



**TURBONOMIC MAINTENANCE & SUPPORT POLICY**  
**(Standard)**

1. **Definitions.** Capitalized terms used in this policy statement and not otherwise defined shall have the respective meaning assigned thereto in Turbonomic’s license agreement. The following terms shall have the following meaning.

- 1.1. **“Authorized Contact”** has the meaning assigned thereto in Section 4.5 below.
- 1.2. **“Error”** means an error in the Licensed Software, which significantly degrades use of the Licensed Software as compared to the published and functional performance documentation for the Licensed Software.
- 1.3. **“Fix”** means the repair or replacement of object or executable code within the Licensed Software to remedy an Error.
- 1.4. **“Severity 1”** means that the Licensed Software is non-operational and there is no known Workaround.
- 1.5. **“Severity 2”** means a problem with the Licensed Software that causes a serious disruption which cannot be solved (temporarily) by a Workaround.
- 1.6. **“Severity 3”** means a non-critical problem in the Licensed Software where Licensee is able to continue to use the Licensed Software and a Workaround is available.
- 1.7. **“Severity 4”** means a non-Severity 1, 2 or 3 Error.
- 1.8. **“Standard Service Hours”** means 8.30AM to 6:00 PM (GMT and U.S. Eastern time), excluding US and UK holidays.
- 1.9. **“Standard Support Reply Time”** means the elapsed time during Standard Service Hours between the receipt of a Support Call and the target time within which Turbonomic begins Support as verified by a verbal or email confirmation to Licensee.
- 1.10. **“Support”** means the support set forth in this policy statement, including (a) the provision of Updates related to the Licensed Software; (b) assistance by telephone or internet with respect to the use of the Licensed Software including without limitation (i) clarification of functions and features of the Licensed Software, (ii) clarification of the documentation, and/or (iii) guidance in the operation of the Licensed Software; and (c) Error verification, analysis and correction.
- 1.11. **“Support Call”** means a telephone call or email notification from Licensee to Turbonomic in respect of a Severity 1, Severity 2, Severity 3 or Severity 4 Error.
- 1.12. **“Update”** means an update, enhancement, modification, bug-fix, patch or Error correction that Turbonomic makes generally available to end users of the Licensed Software to whom Turbonomic owes a support obligation, but excludes hardware, software or services for which Turbonomic would generally charge an additional fee. Updates shall be deemed to be Licensed Software for purposes of the Agreement.
- 1.13. **“Workaround”** means a change in the procedures followed or data supplied by Licensee to avoid an Error without substantially impairing Licensee’s use of the Licensed Software.

2. **Support Services.** For so long as Licensee is current in payment of all Support Fees and subject to the terms and conditions of the Agreement, Licensee will receive Support as specified herein.

- 2.1. **Licensee Support Center.** Turbonomic shall receive Support Calls from an Authorized Contact and assign an Error priority level to the request during Standard Service Hours.
- 2.2. **Support Call Logging.** Turbonomic shall acknowledge receipt of Support Calls by telephone or the same method that the Support Call was received with a tracking number within the Standard Support Reply Times.
- 2.3. **Support Reply Times.** Support for the Licensed Software is available during Standard Service Hours with the following Standard Support Reply Times:

<u>Error Priority</u>	<u>Standard Support Reply Time</u>
Severity 1	1 hour
Severity 2	4 hours

Severity 3 24 hours

Severity 4 72 hours

Where Turbonomic does not acknowledge receipt of a Support Call within the applicable Support Response Times, the following escalation contact protocol shall apply:

<u>Error Priority</u>	<u>Standard Support Reply Time Elapsed</u>	<u>Escalation Contact</u>
Severity 1	2 hours	Support Manager
Severity 1	4 hours	Support Director
Severity 1	8 hours	President
Severity 2	8 hours	Support Manager
Severity 2	12 hours	Support Director

- 2.4. Response. Following acknowledgement by Turbonomic in response to a Support Call in respect of a Severity 1 or 2 Error, Turbonomic will work uninterrupted during Standard Service Hours using commercially reasonable efforts to provide Licensee with a Workaround or Fix. Following acknowledgement of a Severity 3 Error, Turbonomic will work using commercially reasonable efforts during Standard Service Hours to provide Licensee with a Workaround or Fix. Following acknowledgement of a Severity 4 Error, Turbonomic will use commercially reasonable efforts to incorporate any necessary changes with the next release of the Licensed Software, or provide a Fix or Workaround thereto, in its sole discretion.
- 2.5. Licensee Issues. If Turbonomic believes that a problem reported by Licensee may not be due to an Error in the Licensed Software, Turbonomic will so notify Licensee.

### 3. Exclusions.

- 3.1. Support does not include services requested as a result of, or with respect to, causes which are not attributable to Turbonomic or the Licensed Software ("**Excluded Services**"). Excluded Services will be billed to Licensee at Turbonomic's then-current rates. Causes which are not attributable to Turbonomic or the Licensed Software include, but are not limited to:
- (a) installation, modification, customization, alteration or addition or attempted installation, modification, customization, alteration or addition of the Licensed Software undertaken by any party other than Turbonomic or an authorized designee of Turbonomic;
  - (b) Errors arising out of misuse, negligence, misapplication, or willful acts of Licensee or any third party;
  - (c) any combination of the Licensed Software with any computer hardware or software not provided or approved in writing by Turbonomic;
  - (d) use of the Licensed Software other than in accordance with its documentation or the Agreement; or
  - (e) use of a version of the Licensed Software other than the current release or the two (2) immediately previous releases.

### 4. Licensee Responsibilities. Turbonomic's provision of Support to Licensee is subject to the following.

- 4.1. Information. Licensee is responsible for providing sufficient information and data to allow Turbonomic to readily reproduce all reported Errors.
- 4.2. Access. Licensee shall provide Turbonomic with necessary access to the Licensed Software, personnel and equipment during Standard Service Hours. This access includes the ability to remotely access the Licensed Software, subject to Licensee's security procedures.
- 4.3. Report Errors. Licensee shall document and promptly report all detected Errors to Turbonomic. At Turbonomic's direction, Licensee shall take all steps necessary to carry out procedures for the rectification of Errors within a reasonable time after such procedures have been received from Turbonomic.
- 4.4. Training. Licensee shall properly train its personnel in the use and application of the Licensed Software.
- 4.5. Authorized Contacts. Licensee shall appoint a reasonable number of trained individuals to serve as primary contacts between Licensee and Turbonomic regarding the registry and report of Support Calls (each an

“Authorized Contact”). All of Licensee’s Support Calls and Support inquiries shall be initialized through the Authorized Contacts.

THIS SUPPORT POLICY DEFINES A SERVICE ARRANGEMENT AND NOT A PRODUCT WARRANTY. THE LICENSED SOFTWARE AND MATERIALS AND SERVICES RELATED THERETO ARE SUBJECT EXCLUSIVELY TO THE WARRANTIES SET FORTH IN THE AGREEMENT. THIS SUPPORT POLICY DOES NOT CHANGE OR SUPERSEDE ANY TERM OF ANY SUCH AGREEMENT.