



Time Management Systems, Inc.  
**Support and Service Agreement**  
**2016**

**Corporate Office**  
3220 Line Drive, Sioux City, IA 51106  
800-282-8463  
[www.timemanagementsystems.com](http://www.timemanagementsystems.com)

# Support and Service Agreement

## Provided by Time Management Systems (TMS)

TMS warrants and represents that it is an authorized dealer for Infotronics, Inc. and as such, has the authority and is qualified to extend the Agreement described herein. This Agreement shall remain in effect for a period of twelve (12) months.

The Support and Service Agreement described below does not extend the warranty period for the Software or expand upon or in any way alter the Software warranty provisions set forth in the Manufacturer's License Agreement.

- a. Technical Support: Maintenance contract service consists of all service calls and repair work as necessary during the contract period performed at no extra charge during normal business hours. (Monday through Friday, 8:00 a.m. to 5:00 p.m. Central time except holidays.) If customer is over a 50 miles radius from a TMS office, \$95 an hour portal to portal for travel time will apply.
- b. Work outside of normal business hours is available for customers with a current maintenance agreement at the rate of time and a half. Our normal hourly rate is \$165.00 per hour.

Observed Holidays when they fall during the work week:

- New Year's Day
- Memorial Day
- Fourth of July
- Labor Day
- Thanksgiving Day
- Christmas Eve beginning at 2PM (Central Time)
- Christmas Day
- New Year's Eve Beginning at 2PM (Central Time)

### **To be covered under this Maintenance Agreement:**

- During the term of this Agreement TMS shall, unless prevented by unavoidable circumstances, diligently and faithfully use their best endeavors with all appropriate skill and ability in carrying out and performing the support and services for the Customer by the terms and conditions contained in this Agreement. TMS will make every reasonable effort to correct and resolve any Software problem that Customer reports to TMS in which TMS is able to reproduce. Customer will promptly provide TMS with all information requested by TMS to reproduce such problem.
- TMS will undertake all reasonable efforts to provide technical assistance under this Agreement and to rectify or provide solutions to Customer's support issue where the Software and Hardware does not function properly. TMS does not guarantee that the problems will be solved if the issue cannot be reproduced, nor that the remedy will be error free. This Agreement is only applicable to the Software and Hardware sold to Customer by TMS, and running under the accepted environments specified for that product.

- Timekeeping Software Maintenance provides unlimited telephone support with the utilization of remote access software.
- A software maintenance agreement also entitles the operator to the latest updates in software of their version

To provide high levels of support in a timely manner, TMS has a centralized support system known as the Service Desk. The Service Desk Support team will be your single point of contact. They will field calls, send a service request to the appropriate technician who will research the issue and then contact you to resolve the problem. By utilizing this method, every call will be logged and a call number assigned.

TMS technical support services may be accessed through one of the following options:

- |                     |                           |
|---------------------|---------------------------|
| • Telephone support | +1 800 282-8463 ext. 5124 |
| • Facsimile support | +1 712 271 8463           |
| • Email support     | servicedesk@tmstime.com   |

The customer is responsible for supplying and maintaining the network environment recommended by Infotronics. If issues arise that are outside the knowledge of the Time Management Systems expertise, Infotronics will become involved as long as the hardware and software requirements are met.

TMS will strive to provide accurate and timely technical support for all Customers to ensure maximum up time. TMS will assist the authorized contact person(s) in utilizing the Software and identifying and providing workarounds, if possible, for standard component product problems.

**This Maintenance Agreement will not cover:**

- Services required due to changes in customer's computers, printers, and new software or hard disk problems
- TMS is available to assist in installing our Time and Attendance software on additional computers, moving to a different server or assisting in any way possible. However, this is not covered under the maintenance contract. With a current maintenance agreement the time will be billed in increments of 15 minutes.
- TMS shall have no support obligations with respect to any hardware of third party software product. If TMS provides Technical Support for a problem caused by a Non-qualified product, or if TMS's service efforts are increased as a result of Customers use of a Non-qualified Product, customer agrees to pay TMS for this additional service on a time and materials basis at its then current published rates for custom software services.
- If, in TMS's opinion, performance of Technical Support is made more difficult or impaired because of Customer's use of Non-qualified Products, TMS shall so notify the customer and the customer shall immediately remove the Non-qualified product at its own risk and expense during any of TMS's efforts to render Technical support under this Agreement.
- Customer shall be solely responsible for the compatibility and functioning of Non-qualified Products with the Software.
- The main operators of the software must be trained by a qualified TMS Technician to receive support

- under the maintenance agreement.
- Major reconfiguration of programming parameters is not included.
    - All reconfiguration of parameters or rules must be submitted in writing by an authorized contact person. TMS will not make any major changes to the system without written authorization from an authorized contact person.

TMS's liability shall in all events be limited to restoring the software covered by its agreement to good operating condition. TMS shall in no event be liable for any incidental or consequential damages, nor for recreation of data lost for any reason. It shall be the Customer's responsibility to maintain current, usable backups of all data files relating to the software packages covered by this agreement. Customer is responsible for having and maintaining remote access for TMS Support Technicians.

### **Remote Diagnostics**

In order for the Software problem to be quickly analyzed, TMS technicians must have reasonable access to the Customer network infrastructure in which the Software resides as outlined in this Agreement.

- Any remote access will be done with the Customer permission and TMS personnel will access only those areas authorized by the Customer. Remote access will be terminated once the issue is resolved or at the end of the remote connection window.
- TMS shall have no liability to Customer if TMS' ability to render support is impaired by Customer inability to provide telecommunications functionality required for remote support.

### **Outline of Customer Responsibilities:**

In connection with TMS's provision of Technical Support as described herein, Customer acknowledges that Customer has the responsibility to do each of the following:

- It is not the responsibility of Time Management Systems, Inc. (TMS) or any of their employees to interpret your Company Rules, Policies, Labor Law or Compliance Information. If you have questions regarding compliance or laws, it will be your responsibility to seek your legal counsel. TMS will configure your payroll rules per your instructions. TMS is not a legal representative responsible for knowing customers labor laws, Federal, State and Local Laws.
- Customer acknowledges that it is the sole responsibility of the Customer, at all times, during all support and service functions performed by TMS, to protect and maintain an up-to-date and restorable backup of any and all databases, files, utilities, Software and other systems which TMS staff may directly access, or in connection with the support and service request.
- Customer must provide remote access to the Software for troubleshooting and problem diagnosis. This includes but is not limited to using reasonable efforts to provide a sufficient amount of information for problem diagnosis prior to on-site dispatch which could include but is not limited to Software logs, hardware logs, or traces. This may also require a Customer to install certain Software to assist with diagnosis.
- If Customer refuses this option, TMS reserves the right to charge for any support rendered on-site which may have reasonably been provided remotely. All charges would be invoiced to Customer at the support agreement hourly rate.

- TMS will have no liability for loss or recovery of data, databases, programs, or loss of system arising out of the services or support, or any act of omission, including negligence by third party service, consultant or IT provider.

### **Software Error Replication**

Responses to the Customer's request (whether by telephone, email or fax) of a Software error and assistance in diagnosis of issue.

- The Customer must provide TMS with adequate information and documentation to enable TMS to replicate the Software error. TMS may notify the Customer that the Software error could not be replicated, located or identified. If such is the case, TMS will notify Customer that the Software error cannot be resolved and the reason for this decision.
- Not all Software errors' can be resolved while the technician is on the phone. Certain requests for support may require testing and/or assistance from our programming or development department to resolve. Should this occur TMS will keep the Customer updated as to the status of the open Software error(s).
- If it is determined that there is no error or problem with the performance of Software, TMS will so inform the Customer and in such case TMS reserves the right to charge Customer the support agreement hourly rate.

### **Software Build Releases**

- During the term of this Agreement, TMS shall make available to Customer, without additional license fees, all viable Build Releases provided by manufacturer. A Build Release may include error correction, product/security fixes, and patches to the Software version purchased by the Customer and identified in this Agreement.
- TMS will notify Customer when a new Build Release is available for distribution. When approved by Customer TMS technical staff will perform the upgrade via remote diagnostics.
- Build Releases are indicated by a change in the Software numeric identifier in the third (3<sup>rd</sup>) and fourth (4<sup>th</sup>) set of digits to Customer's Version number. (i.e. 2.2.35.897)

### **Software Version Release**

A Version Release contains major core architectural changes that affect the operation and functionality of the Software, and provides extended compatibility with supported Microsoft Operating System (OS), supported browsers (i.e. Internet Explorer, Chrome), any new third party network technology, or interfaces previously not available in earlier Software version.

Historically, a new Authorized Version Release is developed and made available every 3-4 years, but is not mandatory. Customer may continue using existing Software version without any operational issues providing that the Customer network infrastructure has not been altered from the initial implementation and all factory Built Releases have been installed.

A Version Release is not included in the Agreement, and will be charged as a separate item based on Customer's employee capacity, number of licensed users and suite of products.

A Version Release is indicated by a change in the Software numeric identifier in the 1st or 2nd set of digits: (i.e. 2.2 35.897).

Nevertheless, any changes, upgrades or enhancements to network infrastructure, Microsoft SQL Version or Operating System by Customer may well have an effect on the performance of the existing Software version and data integrity. Should this be the case, TMS may recommend that the Customer upgrade AE Software to the latest Version Release for compatibility.

### **Hardware Support**

Every effort has been made by TMS to implement defective-free Hardware. Special installation procedures and materials have been implemented to ensure the Hardware's ability to perform to the highest standards even in unforeseen circumstances.

TMS will, during regular business hours, make all adjustments, repairs and parts replacements necessary to insure proper operation of the Hardware during the prescribed Agreement period at no additional cost to the Customer. If telephone or remote diagnostic support cannot resolve the issue, one of the following options will be applied by TMS:

- a. Customer will be requested to remove the malfunctioning/defective Hardware and ship the item to TMS for in-house evaluation/repair by a TMS technician. In the event that a unit should require bench repair, TMS will provide loaner equipment when available to maintenance customers at no additional charge. Hardware will be shipped to the customer at no charge for normal UPS Ground shipping. If Next Day or Two Day Air shipping is requested by customer, the shipping charges will be billed to the customer.
- b. Repair service may include replacement of defective parts with used parts. All replaced parts shall become or remain the property of TMS. Any service or repairs performed outside of normal business hours will be billed at TMS's then prevailing after hour rates.
- c. If it is determined that the defective part is of a "plug-and play" nature, TMS will ship the replacement part and instruct Customer on installation procedure.
- d. A representative from TMS will to be sent to Customer's site of operation to resolve the malfunction and/or replace the defective Hardware. If customer is over a 50 miles radius from a TMS office, the \$95 an hour portal to portal for travel time will apply.

### **Hardware Support Limitations**

Hardware support does not include services to the Hardware resulting from, or associated with, the items listed below. Customer will be billed at the support agreement hourly rate for these services.

- a. Re-locating hardware to a new sight.
- b. Customer failure to continually provide a suitable installation environment including, but not limited to, adequate electrical power.
- c. Downloading new or overriding existing Hardware firmware program without TMS knowledge.
- d. Inoperative Network connections, network communication equipment, telephone modem lines or telecommunication equipment directly, or part of the communication portal to Hardware.
- e. Disrupted or broken communication wiring due to construction, relocation, general maintenance or rewiring.

- f. Third-party Hardware equipment not purchased or installed by TMS.
- g. Customer repair, attempted repair or modification of hardware.
- h. Any neglect, accident, abuse, theft, vandalism or fire:
  - Damage to a blow or fall which results in damage to terminal boards
  - Any fluids, foreign objects or conductive materials
- i. Tampering or adjustment of set control switches.
- j. Improper electrical power or wiring, interruptions in power, electrical static, and damage arising from acts by a third-party or acts of God.
- k. Compatibility of third party equipment or supplies (i.e. employee badges, key fobs, etc.)
- l. Badges and other supplies are not included under this contract, but will be provided by TMS at its then current prices.
- m. Any hardware not previously covered under a maintenance agreement with TMS must be inspected and brought up to working condition by a TMS technician. Any labor or parts necessary to return the equipment to working order will be the customer's responsibility. Once this equipment is approved, it may be covered under an agreement without exceptions.

Time Management Systems is dedicated to minimize any down time and to rectify all problems as quickly as possible. All support covered under this agreement will be performed remotely. If on site repair is requested by the customer, travel time is billed at \$95.00 an hour if outside of the 50 miles radius of a TMS office. Any lodging or travel expenses will be the responsibility of the customer. The annual maintenance agreement prices are based on the software and hardware purchased. Software maintenance is mandatory for the first year. The Maintenance Agreement will automatically be renewed and increased 5% per year.

## **Termination**

### **Termination by Customer**

The Customer shall have the right at any time, to terminate this Agreement by giving TMS a thirty (30) day written notice thereof; however, termination of this Agreement by Customer will not entitle Customer to the refund of any annual Agreement fees previously paid by Customer.

### **Termination by TMS**

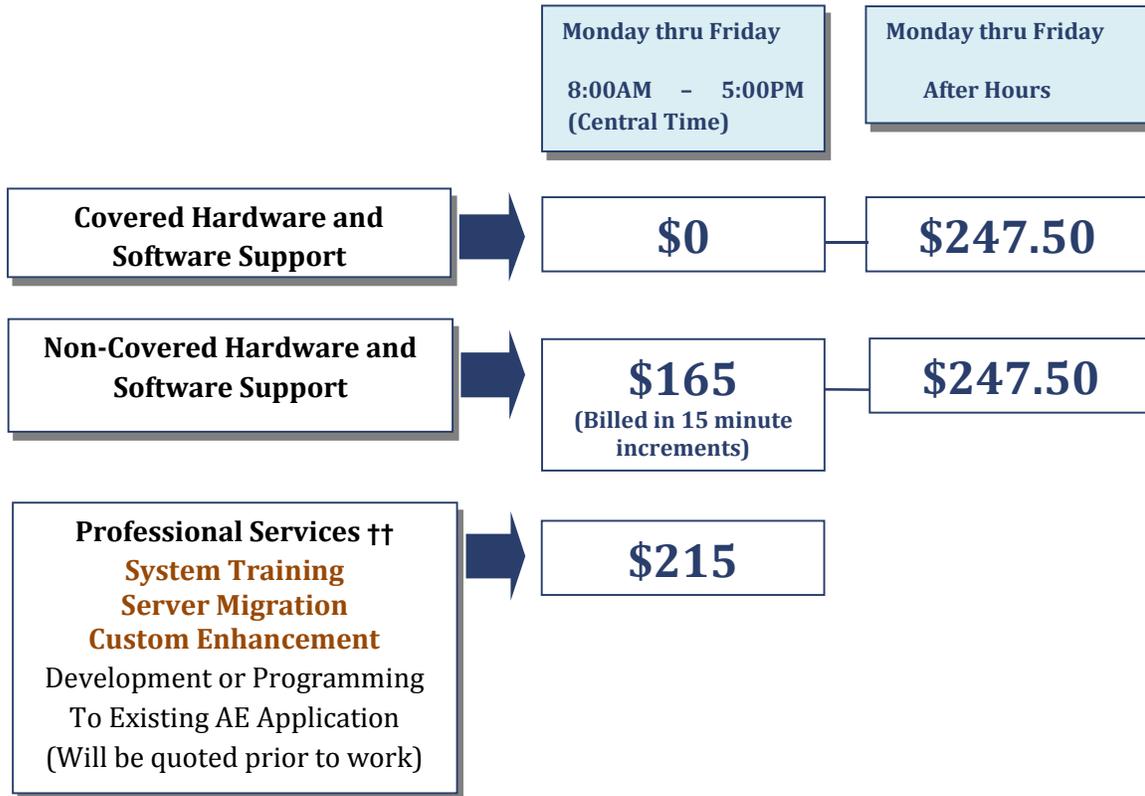
TMS reserves the right to terminate this Agreement at its sole and absolute discretion upon determination by TMS that the continued support to Customer is not practical. TMS' obligation and liability to Customer upon termination of this Agreement is limited to providing Customer with 30 days written notice and a pro-rated refund of all unearned Agreement fees.

### **Termination Liability**

No termination of the Agreement, whether by TMS or the Customer, shall relieve the Customer from liability for any existing payments or performance fees due to TMS.

### Agreement Hourly Rate

In the event that Customers request for support or services not covered in the enclosed support agreement; or outside the normal TMS working hours, the following hourly rates will apply.



### ††-Professional Services are not included in the Agreement

All requested Professional Services are subject to approval and availability. Once approved by Customer, the project will be scheduled for work. The Professional Services per hour cost is for remote services utilizing telephone, conference calls, and email communications, along with remote connectivity tools including, but not limited to: Go-To-Assist, VPN, and WebEx. In the event that Customer's request for Professional Services necessitates on-site presence, addition services and travel expenses will be applied.