

Support Subscription Agreement

This Support Subscription Agreement (this “**Agreement**”) is a legal contract between (“**you**” or “**your**”), to receive Support Services from Acumatica, Inc. (“**Acumatica**” or the “**Company**”).

READ THE TERMS OF THIS AGREEMENT CAREFULLY.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND IT, AND THAT YOU ACCEPT AND AGREE TO BE BOUND BY ITS TERMS. THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT BETWEEN YOU AND ACUMATICA CONCERNING SUPPORT SERVICES, AND THIS AGREEMENT SUPERSEDES AND REPLACES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING YOU MAY HAVE HAD WITH ACUMATICA CONCERNING OR RELATING TO THE SUPPORT SERVICES.

- 1. Support Services.** During the Initial Term and any Renewal Term of this Agreement, as defined in Section 3, Acumatica will provide to you the services set forth in this Section 1 (the “**Support Services**”):

- a. General Description of Support Services:**

Acumatica will provide you the Basic and Premier Support Services, as further defined in <https://www.acumatica.com/support/direct-support/> that you subscribed to in a professional and workmanlike manner in accordance with industry standards. Support Services, in connection with Cases (as hereinafter defined) shall include direct response to you with respect to specific questions and issues (“**Issues**”) related to the following described software: Acumatica ERP (“**Software**”). Support Services do not include or replace Professional or Implementation Services. The parties agree that Acumatica shall have no obligation to provide any Professional or Implementation Services under this Agreement. Support Services are intended only for clients that are past the implementation phase, are operational and using the system in a live environment.

- b. Cases**

Each instance in which you contact Acumatica for Support Services shall be considered a “**Case**” and shall be assigned a unique Case number. You must have an active Support Subscription as provided in this Agreement to be eligible to register a Case with Acumatica and receive Support Services.

c. Issue Response

Acumatica shall use its reasonable commercial efforts to respond to Cases reported by you. The terms and conditions of Acumatica's Service Level Commitment for responding to reported Issues are published on the Acumatica Support Portal under "Support and SLA policy." Notwithstanding anything herein to the contrary, Acumatica makes no guarantee that: (i) all Issues will be resolved, (ii) that any version of the Software will be error free, or (iii) it will correct or attempt to correct all Issues. The decision whether to correct any particular Issue shall be made in Acumatica's sole discretion. The Software is designed to work with certain third-party software and in cases where Acumatica has isolated an Issue as being caused by a certain third party product, Acumatica may require that you work with the support personnel of such third party software vendor. In the resolution of certain Cases, you may be required to: (i) provide Acumatica a listing of output and other data, including databases and backup systems, that Acumatica may need in order to reproduce operating conditions similar to those present when the Issue occurred; (ii) assist by eliminating any hardware, operating system software, and application software deficiencies or conflicts; (iii) provide any requested diagnostic information to allow Acumatica to further diagnose the Issue; and (iv) implement recommended corrective or workaround procedure(s).

d. Methods of Assistance

Premier support customers will have access to Support Services by and through the Acumatica Support Portal website, web chat and phone during premier support hours as published on the Acumatica Support Portal under "Support and SLA policy" based upon the Support Level you've subscribed to.

Basic support customers will have access to Support Services by and through the Acumatica Support Portal only during Acumatica business hours as published on the Acumatica Support Portal under "Support and SLA policy." The terms for after-hours support can be found on the Acumatica Portal.

e. Supported Versions

Acumatica provides Support Services for all supported versions of the Software as set forth in the Product Support Lifecycle Policy published on the Acumatica Support Portal. Retired versions are not supported under this Agreement.

f. Service Limitations

Acumatica promotes mutually respectful communication between our employees and our clients. Any repeated verbal abuse directed at Acumatica employees and contractors may constitute grounds to immediately terminate this Agreement and deny you any future Support Services.

g. Online Resources; Disclaimer

Your access to Support Services under this Agreement shall also include access to Acumatica's support knowledgebase, online documentation, and the product suggestion system. ACUMATICA EXPRESSLY DISCLAIMS ALL WARRANTIES REGARDING INFORMATION IN THE ACUMATICA KNOWLEDGEBASE AND SUPPORT FORUMS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

h. Client Support Contacts

You will designate authorized support contact(s) for Support Services (the “***Support Contact***”) who is trained and knowledgeable in the use of the Software and to whom all Support Services shall be delivered. Two (2) authorized Support Contacts are included with Basic Support. Four (4) authorized Support Contacts are included with Premier Support Services. You may change the identity of the Support Contact from time to time on the Acumatica Support Portal.

i. Remote Support - Premier Support only

In certain cases, where you have subscribed to Premier Support and Acumatica is unable to diagnose or resolve a Case reported by you, Acumatica may request access to your server or computer(s) experiencing issues in order to continue providing Support Services. In order to facilitate the provision of such support services, you will need to have Remote Desktop (“RDP”) capabilities on the systems that need to be accessed. In such cases, you authorize Acumatica to remotely access your systems and data solely for the purpose of providing Support Services with respect to the Case and you agree to backup all of your data prior to providing Acumatica access to your applicable computer(s).

Remote support is not available for Basic support customers.

j. Developer, Testing and Non-Production Acumatica Licenses - Premier Support Only

If you have subscribed to Premier Support, then you will be granted, subject to the terms of Acumatica's end-user license agreement, one (1) Acumatica Subscription-On-Premise license for purposes of development, testing, and nonproduction use. This license may have no more than 20 named users.

k. Developer Support – Premier and Basic

If you have subscribed to Premier or Basic Support Acumatica will provide an unlimited number of developer support cases (“***Developer Support***”). Developer support policy is published at Acumatica portal under “Support and SLA policy” section. All assigned contacts for submitting developer support cases should undergo through necessary developer trainings at Acumatica Open University.

2. Disclaimers; Limitation of Liability.

a. Disclaimer.

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 1a. AND 1d., ACUMATICA DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

Limitation of Liability.

1. Limitation on Consequential Damages. IN NO EVENT SHALL ACUMATICA BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT, OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, BUSINESS INTERRUPTION, OR LOSS OF INFORMATION), REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, OR EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2. Limitation on Cumulative Liability. ACUMATICA’S CUMULATIVE LIABILITY TO YOU OR ANY PARTY RELATED TO YOU FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT OF FEES PAID TO ACUMATICA BY YOU UNDER THIS AGREEMENT FOR THE PAST 12 MONTHS. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS.

3. All limitations on liability, damages and claims are intended to apply without regard to whether other provisions of this Agreement have been breached or have proven ineffective.

3. Term; Termination.

a. Term.

The initial term of this Agreement commences as provided in the Acumatica Order Form you signed when you subscribed to the Support Services from your Authorized Acumatica Reseller or Acumatica (the “*Acumatica Order Form*”).

The length of the initial term of this Agreement for the Support Services (the “*Initial Term*”) is for one (1) year unless set forth otherwise in your Acumatica Order Form. This Agreement will automatically renew for an additional one (1) year term at the end of the then-current term unless set forth otherwise in your Acumatica Order Form. This Agreement will terminate upon expiration of all your Acumatica Order Forms. It is your responsibility to contact your Authorized Acumatica Reseller or Acumatica regarding any potential expiration that you deem inappropriate. Acumatica is not liable for any damages or costs incurred in connection with expiration of the Support Services.

b. Suspension of the Support Services

Acumatica reserves the right to suspend your access to and/or use of the Support Services if any payment due to Acumatica remains unpaid for 30 days, after notification of default has been issued by Acumatica.

In the event Acumatica suspends the provision of Support Services pursuant to this Section, Acumatica will use commercially reasonable efforts to work with you to resolve the issues which resulted in the suspension. Acumatica shall not be liable to you nor to any third party for any suspension of the Support Services under such circumstances as described in this Section. Any suspension pursuant to this Section shall not relieve you of your obligation to make payments for the Support Services.

c. Termination

Either Party may terminate this Agreement; (i) upon 30 days’ written notice to the other Party in the event of a material breach by the Party and if such breach remains uncured at the expiration of the said notice period, or (ii) immediately in the event the other Party becomes the subject of petition for bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Acumatica may terminate this Agreement upon 30 days’ prior notice to you if you fail to pay the fees and do not cure such failure within such 30 day notice period.

d. Effect of Termination

Termination of this Agreement for any reason shall not relieve you of the obligation to pay any fees accrued or due and payable in connection with Support Services provided prior to the effective date of termination, and termination for any reason other than for uncured

material breach by Acumatica shall not relieve you of the obligation to pay all future amounts that may be due.

4. Fees and Billings.

a. Charges for Services:

The fee for the Initial Term and any Renewal Terms shall be governed by Acumatica's standard published price list and amount invoiced to you by your Authorized Acumatica Reseller or Acumatica.

b. Out-of-Pocket Expenses:

You will also pay your Authorized Acumatica Reseller or Acumatica all reasonable out-of-pocket expenses (including without limitation, travel expenses), if any, incurred by Acumatica in the course of providing Support Services to you. Acumatica will obtain prior approval from you for expenditures greater than \$250.

c. Payment.

Your Authorized Acumatica Reseller, or Acumatica, will invoice you for fees as set forth in Section 4.a. upon the commencement of the Initial Term and each Renewal Term. All invoices are due upon receipt. You shall be responsible for all taxes (including sales taxes) imposed as a result of the Support Services, excluding only taxes based on the net income of your Authorized Acumatica Reseller, or Acumatica, as applicable. Any amount not paid within thirty (30) days of the date of each invoice shall be subject to an interest charge equal to the lesser of 1.5% monthly or the maximum interest charge permissible under applicable law, payable on demand. Any charges not disputed by you in good faith within ten (10) days of the receipt of an invoice will be deemed approved and accepted by you. Except as otherwise expressly provided in this Agreement, Acumatica does not refund its fees.

d. Discounts

If the Acumatica Order Form has been modified in accordance with the applicable terms, resulting in a decrease in the fees owed by you, any discount previously granted to you (if any) will no longer apply. If the modification results in an increase in the fees you owe, then your current discount amount (rather than the discount percentage) will be applied on a pro-rata basis, for the remaining term.

5. Additional Terms.

a. Relationship of the Parties

The Parties are independent contractors. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third party beneficiaries to this Agreement.

b. Notices

All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing; or (iii) if sent by email, upon receipt, provided such email is sent during the recipient's normal business hours; otherwise, it shall be deemed received on the recipient's next business day. Notices to Acumatica shall be addressed to Attn: Legal Department, Acumatica, Inc. Notices to you shall be addressed to your contact provided to Acumatica. Each Party may modify its recipient of notices by providing notice pursuant to this Agreement.

c. Force Majeure

Except for your payment obligations, neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Acumatica or your employees, respectively). Dates by which performance of obligations if scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

d. Assignment

Neither Party may assign any of its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets so long as the assignee agrees to be bound by all of the terms of this Agreement and all past dues owed to Acumatica are paid in full. Any attempt by a Party to assign its rights or obligations under this Agreement other than as permitted by this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

e. Modification of Terms

Acumatica reserves the right from time to time to modify the terms under which the Support Services are provided to its customers and subscribers, including you, and as a result to modify the terms and conditions of this Agreement. If Acumatica makes a material change to any of the terms of this Agreement, then Acumatica will notify you by either sending an email to the notification email address or by mail to the mailing address which has been provided to Acumatica. The current version of the Acumatica Support Subscription Agreement can also be found on www.acumatica.com/agreements. If the change has a material adverse impact on you and you do not agree to the change, you must so notify Acumatica in writing within thirty (30) days after receiving notice of the change. If you notify Acumatica as set forth in this Section, then your use of the Support Services will remain governed by the Agreement as in effect immediately prior to the change until the end of the then current subscription term for the Support Services. If you renew the Agreement at the end of the then current term (including automatic renewal), it will be renewed under Acumatica's then current Acumatica Support Subscription Agreement.

f. Governing Law:

This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington, USA, without regard to the conflicts of law rules thereof. Any claim or dispute arising in connection with this Agreement shall be resolved in the federal or state courts situated in the State of Washington. To the maximum extent permitted by law, you hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts. You and Acumatica agree that the Uniform Computer Information Transactions Act (UCITA) as adopted in any state, in which this Agreement may be performed, shall not apply to this Agreement. Each Party waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to the Support Services or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

g. Severability:

If any term or provision of this Agreement is declared void or unenforceable in a particular situation, by any judicial or administrative authority, this declaration shall not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of that term or provision in any other situation.

h. Survival:

Sections 2 and 4 of this Agreement shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

i. No Waiver:

The failure of either party to enforce any rights granted under this Agreement or to take action against the other party in the event of any breach of this Agreement shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.