

FUSION SOFTWARE LLC SOFTWARE SUPPORT AGREEMENT

This Software Support Agreement ("Agreement") is between Fusion Software, LLC ("Fusion Software"), and the Client as defined herein.

Client is a registered licensee of certain Licensed Program(s) as defined herein, published by Fusion Software and wishes to obtain certain Support directly from Fusion Software in conjunction with the use of Licensed Program(s); and Fusion Software wishes to provide support services to Client under the terms and conditions of this Agreement.

1. **Definitions:** The following capitalized terms shall have the meanings set forth below:
 - a. **"Authorized Contact"** means an employee or agent of Client who may contact Fusion Software for Support to be provided under this Agreement.
 - b. **"Guaranteed Response Time"** means that a member of Fusion Software's client support team will respond to Client's inquiry within the guaranteed time period. Fusion Software does not guarantee a resolution to questions or problems during the guaranteed time period, only that Fusion Software will initiate work on Client's case within the guarantee time period.
 - c. **"Licensed Program(s)"** means those computer Program(s) published by Fusion Software for which Client is an authorized and duly licensed end-user.
 - d. **"Normal Working Hours"** means the hours between 9:00 a.m. and 6 p.m., Central Standard Time, Monday through Friday, excluding Fusion Software designated holidays which are published on the Fusion Software web site (www.FusionRMS.com) or issues experienced as a result of an event of Force Majeure
 - e. **"Extended Working Hours"** means the hours between 9:00 a.m. and 6 p.m., Central Standard Time, Monday through Sunday, excluding Fusion Software designated holidays or issues experienced as a result of an event of Force Majeure
 - f. **"Effective Date"** will be the date of this agreement.
 - g. **"Term"** means a period of one (1) year commencing on the Effective Date along with renewals and extensions.
 - h. **"Update"** means a revised release of the Licensed Program(s).
 - i. **"Critical Event"** means an event where the Licensed Program(s) fails to operate as designed causing an interruption of business.
 - j. **"Force Majeure"** means that Fusion Software's performance hereunder, or any delay in such performance, shall be excused for such failure to perform or delay as attributable to any cause or reason beyond Fusion Software's control, including without limitation lack of available labor trouble, governmental regulations, transportation difficulties, embargoes, civil disturbances, acts of God, or any other causes of the like or difference character beyond Fusion Software's control.



- k. **"Support"** means assistance with normal use of the Licensed Program(s) by trained personnel. Training on the use and / or maintenance of the Licensed Program(s) may be obtained from Fusion Software separately and is not within the scope of the Agreement.
- l. **"Automatic Payments"** preauthorized direct debit, credit card charge or other payment as mutually agreed upon by Client and Fusion Software.

2. Support Plans.

- a. **Bronze Support Plan.** The Fusion Bronze Support Plan, includes the following:
 - i. Access to Fusion Software's on-line help desk and Support Ticketing System for Authorized Contacts. (www.fusionrms.com/support)
 - ii. Access to all training materials, manuals, etc. which may be downloaded from the Fusion Software web site (FusionRMS.com).
 - iii. Guaranteed Response Time of 4 hour during Normal Business Hours.
- b. **Silver Support Plan.** The Fusion Silver Support Plan includes all the features of the Bronze Support Plan but also includes access to the Fusion Telephone support for Authorized contacts.
- c. **Gold Support Plan.** The Fusion Gold support plan includes the features of the Silver support plan and adds both Online and Telephone support during Extended Hours.
- d. Additional Authorized Contacts may be added to any support plan to provide store level personnel more access to Fusion Client Support Team.

A comparison of Support Plans is presented in Exhibit A.

3. Terms and Conditions Applicable to all Support Plans

- a. **Environment.** Client must procure, install and maintain all required software, equipment, telephone lines, communication interfaces and other hardware deemed necessary by Fusion Software to operate the Licensed Program(s).
- b. **Backups.** Where applicable Client shall maintain and protect database backups on regular basis.
- c. **Regular Maintenance.** Client shall perform regular system maintenance to ensure maximum system performance and reliability.



- d. Reasonable Access. Client shall provide Fusion Software with reasonable access to the Licensed Program(s) in Client's environment to perform diagnostic services.
- e. Authorized Contacts. Client's must have internet access and active email accounts. Client shall be responsible for maintaining current e-mail address(es) of the Authorized Contact(s) and notifying Fusion Software of any updates or changes.
- f. Current Version. Unless otherwise agreed in writing, Fusion Software will provide Support under this Agreement for current version of the Licensed Program(s) s and one prior release, including any associated update, as well as maintenance for only the current release version. A schedule of supported versions can be found on www.FusionRMS.com/Support.
- g. On Site Support. If on-site Support is requested or required by Customer, Client may contract with Fusion Software professional to provide such services at a mutually agreed price which will be documented in a separate agreement.

4. Fees & Charges

- a. Fees. Client shall pay Fusion Software or its authorized agent (a) twelve monthly Automatic Payments on the first day of each month or (b) other payment plan as mutually agreed between Client and Fusion Software.
- b. Sales Tax. Fusion Software will charge Sales Tax wherever appropriate.
- c. Collection Efforts. In the case that Fusion Software engages outside services for the collection of ay outstanding payment, Client agree to pay all related fees incurred by Fusion Software.

5. Term and Termination

- a. Renewal of Agreement. This is a twelve-month contract. Unless terminated in accordance with Section 5.b. herein this agreement will automatically renew on each anniversary of the effective date.
- b. Termination. This Agreement may terminate by the Client by providing thirty (30) days' prior written notice.
- c. Effect of Termination. Upon termination of this Agreement, all outstanding sums due to Fusion Software will be immediately due and payable. Fusion will also invoice Client for any additional fees or expenses, and Client shall pay the invoiced amount immediately upon receipt of such invoice. Any undisputed amount not paid within thirty (30) days after the invoices date shall bear interest at the lesser of one and a half percent (1.5%) per month or the highest rate allowed by the applicable law.

6. Exclusions/Limitations of Liability

- a. Unauthorized Changes. Fusion Software shall not be required to provide Support relating to the Licensed Program(s) caused by (a) Client's failure to implement all currently available Updates and New Releases to the Licensed Program(s) , (b) changes to Client's operating system or environment that adversely affects the Licensed Program(s) , (c) any alteration of, or addition to, the Licensed Program(s) performed by any party other than Fusion Software or its duly authorized agent, (d) negligence or misuse of the Licensed Program(s) , (e) integration of the Licensed Program(s) with other software products not supplied or authorized by Fusion Software.
- b. Hardware. Support does not include services or support for any hardware components of Client's system or for any software not supplied by Fusion Software and covered under the License Agreement, including but not limited to computers, hard disks, operating systems, databases, third-party software, network servers, printers, bar code readers, credit card devices, cash drawers or any software associated with such hardware devices.
- c. Acumatica Support & Upgrades. Support specifically excludes assistance with or upgrades of Acumatica. Such support should be provided by Client's authorized reseller.
- d. Out of Scope Support. Support outside of covered business hours will be billed separately and are not covered by Support Plans.

7. Miscellaneous.

- a. Complete Agreement. This Agreement contains the complete and exclusive statement of the agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior proposals, understandings and agreements, whether oral or written, between the parties with respect to the subject matter hereof. This Agreement may not be modified except by a written instrument duly executed by an authorized officer of each of the parties hereto.
- b. Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Texas. Client agrees that the courts of the State of Texas or the United States, located in Dallas County, shall have sole and exclusive jurisdiction and venue regarding interpretation or enforcement of the Agreement, or any other dispute which arises between Client and Point Solutions. Client further agrees and irrevocably waives any right to challenge, dismiss or transfer any legal action based upon consideration of venue or jurisdiction and to reimburse all costs and expenses, including reasonable attorney's fees, incurred by Fusion Software in collecting any unpaid invoice(s).
- c. Unenforceability. If any provision of this Agreement is held invalid, unlawful or unenforceable, the remaining provisions shall be enforced to the maximum extent permitted by applicable law.



- d. Limitations on Actions. No action, whether based in contract, strict liability, tort (including any action-based negligence), or otherwise arising out of this Agreement, may be brought by either party more than (1) year after such cause of action accrued, except that an action for nonpayment may be brought within two (2) years of the date of the last payment.
- e. Assignment. Client may not assign its rights or duties under this Agreement, without the prior written consent of Fusion Software, except to a successor of all or substantially all its business and properties and in connection with an authorized assignment of Licensed Program(s).
- f. Waiver. The waiver by either party of any term or condition of this Agreement shall not be deemed to constitute a continuing waiver thereof nor of any further or additional rights that such party may hold under this Agreement.
- g. Dispute Resolution. In the spirit of cooperation and with an eye toward resolving any dispute amicably and without the necessity of litigation, the parties shall attempt to resolve and settle any dispute, claim or controversy between them through consultation and negotiation prior to the commencement of any legal action to interpret or enforce this Agreement. In the event such attempts are unsuccessful, the disputing party shall notify the other party in writing of the nature of the dispute and the parties shall submit the dispute for non-binding mediation by a mutually acceptable third - party, neutral mediator to be chosen by the parties within fourteen (14) days of receipt of notice. The mediation shall take place at a neutral site located in the State of Texas and shall be conducted in strict confidentiality. Participation in mediation shall not prejudice or waive any rights of either party to pursue all legal and equitable remedies (including damages and injunctive relief) if the parties are unable to resolve the dispute through mediation. The parties agree to equally share the fees and expenses of the mediator and neither party may unreasonably withhold consent to the selection of a mediator. If the parties are unable to resolve a dispute through mediation or otherwise within ninety (90) days after written notice of the dispute, the dispute shall be submitted to binding arbitration with the American Arbitration Association. Binding arbitration shall be conducted in Dallas, Texas in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The claim shall be decided by a single arbitrator who shall be selected by mutual agreement of the parties, or if the parties cannot agree, by the American Arbitration Association. Participation in arbitration shall not prejudice or waive any rights of either party to pursue all legal and equitable remedies (including damages and injunctive relief). The parties agree to equally share the fees and expenses of the arbitrator and neither party may unreasonably withhold consent to the selection of an arbitrator.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized officer or representatives as set forth below.

Client:

By: _____

Name:

Title:

Date: _____, 20_____

Fusion Software, LLC

By: _____

Name: Mike Gill

Title: President

Date: _____, 20_____



Exhibit A

FUSION SOFTWARE Support Plan Pricing

Plan	Cost
Bronze Support Plan	\$199.95 / month*
Silver Support Plan	\$299.95 / month*
Gold Support Plan	\$399.95 / month*
Bulk Purchase	\$1,500 for ten prepaid hours
Additional Authorized Users	@ \$49.95 / Month
Off Plan Support	\$205 / hr. Min 2 Hrs. paid in Advance

*Twelve-month contract with payments via Direct Debit from Client's Account. 5% discount for 12 months in Advance

FUSION SOFTWARE Warehouse Management Support Plan Comparison

Feature \ Plan	Bronze Support	Silver Support	Gold Support
Authorized Contacts	2	3	4
On Line Support	Yes	Yes	Yes
Guaranteed Response time	4 hrs	3 hrs	2 hrs
Normal working hours	Yes	Yes	Yes
Extended Working Hours	No	No	Yes
Telephone Support	No	Yes	Yes
Critical Event - Business Hours	Yes	Yes	Yes
Critical Event – Any Time	No	No	Yes
Annual Onsite Review	Optional	Optional	Yes**
Annual Fusion Upgrade	No	No	Yes***
Client Specific Support Page	No	No	Yes
Out of Scope Support*	\$175 / hr	\$175 / hr	\$175 / hr

*1/2 hour minimum. ** Does not include travel. ***not to exceed 8 hours

Exhibit B

Please fill in all required information for authorized points of contact. Client is responsible for timely updating any information provided to Fusion Software.

Authorized Contact information:

Client Name:	
Address:	
City, State Zip	
Phone:	
Contact Name:	
Title:	
Phone Number:	
E-Mail Address:	
Contact Name:	
Title:	
Phone Number:	
E-Mail Address:	
Contact Name:	
Title:	
Phone Number:	
E-Mail Address:	
Contact Name:	
Title:	
Phone Number:	
E-Mail Address:	