

# End User License Agreement

## (Perpetual)

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This End-User License Agreement (this “Agreement”) is a legal contract between you, as either an individual or a single business entity, and Acumatica, Inc. (“Acumatica”).

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### 1. License

**1.1. Grant of License.** Acumatica hereby grants to you, and you accept, a limited, nonexclusive license to use the Software in machine-readable, object code form only, and the user manuals accompanying the Software (the “Documentation”), only as authorized in this Agreement. For purposes of this Agreement, the “Software” includes any corrections and enhancements including hot fixes, patches, work-arounds, updates and upgrades to the Software (“Maintenance Releases”) made available to end-users through Acumatica’s ([www.acumatica.com](http://www.acumatica.com)) web site. Notwithstanding the foregoing, Acumatica shall be under no obligation to provide any Maintenance Releases.

**1.2. Scope of Use.** You may use (i) one copy of the Software activated by a license key on a single server (virtual or physical) owned, leased, or otherwise controlled by you, at a single time, and (ii) only on the type of data base server licensed by you; provided, the database for the Software may reside on a separate single server. If you have multiple license keys for the Software, you may make and use as many copies of the Software as you have license keys. For purposes of this Agreement, “use” of the software means loading the Software into the temporary or permanent memory of a computer. Installation of the Software on a network server solely for distribution to other computers is not “use” of the Software, and is permitted, as long as you have a license key for each server (virtual or physical) to which the Software is distributed and for each data base server being accessed by the Software. The Software may not be used on or distributed to a greater number of computers than you have license keys. You may also use a reasonable number of copies of the Software for testing, off-line archival purposes, and training on a non-production server. No other right or license to use or make copies of the software is granted or implied. Without limiting the

foregoing, the following use of the Software requires an additional secondary license: Multiple databases; multi-server configurations; and separated customizations between entities.

**1.3. Maintenance of Software.** Acumatica will only make Maintenance Releases available to you if you are an active subscriber of an Acumatica maintenance plan, if and when such Maintenance Releases are made available to end-users of the Software. Maintenance Releases include Software updates, version upgrades and hot fixes at no additional cost, but do not include new products or add-ons to the Software which include new features for which Acumatica charges a separate fee to its end-users. All Maintenance Releases are subject to this Agreement. If you are an active subscriber of an Acumatica maintenance plan, you also receive access to support forums, frequently asked questions and answers, and documentation as it becomes available, and receive credit for your existing license payment when you upgrade the edition of the Software you are using. You should refer to the maintenance plan that you subscribe to for the definitive terms and conditions of that plan. You acknowledge that installation of Maintenance Releases may cause customizations which have been made to your Software to no longer function as intended. To avoid such a situation, you should coordinate installation of all Maintenance Releases with the parties supporting your Software, test the Maintenance Release and any customizations on a separate test system, insure that the system is fully operational, and remedy any non-functioning components before installing the Maintenance Release on your production server.

**1.4. Operating Environments.** You acknowledge that Acumatica licenses the Software for use with (1) operating environments (web browsers, cloud services, servers, peripherals, database management systems and operating systems) supported by Acumatica, or (2) operating environments compatible with those supported by Acumatica. Acumatica makes NO representation as to what environments are compatible with supported operating environments.

**1.5. Copies and Modifications.** You may not reverse engineer, decompile, disassemble, or otherwise translate the Software or any license keys you have obtained. You may not modify or adapt the Software or any license keys that you have obtained in any way. Except as provided in Section 1.2 of this Agreement, You may make one copy of the Software, the Documentation, and any license keys that you have obtained, solely for backup or archival purposes. Any such copies of the Software, Documentation, or license keys shall include any copyright or other proprietary notices that were included on such materials when you first received them. Except as authorized in Section 1.2 and this Section, no copies of the Software, Documentation, or license keys, or any portions thereof, may be made by you or any person under your authority or control.

**1.6. Assignment of Rights.** You may not sublicense, lease, rent, or lend your rights in the Software, Documentation, or license keys, as granted by this Agreement, with any third party without prior written consent of Acumatica. Notwithstanding the foregoing, you may assign your rights in this Agreement without such consent in the case of a sale of substantially all of your assets or equity interests, or in the case of a merger, change in control or similar transaction, provided that (i) the assignee agrees in writing to be bound by the terms and conditions of this Agreement, (ii) you are not in material default hereunder, and (iii) you agree to remain liable for any breach of this Agreement by the assignee.

## **2. Intellectual Property and Confidentiality**

**2.1. Use Reporting, License Violations and Remedies.** Acumatica reserves the right to gather data on key usage including license key numbers, server IP addresses, domain counts and other information deemed relevant, to ensure that our products are being used in accordance with the terms of this Agreement. Acumatica expressly prohibits simultaneous, multiple installations of our licensed products and domain count overrides without prior written approval. Any unauthorized use shall be considered by Acumatica to be a violation of this Agreement. Acumatica reserves the right to remedy violations immediately upon discovery, by giving written notice thereof to you and charging the then current list price of unauthorized keys to the credit card used to make the original, authorized purchase, or by any other means necessary. You agree not to block, electronically or otherwise, the transmission of data required for compliance with this Agreement. Any blocking of data required for compliance under this Agreement is considered to be violation of this Agreement and will result in immediate termination of this Agreement pursuant to Section 4.

**2.2. License Automatic Update and Expiration.** Your license may include an expiration date that can result in the termination of the license. For permanent (non-lease) license keys, the license updates automatically except if Acumatica determines that a license is used in violation of the terms of this Agreement. If your license key is stolen, or if you suspect any improper or illegal usage of your license outside of your control you should promptly notify Acumatica of such occurrence. A replacement license will be issued to you and the suspect license will be allowed to expire. For lease licenses, your monthly payment for each month must be processed prior to the expiration date in order for the license updates to be performed. For your convenience Acumatica provides license expiration warnings in the product interface should there be any issues that would cause the product license to expire. It is your responsibility to contact Acumatica regarding any potential expiration that you deem inappropriate. Acumatica is not liable for any damages or costs incurred in connection with the expiring licenses.

**2.3. Proprietary Rights to Software and Trademarks.** You acknowledge that the Software and the Documentation are proprietary to Acumatica, and the Software and Documentation are protected under United States copyright law and international treaties. You further acknowledge and agree that, as between you and Acumatica, Acumatica owns and shall continue to own all right, title, and interest in and to the Software and Documentation, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws. This Agreement does not grant you any ownership interest in or to the Software or the Documentation, but only a limited right of use that is revocable in accordance with the terms of this Agreement. Any and all trademarks or service marks that Acumatica uses in connection with the Software or with services rendered by Acumatica are marks owned by Acumatica. This Agreement does not grant you any right, license, or interest in such marks, and you shall not assert any right, license, or interest in such marks or any words or designs that are confusingly similar to such marks.

**2.4. Restrictions on Use of the Software and License Keys.** You shall permit only authorized users, who possess rightfully, obtained license keys, to use the Software or to view the Documentation. Except as expressly authorized by this Agreement, you shall not make available the Software, Documentation, or any license key to any third party. You will use your best efforts to

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### **3. License Fees**

The Software will be available to you for use upon your receipt of one or more license keys. Upon acceptance of this Agreement, you may obtain one or more license keys by paying the requisite license fees, using the procedure set forth on Acumatica's ([www.acumatica.com](http://www.acumatica.com)) web site. The license fees paid by you are paid in consideration of the license granted under this Agreement. Acumatica does not refund license fees. By accepting this Agreement you fully understand that once license fee payment is made to Acumatica you will have no recourse for receiving a refund of any part of the fees.

### **4. Term and Termination**

This Agreement is effective upon your acceptance of the Agreement, or upon your downloading, accessing, and using the Software, even if you have not expressly accepted this Agreement. This Agreement shall continue in effect until terminated. Without prejudice to any other rights, this Agreement will terminate automatically if you fail to comply with any of the limitations or other requirements described herein. If you are leasing the Software, and fail to pay the applicable license fees, Acumatica shall have the right to disable the Software. You may terminate this License Agreement at any time by: (i) providing written notice of your decision to terminate the Agreement to Acumatica, and (ii) either returning the Software, Documentation, all copies thereof, and all license keys that you have obtained to Acumatica or destroying all such materials and providing written verification of such destruction to Acumatica. Acumatica may terminate this Agreement if you breach any term of the Agreement by giving you written notice of your breach and Acumatica's decision to terminate the Agreement. Upon termination of this Agreement by Acumatica, you agree to either return to Acumatica the Software, Documentation, all copies thereof, and all license keys that you have obtained, or to destroy all such materials and provide written verification of such destruction to Acumatica.

### **5. Remedies, Indemnification**

**5.1.** Acumatica will, at its expense, indemnify and hold you harmless against any claims made by an unaffiliated third party that the Software infringes its patent, copyright or trademark or misappropriates its trade secret; provided (i) you notify Acumatica, in writing, not later than 20 days after you receive notice of the claim, (ii) you give Acumatica sole control of the defense and any settlement negotiations, and (iii) you cooperate with Acumatica in defending against or settling the claim. Acumatica's obligation of indemnification will not apply to the extent that the claim is based on (i) your use of the Software after Acumatica notifies you to discontinue use due to such a claim; (ii) your combining the Software with non-Acumatica product, data or business process including third party add-ons or programs; (iii) damages attributable to the value of the use of a non-Acumatica product, data or business process; (iv) your altering or modifying the Software, including any modifications by third parties; or (v) your use of the Software in violation of this Agreement. You will

reimburse us for any costs or damages that result from these actions. If Acumatica receives information concerning an infringement or misappropriation claim related to the Software, Acumatica may, at its expense and without obligation to do so, either (i) procure for you the right to continue to run the Software or (ii) modify the Software or replace it with a functional equivalent, to make it non-infringing, in which case you will stop using the allegedly infringing Software immediately. If, as a result of an infringement or misappropriation claim, your use of the Software is enjoined by a court of competent jurisdiction, Acumatica will, at its option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license granted in this Agreement. This Section 5.1 constitutes your exclusive remedy for third party infringement and trade secret misappropriation claims.

**5.2.** You will, at your own expense, indemnify and hold Acumatica, and its subsidiaries and affiliates, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including reasonable attorneys' fees (collectively, "Claims"), arising out of any use of the Software by you, any party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this Agreement.

## **6. Limited Warranties; Disclaimer**

**6.1 Limited Warranties.** Acumatica warrants to you that (i) the Software (including updates) will perform in all material respects as described in the Documentation, provided that, problems caused by your acts or failures to act, or caused by software or hardware not provided by Acumatica shall be excluded; and (ii) the Software (including updates) is and will be free of malicious code (software designed to intentionally infiltrate or damage a computer system without the owner's consent) and malware (software intended to disrupt computer operation, gather sensitive data, or gain access to computer systems, including, without limitation, viruses, worms, Trojan horses, root kits, spyware and adware). This limited warranty covers the Software for a period of six (6) months after acquired by you. If you receive updates to the Software, this limited warranty covers the update to the Software for thirty (30) days or the balance of the original 6 month warranty period, whichever is longer.

**6.2 Exclusive Remedies.** In the event of any breach of the limited warranty in Section 6.1(i), Acumatica will use reasonable effort, at its expense, to make available to you corrections sufficient to eliminate any demonstrable breaches within thirty (30) days of notice of the breach. In the event of any breach of the warranty in Section 6.1(ii), Acumatica will promptly cure, at its expense, the breach. If Acumatica fails to provide the remedies specified in this Section within a reasonable period of time, but in no event more than thirty (30) days of notice of the breach, you may elect, as your exclusive remedy, to terminate the license and return the Software and receive a refund of the license fees paid by you for the Software.

**6.3 Purchase of License From Third Parties.** If you obtained the Software from a third party (such as a reseller), you must report breaches of the limited warranties specified in Section 6.1 to the third party, and the remedies specified in Section 6.2 shall be provided to you by the third party, and not directly by Acumatica.

**6.4 Disclaimers.** EXCEPT AS PROVIDED IN THIS SECTION 6, ACUMATICA DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE EXTENT AUTHORIZED BY LAW. WITHOUT LIMITING THE FOREGOING, ACUMATICA EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE. YOU ASSUME RESPONSIBILITY FOR SELECTING THE SOFTWARE TO ACHIEVE YOUR INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM YOUR USE OF THE SOFTWARE. YOU SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SOFTWARE.

## **7. Limitation of 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, INCLUDING WITHOUT LIMITATION ACUMATICA'S INTELLECTUAL PROPERTY INDEMNIFICATION OBLIGATIONS, SHALL BE LIMITED TO THE AMOUNT OF LICENSE FEES PAID TO ACUMATICA BY YOU UNDER THIS AGREEMENT, BUT IN NO EVENT SUCH LIABILITY SHALL EXCEED US\$10,000 IN THE AGGREGATE FOR ALL OCCURRENCES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION, AND OTHER TORTS. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OR LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **8. General Terms**

**8.1. Governing Law and Choice of Forum.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Washington, without regard to the conflicts of law rules thereof.

**8.2. 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 of enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation.

**8.3. Survival.** Articles 2, 5, 6, 7, and 8 of this Agreement and all Sections thereof, shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

**8.4. Headings.** The Article and Section headings contained in this Agreement are incorporated for reference purposes only and shall not affect the meaning or interpretation of this Agreement.



**8.5. No Waiver.** The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

**8.6. Right To Use Name.** Unless you provide Acumatica with written notice to the contrary, you give Acumatica the right to use your name in print, on-line, and in other multimedia advertising and marketing materials for the purpose of disclosing that you are a customer of Acumatica.

**8.7. Amendment.** Acumatica reserves the right, in its sole discretion, to amend this Agreement from time to time to conform to the most recent version of Acumatica's End User License Agreement. Any amendment is effective sixty (60) days after the most current version of Acumatica's End User License Agreement is posted at <http://www.acumatica.com/agreements> . You are responsible for regularly reviewing the terms and conditions of Acumatica's End User License Agreement. Your continued use of the Software 60 days after the most current version of Acumatica's End User License Agreement is posted at [www.acumatica.com](http://www.acumatica.com) shall be conclusively deemed an acceptance of the amended Agreement. Should you not agree to the terms and conditions of the amended Agreement, your sole remedy is to terminate this Agreement.

**8.8. Taxes.** You shall, in addition to the license fees required under this Agreement, pay all applicable sales, use, transfer, or other taxes and all duties, whether national, state, or local, however designated, that are levied or imposed by reason of the transaction contemplated under this Agreement, excluding income taxes on the net profits of Acumatica. You shall reimburse Acumatica for the amount of any such taxes or duties paid or incurred directly by Acumatica as a result of this transaction.

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