

## Acumatica Cloud ERP Subscription SaaS Agreement

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This Cloud ERP Subscription Software-as-a-Service (“SaaS”) Agreement (this “**Agreement**”) is an agreement between the individual or business entity obtaining the Service (as defined below) (“**you**”) and Acumatica, Inc. (“**Acumatica**”).

Acumatica provides a subscription service to which you intend to subscribe. This Agreement sets forth the terms pursuant to which you will be permitted access to the Service, and becomes effective upon the earlier of your first use of the Service or execution of the Acumatica Order Form. The Parties agree as follows:

### 1. Definitions.

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

“**Acumatica Order Form**” means the Acumatica Order Form you signed when you purchased the Service from your Authorized Acumatica Reseller or Acumatica.

“**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 Acumatica Cloud ERP Subscription SaaS Agreement, including the SLA (as may be updated from time to time), the Acumatica Data Processing Addendum which can be found at <https://www.acumatica.com/agreements/>, and any schedules or exhibits to this Agreement.

“**Authorized Acumatica Reseller**” means a business partner that has entered into a contractual relationship with Acumatica to sell Acumatica software licenses and services to end users.

“**Authorized Parties**” means you, yours or your authorized Affiliate’s Employees, yours or your authorized Affiliate’s third party providers, or your students (in case you are an educational institute), you authorize to access your Tenants and/or to receive Subscriber Data (i) in writing, (ii) through the Service’s security designation, or (iii) by system integration or other dataexchange process.

“**Confidential Information**” means all your and Acumatica’s information, material and data or any third party data (i) labeled or designated in writing as confidential or proprietary, (ii) which is verbal or otherwise intangible and the disclosing party advises the receiving party is proprietary or confidential or (iii) which, in view of the nature of such information and/or the circumstances of its disclosure the receiving party knows or reasonably should know is confidential or proprietary, including, but not limited to, software, information relating to financial data, plans, forecasts, intellectual property, methodologies, algorithms, agreements, market intelligence, technical concepts, customer information, strategic analyses and internal developments. Confidential Information does not include information (i) which is or becomes publicly known without any fault of or participation by the receiving party, (ii) was in receiving party’s possession prior to the time it was received from disclosing party or came into receiving party’s possession

thereafter, in each case lawfully obtained from a source other than disclosing party and not subject to any obligation of confidentiality or restriction on use, or (iii) is independently developed by the receiving party by persons not having exposure to disclosing party's Confidential Information.

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

**"User"** means your employees, consultants, contingent workers, students, independent contractors, and retirees and of your 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, bugfixes, hot fixes, changes, 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 you.

**"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.

**"Host," "Hosting," or "Hosted"** means the storing of software applications on a hosting provider's servers, allowing customers to access a software solution or application through the internet.

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

**"Licensing Guide"** which can be found at [www.acumatica.com/agreements](http://www.acumatica.com/agreements) provides guidance to help you answer questions on the Service and your use of the Service.

**"Malicious Code"** means viruses, worms, time bombs, Trojan horses, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another.

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

**"Production"** means the use by you, your Users or other Authorized Party to use the Service (i) to administer Users; (ii) to generate data for your 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 Law and (ii) any security breach (or substantially similar term) as defined by Law.

**"Service"** means Acumatica's software-as-a-service ("SaaS") applications delivered by Acumatica pursuant to the Acumatica Order Form.

**"SLA"** means the *Service Level Agreement*, 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 Agreement.

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

**"Subscriber Input"** means suggestions, enhancement requests, recommendations or other feedback provided by you, your Users and Authorized Parties relating to the operation or functionality of the Service.

**"Subscription Service Fees"** means all amounts invoiced and payable by you for the Service.

**"Supported Version of the Service"** means a version of the Service that is listed as a supported version of the Service in Acumatica's lifecycle policy. All versions of the Service are supported for at least 18 months after their initial release.

**"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 10.1.

**"Third Party Application"** means applications licensed or purchased from third parties which connect with, interoperate with, or Host any portion of the Service.

## **2. Provision of Service.**

**2.1 Acumatica Obligations.** During the Term of this Agreement, Acumatica shall: (i) make the Service available to you 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, or to verify Improvements to the Service, or in accordance with this Agreement and the Documentation, or in accordance with your 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 your compliance with this Agreement or to protect the rights, property, and interests of Acumatica, its Affiliates, service providers and licensors.

**2.2 Subscriber Obligations.** You may enable access of the Service for use only by Authorized Parties solely for your internal business purposes and those of your Affiliates in accordance with the terms of this Agreement and the Documentation and not for the benefit of

any third parties. You are responsible for all Authorized Party use of the Service and compliance with this Agreement. You 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 Service in the Documentation or sent to you 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, (d) be responsible for all electronic communications, including those containing business information, account registration, financial information, Subscriber Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service, and (e) 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 Service, the Documentation, or any portion of the Service or the Documentation. You shall not: (i) use the Service in violation of Law or in such a manner as is likely to harm Acumatica, its Affiliates, service providers, licensors, suppliers and/or customers, (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 related data, (v) attempt to breach the security of the Service, 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, or (vii) perform, or engage any third party to perform, authenticated or unauthenticated penetration testing, vulnerability assessments or other security assessments on the Service. You shall be liable for the acts and omissions of all of your Authorized Parties and Affiliates relating to this Agreement.

**2.3 Failure to Maintain Supported Version of the Service.** In the event you do not maintain a Supported Version of the Service, then you will be charged a premium upon renewal of the Service.

**2.4 Temporary Limited Service.** In the event Acumatica has made the Service available to you (i) to evaluate the Service, (ii) as an Acumatica Authorized Reseller, not for resale, (iii) as an institution of higher education, for use by staff and/or students, without Subscription Service Fees, or (iv) when otherwise no Subscription Service Fees are charged for use of the Service, then, subject to your compliance with the terms and conditions of this Agreement, Acumatica grants you access to use the Service solely for the purpose(s) agreed upon by Acumatica and you. The use of the service granted under this Section 2.4 shall be limited as follows: (a) you may use the Service only for the user counts, transaction volumes, and resource level utilization specifically authorized by Acumatica; (b) you may use the Service only for the purposes expressly authorized by Acumatica and subject to such further restrictions agreed upon by Acumatica and you; (c) the Service may be terminated by Acumatica upon ten (10) days written notice; (d) the Service is provided "As Is" without warranty of any kind, either express or implied, including, without limitation, the implied warranties or merchantability, fitness for a particular purpose; and (e) Sections 5.2, 5.5, 6, 8.1, 10.1 and 10.3, and Schedule 1 of this Agreement shall not apply.

**2.5 Use Reporting.** Acumatica reserves the right to gather data on usage of the Service to ensure that the Service is being used in accordance with the terms of this Agreement

and the type of Service purchased by you. The Service monitors user counts, transaction volumes, resource level utilization, License Key numbers, server IP addresses and other information. In the event (a) transaction volumes or resource level utilization of your database exceeds, for any three (3) months during the trailing twelve (12) month period, the transaction volumes or capacity, respectively, purchased by you, or (b) any other unauthorized use of the Service is discovered, it shall be considered a material breach of this Agreement. You agree not to block, electronically or otherwise, the transmission of data required for the monitoring of compliance with this Agreement. Any blocking of data required for compliance may result in immediate termination of this Agreement.

### **3. Proprietary Rights.**

#### **3.1 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 under this Agreement, 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 you other than as expressly set forth in this Agreement.

**3.2 Access to and Use of Content.** You and your Affiliates have the right to access and use the Service and Documentation subject to the terms of this Agreement and the Documentation.

**3.3 Restrictions.** You shall not; (i) modify or copy the Service or create any derivative works based on the Service, (ii) modify or copy the Documentation or create any derivative works based on the Documentation, except for internal training purposes, (iii) 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 by this Agreement, (iv) reverse engineer or decompile any portion of the Service, including but not limited to, any software utilized by Acumatica in the provision of the Service, (v) access the Service or Documentation in order to build any commercially available software product or service, or (vi) copy any features, functions, integrations, interfaces or graphics of the Service or Documentation.

**3.4 Ownership of Subscriber Data.** As between Acumatica and you, you own your Subscriber Data.

**3.5 License to Host Subscriber Data and Applications.** You grant 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 Service in accordance with this Agreement. Subject to the limited licenses granted in this Agreement to Acumatica, Acumatica acquires no right, title or interest from you or your licensors under this Agreement in or to any of Subscriber Data.

**3.6 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. You shall have no obligation to provide Subscriber Input.

**3.7 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 in this Agreement shall be construed as prohibiting Acumatica from utilizing the Aggregated Statistical Information for purposes of providing or improving the Service, benchmarking the Service performance, and preparing statistics and system metrics; provided, however, that Acumatica’s use of Aggregated Statistical Information will not reveal your identity or your Personal Data to any third party.

**3.8 Injunctive Relief.** The Parties acknowledge that, in the event of a breach of any of the provisions of this Section 3, 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.

#### **4. Confidentiality.**

**4.1 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.

**4.2 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.

**4.3 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.

**4.4 Remedies.** If a Party discloses or uses (or threatens to disclose or use) any Confidential Information of the other Party in breach of the confidentiality protections described in this Agreement, 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.

**4.5 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 4.5.

## **5. Subscriber Data.**

**5.1 Privacy and Security.** Acumatica has taken reasonable actions, including encryption of Subscriber Data during transmission and firewalls, to ensure that Subscriber Data is disclosed only to Authorized Parties. However, you acknowledge 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 5.1, Acumatica may disclose information you submitted 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 your explicit consent and Acumatica only uses your information as described in the Privacy Statement. For more information on Acumatica's Privacy Statement, see the Privacy Statement posted on [www.acumatica.com/agreements](http://www.acumatica.com/agreements). If you object to your information being used in the manner set forth in the Privacy Statement, you should discontinue use of the Service.

**5.2 Subscriber Data Upon Termination.** Upon termination of this Agreement, all Subscriber Data retained by Acumatica in the system database files shall be made available to you for a period of 60 days after the termination of this Agreement. Thereafter, all of Subscriber Data, if retained by Acumatica in the system database files, shall be made available to you only upon remittance to Acumatica of a reasonable fee to cover the servicing and handling of Subscriber Data.

**5.3 Use of Subscriber Data.** Notwithstanding Section 5.2, it is Acumatica's practice to make backup copies of the Subscriber Data Hosted by Acumatica. You acknowledge and agree that Acumatica may store and maintain Subscriber Data Hosted by Acumatica for such period of time as it deems necessary. Subject to the terms and conditions of this Agreement, you grant 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 the Service. You agree that the license to store and maintain Subscriber Data shall survive the termination of this Agreement. You acknowledge and agree that Acumatica will not make backup copies of Subscriber Data not Hosted by Acumatica.

**5.4 Limitations on Use.** Acumatica shall maintain in confidence, and shall not disclose to any third party, Subscriber Data, and Acumatica will not use Subscriber Data for any purposes other than the provision of the Service and as provided in Section 3.7 of this Agreement and Acumatica's Privacy Statement.

**5.5 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 provide you notification as required by Law and pay the reasonable and documented costs you incur 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 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 YOU OR YOUR USERS, AGENTS OR CONTRACTORS.

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

**6.1 Service Limited Warranty; Exclusive Remedy.** Acumatica warrants 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. Your 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 most current Documentation, and if Acumatica is unable to restore such performance and functionality, you 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 your use of the Service for the terminated portion of the Term. Acumatica shall have no obligation with respect to a warranty claim (i) unless notified of such claim within sixty (60) days of the first instance of any material performance and/or functionality issue, or (ii) if you fail to upgrade to a Supported Version of the Service, or (iii) if you fail to meet capacity recommendations in the Licensing Guide, or (iv) if the warranty claim is the result of a Third Party Application or a customization of the Service prepared by you or a third party. Any notice required to be sent pursuant to this Section 6.1 must be sent pursuant to Section 11.2

**6.2 Service Level Limited Warranty; Exclusive Remedy.** Acumatica warrants that the Service will meet the service level specified in the SLA. Except as provided in Section 10.3, in the event that Acumatica fails to achieve the applicable service level in any month, you will be entitled, as your sole and exclusive remedy, to a credit in accordance with the SLA. You agree that Acumatica's system logs and other records shall be used for calculating any service level events.

**6.3 No Virus Warranty.** Acumatica warrants that it will provide the Service free of Malicious Code. This warranty does not extend to your media files, alterations and customizations, Subscriber Data, or Third Party Applications or third-party customizations.



**6.4 Security, Data And Backup Warranty.** Acumatica warrants 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 6.4, 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. This warranty does not extend to any Third Party Applications or to Subscriber Data not Hosted by Acumatica.

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

**6.6 Disclaimer.** Except as provided in this Section 6, 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 your requirements. You assume responsibility for selecting the Service to achieve your intended results, and for the results obtained from your use of the Service. You shall bear the entire risk as to your use of the Service in accordance with the Documentation. This disclaimer applies to any expenses, damages or injury, regardless of the cause, whether for breach of contract, strict liability, tortious behavior, negligence, or for any other cause of action.

**6.7 No Other Warranties.** No advice or information provided by Acumatica shall create any warranty.

## **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 your 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 3.4, 4, 5.5 or 8.1, Acumatica's cumulative liability to you, your affiliates, or any other 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 total amount of subscription service fees actually paid to Acumatica for the Service for twelve (12) months, aggregate for all occurrences. 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 you regarding the Service.

## **8. Indemnification.**

**8.1 By Acumatica.** Acumatica will, at its expense, indemnify and hold you harmless against any claims made by an unaffiliated third party that the Service infringes its Intellectual Property Rights; 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 (a) your and/or your Affiliates' use of the Service after Acumatica notifies you to discontinue use due to such a claim, (b) your combining the Service with non-Acumatica service, product, data or business process including third party add-ons or programs, (c) damages attributable to the value of the use of a non-Acumatica service, product, data or business process, (d) your altering or modifying the Service, including any modifications by third parties, or (e) your use of the Service in violation of this Agreement. You 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 (y) procure for you the right to continue to use the Service, or (z) modify the Service with a functional equivalent, to make it non-infringing. If, as a result of an infringement or misappropriation claim, your 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 Subscription Service Fees paid and terminate this Agreement. This Section 8.1 constitutes your exclusive remedy for third party infringement and trade secret misappropriation claims.

**8.2 By Subscriber.** You shall 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 made by an unaffiliated third party and arising out of (i) any breach or alleged breach of any of your obligations set forth in this Agreement, and (ii) your or your Affiliates' use of the Service, or the use by any party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this Agreement, regardless of the type or nature of the claim. You 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 you and you shall not in any event settle any matter without the written consent of Acumatica.

## **9. Third Party Applications.**

**9.1 No Warranty of Third Party Applications.** Acumatica does not warrant any Third Party Applications regardless of who you may purchase or license the application from.

**9.2 Use of Third Party Application.** Any agreement for use by you of a Third Party Application is solely between you and the applicable third party provider. You may not use a Third Party Application to enter and/or submit transactions to be processed and/or stored in the Service unless you have procured the applicable license or subscription to do so.

**9.3 No Obligation As to Third Party Application.** Acumatica is not responsible for any aspect of a Third Party Application that you may purchase, license, subscribe to or connect to through the Service, or any interoperation or other information related to the foregoing, including, but not limited to, any portion of the Service not Hosted by Acumatica. If you install, engage or enable a Third Party Application for use with or to Host any portion of the Service, you agree that Acumatica may enable such third party provider to access Subscriber Data for the interoperation of such Third Party Application with the Service. Acumatica is not responsible for any exchange of data or other interaction between you and a third party provider of the Third Party Application, and the SLA shall not apply to the portion of Service not Hosted by Acumatica. Any such exchange or interaction is solely between you and such third party provider and is subject to a separate privacy policy or other terms governing your access to or use of the Third Party Application. Acumatica shall not be responsible for any disclosure, modification, corruption or deletion of Subscriber Data resulting from any such access by or use of any Third Party Application.

## **10. Term; Suspension of the Service; Termination.**

**10.1 Term of Agreement.** The initial term of this Agreement for the Service commences as provided in your Acumatica Order Form. The length of the initial term of this Agreement for the Service 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. It is your responsibility to contact Acumatica regarding any potential expiration that you deem inappropriate. This Agreement will terminate upon expiration of the initial term or any renewal term should you fail to renew this Agreement. Acumatica is not liable for any damages or costs incurred in connection with expiration of the Service.

**10.2 Suspension of the Service.** Acumatica reserves the right to suspend your and your Affiliates' access to and /or use of the Service: (a) if any payment for the Service is due but unpaid but only after Acumatica has provided you with at least 30 days' prior written notice, or (b) if Acumatica reasonably determines that your use of the Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or your use of the Service is causing immediate, material and ongoing harm to Acumatica or others. In the event Acumatica suspends access to the Service pursuant to Section 10.2(b), Acumatica will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with you to resolve the issues which resulted in the suspension of the Service. Acumatica shall not be liable to you nor to any third party for any suspension of the Service 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 Service.

**10.3 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 thirty (30) days prior written notice to you if you fail to pay the Subscription Service Fees and do not cure such failure within the 30-day notice period. You may terminate this Agreement upon fifteen (15) days prior written notice to Acumatica if Acumatica fails to meet a 99.5% Monthly Uptime Percentage (as defined in the Schedule 1) for three (3) consecutive months. Upon any termination by you pursuant to this section, Acumatica shall refund to you any prepaid Subscription Service Fees for the affected Service that were to be provided after the effective date of termination.

**10.4 Effect of Termination.** Upon any termination of this Agreement, you shall, as of the date of such termination, immediately cease accessing and otherwise utilizing the Service and Acumatica Confidential Information. Termination for any reason shall not relieve you of the obligation to pay any Subscription Service Fees accrued or due and payable 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 due.

**10.5 Surviving Provisions.** The following provisions of this Agreement shall survive the termination of this Agreement; Sections 3.1, 3.3, 3.4, 3.6, 3.7, 4, 5, 6, 7, 8, 9.1, 10.4, 10.5, and 11.

## **11. General Provisions.**

**11.1 Additional Products and Services.** You acknowledge that other agreements found at [www.acumatica.com/agreements](http://www.acumatica.com/agreements) shall apply if other Acumatica products or services are ordered or activated. Such other agreements do not apply to the Service covered by this Agreement.

**11.2 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.

**11.3 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 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.

**11.4 Waiver.** 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.

**11.5 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 Users, 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.

**11.6 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 due Subscription Service Fees 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.

**11.7 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 its conflicts of law rules. 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 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.

**11.8 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, you 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.

**11.9 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.

**11.10 Use of Subscriber's 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.

**11.11 Modification of Terms.** Acumatica reserves the right from time to time to modify the terms under which the Service is provided to its 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 Cloud ERP Subscription SaaS Services Agreement can also be found on [www.acumatica.com/agreements](http://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 11.11, then your use of the Service 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 Service. If you renew the Service at the end of the then current term, it will be renewed under Acumatica's then current Acumatica Cloud ERP Subscription SaaS Services Agreement.

**11.12 Miscellaneous.** This Agreement, including all schedules and exhibits to this Agreement, together with your Acumatica Order Form, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as provided in Section 11.11, 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 purchase order or in any other order documentation you submit shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

## Schedule 1 – SERVICE LEVEL AGREEMENT

### 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). You are not entitled to a Service Credit if the Monthly Uptime Percentage is 99.5% or greater.

#### 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 will notify you within 90 days if your Service Credit request is denied for any reason.

#### Acumatica SLA Exclusions

The Service Commitment does not apply to any unavailability, suspension or termination of Acumatica Service, or any other Acumatica performance issues: (a) that result from a suspension due to non-payment of Subscription Service Fees, (b) that result from your failure to upgrade to a Supported Version of the Service, (c) 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, (d) 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.), (e) that result from you not following the guidelines described in the Acumatica Licensing Guide, (f) that result in long recovery time due to insufficient resource level capacity purchased for your database workload, (g) 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), (h) that result from any regularly scheduled maintenance as provided for pursuant to the Agreement, or (i) 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 Service.