

End User License Agreement

This End-User License Agreement (this "**Agreement**") is an agreement between the individual or business entity obtaining a license for the Software according to the terms of this Agreement ("**you**"), and MaxQ Technologies, Inc. ("**MaxQ**").

Read the terms and conditions of this Agreement carefully, as it becomes effective upon the earlier of (i) issuance of a Registration Key to the Software, (ii) your first use of the Software, or (iii) entering into your MaxQ Order Form.

1. Definitions

"Acumatica Environment" means the servers - virtual or physical - and software configured to run the Acumatica Software.

"Acumatica Software" means Acumatica Inc.'s proprietary software, including any modules or add-ons you may elect to install, subscribe to or use on your Acumatica Environment.

"Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with, you. 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.

"Authorized MaxQ Reseller" means a business partner that has entered into a contractual relationship with MaxQ to sell MaxQ software licenses and services to end users.

"Confidential Information" means all your and MaxQ's information, material and data or any third party (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 the user manuals for the Software which can be found on MaxQ's portal/website/website..

"Employee" means your employees, consultants, contingent workers, independent contractors, and retirees and of your Affiliates whose business record(s) are or may be managed by the Software and for which a license for the Software has been purchased.

Fees shall have the meaning set forth in Section 4.

MaxQ Intellectual Property means the Software, Documentation, and all trademarks and service marks owned or used by MaxQ, including associated intellectual property rights under copyright, trade secret, patent, or trademark laws.

MaxQ Order Form means the MaxQ Order Form, quote or proposal you signed when you purchased your Perpetual License or Subscription License from MaxQ or your Authorized MaxQ Reseller.

Perpetual License means a license for which you pay a one-time Fee to obtain the right to use and deploy the Software, whether on your premises or at your preferred hosting provider.

Production means the use by you or your Employee of, or MaxQ's written verification of, the availability of the Service (i) to use in your business for its intended purpose; (ii) to generate data for your books/records; or (iii) in any decision support capacity.

Registration Key means the data string provided by MaxQ to you that, upon installation, permits the use of the Software in a Production environment in accordance with your MaxQ Order Form.

Software means MaxQ's proprietary software, including any modules or add-ons you may elect to install, subscribe to or use. For purposes of this Agreement, the "Software" includes any Updates you are entitled to install or use.

Software Maintenance Plan means a maintenance plan for the Software provided by MaxQ and purchased from MaxQ or your Authorized MaxQ Reseller .

Subscription License means a license for which you pay a periodic Fee to obtain the right to use and deploy the Software, whether on your premises or at your preferred hosting provider.

Third Party Application means applications licensed from third parties which connect with or interoperate with the Software.

Updates means any corrections and enhancements including hot fixes, patches, updates, changes, and upgrades to the Software if and when made available to end-users through MaxQ's portal/website. Updates do not include new module or add-ons to the Software which include new functionality for which MaxQ charges a separate fee to its end-users.

Your Input means suggestions, enhancement requests, recommendations or other feedback provided by you and your employees and relating to the functionality of the Software.

2. License

2.1 Nature of License. Subject to your MaxQ Order Form, this Agreement is for the license of the Software on one of the following basis:

- Perpetual License, or
- Subscription License

2.2 Grant of License. Subject to the terms of this Agreement, MaxQ grants to you and all of your authorized users of the Software, including your and your Affiliates' respective employees, agents and contractors acting on your or your Affiliates' behalf, a non-transferable, non-exclusive, world-wide, license to use, for your business purposes only, a single copy of the Software, including Documentation, on a single licensed instance of Acumatica Software, delivered by download in electronic form, on one (1) and only one (1) production Acumatica Environment of your choice. The Software is licensed based on the Acumatica Software you have licensed to operate on the production Acumatica Environment chosen by you and other quantity metrics, both as set forth in your MaxQ Order Form.

2.3 Temporary Limited License. In the event MaxQ has provided the Software to you (i) to evaluate the Software, (ii) as an MaxQ Authorized Reseller, not for resale, or (iv) when otherwise no Fees are charged for use of the Software, then, subject to your compliance with the terms and conditions of this Agreement, MaxQ grants you a nonexclusive, non-transferable license to use and operate the Software solely for the purpose(s) agreed upon by MaxQ and you. The license granted under this Section 2.2 shall be limited as follows: (a) you may use the Software only on the number of computers and networks specifically authorized by MaxQ; (b) you may use the Software only for the purposes expressly authorized by MaxQ and subject to such further restrictions agreed upon by MaxQ and you; (c) the license grant may be terminated by MaxQ upon ten (10) days written notice; (d) the Software and any related documentation 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 2.1, 2.5, 4, 5.2, 6.1 and 7 of this Agreement shall not apply.

2.4 Scope of Use. You or your Affiliates may use the Software for each Registration Key you purchased on a single MaxQ production database. You may also use a reasonable number of copies of the Software for development, testing, archival purposes, and training on non-production servers. No other right or license to use of the Software is granted or implied. You are responsible for ensuring your Affiliates comply with the terms of this Agreement. Except as otherwise expressly provided in this Agreement, you may not:

- use the Software, or any copy, adaption, transcription, or merged portion thereof, except as expressly authorized by this Agreement;
- permit any person other than authorized users who possess rightfully-obtained Registration Keys and authorized Affiliates to use the Software;
- reverse engineer, decompile or disassemble the Software;
- publish the Software for others to copy;
- rent, lease or lend the Software; or
- use the Software for commercial software hosting services

You may make copies of and modify the Documentation for the purpose of internal employee training.

2.5 Operating Environments. You acknowledge that MaxQ licenses the Software for use with operating environments (cloud services, servers, peripherals, database management systems and operating systems) supported by MaxQ as set forth in the Documentation.

2.6 Software Updates. In the case of Subscription Licenses, so long as you are current on your Fees, MaxQ will provide you with Updates at no additional charge. In the case of Perpetual Licenses, Updates will be provided to you as long as you are currently covered by a Software Maintenance Plan.

Updates are only available if you have, or have upgraded to, a supported version of the Software. as set forth in MaxQ's portal/website. In the case of a Perpetual License, if your Software Maintenance Plan lapses, you may be charged fees for the lapsed period, reinstatement fees and penalties in order to purchase a new Software Maintenance Plan.

2.7 Registration Keys. The Software, when used in production, requires a Registration Key to install or access it. You are responsible for the use of any Registration Key(s) assigned to you and must not share the Registration Key(s) with any third party. If your Registration Key is stolen, or if you suspect any improper or illegal usage of your Registration Key, you should promptly notify MaxQ of such occurrence. A replacement Registration Key will be issued to you and the compromised Registration Key will be disabled.

2.8 Use Reporting. MaxQ reserves the right to gather data on usage of the Software to ensure that the Software is being used in accordance with the terms of this Agreement and the type of license purchased by you. 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. Intellectual Property and Confidentiality

3.1 Ownership and Reservation of Rights to MaxQ Intellectual Property. MaxQ and its licensors own all right, title and interest in and to the MaxQ Intellectual Property. Subject to the limited rights expressly granted hereunder, MaxQ reserves all rights, title and interest in and to the MaxQ Intellectual Property. No rights are granted to you pursuant to this Agreement other than as expressly set forth in this Agreement.

3.2 Your Input. MaxQ shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the Software any of Your Input. MaxQ shall have no obligation to add Your Input to the Software. You shall have no obligation to provide Your Input.

3.3 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. 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. No disclosure of any Confidential Information will be construed as granting (a) except for any limited license expressly set forth in this Agreement, a license of such Confidential Information, including without limitation any intellectual property rights, or (b) any right of ownership in such Confidential Information. 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 expense, if the other party wishes to contest the disclosure.

3.4 Remedies. If a party violates (or threatens to violate) the terms of Section 3, 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. Fees

License fees (the "Fees") for the Software in the case of a Perpetual License, or the initial term of the Agreement in the case of a Subscription License, are due and payable to MaxQ or your Authorized MaxQ Partner as provided in your MaxQ Order Form. Unless otherwise expressly provided in your MaxQ Order Form, in the case of a Subscription License, the Fees for renewal terms shall be based on the then current list price for the Subscription License purchased by you. Except as otherwise expressly provided in this Agreement, MaxQ does not refund Fees.

5. Term and Termination.

5.1 Term for Perpetual Licenses Only. The term of your Perpetual License commences as provided in your MaxQ Order Form. The term of this Agreement shall continue in effect until terminated as provided in Section 5.3.

5.2 Term for Subscription Licenses Only. The initial term of your Subscription License commences as provided in your MaxQ Order Form. The length of the initial term of this Agreement for your Subscription License is set forth in your MaxQ Order Form. It is your responsibility to contact MaxQ 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. MaxQ is not liable for any damages or costs incurred in connection with expiring licenses of the Software.

5.3 Termination. Either party may terminate this Agreement: (a) 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 30 day notice period; or (b) 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. MaxQ may terminate this Agreement upon fifteen (15) days prior written notice to you if you fail to pay any Fees and you do not cure such failure within the 15 day notice period. In the case of a Subscription License, upon any termination by you pursuant to this Section, MaxQ shall refund you any prepaid Fees received by MaxQ for your Subscription License for the balance of the term after the effective date of termination. In the case of a Perpetual License, upon any termination by you pursuant to this Section, Acumatica shall refund you any prepaid fees received by Acumatica for your Software Maintenance Plan for the balance of the term after the effective date of termination.

5.4 Effect of Termination. Upon any termination of this Agreement, you shall, as of the date of such termination, immediately cease using the Software, Documentation and MaxQ Confidential Information, and either (a) return the Software, Documentation, all copies thereof, and all Registration Keys that you have obtained to MaxQ, or (b) destroy all such materials and provide written verification of such destruction to MaxQ. Termination for any reason shall not relieve you of the obligation to pay any Fees accrued or due and payable to MaxQ prior to the effective date of termination.

6. Remedies, Indemnification

6.1 Indemnification by MaxQ.

6.1.1. Infringement; Limitation. MaxQ will, at its expense, defend, indemnify and hold you harmless against any claims made by an unaffiliated third party that the Software infringes its patent, copyright, or trademark, or misappropriates its trade secret (“Infringement Claim”); provided: (a) you notify MaxQ, in writing, not later than 20 days after you receive notice of the Infringement Claim, (b) you give MaxQ sole control of the defense and any settlement negotiations, and (c) you cooperate with MaxQ in defending against or settling the Infringement Claim. MaxQ’s obligation of indemnification will not apply to the extent that the Infringement Claim is based on (v) your use of the Software after MaxQ notifies you to discontinue use due to such a claim, (w) your combining the Software with non-MaxQ product, data or business process including third party add-ons or programs, (x) damages attributable to the value of the use of a non-MaxQ product, data or business process, (y) your altering or modifying the Software, including any modifications by third parties, or (z) your use of the Software in violation of this Agreement. You agree to reimburse MaxQ for any costs or damages that result from these actions.

6.1.2 Remedy for Infringement. If MaxQ receives information concerning an Infringement Claim, MaxQ may, at its expense and without obligation to do so, either (a) procure for you the right to continue to run the Software or (b) modify the Software or replace it with a functional equivalent, to make it non-infringing, in which case you will stop using the allegedly-infringing Software immediately. If, as a result of an Infringement Claim, your use of the Software is enjoined by a court of competent jurisdiction, MaxQ will, at its option, (w) procure the right to continue its use, (x) replace it with a functional equivalent, (y) modify it to make it non-infringing, or (z) refund the Fees and terminate this Agreement.

6.1.3 Exclusive Remedy. This Section 6.1 constitutes your exclusive remedy for Infringement Claims.

6.2. Indemnification by You. You will, at your own expense, indemnify and hold MaxQ, and its subsidiaries and Affiliates, and all officers, directors, and employees thereof, harmless from and against any and all claims, actions, liabilities, losses, damages, judgments, grants, costs, and expenses, including reasonable attorneys’ fees, arising out of any use of the Software by you, your Affiliates, any other party related to you, or any party acting upon your authorization in a manner that is not expressly authorized by this Agreement.

7. Limited Warranties; Disclaimer

7.1 Limited Warranties. MaxQ warrants to you that: (a) the Software will perform in all material respects as described in the Documentation, provided that, problems caused by your actions or failure to act, or caused by software or hardware not provided by MaxQ, shall be excluded; and (b) the Software is and will be free of malicious code (software designed to intentionally infiltrate or damage a computer system without the owner’s consent) and malware (software intended to disrupt computer operation, gather sensitive data, or gain access to computer systems, including, without limitation, viruses, worms, Trojan horses, root kits, spyware and adware); provided the limited warranty in (b) does not extend to your media files, alterations and customizations, your data input, or Third Party Applications or third-party customizations. This limited warranty covers the Software for a period of six (6) months after acquired by you. If you receive Updates, this limited warranty covers the Update

for thirty (30) days or the balance of the original 6-month warranty period, whichever is longer. No advice or information provided by MaxQ shall create any warranty.

7.2 Exclusions to Limited Warranties. The limited warranty stated in Section 7.1 does not apply if: (i) you fail to notify MaxQ of a warranty claim within sixty (60) days of the first instance of the issue upon which the claim is based, (ii) you fail to install any Updates and such Updates, if installed, would have prevented the breach of the limited warranty, (iii) you fail to meet capacity recommendations in Acumatica's Licensing Guide plus any additional capacity required to operate the Software, or (iv) if the warranty claim is the result of a Third Party Application or a customization of the Software prepared by you or a third party.

7.3 Exclusive Remedies. In the event of any breach of the limited warranty in Section 7.1(a), MaxQ will use reasonable efforts, at its expense, to make available to you corrections sufficient to eliminate any demonstrable breach within thirty (30) days of notice of the breach. In the event of any breach of the warranty in Section 7.1(b), MaxQ will promptly cure, at its expense, the breach. If MaxQ fails to provide the remedies specified in this Section within a reasonable period of time, which in no event will be less than thirty (30) days following notice of the breach, you may elect, as your exclusive remedy, to terminate this Agreement, return the Software, and receive a refund of the Fees you paid for the Software.

7.4 Purchase of License From Third Parties. If you obtained the Software from a third party (such as an Authorized MaxQ Reseller), you must report breaches of the limited warranties specified in Section 7.1 to the third party, and the remedies specified in Section 7.3 shall be provided to you by the third party, and not directly by MaxQ.

7.5 Disclaimers. Except as provided in this Section 7, MaxQ disclaims any and all warranties, whether express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, to the extent authorized by law. Without limiting the foregoing, MaxQ expressly disclaims any warranty that the Software will meet your requirements or that operation of the Software will be uninterrupted or error free. You assume responsibility for selecting the Software to achieve your intended results, and for the results obtained from your use of the Software.

8. Limitation of Damages and Liability

8.1 Limitation on Damages. Except for a breach of Section 3, in no event shall either party be liable to the other or any other party for any indirect, incidental, consequential, special, exemplary, or punitive damages or lost profits, even if advised of the possibility of such damages.

8.2 Limitation on Liability. Except for MaxQ's indemnification obligations pursuant to Section 6, MaxQ's cumulative liability to you, your Affiliates, or any other party for any loss or damages resulting from any claims, demands, or actions arising out of or relating to this Agreement shall be limited (i) in the case of a Perpetual License, to the Fees received by Acumatica for the Software prorated over a five (5) year term commencing with the date your Perpetual License commenced pursuant to Section 5.1, or (ii) in the case of a Subscription License to the Fees received by MaxQ for the last twelve (12) months. This limitation applies to all causes of action

or claims in the aggregate, including, without limitation, breach of contract, breach of warranty, indemnity, negligence, strict liability, misrepresentation, and other torts.

8.3 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.

8.4 No Third Party Representations or Warranties. No third party is authorized by MaxQ to make any representation or warranty to you regarding the Software.

9. Third Party Applications.

9.1 No Warranty of Third Party Applications. MaxQ does not warrant any Third Party Application regardless of who you may purchase or license the Third Party 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.

9.3 No Obligation As to Third Party Application. MaxQ is not responsible for any aspect of a Third Party Application that you may purchase, license, subscribe to or connect to through the Software, or any interoperation or other information related to the foregoing. MaxQ is not responsible for any exchange of data or other interaction between you and a third party provider of the Third Party Application. 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. MaxQ shall not be responsible for any disclosure, modification, corruption or deletion of your data resulting from any such access by a Third Party Application.

10. General Terms

10.1 Governing Law and Choice of Forum. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Connecticut, without regard to its conflicts of law rules.

10.2 Complete Agreement. This Agreement, including all exhibits hereto, together with your MaxQ 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.

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

10.4 Survival. Articles 3, 6, 7, 8, and 10 of this Agreement and Section 5.4 shall survive the termination of this Agreement, regardless of the cause for termination, and shall remain valid and binding indefinitely.

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

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

10.7 Right To Use Name. Unless you provide MaxQ with written notice to the contrary, you give MaxQ 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 MaxQ.

10.8 Amendment. MaxQ reserves the right, in its sole discretion, to amend this Agreement from time to time to conform to the most recent version of MaxQ's End User License Agreement. Any amendment is effective sixty (60) days after the most current version of MaxQ's End User License Agreement is posted at _____. You are responsible for regularly reviewing the terms and conditions of MaxQ's End User License Agreement. Your continued use of the Software 60 days after the most current version of MaxQ's End User License Agreement is posted at _____ shall be conclusively deemed an acceptance of the amended Agreement. Should you not agree to the terms and conditions of the amended Agreement, your sole remedy is to terminate this Agreement.

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

10.11 Assignment of Rights. You may not sublicense, lease, rent, or assign your rights in the Subscription License, Documentation, Registration Keys, or this Agreement, to or with any third party (other than an Affiliate) without prior written consent of MaxQ. Notwithstanding the foregoing, you may assign your rights in this Agreement and the Subscription License without such consent in the case of a sale of substantially all of your assets or equity interests, or in the case of a merger, change in control or similar transaction, provided that (i) the assignee agrees in writing to be bound by the terms of this Agreement, (ii) you are not in material breach or default under this Agreement, and (iii) you agree to remain liable for any breach of this Agreement by the assignee. 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. Export Regulations

Each party shall comply with the export laws and regulations of the United States and other applicable jurisdictions in licensing and using the Software. Without limiting the generality of the foregoing, you shall not make the Software 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.

12. United States Government Restricted Rights

The Software and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the government is subject to restrictions as set forth in subparagraph (c)(f)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (b) (1) and (2) of the Commercial Computer Software-Restricted Rights at 48 C.F.R. S:52.227-19, as applicable.

Accepted by:

Accepted by: Max Q Technologies, Inc.

*By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Company Name _____

Effective Date: _____

Effective Date: _____

*SIGNATURE CONSTITUES AGREEMENT WITH SECTIONS 1-2