

## Acumatica

### Subscription SaaS Services Agreement

**THIS SUBSCRIPTION SERVICES AGREEMENT (THE “AGREEMENT”) IS A LEGAL CONTRACT BETWEEN YOU (SOMETIMES REFERRED TO AS “SUBSCRIBER”) AND ACUMATICA (AS DEFINED BELOW) GOVERNING YOUR USE OF ALL SERVICES OUTLINED IN THIS AGREEMENT. ACUMATICA IS UNWILLING TO AUTHORIZE YOUR USE OF THE SERVICES PROVIDED HEREIN EXCEPT ON THE TERMS CONTAINED IN THIS AGREEMENT. YOUR USE OF ANY OF THE SERVICES SHALL CONSTITUTE AN ACCEPTANCE BY YOU OF THE TERMS OF THIS AGREEMENT. IF YOU DO NOT WISH TO AGREE TO THE TERMS OF THIS AGREEMENT, DISCONTINUE ALL USE OF THE SERVICES.**

**THIS AGREEMENT IS THE COMPLETE AND EXCLUSIVE STATEMENT OF ACUMATICA’S OBLIGATIONS AND RESPONSIBILITIES TO YOU, AS USER OF THE SERVICES, AND SUPERSEDES ANY OTHER PROPOSAL, REPRESENTATION, OR OTHER COMMUNICATION BY OR ON BEHALF OF ACUMATICA RELATING TO THE SUBJECT.**

**THIS AGREEMENT CONTAINS DISCLAIMERS OF WARRANTIES (see Section 5), EXCLUSIVE REMEDIES (see Section 5), AND LIMITATIONS ON LIABILITIES (see Section 7), ALL OF WHICH FORM AN ESSENTIAL BASIS OF THIS AGREEMENT.**

Acumatica and Subscriber may each be referred to herein as a “Party” or collectively as “Parties”.

Acumatica provides a subscription service to which Subscriber intends to subscribe. This Agreement sets forth the terms pursuant to which Subscriber will be permitted access to Acumatica’s web-based services. The Parties agree as follows:

#### **1. Provision of Service.**

**1.1 Acumatica Obligations.** During the Term of this Agreement, Acumatica shall: (i) make the Service available to Subscriber in accordance with the Documentation, the SLA and pursuant to the terms of this Agreement; (ii) not use Subscriber Data except to provide the Service to Authorized Parties, or to prevent or address service or technical problems, verify Service Improvements, in accordance with this Agreement and the Documentation, or in accordance with Subscriber’s instructions; and (iii) not disclose Subscriber Data to anyone other than Authorized Parties in accordance with this Agreement. Acumatica reserves the right to deny access to the Service to anyone at any time in the event that Acumatica, in good faith, believes it is necessary for purposes of ensuring Subscriber’s compliance with this Agreement or to protect the rights, property, and interests of Acumatica, its Affiliates, service providers and licensors.

**1.2 Subscriber Obligations.** Subscriber may enable access of the Service for use only by Authorized Parties solely for the internal business purposes of Subscriber in accordance with the terms of this Agreement and the Documentation and not for the benefit of any third parties. Subscriber is responsible for all Authorized Party use of the Service and compliance with this Agreement. Subscriber shall: (a) have sole responsibility for the evaluation, selection and for the results obtained from the

Service; (b) comply with all rules and regulations relating to the Services in the Documentation or sent to Subscriber by email or other electronic means as they may be amended from time to time; (c) have sole responsibility for the accuracy, quality, and legality of all Subscriber Data; and (d) take commercially reasonable efforts to prevent unauthorized access to, or use of, the Service, notify Acumatica promptly of any such unauthorized access or use, and cooperate with and assist Acumatica in identifying and preventing any unauthorized use, copying, or disclosure of the Services, the Documentation, or any portion thereof. Subscriber shall not: (i) use the Service in violation of applicable Laws or in such a manner as is likely to harm Acumatica, its Affiliates, service providers, licensors and/or suppliers; (ii) in connection with the Service, send or store infringing, obscene, threatening, or otherwise unlawful or tortious material, including material that violates privacy rights; (iii) send or store Malicious Code in connection with the Service; (iv) interfere with or disrupt performance of the Service or the data contained therein; or (v) attempt to breach the security of the Services, or access or attempt to access data belonging to third parties; (vi) attempt to gain access to the Service or its related systems or networks in a manner not set forth in this Agreement or the Documentation. Subscriber shall provide Acumatica a maximum number of named contacts to request and receive support services from Acumatica ("**Named Support Contacts**"). Named Support Contacts must be trained on the Acumatica product(s) for which they initiate support requests. Subscriber shall be liable for the acts and omissions of all Authorized Parties and Subscriber Affiliates relating to this Agreement.

## **2. Proprietary Rights.**

**2.1 Ownership and Reservation of Rights to Acumatica Intellectual Property.** Acumatica and its licensors own all right, title and interest in and to the Service, Documentation, and other Acumatica Intellectual Property Rights. Subject to the limited rights expressly granted hereunder, Acumatica reserves all rights, title and interest in and to the Service, and Documentation, including all related Intellectual Property Rights. No rights are granted to Subscriber hereunder other than as expressly set forth herein.

**2.2 Access to and Use of Content.** Subscriber has the right to access and use the Service and Documentation subject to the terms of this Agreement and the Documentation.

**2.3 Restrictions.** Subscriber shall not (i) modify or copy the Service or Documentation or create any derivative works based on the Service or Documentation; (ii) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, offer in a service bureau, or otherwise make the Service or Documentation available to any third party, other than to Authorized Parties as permitted herein; (iii) reverse engineer or decompile any portion of the Service or Documentation, including but not limited to, any software utilized by Acumatica in the provision of the Service and Documentation; (iv) access the Service or Documentation in order to build any commercially available product or service; or (v) copy any features, functions, integrations, interfaces or graphics of the Service or Documentation.

**2.4 Ownership of Subscriber Data.** As between Acumatica and Subscriber, Subscriber owns its Subscriber Data.

**2.5 License to Host Subscriber Data and Applications.** Subscriber grants, Acumatica and its Affiliates and applicable contractors a worldwide, limited-term license to host, copy, store, record, transmit, display, view or otherwise use Subscriber Data, as reasonably necessary for Acumatica to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein to Acumatica, Acumatica acquires no right, title or interest from Subscriber or Subscriber's licensors under this Agreement in or to any of Subscriber Data.

**2.6 Subscriber Input.** Acumatica shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Service any Subscriber Input. Acumatica shall have no obligation to make Subscriber Input an Improvement. Subscriber shall have no obligation to provide Subscriber Input.

**2.7 Aggregated Statistical Information.** Acumatica owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "Aggregated Statistical Information"). Nothing herein shall be construed as prohibiting Acumatica from utilizing the Aggregated Statistical Information for purposes of operating Acumatica's business, provided that Acumatica's use of Aggregated Statistical Information will not reveal the identity of Subscriber or its Personal Data to any third party.

**2.8 Injunctive Relief.** The Parties acknowledge that, in the event of a breach of any of the provisions of this Section, the non-breaching Party will not have an adequate remedy at law. The non-breaching Party shall, therefore, be entitled to obtain an injunction against such breach from any court of competent jurisdiction immediately upon request. The non-breaching Party's right to obtain injunctive relief shall not limit its right to seek further remedies.

### **3. Confidentiality.**

**3.1 Confidentiality.** A Party shall not disclose or use any Confidential Information of the other Party except as reasonably necessary to perform its obligations or exercise its rights pursuant to this Agreement except with the other Party's prior written permission.

**3.2 Protection.** Each Party agrees to protect the Confidential Information of the other Party in the same manner that it protects its own Confidential Information of like kind, but in no event using less than a reasonable standard of care.

**3.3 Compelled Disclosure.** A disclosure by one Party of Confidential Information of the other Party to the extent required by Law shall not be considered a breach of this Agreement, provided the Party so compelled promptly provides the other Party with prior notice of such compelled disclosure (to the extent legally permitted) and provides reasonable assistance, at the other Party's cost, if the other Party wishes to contest the disclosure.

**3.4 Remedies.** If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of confidentiality protections hereunder, the other Party shall have the right, in addition to any other remedies available, to injunctive relief to enjoin such acts, it being acknowledged by the Parties that any other available remedies are inadequate.

**3.5 Exclusions.** Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to the other Party; (ii) was known to a Party prior to its disclosure by the other Party without breach of any obligation owed to the other Party; (iii) was independently developed by a Party without breach of any obligation owed to the other Party; or (iv) is received from a third party without breach of any obligation owed to the other Party. Subscriber Data shall not be subject to the exclusions set forth in this Section.

#### **4. Subscriber Data.**

**4.1 Privacy and Security.** Acumatica has taken reasonable actions, including encryption and firewalls, to ensure that Subscriber Data is disclosed only to Authorized Parties. However, Subscriber acknowledges that the Internet is an open system and Acumatica cannot and does not warrant or guarantee that Subscriber Data will not be intercepted by third parties. Acumatica disclaims any liability for interception of any Subscriber Data or electronic communications. Notwithstanding the first sentence in this Section, Acumatica may disclose information submitted by Subscriber to Acumatica if required by law or in the event that Acumatica, in good faith, believes disclosure is necessary to (i) comply with legal process, or (ii) protect the rights or property of Acumatica, its Affiliates, licensors or others. Acumatica does not sell or rent Personal Data to third parties for their marketing purposes without Subscriber's explicit consent and Acumatica only uses Subscriber information as described in the Privacy Statement. For more information on Acumatica's Privacy Statement, see the Privacy Statement posted on [www.acumatica.com](http://www.acumatica.com). If Subscriber objects to Subscriber information being used in the manner set forth in the Privacy Statement, Subscriber should discontinue use of the Service.

**4.2 Ownership.** As between Subscriber and Acumatica, Subscriber is the owner of all Subscriber Data. Upon termination of this Agreement, all Subscriber Data retained by Acumatica in the system database files shall be made available to Subscriber for a period of 10 days after the termination of this Agreement. Thereafter, all of Subscriber Data retained by Acumatica in the system database files shall be made available to Subscriber only upon remittance to Acumatica of a reasonable fee to cover the servicing and handling of Subscriber Data.

**4.3 Use of Subscriber Data.** Notwithstanding Section 4.2, Subscriber acknowledges and agrees that it is Acumatica's practice to make backup copies of the Subscriber Data. Subscriber acknowledges and agrees that Acumatica may store and maintain Subscriber Data for such period of time as it deems necessary. Subject to the terms and conditions of this Agreement, Subscriber grants Acumatica a limited, non-exclusive, non-transferable license to copy, store, record, transmit, display, view, print, or otherwise use Subscriber Data to the extent necessary to perform its services pursuant to this Agreement. Subscriber agrees that the license to store and maintain Subscriber Data shall survive the termination of this Agreement.

**4.4 Limitations on Use.** Acumatica shall maintain in confidence and shall not disclose to any third party Subscriber Data, and Acumatica agrees that Subscriber Data will not be used by Acumatica for any purposes other than the provision of Services and as provided in the Acumatica's Privacy Statement.

**4.5 Acumatica Remediation of Certain Unauthorized Disclosures.** In the event that any unauthorized access to or acquisition of Personal Data is caused by Acumatica's breach of its security and/or privacy obligations under this Agreement, Acumatica shall pay the reasonable and documented costs incurred by Subscriber in connection with the following items: (a) costs of any required forensic investigation to determine the cause of the breach, (b) providing notification of the security breach to applicable government and relevant industry self-regulatory agencies, to the media (if required by applicable Law) and to individuals whose Personal Data may have been accessed or acquired, (c) providing credit monitoring service to individuals whose Personal Data may have been accessed or acquired for a period of one year after the date on which such individuals were notified of the unauthorized access or acquisition for such individuals who elected such credit monitoring service, and (d) operating a call center to respond to questions from individuals whose Personal Data may have been accessed or acquired for a period of one year after the date on which such individuals were notified of the unauthorized access or acquisition. NOTWITHSTANDING THE FOREGOING, OR ANYTHING IN THE AGREEMENT TO THE CONTRARY, ACUMATICA SHALL HAVE NO RESPONSIBILITY TO PAY COSTS OF REMEDIATION THAT ARE DUE TO RECKLESS MISCONDUCT, GROSS NEGLIGENCE, WILLFUL MISCONDUCT AND/OR FRAUD BY SUBSCRIBER OR ITS EMPLOYEES, AGENTS OR CONTRACTORS.

## **5. Limited Warranties; Disclaimer of Warranties.**

**5.1 Service Limited Warranty; Exclusive Remedy.** Acumatica warrants to Subscriber that the performance and functionality of the Service, in all material respects, meet the specifications set forth in the Documentation. Acumatica does not warrant that the Service will be error-free. Subscriber's sole and exclusive remedy for Acumatica's breach of this limited warranty shall be that Acumatica shall use commercially reasonable efforts to modify the Service to meet the performance and functionality specifications, in all material respects, described in the Documentation, and if Acumatica is unable to restore such performance and functionality, Subscriber shall be entitled to terminate this Agreement and shall be entitled to receive a pro-rata refund of the Subscriber Service Fees paid for under this Agreement for Subscriber's use of the Service for the terminated portion of the Term. Acumatica shall have no obligation with respect to warranty claim unless notified of such claim within sixty (60) days of the first instance of any material performance and/or functionality issue. Any notice required to be sent pursuant to this Section 5.1 must be sent to Attn: Legal Department, Acumatica, 11235 SE 6th, Suite 140, Bellevue, WA 98004, USA.

**5.2 Service Level Limited Warranty; Exclusive Remedy.** Acumatica warrants to Subscriber that the Service will meet the service level specified in the "Service Level Commitment" listed on Schedule1 attached hereto, which is hereby incorporated by reference. In the event that Acumatica fails to achieve the applicable service level in any month. Subscriber will be entitled, as Subscriber's sole and exclusive remedy, to a credit in accordance with the Service Level Commitment. Subscriber agrees that Acumatica's system logs and other records shall be used for calculating any service level events.

**5.3 No Virus Warranty.** Acumatica warrants that the Service shall be free of Malicious Code.

**5.4 Security, Data And Backup Warranty.** Acumatica warrants to Subscriber that Acumatica will use commercially reasonable efforts to safeguard and accurately maintain Subscriber Data, consistent with industry security standards and backup procedures. In the event of a breach of this Section, Acumatica shall use commercially reasonable efforts to correct Subscriber Data or restore Subscriber Data as quickly as possible but in any case not to exceed three (3) business days.

**5.5 Warranty of Title.** Acumatica warrants to Subscriber that Acumatica is the owner of the Service or otherwise has the right to provide the Service to Subscriber as set forth in this Agreement without violating any proprietary rights of any third parties.

**5.6 Disclaimer.** EXCEPT AS PROVIDED IN THIS SECTION 5, ACUMATICA DISCLAIMS, TO THE EXTENT AUTHORIZED BY LAW, ANY AND ALL WARRANTIES, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, (i) WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR WORKMANLIKE EFFORT; (ii) WARRANTIES ARISING THROUGH COURSE OF DEALINGS OR USAGE OF TRADE; AND (iii) WARRANTIES THAT THE SERVICE WILL BE ERROR FREE. WITHOUT LIMITING THE FOREGOING, ACUMATICA EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SERVICE WILL MEET SUBSCRIBER'S REQUIREMENTS. SUBSCRIBER ASSUMES RESPONSIBILITY FOR SELECTING THE SERVICE TO ACHIEVE SUBSCRIBER'S INTENDED RESULTS, AND FOR THE RESULTS OBTAINED FROM SUBSCRIBER'S USE OF THE SERVICE. SUBSCRIBER SHALL BEAR THE ENTIRE RISK AS TO THE QUALITY AND THE PERFORMANCE OF THE SERVICE. THIS DISCLAIMER APPLIES TO ANY EXPENSES, DAMAGES OR INJURY, REGARDLESS OF THE CAUSE, WHETHER FOR BREACH OF CONTRACT, STRICT LIABILITY, TORTUOUS BEHAVIOR, NEGLIGENCE, OR FOR ANY OTHER CAUSE OF ACTION.

**5.7 No Other Warranties.** NO ADVICE OR INFORMATION PROVIDED BY ACUMATICA SHALL CREATE ANY WARRANTY.

## **6. Indemnification.**

**6.1 By Acumatica.** Acumatica will, at its expense, indemnify and hold Subscriber harmless against any claims made by an unaffiliated third party that the Service infringes its Intellectual Property Rights; provided (i) Subscriber notifies Acumatica, in writing, not later than 20 days after Subscriber receives notice of the claim, (ii) Subscriber gives Acumatica sole control of the defense and any settlement negotiations, and (iii) Subscriber cooperates 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) Subscriber's use of the Service after Acumatica notifies Subscriber to discontinue use due to such a claim; (ii) Subscriber's combining the Service with non-Acumatica service, 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 service, product, data or business process; (iv) Subscriber's altering or modifying the Service, including any modifications by third parties; or (v) Subscriber's use of the Service in violation of this Agreement. Subscriber will reimburse Acumatica for any costs or damages that result from these actions. If Acumatica receives information concerning an infringement or misappropriation claim related to the Service, Acumatica may, at its expense and without obligation to do so, either (i) procure

for Subscriber the right to continue to use the Service, or (ii) modify the Service with a functional equivalent, to make it non-infringing. If, as a result of an infringement or misappropriation claim, Subscriber's use of the Service 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 this Agreement. This Section 6.1 constitutes Subscriber's exclusive remedy for third party infringement and trade secret misappropriation claims.

**6.2 By Subscriber.** Subscriber hereby agrees to indemnify, defend and hold harmless Acumatica from and against any and all claims, proceedings, damages, liability and costs (including reasonable attorneys' fees) incurred by Acumatica in connection with any claim arising out of (i) any breach or alleged breach of any of Subscriber's obligations set forth herein, and (ii) Subscriber's use of the Service, or the use by any party related to Subscriber, or any party acting upon Subscriber's authorization in a manner that is not expressly authorized by this Agreement, regardless of the type or nature of the claim. Subscriber shall cooperate as fully as reasonably required in the defense of any claim. Acumatica reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by Subscriber and Subscriber shall not in any event settle any matter without the written consent of Acumatica.

## **7. Limitation of Liability.**

**7.1 Limitation of Liability.** 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 (INCLUDING DAMAGES FOR BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR SIMILAR LOSSES), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION ON LIABILITY SET FORTH IN THIS SECTION 7.1 IS INDEPENDENT OF SUBSCRIBER'S EXCLUSIVE REMEDY AND SURVIVES IN THE EVENT SUCH REMEDY IS DEEMED UNENFORCEABLE.

**7.2 Limitation on Damages.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT FOR A BREACH OF SECTION 2.4, 3, 4.5 OR 6.1, ACUMATICA'S CUMULATIVE LIABILITY TO SUBSCRIBER OR ANY PARTY RELATED TO SUBSCRIBER 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 SUBSCRIPTION SERVICE FEES RECEIVED BY ACUMATICA FOR SUBSCRIBER'S SUBSCRIPTION UNDER THIS AGREEMENT IN THE PREVIOUS SIX MONTHS, AGGREGATE FOR ALL OCCURENCES. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION OR CLAIMS IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, AND OTHER TORTS.

**7.3 Application of Limitations.** 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.

**7.4 No third Party Representations or Warranties.** No third party is authorized by Acumatica to make any representation or warranty to Subscriber regarding the Service.

## **8. Term; Termination.**

**8.1 Term of Agreement.** This Agreement is effective upon Subscriber's acceptance of this Agreement, or upon Subscriber's accessing, and using the Service, even if Subscriber has not expressly accepted this Agreement. This Agreement will automatically renew for an additional term equivalent to the initial term unless notice is provided at least sixty (60) days in advance of service term expiration.

**8.2 Termination.** Either Party may terminate this Agreement: (i) upon thirty (30) days prior written notice to the other Party of a material breach by the other Party if such breach remains uncured at the expiration of such notice period; or (ii) immediately in the event the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Acumatica may terminate this Agreement upon fifteen (15) days prior written notice to Subscriber if Subscriber fails to pay the fees for the Service and does not cure such failure within the 15 day notice period. Upon any termination by Subscriber pursuant to this section, Acumatica shall refund Subscriber any prepaid fees for the affected Service that were to be provided after the effective date of termination.

**8.3 Effect of Termination.** Upon any termination of this Agreement, Subscriber shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the applicable Service and Acumatica Confidential Information. Termination for any reason shall not relieve Subscriber of the obligation to pay any fees accrued or due and payable to Acumatica prior to the effective date of termination and termination for any reason other than for uncured material breach by Acumatica shall not relieve Subscriber of the obligation to pay all future amounts due.

**8.4 Surviving Provisions.** The following provisions of this Agreement shall survive the termination of this Agreement; Sections 2.1, 2.3, 2.4, 2.6, 2.7, 3, 4, 5, 6, 7, 8.3, 8.4 and 9.

## **9. General Provisions.**

**9.1 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.

**9.2 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) the second business day after sending by facsimile with telephonic confirmation of receipt. Notices to Acumatica shall be addressed to the attention of its legal department. Notices to Subscriber shall be addressed to Subscriber's signatory of this Agreement. Each Party may modify its recipient of notices by providing notice pursuant to this Agreement.

**9.3 Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly



stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**9.4 Force Majeure.** Except for Subscriber's 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 Subscriber employees, respectively). Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

**9.5 Assignment.** Neither Party may assign any of its rights or obligations hereunder, 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 due fees are paid in full. In no event shall Subscriber have the right to assign this Agreement to a direct Competitor of Acumatica. 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.

**9.6 Governing Law; Waiver of Jury Trial.** 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, Subscriber hereby consent to the jurisdiction and venue of such courts and waive any objections to the jurisdiction or venue of such courts. Subscriber 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 hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement. Subscriber agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Service or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

**9.7 Export.** Each Party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Service. Without limiting the generality of the foregoing, Subscriber shall not make the Service available to any person or entity that: (i) is located in a country that is subject to a U.S. government embargo; (ii) is listed on any U.S. government list of prohibited or restricted parties; or (iii) is engaged in activities directly or indirectly related to the proliferation of weapons of mass destruction.

**9.8 Federal Government End Use Provisions (if applicable).** Acumatica provides the Service, including related software and technology, for federal government end use solely in accordance with the following: Government technical data and software rights related to the Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202.3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a “need for” right not conveyed under these terms, it must negotiate with Acumatica to determine whether there are acceptable terms for transferring additional rights. A mutually acceptable addendum specifically conveying such rights must be executed by the parties in order to convey such rights beyond those set forth herein.

**9.9 Use of Subscriber’s Name.** Unless Subscriber provides Acumatica with written notice to the contrary, Subscriber gives Acumatica the right to use Subscriber’s name in print, on-line, and in other multimedia advertising and marketing materials for the purpose of disclosing that Subscriber is a customer of Acumatica.

**9.10 Miscellaneous.** This Agreement, including all schedules and exhibits hereto, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Subscriber purchase order or in any other Subscriber order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

## **10. Definitions.**

**“Acumatica”** means Acumatica, Inc., a Delaware corporation, and its Affiliates.

**“Affiliate”** means any entity which directly or indirectly controls, is controlled by, or is under common control by either Party. For purposes of the preceding sentence, "control" means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

**“Agreement”** means this Subscription Services Agreement, including the Acumatica Service Level Commitment (the “SLA”) (as may be updated from time to time), any schedules or exhibits hereto.

**"Authorized Parties"** means Subscriber’s or an authorized Affiliate’s Employees and third party providers authorized to access Subscriber’s Tenants and/or to receive Subscriber Data by Subscriber (i)

in writing, (ii) through the Service's security designation, or (iii) by system integration or other data exchange process.

**"Competitor"** means any entity that may be reasonably construed as offering competitive functionality or services to those offered by Acumatica.

**"Confidential Information"** means (a) any software utilized by Acumatica in the provision of the Service and its respective source code; (b) Subscriber Data; (c) the Documentation; (d) each Party's business or technical information, including but not limited to training materials, any information relating to software plans, designs, costs, prices and names, finances, marketing plans, business opportunities, personnel, research, development or know-how that is designated by the disclosing Party as "confidential" or "proprietary" or the receiving Party knows or should reasonably know is confidential or proprietary; and (e) the terms, conditions and pricing of this Agreement (but not its existence or parties).

**"Documentation"** means Acumatica's electronic and hardcopy user guide for the Service, which may be updated by Acumatica from time to time.

**"Employee"** or **"Worker"** means employees, consultants, contingent workers, independent contractors, and retirees of Subscriber and its Affiliates whose business record(s) are or may be managed by the Service and for which a subscription to the Service has been purchased.

**"Improvements"** means all improvements, updates, enhancements, error corrections, bug fixes, release notes, upgrades and changes to the Service and Documentation, as developed by Acumatica and made generally available for Production use without a separate charge to Subscribers.

**"Intellectual Property Rights"** means any and all common law, statutory and other industrial property rights and intellectual property rights, including copyrights, trademarks, trade secrets, patents and other proprietary rights issued, honored or enforceable under any applicable laws anywhere in the world, and all moral rights related thereto.

**"Law"** means any local, state, national and/or foreign law, treaties, and/or regulations applicable to a respective Party.

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other malicious code, files, scripts, agents or programs.

**"Personal Data"** means any information that is related to an identified or identifiable individual and has been provided by Subscriber or its Affiliates as Subscriber Data within the Service to enable Acumatica to process the data on Subscriber's behalf.

**"Production"** means the Subscriber's or an Employee's use of or Acumatica's written verification of the availability of the Service (i) to administer Employees; (ii) to generate data for Subscriber's books/records; or (iii) in any decision support capacity.

**“Security Breach”** means (i) any actual or reasonably suspected unauthorized use of, loss of, access to or disclosure of, Subscriber Data; provided that an incidental disclosure of Subscriber Data to an Authorized Party or Acumatica, or incidental access to Subscriber Data by an Authorized Party or Acumatica, where no reasonable suspicion exists that such disclosure or access involves theft, or is fraudulent, criminal or malicious in nature, shall not be considered a “Security Breach” for purposes of this definition, unless such incidental disclosure or incidental access triggers a notification obligation under any applicable Law and (ii) any security breach (or substantially similar term) as defined by applicable Law.

**"Service"** means Acumatica’s software-as-a-service (“SaaS”) applications performed by Acumatica as a subscription service as described in the Documentation.

**“SLA”** means the *Service Level Commitment*, attached as Schedule 1, which may be updated by Acumatica from time to time. No update shall materially diminish Acumatica’s responsibilities under the Service Level Commitment.

**"Subscriber Data"** means the electronic data or information submitted by Subscriber or Authorized Parties to the Service.

**“Subscriber Input”** means suggestions, enhancement requests, recommendations or other feedback provided by Subscriber, its Employees and Authorized Parties relating to the operation or functionality of the Service.

**“Subscription Service Fees”** means all amounts invoiced and payable by Subscriber for the Service.

**"Tenant"** means a unique instance of the Service, with a separate set of Subscriber data held by Acumatica in a logically separated database (i.e., a database segregated through password-controlled access).

**“Term”** has the meaning set forth in Section 8.1.

## Schedule 1 – SERVICE LEVEL COMMITMENT

### Service Commitment

Acumatica will use commercially reasonable efforts to make Service Instances (defined below) available with a Monthly Uptime Percentage (defined below) of at least 99.5% during any month of the year (the "Service Commitment"). In the event Acumatica does not meet the Monthly Uptime Percentage commitment, you will be eligible to receive a Service Credit as described below.

### Definitions

- "Monthly Uptime Percentage" for a given service instance is calculated by subtracting from 100% the percentage of 1 minute periods during the month in which the service instance was "Unavailable". If you have been running that service instance for only part of the month, your Service Instance is assumed to be 100% available for the portion of the month that it was not running. Monthly Uptime Percentage measurements exclude downtime resulting directly or indirectly from any Acumatica SLA Exclusion (defined below).
- "Service Instance" means an Acumatica SaaS service instance.
- "Unavailable" means that all connection requests to the running service instance fail during a 1 minute period.
- A "Service Credit" is a dollar credit, calculated as set forth below, that Acumatica may credit to an eligible account.

### Service Credits

Service Credits are calculated as a percentage of the value of the service for the month, based on current list price, in which Acumatica SaaS did not meet the Monthly Uptime Percentage commitment.

Monthly Uptime Percentage	Service Credit Percentage (per month)
Less than 99.5% but equal to or greater than 99.0%	10%
Less than 99.0%	20%

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Service Credits will not entitle you to any refund or other payment you may owe to Acumatica or an Acumatica provider. A Service Credit will be applicable and issued only if the credit amount is greater than one United States Dollar (\$1 USD).

## Credit Request and Payment Procedures

To receive a Service Credit, you will need to submit a claim by sending an email to [sla@acumatica.com](mailto:sla@acumatica.com). To be eligible, the credit request must be received by us within 30 days of the occurrence of the incident and must include:

- i. the words "SLA Credit Request" in the subject line;
- ii. the dates and times of each Unavailability incident you are claiming;
- iii. the Acumatica URL of the affected service instances; and
- iv. your request logs or screen shots that document the errors and corroborate your claimed outage (any confidential or sensitive information in these logs should be removed or replaced with asterisks).

If the Monthly Uptime Percentage of such request is confirmed by us and is less than the Service Commitment, then Acumatica will issue the Service Credit to you within 90 days of your request. Your failure to provide the request and other information as required above will disqualify you from receiving a Service Credit.

## Acumatica SLA Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of Acumatica Services, or any other Acumatica performance issues:

- a) that result from a suspension due to non-payment of Subscription SaaS Services;
- b) caused by factors outside of our reasonable control, including any force majeure event or Internet access or related problems beyond the demarcation point of Acumatica and its providers;
- c) that result from any voluntary actions or inactions from you or any third party (e.g., snapshot restores, customization publishing, not scaling storage when the storage is close to full, misconfiguring security groups, VPC configurations or credential settings, etc.);
- d) that result from you not following the guidelines described in the Acumatica User Guide;
- e) that result in long recovery time due to insufficient resource capacity purchased for your database workload;
- f) that result from your equipment, software or other technology and/or third party equipment, software or other technology (other than third party equipment within our direct control); or
- g) that result from any regularly scheduled maintenance as provided for pursuant to the Agreement; or

- h) arising from our suspension and termination of your right to use Acumatica in accordance with the Agreement (collectively, the "Acumatica SLA Exclusions").

If availability is impacted by factors other than those explicitly used in our Monthly Uptime Percentage calculation, then Acumatica may issue a Service Credit considering such factors at our discretion.

This SLA applies separately to each account using Acumatica Services.