TCP does not provide refunds or credits for partially used periods or if Client did not use the service.

10. **Taxes.** As applicable, Client shall, in addition to the other amounts payable under this Agreement, pay all sales, use, value added or other taxes, whether federal, state or local, however

named, arising out of the transactions contemplated by this Agreement, except that Client shall not be liable for taxes based on TCP's aggregate income.

11. **Term; Guaranteed Payment.** This Agreement commences on the Effective Date and, unless terminated earlier in accordance with Section Error! Reference source not found., will remain in effect for the term specified in the applicable invoice or Order Form ("Initial Term"), and then shall automatically renew for subsequent terms consistent with the Initial Term thereafter, unless either Party gives written notice of non-renewal at least thirty (30) days prior to the end of the then current term (the Initial Term and subsequent renewal terms being referred to as the "Term").

12. **Effect of Termination.** Without prejudice to any right or remedy of a Party with respect to the other Party's breach hereunder, upon the effective date of any termination of this Agreement:

12.1 TCP's obligation to provide ScheduleBase Services shall immediately terminate; within forty-five (45) days of such termination, each Party will destroy or return all additional Confidential Information of the other Party in its possession and will not make or retain any copies of such Confidential Information except as required to comply with any applicable legal or accounting record keeping requirement.

13. **Intellectual Property Ownership.** Subject to the limited rights expressly granted hereunder, TCP reserves all right, title and interest in and to ScheduleBase Services and TCP Technology, including all intellectual property rights embodied therein, which shall remain the sole and exclusive property of TCP or its licensors. No rights are granted to Client hereunder other than as expressly set forth herein. This Agreement does not transfer from TCP to Client any ownership interest in ScheduleBase Services or TCP Technology. It does not transfer from Client to TCP any ownership interest in Client Data.

14. **Client Representations and Warranties.**

14.1 Client represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of Client's obligations and use of ScheduleBase Services by Client, its Designated Users and Employees will not violate any applicable laws, including all applicable domestic and international data protection laws, or cause a breach of duty to any third party, including Employees.

14.2 Client represents and warrants that all Personal Data included in the Client Data has been collected from all Employees and Designated Users and will be transferred to TCP in accordance with all applicable data protection laws, to the extent applicable. Client acknowledges and agrees that (i) TCP is a service provider and processes Client Data solely on behalf of and at the direction of Client, and exercises no control whatsoever over the content of the Client Data passing through ScheduleBase Services or that is otherwise transferred by Client to TCP, and (ii) it is the sole responsibility of Client to ensure that the Client Data passing through ScheduleBase Services or that is otherwise transferred by Client to TCP complies with all applicable laws and regulations, whether now in existence or hereafter enacted and in force.

14.3 Client represents and warrants that its Affiliates' use of ScheduleBase Services, if any, shall not relieve Client of any liability under this Agreement, and Client shall be responsible and liable for the acts and omissions of its Affiliates hereunder as if performed or omitted by Client.

14.4 In the event of any breach of any of the foregoing representations or warranties in this Section 14, in addition to any other remedies available at law or in equity, TCP will have the right to suspend immediately any ScheduleBase Services if deemed reasonably necessary by TCP to prevent any harm to TCP and its business. TCP will provide notice to Client and an opportunity

to cure, if practicable, depending on the nature of the breach. Once cured, TCP will promptly restore ScheduleBase Services.

15. **TCP Representations and Warranties.** TCP represents and warrants that (i) it has the legal right to enter into this Agreement and perform its obligations hereunder, and (ii) the performance of its obligations and delivery of ScheduleBase Services to Client will not violate any applicable laws or regulations of the United States or cause a breach of any agreements between TCP and any third parties.

16. **Mutual Representations and Warranties.** Each Party represents and warrants that it has implemented a comprehensive written information security program that includes appropriate administrative, technical and physical safeguards to: (i) ensure the safety and confidentiality of Personal Data; (ii) protect against unauthorized access to and use of Personal Data; (iii) protect against anticipated threats or hazards to the security or integrity of Personal Data, and (iv) comply with applicable data protection laws.

17. **Limited Warranty.** TCP represents and warrants that ScheduleBase Services and related products as described with this Agreement will perform in accordance with all TCP published documentation, contract documents, contractor marketing literature, and any other communications attached to or referenced in this Agreement, and that ScheduleBase Services will be free of errors and defects that materially affect the performance of ScheduleBase Services ("Limited Warranty"). Client's sole and exclusive remedy for breach of the Limited Warranty shall be the prompt correction of non-conforming ScheduleBase Services at TCP's expense.

18. **Warranty Disclaimer.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 17 (LIMITED WARRANTY), SCHEDULEBASE SERVICES ARE PROVIDED BY TCP ON AN "AS IS" BASIS, AND CLIENT'S USE OF SCHEDULEBASE SERVICES IS AT CLIENT'S OWN RISK. TCP AND ITS SUPPLIERS DO NOT MAKE, AND HEREBY DISCLAIM, ANY AND ALL OTHER EXPRESS AND/OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AGAINST HIDDEN DEFECTS, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. TCP DOES NOT WARRANT THAT SCHEDULEBASE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. NOTHING STATED OR IMPLIED BY TCP, WHETHER THROUGH SCHEDULEBASE SERVICES OR OTHERWISE, SHOULD BE CONSIDERED LEGAL COUNSEL. TCP HAS NO RESPONSIBILITY TO NOTIFY CLIENT OF ANY CHANGES IN THE LAW THAT MAY AFFECT USE OF SCHEDULEBASE SERVICES. ANY ORAL STATEMENT OR IMPLICATION BY ANY PERSON CONTRADICTING THE FOREGOING IS UNAUTHORIZED AND SHALL NOT BE BINDING ON TCP. CLIENT ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT, CLIENT HAS RELIED UPON CLIENT'S OWN EXPERIENCE, SKILL AND JUDGMENT TO EVALUATE SCHEDULEBASE SERVICES AND THAT CLIENT HAS SATISFIED ITSELF AS TO THE SUITABILITY OF SUCH SERVICES TO MEET CLIENT'S BUSINESS AND LEGAL REQUIREMENTS.

19. **Indemnification.**

19.1 Client hereby acknowledges and agrees that TCP may not be aware of all rights available to Client's Designated Users or Employees under all data protection regimes. Client, to the extent permitted by law, shall indemnify, defend and hold harmless TCP, its Affiliates, Subprocessors, officers, managers, directors, employees, agents, advisors, and other representatives (the "TCP Indemnitees") from and against any lawsuit, liability, loss, cost or expense (including reasonable attorneys' fees) actually incurred or suffered by TCP Indemnitees of every kind and nature to the extent caused by or resulting from (i) any breach of a representation or warranty made by Client under this Agreement; or (ii) a third-party claim made against a TCP Indemnitee arising from or related to Client's failure to comply with any applicable domestic or foreign data protection laws or regulations. Client shall have the right to control any defense provided pursuant to this Section 19.1, provided, however, that Client shall not, without TCP's prior



written consent, (A) enter into any settlement or compromise or consent to the entry of any judgment that does not include the delivery by the claimant or plaintiff to the applicable TCP Indemnitee of a written release from all liability in respect of such third party claim, or (B) enter into any settlement or compromise with respect to any third party claim that may adversely affect the applicable TCP Indemnitee other than as a result of money damages or other monetary payments that are indemnified hereunder.

19.2 TCP will indemnify, defend and hold harmless Client and its Affiliates (the "Client Indemnitees") from and against any lawsuit, liability, loss, cost or expense actually incurred or suffered by a Client Indemnitee of every kind and nature to the extent caused by or resulting from a third-party claim made against a Client Indemnitee that the TCP Technology infringes on any U.S. intellectual property right of a third party; provided, however, that TCP is notified in writing of such claim promptly after such claim is made upon Client. TCP shall have the right to control any defense provided pursuant to this Section 19.2. In no event shall Client settle any such claim without TCP's prior written approval. If such a claim is made or if the TCP Technology, in TCP's opinion, is likely to become subject to such a claim, TCP may, at its option and expense, either (i) procure the right to continue using the TCP Technology or portion thereof, or (ii) replace or modify the TCP Technology or portion thereof so that it becomes non-infringing. If TCP determines that neither alternative is reasonably practicable, TCP may terminate this Agreement with respect to the portion of the TCP Technology infringing or alleged to infringe. TCP shall have no liability or obligation under this Section 19.2 if the claim arises from (i) any alteration or modification to the TCP Technology other than by TCP, (ii) any combination of the TCP Technology with other programs or data not furnished by TCP, or (iii) any use of the TCP Technology prohibited by this Agreement or otherwise outside the scope of use for which the TCP Technology is intended.

20. **Liability Limitation.** Except for claims arising out of Section 19.2 (TCP's Intellectual Property Indemnity) and Section 5 (Confidential Information), in no event shall TCP's aggregate liability, if any, including liability arising out of contract, negligence, strict liability in tort or warranty, or otherwise, exceed the sum of amounts paid by Client to TCP during the twelve (12) months immediately prior to the date of the claim.

21. **Notices.** Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by email (provided delivery is confirmed), or U.S. Mail (registered or certified only), return receipt requested, to the address set forth on the initial page hereof.

22. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which shall not be unreasonably withheld; provided, however, that either Party may, without the prior consent of the other, assign all of its rights under this Agreement to (i) such Party's parent company or a subsidiary of such Party, (ii) a purchaser of all or substantially all of such Party's assets related to this Agreement, or (iii) a third party participating in a merger, acquisition, sale of assets or other corporate reorganization in which such Party is participating. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns.

23. **Continuing Obligations.** Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include the following: (i) any and all warranty disclaimers, limitations on or limitations of liability and indemnities granted by either Party herein; (ii) any terms relating to the ownership or protection of intellectual property rights or Confidential Information of either Party, or any remedy for breach thereof; and (iii) the payment of taxes, duties, or any money to either Party hereunder.

24. **Marketing.** During the Term hereof, Client agrees that TCP may publicly refer to Client, orally and in writing, as a customer of TCP. Any other reference to Client by TCP requires the written consent of Client.

25. **Force Majeure.** Except for the obligation to make payments, neither Party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including acts of war, terrorism, acts of God, epidemic, earthquake, flood, embargo, riot, sabotage, labor shortage or dispute, governmental act or complete or partial failure of the Internet (not resulting from the actions or inactions of TCP), provided that the delayed Party: (i) gives the other Party prompt notice of such cause, and (ii) uses its reasonable commercial efforts to promptly correct such failure or delay in performance.

26. **Dispute Resolution.** For any dispute, controversy or claims arising out of or relating to this Agreement or the breach, termination, interpretation or invalidity thereof or any Invoice, or Order Form, the Parties shall endeavor for a period of two (2) weeks to resolve the Dispute by negotiation. This period may be extended by mutual agreement of the Parties. In the event the Dispute is not successfully resolved, the Parties agree to submit the Dispute to litigation in a court of competent jurisdiction.

27. **Waiver of Jury Trial.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE OTHER PARTY WOULD NOT SEEK TO ENFORCE THE FOREGOING WAIVER IN THE EVENT OF A LEGAL ACTION, (B) IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) IT MAKES THIS WAIVER KNOWINGLY AND VOLUNTARILY, AND (D) IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 27.

28. **Class Action Waiver.** THE PARTIES WAIVE ANY RIGHT TO ASSERT ANY CLAIMS AGAINST THE OTHER PARTY AS A REPRESENTATIVE OR MEMBER IN ANY CLASS OR REPRESENTATIVE ACTION, EXCEPT WHERE SUCH WAIVER IS PROHIBITED BY LAW OR DEEMED BY A COURT OF LAW TO BE AGAINST PUBLIC POLICY. TO THE EXTENT EITHER PARTY IS PERMITTED BY LAW OR COURT OF LAW TO PROCEED WITH A CLASS OR REPRESENTATIVE ACTION AGAINST THE OTHER, THE PARTIES AGREE THAT: (I) THE PREVAILING PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEYS' FEES OR COSTS ASSOCIATED WITH PURSUING THE CLASS OR REPRESENTATIVE ACTION (NOT WITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT); AND (II) THE PARTY WHO INITIATES OR PARTICIPATES AS A MEMBER OF THE CLASS WILL NOT SUBMIT A CLAIM OR OTHERWISE PARTICIPATE IN ANY RECOVERY SECURED THROUGH THE CLASS OR REPRESENTATIVE ACTION.

29. **Applicable Law; Jurisdiction; Limitations Period.** This Agreement shall be construed under the laws of the State of Texas, without regard to its principles of conflicts of law. To the extent permitted by law, no action, regardless of form, arising out of this Agreement may be brought by either Party more than one (1) year after the cause of action has arisen.

30. **Counterparts; Facsimile Signatures.** This Agreement may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original, but all of which shall constitute one and the same instrument. Any signature page of any such counterpart, or any email transmission thereof, may be attached or appended to any other counterpart to complete a fully executed counterpart of this Agreement, and any email transmission of any signature of a Party shall be deemed an original and shall bind such Party.

31. **Miscellaneous.** This Agreement constitutes the entire understanding of the Parties with respect to the subject matter of this Agreement and merges all prior communications,

understandings, and agreements. This Agreement may be modified only by a written agreement signed by the Parties. In the case of any conflict between this Agreement and the Privacy Policy, the Privacy Policy shall control. The failure of either Party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such Party thereafter to enforce any provision hereof. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect and be construed and enforced, as if such provision had not been included or had been modified as above provided.

## EXHIBIT A

### SCHEDULEBASE SCHEDULING 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 ScheduleBase.com, Inc, a subsidiary of TimeClock Plus, LLC ("TCP") and Client. TCP reserves the right to improve the Support and Maintenance continuously 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 [tcpsoftware.com/privacy](http://tcpsoftware.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 "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 ScheduleBase 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 ScheduleBase 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 ScheduleBase 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 ScheduleBase Services.

1.7 "Software" means the certain software program(s) purchased by Client. Software includes ScheduleBase 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 invoice, 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 ScheduleBase 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 emailing [schedulebase@tcpsoftware.com](mailto:schedulebase@tcpsoftware.com). TCP shall use commercially reasonable efforts to maintain the Software to operate 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 the severity of impact on the use of the Software, according to the Support Response Time Goal chart below. TCP will resolve all disputes regarding severity classification at 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.** If 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 ScheduleBase 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 an attached Addendum, 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.

## 7. **Termination; Effects of Termination**

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

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.

7.3 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.

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.