

**TCOGROUP S.R.L.**  
**Maintenance & Software GOLD Support Agreement**  
**(the “Maintenance Agreement”)**  
**READ CAREFULLY**  
**INTERNATIONAL**

## 1. DEFINITIONS

“Product” means the set of software components covered by the registered trademarks TCOProject® and LBL® and their Distributions.

“Customer” means the licensee of the Product ordered from TCOGROUP SRL or an authorized reseller or distributor.

“Distributions” means the different products packages to be supplied as confirmed by the Proof of Purchase.

“Services” means all the activities such as consulting, training, installation. All services related to support and updates made available under this “Maintenance & GOLD Software Support Agreement” are excluded.

“Service hours” means the working days and hours of assistance being Monday to Sunday from 00.00 a.m.

To 23.59 p.m. local time.

“Proof of Purchase” means the set of documents accepted by the parties:

Offer by TCOGROUP SRL inclusive of Binary Code License Terms;

- Purchase Order submitted by the Customer in accordance with the Offer and signed off for express acceptance of the Binary Code License Terms of TCOGROUP SRL;
- Acceptance of the Purchase Order by TCOGROUP SRL;
- Invoice issued by TCOGROUP SRL;
- Relevant receipt of payment to TCOGROUP SRL.

“Purchase” means receiving the product following the completion of the documents specified in the Proof of Purchase.

## 2. SCOPE

Under this Maintenance Agreement TCOGROUP SRL provides online customer support for problems relating to the Product, seven days a week 24 hours a day ("7x24"), in addition to other rights, as described below in the Delivery Section.

## 3. DELIVERY

### • Coverage hours and response times

- **Support.** Support is provided on-line during extended business hours, holidays excluded ("Hours of Service"), for all software issues covered by the Agreement ("Product"). Customer may request assistance by e-mail to [customercare@tcoproject.com](mailto:customercare@tcoproject.com).
- **Priority of the Customer and response times.** Customer may designate up to two (2) of its qualified System Administrators (defined below in Section 4) as "Contacts" for each eight-hour shift. Customer may also nominate other partners, but, if so, incurring additional costs. Only the designated Customer Contacts may request support and assign a priority to that request. The System Administrators shall assign priority to the problems according to the following guidelines:
  - **Priority 1-** Urgent (software cannot be used) - The response time shall be on average four (4) hours as from the request for Support within Hours of Service.
  - **Priority 2-** Severe (software with significant faults) - The response time shall be on average eight (8) hours as from the request for Support within Hours of Service.
  - **Priority 3-** Not Critical - The response time shall be on average twenty-four (24) hours as from the request for Support within Hours of Service.

- **On-line services**

- **Update release of software supported by TCOGROUP SRL.**

If not otherwise specified, Customer shall be entitled to receive, upon request, all the update releases of the licensed product, at the time such releases are made available on the market. The update release and software documentation shall be made available via electronic download.

- **Access to software patches and maintenance releases.**

If not otherwise specified, Customer shall be entitled to receive patches and maintenance releases for all software products covered by this Maintenance Agreement, at the time such patches and releases are made available on the market. Patches and maintenance releases will be made available via electronic download.

- **Online Access "Reserved Area".**

Customer may access, seven days a week and round the clock, the "Reserved Area", only for its internal use and according to the terms and conditions of the license agreement. The service made available by the "Reserved Area" on request by Customer includes:

- the download of new product releases;
- news, reference guides and technical documents detailed to maintain and improve the functionality, availability and system performance;
- articles for assistance, reports of anomalies and patches containing information for the resolution of already identified problems;
- software patches;
- documentation informing Customer in advance of known issues relating to availability, data loss or security.

#### **4. CUSTOMER OBLIGATIONS**

- The System Administrator requiring assistance shall be certified (first level at least) or be otherwise qualified and authorized by TCOGROUP SRL to perform the diagnostic and troubleshooting of malfunctions of the Products.
- TCOGROUP SRL is not obligated to provide support in case of problems caused by Customer's: (i) accident, neglect, abuse or modification of the software, (ii) failure to follow recommendations regarding the installation environment, (iii) use of the software on systems being different from the supported hardware and software platforms with reference to the Covered Product, or (iv) failure to include or implement patches, maintenance releases or workarounds previously provided for the correction or mitigation of the problem (or problems).
- Customer shall carry out the necessary integration and testing of software applications before using the Product. In particular, the audit phase shall include end-to-end functional testing relevant to volumes, quality and wear. The configuration of the testing environment must be identical to that of the supported hardware and software and set forth in the product documentation.
- Customer shall provide sufficient information to reproduce the reported problems. The Product may not be supported on all hardware or software platforms, or TCOGROUP SRL may not be able to reproduce the problem on all platforms and it is therefore Customer's responsibility to determine before purchasing the Product whether the latter is supported by TCOGROUP SRL on Customer's platform.
- TCOGROUP SRL will use its best efforts to solve the problem reported in Customer's request for assistance. However, there are cases where it is not possible to provide any solution to the request for intervention.
- Customer acknowledges that the Contacts prior to the delivery of support and with the sole purpose of verifying Customer's right to get such support must provide TCOGROUP SRL with the number of an active maintenance agreement and any other information which should be reasonably requested by TCOGROUP SRL.
- Customer shall promptly execute the actions suggested by the support team for the resolution of the problem. Problems resulting from any failure to implement such corrective actions may result in additional costs for the time and materials used for the restoration.
- Customer agrees to perform, at the request of the support team, the activities prescribed as system maintenance, including patching, updating the firmware (if applicable), maintenance of the file system (if applicable) and communication of diagnostic information in a proactive way.

- In determining the support obligations of TCOGROUP SRL, the following conditions shall apply:
  - TCOGROUP SRL supports only configurations entitled to support, according to the list included in the product documentation or on the "www.tcoproject.com" and "www.lblloadbalancer.com" Web sites specific for point product, release and version.
  - The product is installed in the original version delivered by TCOGROUP SRL and has not been subject to changes, except for the application of patches provided by TCOGROUP SRL and of specific third party providers drivers supported by TCOGROUP SRL.
  - TCOGROUP SRL will use its best efforts to find a solution to a problem only if such problem can be reproduced on supported platforms and configurations. In case a problem cannot be reproduced, TCOGROUP SRL will decide in its sole discretion whether to provide additional support and require Customer to send its platform for further inquiries.
- In case Customer purchases the above mentioned products from TCOGROUP SRL, this Maintenance Agreement will be considered fully incorporated by reference in the relevant License Agreement entered into between the parties ("Agreement"). Any obligation of TCOGROUP SRL to provide the support described in this document is conditional upon Customer having an Agreement with TCOGROUP SRL and having received an order confirmation accepting a Purchase Order. This Maintenance Agreement does not constitute an offer or invitation to contract with TCOGROUP SRL. The provision of support set forth above is subject to availability, and, unless otherwise provided for, is only available in the above mentioned country.

#### **5. FAILURE TO EXECUTE OR RENEW THE MAINTENANCE AGREEMENT**

Failure to execute or renew this Maintenance Agreement shall cause the provision of support and the rights set forth above to end when the purchase date is overcome or at the expiry of the last subscription. If the Maintenance Agreement is not executed within 30 days from the date of purchase or expiry of the last renewal of this Maintenance Agreement, the licenses of new releases and new versions of the products shall have to be purchased once again to be able and avail of a new maintenance agreement. In the event of renewal or subscription within 30 days from the expiry date of the last renewal, maintenance shall be activated retroactively to the expiry date of the previous contract or to the date the products were purchased without subscription.

#### **6. GOVERNING LAW - GENERAL CLAUSES**

This Agreement is governed by Italian law. Should any provision of this Agreement be invalid or unenforceable, this shall not affect the enforceability of the remaining provisions of the same, which remains valid and enforceable according to their respective terms.

#### **7. VENUE**

The venue for any claim relevant to the interpretation, execution and assignment of this Maintenance Agreement shall be the appropriate courts of Padua (Italy).

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For information relating to this contract please contact:  
 TCOGROUP S.r.l.  
 Via Savonarola, 217  
 35137 Padova – Italy  
 P.I.: 04442360287 C.F.: 04442360287  
 e-mail: [customercare@tcoproject.com](mailto:customercare@tcoproject.com)