

**Cedar Bay Data Capture for Acumatica
END USER LICENCE AGREEMENT**

This End User Licence Agreement ("**EULA**") shall apply to the provision of any Software by Cedar Bay (Europe) Limited ("**Cedar Bay Europe**") to the person or company with whom this EULA is made ("**Customer**") who is also party to the Master Agreement with Cedar Bay Evolve Limited ("**Cedar Bay**").

1. DEFINITIONS AND INTERPRETATION

1.1 Capitalised words and phrases used in this EULA shall have the following meanings:

"**EULA**" means the provisions of this EULA, together with any Schedules, Annexes and other terms referenced in this document, as may be amended by the Parties in writing from time to time;

"**Confidential Information**" means all information which is marked or designated as confidential or proprietary, the fact that discussions and negotiations are taking place concerning this EULA and the status of those discussions and negotiations, the existence and terms of this EULA, and any other information which the receiving Party, acting reasonably, ought to have realised was confidential due to its nature, content, or the circumstances in which it was disclosed, which is disclosed by or on behalf of one Party or any of its affiliates to the other, whether orally or in writing, or is otherwise obtained by the receiving Party in respect of the disclosing Party and their current and future business and operations;

"**Documentation**" means any operating manuals, user instructions, technical literature, materials, and information relating to the Software, the Source Code of the Software or any Cedar Bay Europe services in printed or electronic form provided by Cedar Bay Europe to the Customer;

"**Force Majeure**" means the following to the extent that they are outside the affected party's control: acts of God, fire, floods and natural disasters; acts of terrorism; strikes, lock-outs and labour disputes (except in the case of Customer or Permitted Party strike, lock-out, labour disputes or any industrial action by Customer or a Permitted Party's employees); civil commotion, riots and acts of war;

"**Group**" in relation to either Party, means any corporation that is the holding company or parent undertaking from time to time of that corporation or a subsidiary or a subsidiary undertaking from time to time of that corporation or of its holding company (and for these purposes "holding company", "parent undertaking", "subsidiary" and "subsidiary undertaking" have the meanings given to them by the Companies Act 2006);

"**Intellectual Property Rights**" means all intellectual property rights, including patents, trade secrets, trademarks, service marks, trade or business names, copyrights, and other rights in works of authorship (including rights in computer software), moral and artists' rights, design rights, domain names, know-how, database rights whether any of the foregoing are registered or unregistered and all rights or forms of protection of a similar nature in any country;

"**Party**" means Customer or Cedar Bay Europe, and "**Parties**" means both Customer and Cedar Bay Europe;

"**Permitted Parties**" means contractors, employees, or third-party service providers of Customer;

"**Permitted Use**" means the use of the Software by the Customer solely for the Customer's internal operations in the quantities, for the duration and subject to any additional terms specified by Cedar Bay Europe or its authorised partner, in accordance with the Documentation and this EULA;

"**Support Services**" means the software support services provided by Cedar Bay Europe or an authorized partner of Cedar Bay Europe to a Customer;

"**Software**" means the object code version of the Cedar Bay Data Capture solution for Acumatica and all and any upgrades, new releases or modifications made to the Software;



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"Source Code" means computer programs or data in eye-readable form and in such form that it can be compiled or interpreted into equivalent object code, together with all technical information and documentation necessary for the use, reproduction, modification, and enhancement of such computer programs;

"Year" means each twelve (12) month period commencing on the Effective Date, or anniversary of the Effective Date (as applicable), except that in the event of expiry or termination of this EULA, **"Year"** shall mean such period commencing on the Effective Date or anniversary of the Effective Date and ending on the date of expiry or termination of this EULA.

1.2 In this EULA words importing the singular include the plural and vice versa and words importing gender include any other gender.

1.3 The headings of Clauses are for ease of reference only and shall not affect the interpretation of this EULA.

1.4 References in this EULA to Clauses, Schedules or Annexes are references to clauses of or schedules or annexes to this EULA. References in this EULA to Paragraphs are references to paragraphs of the Schedule to this EULA.

1.5 The expression "person" used in this EULA shall include any individual, partnership, company or unincorporated association.

1.6 References to "includes" or "including" shall be read as being immediately followed by the words "without limitation".

2. LICENCE

2.1 Subject to the provisions of this EULA, Cedar Bay Europe grants to Customer and members of Customer Group a non-exclusive, non-transferable, licence in object code form only to use the Software and Documentation solely for the Permitted Use in accordance with this EULA, from the Effective Date for the Licence Term (subject to Clause 10).

2.2 Subject to the terms and conditions of this EULA the Software may be used by any member of Customer Group only for as long as it remains a member of Customer Group.

3. USE OF THE SOFTWARE

3.1 Customer shall:

3.1.1 ensure that the Software is only used for the Permitted Use; and

3.1.2 not allow (except as expressly provided otherwise in this EULA) any third party to use the Software in any way whatsoever without the prior written consent of Cedar Bay Europe such consent not to be unreasonably withheld in the case of a third-party service provider.

3.2 Except as permitted by applicable law, Customer shall not itself, nor shall it permit any third party to, copy, modify, alter, improve, enhance, make error corrections, decompile, translate, adapt, reverse engineer, or disassemble the Software, nor attempt to do any such things.

3.3 Customer shall not (a) sub-license, assign or novate the benefit or burden of this licence in whole or in part; (b) allow the Software to become the subject of any charge, lien, or encumbrance; and (c) deal in any other manner with any or all of its rights and obligations under this EULA, without the prior written consent of Cedar Bay Europe, such consent not to be unreasonably withheld or delayed.



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4. CUSTOMER OBLIGATIONS

4.1 Customer shall procure that each Permitted Party and each member of Customer Group complies with all relevant provisions of this EULA mutatis mutandis as though the Permitted Party or Customer Group member was Customer and Customer shall be liable as primary obligor in respect of any failure by a Permitted Party or Customer Group member to so comply.

4.2 Upon Cedar Bay Europe's reasonable request, Customer shall provide Cedar Bay Europe with such information and/or personnel necessary for Cedar Bay Europe to comply with its obligations under this EULA.

5. SUPPORT AND UPGRADES

5.1 Customer must promptly apply to the Software each upgrade released by Cedar Bay Europe and made available by Cedar Bay Europe to the Customer from time to time.

5.2 Cedar Bay Europe will have no obligation to provide Support Services for the Software in relation to any version of the Software that does not incorporate the most recent upgrade to the Software.

5.3 Cedar Bay Europe will provide Support Services to the Customer comprising telephone support between the hours of 09.00 and 17.30 UK time whilst a support agreement is in place for the purpose of ensuring the Software conforms with its Documentation and resolving issues with the Software raised by the Customer acting reasonably.

5.4 Customer acknowledges that:

5.4.1 Cedar Bay Europe's sole obligation under Clause 5.3 is to make reasonable endeavours to resolve issues raised by the Customer;

5.4.2 Cedar Bay Europe will not be obliged to provide any Support Services at a Customer site under this EULA.

5.5 Cedar Bay Europe may subcontract any of its obligations under this Clause 5 to a third party providing Cedar Bay Europe remains responsible for the performance of its obligations under this Agreement.

6. CONFIDENTIALITY

6.1 In the performance of this EULA either Party may learn Confidential Information relating to the other Party. The receiving Party shall take all reasonable security precautions, including precautions at least as great as it takes to protect its own confidential information, to protect the secrecy of Confidential Information of the disclosing Party. The receiving Party may disclose Confidential Information only to Permitted Parties on a need-to-know basis. The receiving Party will have executed or shall execute appropriate written agreements with such Permitted Parties sufficient to enable it to comply with all the provisions of this EULA. Except as provided in Clause 6.2 below, the receiving Party agrees to treat the Confidential Information as confidential and shall not divulge, directly or indirectly, to any other person, firm, corporation, association or entity, for any purpose whatsoever, such information, and shall not make use of such information, without the prior written consent of the disclosing Party.

6.2 Information shall not be deemed Confidential Information if it is: (i) publicly available prior to this EULA or becomes publicly available without a breach by the receiving Party of any obligation of confidentiality; (ii) rightfully received by the receiving Party from third Parties without accompanying confidentiality obligations; (iii) already in the receiving Party's possession and was lawfully received from sources other than the disclosing Party; (iv) independently developed by the receiving Party where such development can be evidenced by documentation; (v) approved by the disclosing Party for release; or (vi) required to be disclosed in a judicial or



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administrative proceeding, provided that the disclosing Party gives the other Party written notice of the information required to be disclosed.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Customer acknowledges that all Intellectual Property Rights in the Software, the Documentation and the Source Code shall be owned by and will remain the property of Cedar Bay Europe. Customer and the Permitted Parties shall have no rights in or to the Software, the Documentation, or the Source Code other than the rights to use them in accordance with this EULA.

7.2 If Customer makes any alteration, improvement, enhancement, or other modification to the Software in breach of this EULA, Customer hereby assigns by way of present assignment of future rights all Intellectual Property Rights in such modification to Cedar Bay Europe with full title guarantee. Customer shall provide full details to Cedar Bay Europe of such alterations, improvements, enhancements and/or other modifications and Customer must promptly remove the same at Cedar Bay Europe's request. Customer undertakes to ensure compliance with this Clause 7.2 by all Permitted Parties and agrees to obtain an assignment, for the benefit of Cedar Bay Europe, from all such Permitted Parties in relation to such Intellectual Property Rights in accordance with this Clause 7.2.

7.3 Customer shall give prompt notice to Cedar Bay Europe if Customer becomes aware of any unauthorised use or exploitation of the whole or any part of the Software and shall provide Cedar Bay Europe with all necessary assistance in preventing and/or remedying such unauthorised use or exploitation.

8. WARRANTIES AND COVENANTS

8.1 Cedar Bay Europe warrants and covenants that the Software will perform substantially in accordance with the Documentation for a period of 90 days from the Effective Date. Customer's exclusive remedy and Cedar Bay Europe's exclusive liability under the warranty contained in this Clause 8.1 shall be for Cedar Bay Europe to use reasonable endeavours to remedy a failure to so conform to such Documentation. The Support Services shall be performed in a timely and professional manner. In the event that Cedar Bay Europe fails to perform the Support Services in a timely and professional manner, Customer's sole remedy and Cedar Bay Europe's exclusive responsibility shall be to re-perform the defective Support Services.

8.2 To the extent permitted by law, all other warranties express or implied by statute or otherwise are excluded from this EULA.

8.3 Cedar Bay Europe does not warrant that the use of the Software will be uninterrupted or error-free.

9. LIMITATION OF LIABILITY

9.1 The following provisions set out the entire financial liability of Cedar Bay Europe to the Customer in respect of any breach of this EULA and any representation, statement or tortious act or omission (including negligence) arising under or in connection with this EULA.

9.2 Except in respect of claims for fraud or fraudulent misrepresentation or for death or personal injury arising from Cedar Bay Europe's negligence or for any other liability that cannot be excluded under applicable law, Cedar Bay Europe excludes and limits all liability for the following: (i) loss of data or use; (ii) loss of revenue; (iii) loss of profits; (iv) loss of anticipated savings; (v) loss or damage to contract; (vi) loss of goodwill; (vii) loss of business; (viii) loss or corruption of data; (ix) pure economic loss, in each case whether considered direct or indirect loss, and (viii) any indirect or consequential loss.



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9.3 Subject to Clause 9.2, the total liability of Cedar Bay Europe to Customer whether based upon an action or claim in contract, tort (including negligence and strict liability), breach of warranty, misrepresentation (except where such liability for misrepresentation cannot be limited), equity or otherwise (including any action or claim arising from the acts or omissions of Cedar Bay Europe or, as the case may be, any member of its Group), or in any other manner arising under or in connection with this EULA, shall not in the aggregate exceed the total fees paid and payable in respect of the Customer's use of the Software.

10. TERMINATION

10.1 Without prejudice to any of its other rights or remedies under this EULA, Cedar Bay Europe may terminate this EULA on giving not less than three (3) months' prior written notice to Customer.

10.2 Without prejudice to any of its other rights or remedies under this EULA, each Party (the "**Terminating Party**") shall have the right to terminate this EULA immediately upon giving written notice to the other (the "**Defaulting Party**") if the Defaulting Party:

- a) commits a material breach which in the case of a breach capable of remedy has not been remedied within thirty (30) days of receipt by it of a written notice from the other Party identifying the breach and requiring its remedy;
- b) makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or insolvent or goes into liquidation or a receiver or similar officer is appointed over any or all of the assets of the Defaulting Party or the Defaulting Party ceases or threatens to cease to carry on business.

11. CONSEQUENCES OF TERMINATION

11.1 Termination of this EULA shall be without prejudice to the rights and liabilities of either Party that may have accrued on or at any time up to that date of termination and shall not affect the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after termination.

11.2 On expiry or termination of this EULA, Customer shall forthwith stop using the Software and Documentation and return or destroy (at Cedar Bay Europe's request) all copies of the Software and the Documentation in Customer's possession, power, custody, or control (including all copies with any Permitted Parties).

11.3 Save as expressly provided in this EULA, the Licensee will not be entitled to a refund upon termination of this EULA.

12. FORCE MAJEURE

12.1 Neither Party shall be liable to the other for any delay, breach, or non-performance of this EULA to the extent arising from any event of Force Majeure.

12.2 If an event of Force Majeure affecting either Party continues beyond thirty (30) days, the other Party may immediately terminate this EULA by giving written notice to the other in which case neither Party shall have any liability to the other except those rights and liabilities which accrued prior to such termination shall continue to subsist.



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13. NOTICES

13.1 Any notice given under this EULA shall be in writing by e-mail to the respective contact person(s) and at the address(es) designated by the Parties in writing from time to time.

13.2 Any notice given pursuant to this Clause 13 shall be deemed to have been received at the time an applicable email is sent.

14. EXPORT CONTROLS

14.1 Customer and its sublicensees, if any, shall comply with all applicable export control and trade sanctions laws, regulations, rules and licences, including those of the US, EU and UK, ("**Export Control and Sanctions Rules**"). The Export Control and Sanctions Rules may include the Export Administration Regulations (15 CFR 730-774), the International Traffic in Arms Regulations (22 CFR 120-130) and the various economic sanctions regulations administered by the US Department of the Treasury (31 CFR 500-600), and the EU Dual Use Regulation (Regulation (EC) 428/2009, as amended or replaced) and the various EU and UK sanctions regulations.

14.2 Among other things, the Export Control and Sanctions Rules prohibit or require a license for the export or retransfer of certain software in source code or binary code to specified countries, entities, and persons. Customer hereby gives written assurance that it will comply with, and will cause its sublicensees, if any, to comply with the Export Control and Sanctions Rules; that it bears sole responsibility for any violation of the Export Control and Sanctions Rules by itself or its sublicensees, if any; that it will indemnify, defend and hold Cedar Bay Europe harmless for the consequences of any such violation by itself or its sublicensees, if any; and not do anything which would cause Cedar Bay Europe to be in breach of the Export Control and Sanctions Rules.

15. ANTI-BRIBERY COMPLIANCE

15.1 Customer and its sublicensees, if any, shall comply with all applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, as amended from time to time, including the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("**Anti-Bribery Laws**"), and shall not, directly or indirectly, in connection with this EULA, the Software, or any business resulting therefrom:

15.1.1 offer, pay, promise to pay, or authorise the giving of any monies or financial or other advantage to any person: (i) for the purpose of inducing or rewarding that person or any other person to perform their role or function improperly; (ii) for the purpose of influencing a public official in relation to any decision, act or other performance of their official role or function, including a decision to fail to perform that role or function, so as to obtain or retain business or a business advantage of any kind; or

15.1.2 do anything which is otherwise in breach of or would cause Cedar Bay Europe to be in breach of, any Anti-Bribery Laws.

16. GENERAL

16.1 During the Licence Term, Cedar Bay Europe or its representative may, upon prior notice to Customer, inspect the files, computer processors, equipment, records, and facilities of Customer during normal working hours to verify Customer's compliance with this EULA. While conducting such inspection, Cedar Bay Europe or its representative will be entitled to copy any item that Customer may possess in violation of this EULA.

16.2 No variation of this EULA shall be effective unless it is in writing and signed by the Parties. Customer and Cedar Bay Europe agree to discuss in good faith any change to the Software or the Documentation requested by the other Party and may agree on the procedure for making such change from time to time.



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16.3 Nothing contained within this EULA is intended to extend, nor does it extend, any rights or benefits to any subcontractor, and no third party beneficiary right is intended or granted to any third party hereby. Customer and Cedar Bay Europe reserve the right to rescind or vary this EULA without the consent of such third parties.

16.4 If any provision or part-provision of this EULA is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this EULA.

16.5 The rights, powers and remedies provided in this EULA are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by law, or otherwise.

16.6 The Parties shall and shall use reasonable endeavours to ensure that third parties shall, do, execute, and perform at their own cost and expense all such further deeds, documents, assurances, acts and things as either of the Parties may reasonably require by notice in writing to the other Party to carry the provision of this EULA into full force and effect.

16.7 If either Party delays or fails to exercise any right or remedy under this EULA, that Party will not have waived that right or remedy.

16.8 This EULA may be executed in any number of counterparts or duplicates, each of which shall be an original, and such counterparts or duplicates shall together constitute one and the same agreement.

16.9 Nothing in this EULA shall constitute or be deemed to constitute a partnership, association, joint venture, or other co-operative entity between the Parties and neither Party has authority to bind the other in any way except as provided in this EULA.

16.10 This EULA contains all the terms agreed between the Parties regarding the subject matter and supersedes and replaces any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this EULA except as expressly stated in this EULA. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into this EULA (unless such untrue statement was made fraudulently). Without prejudice to the foregoing, the only remedy available to a Party in respect of a breach of any representation which is incorporated into this EULA shall be for breach of contract.

16.11 This EULA and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this EULA or its subject matter or formation. Notwithstanding the foregoing, either Party may seek interim injunctive relief in any court of competent jurisdiction to protect its Intellectual Property Rights or Confidential Information.

