



**Terms of Service  
for Authorized Resellers of  
Monsido Services**

These Terms of Service (the “**Agreement**”), the relevant terms of the Documentation, and any executed Orders between Customer and Acquia’s Authorized Reseller, are incorporated herein and shall govern the provision of the Services. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT USE THE SERVICES. This Agreement shall commence on the Effective Date of Customer’s first executed Order (“**Effective Date**”) and will continue until otherwise terminated in accordance with Section 12 below.

**1. DEFINITIONS.**

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “**Control**,” for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Ancillary Programs**” means certain enabling software or tools, which Acquia makes available to Customer for download as part of the Subscription Services for purposes of facilitating Customer access to, operation of, and/or use with the Subscription Services. Ancillary Programs do not fall within the meaning of Third Party Tools.

“**Authorized Contractors**” means independent contractors, licensors, or subcontractors.

“**Authorized Reseller**” means Acquia’s third party reseller, authorized to market and resell Acquia services in accordance with a certain Reseller Agreement executed by and between Acquia and Authorized Reseller.

“**Customer**” means a registered user of the Services.

“**Customer Applications**” as applicable, means all software programs, including without limitation Drupal, Node.js, and Magento, that Customer uses on the cloud platform comprising part of the Subscription Services. Subscription Services do not fall within the meaning of Customer Applications.

“**Customer Data**” means all data, records, files, images, graphics, audio, video, photographs, reports, forms and other content and material, in any format, submitted to, stored by, transmitted, or otherwise used by or for Customer within the Subscription Services. Any output (i.e content created by) of Third Party Tools does not fall within the meaning of Customer Data until said output is used with the Subscription Services.

“**Data Center Region**” refers to the geographic region in which the Customer Data is housed.

“**Documentation**” means Acquia’s product guides and other end user documentation for the Services and Ancillary Programs available online and through the help feature of the Subscription Services, as may be updated by Acquia from time to time to reflect the then-current Subscription Services.

“**Order**” or “**Order Form**” means an ordering document or online order specifying the Services to be provided hereunder that is entered into between Authorized Reseller and Customer from time to time, including any addenda and supplements thereto.

“**Services or Subscription Services**” means the cloud based platform services made available by Acquia to Customer, the software made available by Acquia to Customer online via the applicable customer logins and/or associated Support Services, as ordered by Customer under an Order, as applicable.

“**Support Services**” means the level of support services purchased by Customer pursuant to an Order.

“**Subscription Term**” means the term of Subscription Services purchased by Customer which shall commence on the start date specified in the applicable Order and continue for the subscription term specified therein and any renewals thereto.

“**Trial Services**” means any Acquia product, service or functionality that may be made available by Authorized Reseller on behalf of Acquia to Customer to try at Customer’s option, at no additional charge, and which is designated as “beta,” “trial,” “non-GA,” “pilot,” “developer preview,” “non-production,” “evaluation,” or by a similar designation.

“**Third Party Tools**” means any non-Acquia products or services made available as an accommodation through Acquia’s Services.

**2. SUBSCRIPTION SERVICES**

**2.1. Provision of Subscription Services.** Acquia will make the Subscription Services available to Customer pursuant to this Agreement, the Documentation, and the relevant Order Form during the Subscription Term, solely for Customer’s internal business purposes. Acquia’s Affiliates and its Authorized Contractors may perform certain aspects of the Services and access Customer Data and Customer Applications provided that Acquia remain fully liable for same and responsible for ensuring that any of Acquia’s obligations under this Agreement performed by its Affiliates and its Authorized Contractors are carried out in accordance with this Agreement. Customer’s Affiliates and its Authorized Contractors may access certain aspects of the Services hosted or provided through such Services provided that Customer remain fully liable for same and responsible for ensuring that any of Customer’s obligations under this Agreement performed by its Affiliates and its Authorized Contractors are carried out in accordance with this Agreement. Customer’s use of the Subscription Services includes the right to access all functionality available in the Subscription Services during the Subscription Term. So long as Acquia does not materially degrade the functionality, as described in the Documentation, of the Subscription Services during the applicable Subscription Term (i) Acquia may modify the systems and environment used to provide the Subscription Services to reflect changes in technology, industry practices and patterns of system use, and (ii) update the Documentation accordingly. Subsequent updates, upgrades, enhancements to the Subscription Services made generally available to all subscribing customers will be made available to Customer at no additional charge, but the purchase of Subscription Services is not contingent on the delivery of any future functionality or features. New features, functionality or enhancements to the Subscription Services may be marketed separately by Acquia (via Authorized Reseller) and may require the payment of additional fees. Acquia will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require an additional fee.

**2.2 Trial Services.** If Customer registers or accepts an invitation for Trial Services, including through Acquia's website, or executes an Order for the same, Acquia will make such Trial Services available to Customer on a trial basis, free of charge, until the earlier of (a) the end of the free trial period for which Customer registered to use the applicable Trial Services, or (b) the end date specified in the applicable Order. Trial Services are provided for evaluation purposes and not for production use. Customer shall have sole responsibility and Acquia assumes no liability for any Customer Data that Customer may choose to upload on the Trial Services. Trial Services may contain bugs or errors, and may be subject to additional terms. TRIAL SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY AND ACQUIA SHALL HAVE NO INDEMNIFICATION OBLIGATIONS NOR LIABILITY OF ANY TYPE WITH RESPECT TO THE TRIAL SERVICES. Acquia may, in its sole discretion, discontinue Trial Services at any time. For the avoidance of doubt, Trial Services may require acceptance of additional terms and conditions prior to Customer's permitted use.

**2.3 Ancillary Programs.** As part of the Subscription Services, Acquia may provide Customer with access to download certain Ancillary Programs for use with the Subscription Services. Acquia grants Customer during the Subscription Term a non-exclusive, non-transferable non-assignable, limited licensed to use such Ancillary Programs in object code (machine readable) format only on each site hosted by Acquia under an Order for Subscription Service to facilitate Customer access to, operation of, and/or use of the Subscription Services subject to the terms of this Agreement. Ancillary Programs shall only be used to upload, download and synchronize files between Customer's computer or other Customer owned or controlled devices and the Subscription Services.

### 3. SECURITY AND DATA PRIVACY

**3.1. Security and Internal Controls.** In accordance with Acquia's [Security Annex](#) incorporated herein by reference, Acquia shall (i) maintain a security framework of policies, procedures, and controls that includes administrative, physical, and technical safeguards for protection of the security and integrity of the Subscription Services, and of the Customer Data contained within the Subscription Services, using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards, (ii) access and use the Customer Data solely to perform its obligations in accordance with the terms of this Agreement, and (iii) perform periodic testing by independent third party audit organizations, which include with Service Organization Controls 1 (SOC 1), SOC 2 audits and ISO 27001 certification or surveillance audits performed annually, as applicable, and as more fully set forth in the Security Annex. In no event during the Subscription Term shall Acquia materially diminish the protections provided by the controls set forth in Acquia's then-current Security Annex.

**3.2. Data Privacy.** The terms of Authorized Reseller's DPA and the [Acquia Data Processing Addendum](#) ("DPA") are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA.

**EU, UK, Switzerland.** To the extent Customer's use of the Subscription Services includes the processing of Customer Data by Acquia that are subject to the General Data Protection Regulation (EU) 2016/679 or the UK GDPR, as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (jointly "GDPR"), such data processing by Acquia as data processor complies with the requirements of the aforementioned regulations and any Personal Data transfer out of the European Union, the European Economic Area, the United Kingdom, and Switzerland shall be governed by the Standard Contractual Clauses as attached to the DPA, unless the Customer has opted out of those clauses. For the purposes of the **Standard Contractual Clauses**, Customer and its applicable Affiliates are each the data exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order Form, shall be treated as its execution of the Standard Contractual Clauses and Appendices.

**CCPA, CPRA.** Where Customer's use of the Subscription Services includes the processing of California Consumer's Personal Information by Acquia that are subject to the California Consumer Protection Act of 2018 a, and its implementing regulations, as amended or superseded from time to time ("**CCPA**") including as amended by the California Privacy Rights Act of 2020 ("**CPRA**"), such data processing by Acquia as a "service provider" complies with the requirements of the CCPA.

**Processing and Data Subject Requests.** Acquia shall process personal data and personal information on behalf of and in accordance with Customer's instructions consistent with this Agreement and as necessary to provide the Subscription Services and will reasonably cooperate with Customer in its efforts to respond to requests by data subjects and/or California Consumers to exercise their rights under the GDPR or CCPA and to otherwise comply with the GDPR or CCPA.

**3.3. Data Center Region.** Customer may select the Data Center Region from those available for the applicable Subscription Services. Acquia will not move the selected Data Center Region and the Customer Data contained within such Data Center Region, without Customer's written consent or unless required to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). Customer consents to Acquia's storage of Customer Data in, and transfer of Customer Data into, the Data Center Region Customer selects.

**3.4. Compliance with Law.** Acquia will comply with all laws applicable to the provision of the Subscription Services, including applicable security breach notification laws, but not including any laws applicable to the Customer's industry that are not generally applicable to information technology services providers.

### 4. CUSTOMER OBLIGATIONS, SERVICE RESTRICTIONS, RELYING ON SERVICES, ACCEPTABLE USE

**4.1. Responsibilities.** Customer shall (i) access and use the Services in accordance with this Agreement, applicable laws and government regulations and Acquia's [Acceptable Use Policy](#) incorporated herein by reference, (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Acquia promptly of any such unauthorized access or use, and (iii) take commercially reasonable steps necessary to ensure the security and compliance of the Customer Applications.

**4.2. Customer Data.** Customer has and shall maintain all rights as are required to allow Acquia to provide the Subscription Services to Customer as set forth in this Agreement, including without limitation to send the Customer Data to Acquia pursuant to this Agreement and to allow Acquia to access, use, and store Customer Data to provide the Subscription Services pursuant to this Agreement. Customer is responsible for its legal and regulatory compliance in its use of any Subscription Services and shall make Acquia aware of any Customer Data processed, stored, or transmitted through the Subscription Services for which regulations other than those set forth in the Security Annex apply. If, in the course of providing Subscription Services, Acquia agrees in writing to process such Customer Data and Customer has subscribed to any applicable Subscription Services, Acquia shall process it only as permitted under this Agreement and in compliance with data protection legislation to which Acquia is subject as a service provider.

**4.3 Restrictions.** Customer shall not (i) license, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise similarly exploit the Subscription Services or Ancillary Programs), (ii) use or permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Subscription Services, (iii) copy, create a derivative work of reverse engineer, reverse assemble, disassemble, or decompile the Subscription Services, Ancillary Programs, or any part thereof or otherwise attempt to discover any source code or modify the Subscription Services or the Ancillary Programs), (iv) create a competitive offering based on the Subscription Services, and (v) disclose any benchmark or performance tests of the Subscription Services.

**4.4 Reliance on the Services.** Customer acknowledges that the Services are provided for general information only and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete or more timely sources of information. Customer acknowledges further that any reliance on the Services is at Customer's own risk.

**4.5 Restriction on Pages and Information Scanned.** The Services are intended to be used to scan only Customer's public-facing web pages. For the avoidance of doubt, in no event shall Customer utilize the Services to scan private areas of Customer's Web sites, such as those areas that are password protected or contain private information about Customer and/or its users, employees, contractors, officers, directors, and/or other agents. In the event Customer so utilizes the Services in such a manner, Customer agrees and acknowledges that Acquia nor Authorized Reseller shall not be held liable for any damages arising from or related to the same, including but not limited to damages that may arise related to the failure to comply with data protection rules and regulations. Customer shall utilize the Services to scan only those URLs and domains belonging to Customer and/or for which Customer has a license to operate and manage the same. In no event shall the Services be used to scan URLs and domains outside of Customer's control or otherwise in bad faith.

## 5. Reserved

## 6. FEES, PAYMENT, INVOICING, TAXES

All provisions related to pricing, invoicing, fees, payments, taxes and similar shall be as agreed between Customer and Authorized Reseller. Acquia will not be liable for any agreement between Customer and Authorized Reseller for any other account administration on Customer's behalf.

## 7. PROPRIETARY RIGHTS

**7.1. Subscription Services.** Except for the rights expressly granted under this Agreement, Acquia and its licensors retain all right, title and interest in and to the Subscription Services and Documentation, including all related intellectual property rights therein. Acquia reserves all rights in and to the Subscription Services and Documentation not expressly granted to Customer under this Agreement. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary notices of Acquia.

**7.2 Ancillary Programs, Third Party Tools.** The Subscription Services (including Ancillary Programs) may interoperate with certain software products, including open-source software, owned by third parties and licensed directly to the Customer by such third party ("**Third Party Tool**"). Such Third Party Tool(s) is provided to the Customer without liability or obligation by Acquia and is subject to the applicable provider's terms and conditions and any such terms and conditions associated with such use are solely between Customer and such third party provider. Acquia does not provide any Support Services for Third Party Tools.

**7.3. Customer Data and Customer Applications.** As between Customer, Authorized Reseller, and Acquia, Customer is and will remain the sole and exclusive owner of all right, title and interest to all Customer Data and Customer Applications, including any intellectual property rights therein. Customer's use of any output from Third Party Tools shall be subject to and governed by the terms of use applicable to such Third Party Tool. Customer hereby grants Acquia, its Affiliates and applicable Authorized Contractors all necessary rights to host, use, process, store, display and transmit Customer Data and Customer Applications solely as necessary for Acquia to provide the Services in accordance with this Agreement. By using Ancillary Programs Customer grants Acquia permission to access Customer's computer or other devices to the extent necessary in enabling Ancillary Programs. Customer represents that it has, and warrants that it shall maintain, all rights as required to allow Acquia to compile, use, store, and retain aggregated Customer Data, including without limitation in combination with other Acquia customers' data, for internal or marketing uses (provided that no such marketing use shall include any information that can identify Customer or its customers). Subject to the limited licenses granted herein, Acquia

acquires no right, title or interest from Customer or Customer licensors hereunder in or to Customer Data and Customer Applications, including any intellectual property rights therein. Customer reserves all rights in and to the Customer Data that are not expressly granted to Acquia pursuant to this Agreement.

## 8. CONFIDENTIALITY

**8.1. Definition of Confidential Information.** "**Confidential Information**" means all confidential or proprietary information of a party ("**Disclosing Party**") disclosed to the other party ("**Receiving Party**"), whether orally or in writing, that is designated as confidential or reasonably should be understood to be confidential given the nature of information and the circumstances of disclosure. Without limiting the coverage of these confidentiality obligations, the parties acknowledge and agree that Confidential Information of each party shall include the terms and conditions of this Agreement (including pricing and other terms set forth in all Order Forms hereunder), related benchmark or similar test results, other technology and technical information, security information, security audit reports, and business and marketing plans, except that Acquia may reference and use Customer's name, logos and the nature of the Services provided hereunder in Acquia's business development and marketing efforts.

**8.2. Exceptions.** Confidential Information shall not include information that (i) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party, (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party, (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to Disclosing Party, or (iv) is independently developed by Receiving Party without reference to or use of the Disclosing Party's Confidential Information.

**8.3. Protection of Confidential Information.** The Receiving Party shall use the same degree of care used to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care), and, except with Disclosing Party's written consent, shall (i) not use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement and (ii) limit access to Confidential Information of Disclosing Party to those of its and its Authorized Contractors, Affiliates' employees, contractors and agents who need such access for purposes consistent with this Agreement and who have a duty or obligation of confidentiality no less stringent than that set forth herein.

**8.4. Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by applicable law, regulation or legal process, provided that the Receiving Party (i) provides prompt written notice to the extent legally permitted, (ii) provides reasonable assistance, at Disclosing Party's cost, in the event the Disclosing Party wishes to oppose the disclosure, and (iii) limits disclosure to that required by law, regulation or legal process.

## 9. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

**9.1. Acquia Representations & Warranties.** Acquia represents and warrants that (i) Acquia has the legal authority to enter into this Agreement, (ii) the Subscription Services will materially conform with the relevant Documentation, and (iii) the functionality and security of the Subscription Services will not be materially decreased during a Subscription Term.

**9.2. Remedies.** For any failure of any Subscription Services to conform to their respective warranties, Acquia's liability and Customer's sole and exclusive remedy shall be for Acquia, in the case of a breach of the warranty set forth in Section 9.1 (ii), (iii) to use commercially reasonable efforts to correct such failure. If the foregoing remedies are not commercially practicable, Acquia may, in its sole discretion, terminate the applicable Order upon providing Customer with written notice thereof, and, as Customer's sole and exclusive remedy, refund to Customer (a) in the case of breach of the warranty set forth in Section 9.1(ii) or (iii), any Subscription

Services fees paid by Customer with respect to the unexpired portion of the current Subscription Term for the non-conforming Subscription Services.

**9.3. Customer Representations & Warranties.** Customer represents and warrants that (i) it has the legal authority to enter into this Agreement, and (ii) it will use the Services in accordance with the terms and conditions set forth in this Agreement and in compliance with all applicable laws, rules and regulations.

**9.4. Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACQUIA MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND ACQUIA HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, ANY WARRANTY WITH RESPECT TO THE QUALITY, PERFORMANCE, ACCURACY OR FUNCTIONALITY OF THE SERVICES OR THAT THE SERVICES ARE OR WILL BE ERROR FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT; NOR DOES ACQUIA MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES OR AS TO THE ACCURACY, RELIABILITY OR CONTENT OF ANY INFORMATION PROVIDED.

## 10. MUTUAL INDEMNIFICATION

**10.1. Indemnification by Acquia.** Acquia shall indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Subscription Services hereunder infringes or misappropriates the valid intellectual property rights of a third party (a "**Claim Against Customer**"); provided that Customer (a) promptly gives Acquia written notice of the Claim Against Customer; (b) gives Acquia sole control of the defense and settlement of the Claim Against Customer (provided that Acquia may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to Acquia all reasonable assistance, at Acquia's expense. In the event of a Claim Against Customer, or if Acquia reasonably believes the Subscription Services may infringe or misappropriate, Acquia may in Acquia's sole discretion and at no cost to Customer (i) modify the Subscription Services so that they no longer infringe or misappropriate, without breaching Acquia's warranties hereunder, (ii) obtain a license for Customer's continued use of Subscription Services in accordance with this Agreement, or (iii) terminate Customer's subscriptions for such Subscription Services and refund to Customer any prepaid fees covering the remainder of the term of such subscriptions after the effective date of termination. Notwithstanding the foregoing, Acquia shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim Against Customer to the extent it arises from (i) Customer Data, (ii) use by Customer after notice by Acquia to discontinue use of all or a portion of the Subscription Services, (iii) use of Services by Customer in combination with equipment or software not supplied by Acquia where the Service itself would not be infringing, (iv) or Customer's breach of this Agreement.

**10.2. Indemnification by Customer.** Customer shall indemnify, defend and hold Acquia harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit or proceeding made or brought against Acquia by a third party alleging that Customer Data violates applicable law or a third party's rights (a "**Claim Against Acquia**"); provided that Acquia (a) promptly gives Customer written notice of the Claim Against Acquia; (b) gives Customer sole control of the defense and settlement of the Claim Against Acquia (provided that Customer may not settle any Claim Against Acquia unless the settlement unconditionally releases Acquia of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

**10.3. Exclusive Remedy.** This Section 10 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any type of claim described in this Section.

## 11. LIMITATION OF LIABILITY

**11.1. Limitation of Liability.** EXCEPT FOR (I) EACH PARTY'S OBLIGATIONS SET FORTH IN SECTION 10 (MUTUAL INDEMNIFICATION), (II) INFRINGEMENT OR MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING TRADE SECRETS, (III) DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR (IV) ANY OTHER LIABILITY THAT MAY NOT BE LIMITED UNDER APPLICABLE LAW (THE "EXCLUDED MATTERS"), IN NO EVENT SHALL EITHER PARTY'S TOTAL AGGREGATE LIABILITY RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THOSE SERVICES GIVING RISE TO SUCH CLAIM UNDER THE APPLICABLE ORDER FORM IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT.

**11.2. Exclusion of Consequential and Related Damages.** EXCEPT FOR THE EXCLUDED MATTERS, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. TERM AND TERMINATION

**12.1. Term of the Subscription Services.** The term of the Customer's Subscription Services will start on the date indicated on the Order Form. If the Order Form indicates that the Subscription Services will automatically renew, then the Subscription Term will be renewed for a subsequent equal term. If the Order Form does not indicate automatic renewal, then the Customer must contact Acquia or the Authorized Reseller prior to the expiration of the current Subscription Term to continue to access the Subscription Services beyond the end of the Subscription Term.

**12.2 Term of Agreement.** This Agreement commences on the Effective Date and continues until otherwise terminated, by written agreement of the parties, in accordance with Section 12.3 or upon the expiration of the last Subscription Term or renewal thereof.

**12.2. Renewal of Subscription Services.** Except as otherwise specified in the applicable Order, the Subscription Services shall automatically renew for successive one-year periods, unless and until terminated by either party in accordance herewith or unless either party provides written notice of non-renewal to the other party at least sixty (60) days prior to the end of the then-current Subscription Term.

### 12.3 Right to Termination.

(i) If the Customer has chosen the automatic renewal option for the Subscription Services, the Subscription Services shall automatically renew for successive one-year periods, unless and until terminated by either party in accordance herewith or unless either party provides written notice of non-renewal to the other party at least sixty (60) days prior to the end of the then-current Subscription Term.

(ii) For any Subscription Services that have been paid in advance or for a Subscription Term of twelve (12) months or longer, such Subscription Service is non-cancellable and payments for such Subscription are non-refundable.

(iii) This Agreement and each individual Subscription may be terminated by either Party if the other Party breaches any material term of this Agreement and such breach remains uncorrected for thirty (30) days following written notice; or immediately, if the other Party becomes the subject of a voluntary or involuntary petition in bankruptcy or any involuntary proceeding relating to insolvency, receivership, liquidation, or similar action for the benefit of creditors as a consequence of debt, or if the other Party otherwise ceases or threatens to cease business.

**12.4 Effect of Termination.** Upon termination of an individual Subscription Service, this Agreement and all other Subscriptions Services will continue in full force and effect. Upon termination of this Agreement in whole, all

current Subscription Services will be terminated immediately. Termination of this Agreement will be without prejudice to any rights or liabilities accrued as of the date of termination. Authorized Reseller is entitled to invoice and be paid for all Subscription Services provided up to the effective date of termination, and all invoices become immediately then due and payable. Any provision of this Agreement, which is intended to survive expiration or termination will survive, including, without limitation, confidentiality, restrictions on use of intellectual property, indemnity, limitations on liability and disclaimers of warranties and damages, governing law, and the Customer's payment obligations accrued prior to termination.

**12.5. Survival.** Section 7 (Proprietary Rights), 8 (Confidentiality), 9.4 (Disclaimer), 10 (Mutual Indemnification), 11 (Limitation of Liability), 12.4 (Data Portability and Deletion), 13 (Notices, Governing Law and Jurisdiction) and 14 (General Provisions) and any other rights and obligations of the parties hereunder that by their nature are reasonably intended to survive termination or expiration, shall survive any termination or expiration of this Agreement.

### 13. NOTICES, GOVERNING LAW AND JURISDICTION

**13.1. Manner of Giving Notice.** Except as otherwise specified in this Agreement, all legal notices of default, breach or termination ("Legal Notices") hereunder shall be in writing and shall be deemed to have been given upon (i) personal delivery, (ii) the fifth business day after being sent by certified mail return receipt requested, or (iii) the first business day after sending by a generally recognized international guaranteed overnight delivery service. Each party shall send all Legal Notices to the other party at the address set forth in the applicable Order Form or SOW, as such party may update such information from time to time, with, in the case of notices sent by Customer, a copy sent to the Acquia Legal Department at the address first set forth above. Billing-related notices to Customer will be addressed to the relevant billing contact designated by Customer on the applicable Order.

**13.2. Governing Law and Jurisdiction.** If Customer is entering into this Agreement from the UK or a European Union member country, then this Agreement is governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales. If Customer is entering into this Agreement from Australia, then this Agreement is governed by the laws of New South Wales and subject to the exclusive jurisdiction of the courts of Sydney. Otherwise, this Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law rules. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the Commonwealth of Massachusetts in Suffolk County or the United States District Court, Eastern District of Massachusetts. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Notwithstanding the foregoing, the parties acknowledge that any unauthorized disclosure of Confidential Information or any actual or alleged infringement of such party's or third party's intellectual property rights might cause the other party to suffer irreparable harm for which damages would be an inadequate remedy and that, in such event, the aggrieved party may seek, in addition to any other available remedies, injunctive and other equitable relief in any state, federal, or national court of competent jurisdiction, without bond and without the necessity of showing actual monetary damages. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to the Agreement.

**13.3. Waiver of Jury Trial.** Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

### 14. GENERAL PROVISIONS

**14.1. Import and Export Compliance.** Each party shall comply with all applicable import, re-import, export and re-export control laws, treaties, agreements, and regulations. Export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S.

Department of Commerce (EAR), the Department of State International Traffic in Arms Regulations (ITAR), and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control (OFAC), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit users to access or use Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

**14.2. Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of the other party's employees or agents in connection with this Agreement. If a party learns of any violation of the above restriction, such party will use reasonable efforts to promptly notify the other party.

**14.3. Federal Government End Use Provisions (only applicable for the U.S.).** If the Services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Services, or any related documentation of any kind, including technical data, manuals or Acquia Property is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 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), as applicable. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the software and Services with only those rights set forth in this Agreement and any amendment hereto.

**14.4. Subscription Service Analyses.** Acquia may (i) compile statistical and other information related to the performance, operation and use of the Subscription Services, and (ii) use, and share data from the Subscription Services environment in aggregated form for security and operations management, to create statistical analyses, and for research and development purposes (clauses i and ii are collectively referred to as "Subscription Service Analyses"). Subscription Service Analyses will not incorporate any information, including Customer Data, in a form that could serve to identify Customer or an individual. Acquia retains all intellectual property rights in Subscription Service Analyses.

**14.5. Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

**14.6. Non-Solicitation.** Customer agrees that during the term of each Order Form and for twelve (12) months thereafter, it will not recruit or otherwise solicit for employment any person employed by Acquia who participated in the performance of Services under the applicable Order Form. Nothing in this clause shall be construed to prohibit individual Acquia employees from responding to public employment advertisements, postings or job fairs of Customer, provided such response is not prompted by Customer intentionally circumventing the restrictions of this Section.

**14.7. No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

**14.8. Public Relations.** Customer agrees that Acquia may identify Customer as an Acquia customer in advertising, media relations, trade shows, the website, and other similar promotional activities, using Customer's name and trademarks in accordance with Customer's trademark guidelines. Customer shall also assist Acquia in preparing a press release announcing Customer as a new Acquia Customer, with the view to publishing within 60 days following the Effective Date and in preparing a case study for external use that details Customer's use of the Services within 6 months following the Effective Date. Acquia shall not publish such press release or case study without Customer's prior, written approval as to its contents.

**14.9. Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

**14.10. Force Majeure.** Neither party shall be liable under this Agreement for

delays or failures to perform the Services or this Agreement due to causes beyond its reasonable control. Such delays include, but are not limited to, fire, natural catastrophe, government legislation, acts, orders, or regulation, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of the delayed party. The delayed party shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control. If the force majeure event continues for more than thirty (30) calendar days, then either party may terminate the Agreement upon written notice to the other party.

**14.11. Severability.** 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.

**14.12. Assignment.** Neither party may assign its rights and obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement in its

entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors, and permitted assigns.

**14.13. Entire Agreement.** This Agreement constitutes the entire agreement between the parties as it relates to the subject matter and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning or relating to the same. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties. To the extent of any conflict or inconsistency between the provisions of this Agreement, the Documentation, any Order Form, the terms of such Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a PO, payment system, other order documentation or otherwise (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.