

## SOFTWARE END USER LICENSE AGREEMENT

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- 1. Grant of License.** If You accept the terms of this EULA and continue to meet Your obligations hereunder, including without limitation, Your obligation to pay for the Software, Acuity grants to You a non-exclusive, non-transferable, and limited license to use the most recent version of the Software generally publicly available at the time of use, in object code form only, only in accordance with any documentation provided by Acuity, and solely for your internal business purposes.
- 2. Third Party Use.** You may authorize third parties (other than those engaged in competitive activities with Acuity) to utilize the Software when those third parties perform activities solely in the furtherance of Your internal business purposes and only where You would have been licensed to perform such activities under Section 1 **Error! Reference source not found.** Should You choose to so authorize such third parties, You shall ensure that they understand that their performance is subject to compliance with this EULA at all times and You shall remain primarily responsible for the behavior of those third parties. Acuity retains the right to terminate third party use, including where authorized by You, at any time and for any reason.
- 3. Changes to Functionality or Ongoing Access.** Notwithstanding anything herein to the contrary, Acuity retains the right, in Acuity’s sole discretion and at any time, to update and modify the Software, replace the Software with another product or service, and discontinue making the Software available (subject to an independent obligation to provide the Software for a specific term).
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5. **High Risk Restriction.** You acknowledge and accept that Acuity did not design the Software and does not warrant the Software for use in developing, or for incorporation into, products or services relative to or within applications or environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, life support machines, surgically implanted devices, weapons systems, or other applications, devices or systems in which the failure of the Software could directly result in death, personal injury, or severe physical or environmental damage (“High Risk Activities”). Notwithstanding any other provision of this EULA, You may not use or authorize any third party to use the Software in connection with any High Risk Activity.
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7. **Proprietary Rights and Information.** You acknowledge and agree that the Software and all documentation and other information related thereto or disclosed or delivered to You in relation to this EULA (“Acuity’s Information”) represent Acuity’s confidential and proprietary information. You agree to keep Acuity’s Information confidential by exercising the necessary care required to prevent its disclosure. Notwithstanding the above, You will not disclose, divulge, distribute, publish, transmit, or transfer Acuity’s Information to any third party or use Acuity’s Information for any purpose whatsoever other than as expressly authorized by this EULA. Your obligations with respect to Acuity’s Information deemed “trade secrets” under applicable law shall remain in effect for as long as Acuity’s Information remains a trade secret. Your obligations with respect to Acuity’s Information that is not deemed to be a trade secret shall remain in effect for a period of three (3) years following the last day you receive any of Acuity’s Information.
8. **Your Data.** With respect to data entered into the Software or which Acuity may access through its performance of related services for You (e.g., maintenance or support) (collectively “Your Data”), you agree and acknowledge that You are solely responsible for the content of such data. You represent and warrant to Acuity that you shall obtain all licenses and permissions needed to provide and/or license Your Data to Acuity as provided below. You represent and warrant to Acuity that providing and/or licensing Your Data to Acuity under this EULA shall not violate any applicable law or right of any third party. You agree and acknowledge that You are solely responsible for ensuring that You maintain proper backup or documentation necessary to enable You to recover Your Data in the event of corruption or data loss. Acuity is not acting as a disaster recovery provider for You and shall not be liable for the loss or replacement of Your Data.
9. **License to Your Data.** You hereby license Acuity the right to utilize Your Data for the purpose of performance of Acuity’s obligations to You under this EULA. Additionally, you hereby license Acuity to use Your Data to contact You regarding other products and services that Acuity may offer on its own behalf or on behalf of others. Additionally, you hereby license Acuity the right to extract from Your Data certain information that, either alone or in conjunction with other information which Acuity may decide to include, can be used to make up anonymized data sets which Acuity may use for any lawful purpose in perpetuity. For the purposes of this license, anonymized data sets may include any of Your Data on an aggregated basis except (a) Your information which is protected by a separate license agreement between You and Acuity, (b) information that can readily be used to identify a specific individual’s identity, either alone or when combined with other information from another source, (c) protected health information which has not been de-identified in accordance with 45 CFR 164.514 or other applicable law, prior to incorporation in the anonymized data set, or (d) information which can be used to easily identify You as the source.
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11. **Special Warranty Disclaimer.** Without modification to Section 10, You agree and acknowledge that Acuity is providing You with the Software as a tool which is to only be used by an individual of appropriate training and expertise as an adjunct to his or her professional judgment. Such individual shall be solely responsible for reviewing all data put into and all data extracted from the Software to ensure that it meets all applicable professional standards and legal requirements as well as Your needs and intent. Acuity does not represent or warrant and expressly disclaims that (a) the Software will properly scale or translate data between different software programs or data formats, and (b) the Software will conform any output to meet any professional standards or legal requirements.
12. **Limitation on Types of Damages.** IN NO EVENT WILL ACUITY OR ITS AFFILIATES, OFFICERS, DIRECTORS, AGENTS, AND EMPLOYEES, BE LIABLE TO YOU FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR INDIRECT DAMAGES OR COSTS (INCLUDING LEGAL FEES AND EXPENSES) OR LOSS OF GOODWILL OR PROFIT IN CONNECTION WITH THE SUPPLY, PERFORMANCE, USE OF OR INABILITY TO USE THE SOFTWARE OR IN CONNECTION WITH ANY CLAIM ARISING FROM THIS EULA, EVEN IF ACUITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS.
13. **Limitation on Total Damages.** THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF ACUITY FOR ANY AND ALL CLAIMS UNDER THIS EULA, REGARDLESS OF THE THEORY OF LIABILITY, SHALL BE THE GREATER OF THE SUM OF THE LICENSE FEES RECEIVED BY ACUITY FOR LICENSING THE SOFTWARE TO YOU OVER THE TWELVE (12) MONTH PERIOD LEADING UP TO THE DATE THE CAUSE OF ACTION ACCRUED OR ONE HUNDRED DOLLARS (\$100). NO ACTION ARISING OUT OF THIS EULA, REGARDLESS OF FORM, MAY BE BROUGHT MORE THAN ONE (1) YEAR AFTER THE DATE THE CAUSE OF ACTION HAS ACCRUED. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES UNDER CERTAIN CIRCUMSTANCES, SO THIS PARAGRAPH MAY NOT APPLY TO YOU.
14. **Indemnification.** You agree to indemnify, defend, and hold harmless Acuity and its respective officers, directors, employees, agents, successors, representatives and assigns from any suits, losses, claims, demands, liabilities, costs and expenses (including attorney or accounting fees) sustained, incurred, or arising from (a) Your use or misuse of the Software or Program Concepts, including any output therefrom, and (b) Your violation of any term of this EULA.
15. **Verification.** On the reasonable request of Acuity, You shall furnish Acuity with a signed statement that the Software and the Program Concepts are being used pursuant to the terms and conditions of this EULA. If Acuity has reason to believe that the Software or the Program Concepts are not being used in accordance with the terms and conditions of this EULA, You shall permit Acuity to review Your relevant records and inspect Your facilities to ensure compliance with this EULA. Acuity will conduct such inspection during normal business hours in a manner that does not unreasonably interfere with Your business operations.
16. **Term and Termination.** This EULA shall become effective when (a) You click "I Accept", (b) You or someone acting on Your behalf first installs the Software, or (c) You or someone acting on Your behalf first utilizes the Software for any purpose. This EULA shall continue in full force so long as the Software remains installed unless it is terminated earlier as set forth herein. This EULA shall automatically terminate should You voluntarily or involuntarily become subject to the jurisdiction of any bankruptcy court. Acuity hereby reserves the right to terminate this EULA upon written notice at any time. Upon termination of this EULA for any reason, You shall immediately return the Software and any copies, together with all related documentation to Acuity, or, at Acuity's discretion, You shall permanently uninstall and destroy all copies of the Software and any related documentation in Your possession or control. Upon termination or expiration of this EULA all sections of this EULA which by their nature should survive shall continue in full force and effect, including without limitation Sections 4 - 23.
17. **U.S. Government Restricted Rights.** The following applies to all acquisition of the Software by or for the U.S. government or by any prime contractor or subcontractor under any contract, grant, or other activity with the U.S. government. The Software and services related to such Software provided to You hereunder are "commercial

items” as that term is defined at 48 C.F.R. 2.101 (October 1995) consisting of “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 (Sept. 1995) and other applicable acquisition regulations and are provided to the U.S. Government only as a commercial item. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202 (June 1995), all U.S. Government users and licensees acquire the Software and its associated documentation with only those rights and subject to the restrictions set forth in this EULA. Notwithstanding the foregoing, the Software may not be acquired by the U.S. government pursuant to a contract incorporating clauses prescribed by FAR Subpart 27.4 (June 1987) or DFARS Subpart 227.4 (Oct. 1988). If this EULA is inadequate to meet the government’s needs or is inconsistent in any respect with Federal law, the government should return the Software, unused, to Acuity.

18. **Injunctive Relief.** You acknowledge that remedies at law shall be inadequate to provide Acuity with full compensation in the event of Your material breach of this EULA, and that Acuity shall therefore be entitled to injunctive relief in the event of any such material breach without the need to post bond or prove the inadequacy of monetary damages. Regardless of any provisions to the contrary, Acuity shall have no obligation to allow You to cure Your breach prior to seeking injunctive relief and shall be entitled to seek such injunctive relief in any jurisdiction regardless of any choice of law or venue provisions.
19. **Governing Law.** This EULA shall be construed and governed in accordance with the laws of the State of Georgia of the United States of America, without regard to its rules regarding conflicts of law. Neither the Uniform Commercial Code, any part of the Uniform Computer Information Transactions Act (if adopted), nor the United Nations Convention on the International Sale of Goods shall apply to the Software or this EULA. You agree to submit to the personal and exclusive jurisdiction of the state and federal courts located within Fulton County or Rockdale County within the State of Georgia.
20. **Compliance with Laws and Export Rules.** You shall be solely responsible for ensuring that Your use of the Software, documentation, and Your Data is in full compliance with all applicable laws and without violation of the rights of third parties. Without limiting the foregoing, You represent and warrant that the Software and documentation will not be exported to, or used by, nor will the data gained therefrom be exported to, transshipped or re-exported to (a) any individual located in any nation to which export, transshipment, or re-export is prohibited by U.S. law or regulation at that time (collectively, the "Restricted Nations"); (b) any business or organization owned, controlled by or acting on behalf of an individual, business or organization in a Restricted Nation; (c) the governments of a Restricted Nation or any business or organization owned, controlled by or acting on behalf of a government of a Restricted Nation; or (d) any individual, group or organization on the U.S. Department of Treasury's Office of Foreign Assets Control's list of Specially Designated Nationals or the U.S. Department of Commerce's Bureau of Export Administration's List of Denied Persons, as each may be amended from time to time.
21. **Waiver / Severability.** The failure of Acuity to exercise or enforce any right or provision of this EULA shall not constitute a waiver of such right or provision. Should any court or legal authority hold any provision of this EULA unenforceable or invalid for any reason, then You and Acuity agree that such court or authority shall attempt to craft an acceptable provision most closely resembling the intent of the offending provision, and if such court or authority is unable or unwilling to do so then this EULA shall be construed as if such provision were never contained in this EULA.
22. **Assignment.** You cannot assign, sublicense, or transfer this EULA without the prior written consent of Acuity. Any attempt by You to sublicense, assign, or transfer any rights, duties, or obligations hereunder is null and void. Acuity may assign, sublicense, or transfer this EULA, in whole or in part, at will and without notice to You.
23. **Order of Precedence.** If another written agreement signed by Acuity and You both governs the Software and expressly and unambiguously states that this EULA, by specific reference, is subservient to that agreement, then that agreement shall control solely to the extent that there exists a direct conflict between the terms therein and this EULA. Otherwise, this EULA shall control. If Acuity agrees to also license an ancillary piece of software for use in conjunction with the Software pursuant to an Application End User License Agreement for Use with an Acuity Platform (an “Application EULA”), then this Agreement shall be considered the Acuity Platform Agreement, as that term is defined in the Application EULA.
24. **Merger.** This EULA comprises the entire agreement between You and Acuity with respect to the Software, documentation, and related services (“Agreement”), and supersedes any other agreement or discussion, oral or written, with respect to the Software, documentation, and related services. If another written agreement signed by

Acuity and You both governs the Software and expressly and unambiguously states that this EULA, by specific reference, is subservient to that agreement, then that agreement and this EULA, interpreted together in accordance with Section 23, shall constitute the Agreement.

25. **Electronic Execution.** If You are presented with an electronic version of this EULA, by clicking “I Accept” You agree to transact business with Acuity electronically.
26. **Execution Warranties.** You represent and warrant that You have the authority to accept this EULA on behalf of Yourself and any organization You represent, that You are more than 18 years of age, will abide by and comply with this Agreement, are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country, and are not listed on any U.S. Government list of prohibited or restricted parties.