

## Terms of Service for Acquia Cloud Professional

### 1. ACCEPTANCE OF TERMS

THESE TERMS OF SERVICE (“TERMS OF SERVICE” OR “TERMS”) FOR ACQUIA CLOUD PROFESSIONAL (“ACQUIA CLOUD PROFESSIONAL” OR THE “SERVICES”) CONSTITUTES A BINDING CONTRACT ON YOU AND GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES BY YOU, AGENTS AND END-USERS.

By accepting these Terms, either by accessing or using the Services, or authorizing or permitting any agent or end-user to access or use the Services, You agree to be bound by these Terms. If You are entering into these Terms on behalf of a company, organization or another legal entity (an “Entity”), You are agreeing to these Terms for that Entity and representing to Acquia that You have the authority to bind such Entity and its Affiliates to these Terms, in which case the terms “You,” “Your” or a related capitalized term herein shall refer to such Entity and its Affiliates. If You do not have such authority, or if You do not agree with these Terms, You must not accept these Terms and may not use the Services. These Terms, or any part thereof, may be modified by us, including the addition or removal of terms at any time, and such modifications, additions or deletions will be effective immediately upon posting. Your use of the Services after such posting shall be deemed to constitute acceptance by You of such modifications, additions or deletions.

### 2. THE SUBSCRIPTION TERM

These Terms are effective as soon as You click the "I agree" button (the "Effective Date"). The "Initial Subscription Term" will be for the period specified in Your order and commences on the Effective Date. At the end of Your Initial Subscription Term, Your subscription shall automatically renew for successive renewal subscription terms (each a "Renewal Subscription Term") equal in duration to the Initial Subscription Term at our then current subscription fees unless You elect not to renew Your subscription as further described below under “Cancellation and Termination”. The "Initial Subscription Term" and any "Renewal Subscription Term" are referred to herein as the "Subscription Term".

### 3. THE SERVICES

Acquia Cloud Professional is a self-service, Drupal-tuned cloud platform that will provide You with a pre-configured environment for delivering Drupal-powered content and services. We will host and maintain Your Content on our Platform in the Data Center Region You select during Your Subscription Term. We will provide You the level of Services You selected from the [Self-Service Package](#) described [here](#) when You purchased the Services. You are fully responsible for migrating Your Content onto the Services. We may offer You assistance for a fee under a separate statement of work. We will use commercially reasonable efforts to provide the Services twenty-four (24) hours a day, seven (7) days a week throughout the Subscription Term, except for (i) periodic maintenance procedures or updates which we may undertake from time to time, and (ii) causes beyond our reasonable control, for example, an act of God, an act of government, Internet service provider failure or delay, hostile network attacks, network congestion, or other failures. Unavailability of the Service does not constitute a breach of these Terms.

We will conduct daily, weekly and monthly backups of Your Content on the Services for disaster recovery. You may also process on-demand backups and restores at Your discretion. We will provide a shared single server development Platform with the specifications You ordered with Your subscription. You are permitted to run the number of applications included with Your subscription.

If Your subscription includes access to the Acquia Cloud UI, You will have access to Acquia Technology. Acquia may change the Acquia Technology from time to time or discontinue any portion thereof without notifying You. Acquia Technology includes open source software. Subject to Your compliance with the terms and conditions of these Terms, we hereby grant to You a non-exclusive, non-transferable, revocable license for

You and Your users to access and use the Acquia Technology solely for purposes of utilizing the Services. Your use of Acquia Search and the number of Search queries You may perform and the number of documents included in Your Search index will be limited depending on the type of subscription You purchased. If You exceed Your allocated limits, You will incur additional charges. You agree that You will not place excessive burdens on our infrastructure, instances or other resources, including support services. You understand that bandwidth, connection speeds, and other similar indices of capacity are maximum numbers. Consistently reaching these capacity numbers may result in our need to place restrictions on Your use of the Services. You further agree that we may place restrictions on Your use of the Services, including support services, to the extent they exceed the use of these resources for similarly situated customers.

## **Support Services**

We will provide the applicable support services in accordance with the [Support Users Guide](#) incorporated herein by reference. Support must be requested by You in accordance with the support request procedures set forth therein. You will be allotted a certain number of support tickets and advisory hours (if applicable) per the subscription level You have purchased.

## **Data Privacy**

In performing Subscription Services, Acquia will comply with the [Acquia Privacy Policy](#) incorporated herein by reference. The Acquia Privacy Policy is subject to change at Acquia's discretion; however, Acquia policy changes will not result in a material reduction in the level of protection provided for Customer Data during the Subscription Term. Where Your use of the Subscription Services includes the processing of personal data by Acquia that are subject to the EU Data Protection Directive 95/46/EC and, from 25 May 2018 onwards, the General Data Protection Regulation (EU) 2016/679, such data processing by Acquia as data processor complies with the requirements of the aforementioned regulation and, in addition, with the EU-U.S. and Swiss-U.S. Privacy Shield for which Acquia is certified.

## **GDPR**

Each party will comply with its respective obligations under the General Data Protection Regulation (EU) 2016/679 and the European Directive 2002/58/EC (as amended or updated from time to time) and any legislation and or binding regulations implementing or made pursuant to them ("Data Protection Requirements"). You shall be regarded as the data controller of any personal data collected about individuals under this Agreement in connection with Services. When providing the Services to You, We may be processing personal data about individuals on behalf of You and thus acting as a data processor in accordance with the Data Protection Requirements. We shall process the personal data only on behalf of and in accordance with Your documented instructions for the following purposes (i) in accordance with Your instructions consistent with this Agreement and as necessary to provide the Services; and (ii) on documented reasonable instructions from You where such instructions are consistent with the terms of this Agreement, including with regard to transfers of personal data to a third country or an international organization, unless required to do so by Union or Member State law to which We are subject; in such a case, We shall inform You of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. We shall ensure that persons authorized to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality. Your instructions for the processing of personal data shall comply with Data Protection Requirements. Without Your prior written consent, We must not (i) use the personal data for any other purpose than the fulfillment of its duties under the Agreement, or (ii) disclose the data to third parties other than in accordance with the Agreement. We have implemented and shall maintain the appropriate technical and organizational measures to comply with the obligations of a data processor, including ensuring that the personal data is not (i) accidentally or unlawfully destroyed, (ii) lost, altered or damaged, (iii) disclosed to or accessed by any unauthorized person, (iv) misused or (v) in other ways treated in violation of the Data Protection Requirements. Taking into account the nature of the processing, We shall assist You by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Your obligation to respond to requests for exercising the data subject's rights laid down in the Data Protection Requirements. In addition, to

the extent You, in Your use of the Services, do not have the ability to address a data subject request, We shall upon Your request provide commercially reasonable efforts to assist You in responding to such data subject request, to the extent We are legally permitted to do so and the response to such data subject request is required under Data Protection Requirements. To the extent legally permitted, You shall be responsible for any costs arising from Acquia's provision of such assistance. We shall promptly refer to You any requests, notices or other communication from data subjects, data protection authorities or any other law enforcement authority for You to resolve. We shall provide such information to You as You may reasonably require, and within the timescales reasonably specified by You, to allow You to comply with the rights of data subjects, including subject access rights, or with notices served by the relevant data protection authority. We shall include in any contracts Authorized Contractors who will process personal data directly or indirectly on behalf of You, provisions in favor of You which are equivalent to those in this Agreement. We shall assist You in ensuring compliance with the obligations pursuant to the Data Protection Requirements in connection with data protection impact assessments, prior consultation of the supervisory authorities or notifications of personal data breaches taking into account the nature of processing and the information available to Us. At Your choice, Acquia shall delete or return all the personal data to You after the end of the provision of Services relating to processing, and shall delete existing copies unless Union or Member State law requires storage of the personal data. We shall make available to You all information necessary to demonstrate compliance with the obligations set forth in this Agreement.

We shall provide Customer with reasonable cooperation and assistance needed to fulfil Your obligation under the GDPR to carry out a data protection impact assessment related to Your use of the Services, to the extent You do not otherwise have access to the relevant information, and to the extent such information is available to Us.

We must inform You if we believe that Your instruction is in breach of the applicable data protection provisions and may then not undertake the execution of the relevant instruction until it is clarified whether the instruction is compliant with data protection law.

#### 4. FEES AND PAYMENT

Your use of the Services will be subject to the fee schedule applicable to your subscription. We reserve the right to change our subscription fees. You shall pay all fees associated with Your use of the Services in accordance with the billing policies set forth [here](#). You shall provide us with accurate information, including, but not limited to, account permissions, billing, and other account information.

All fees are exclusive of all taxes, levies and duties imposed by taxing authorities and You shall be responsible for payment of such taxes. You agree to pay for any taxes that are applicable to your use of the Services and payments you make to Us.

You must provide us with a valid credit card and non-disposable email address. We will charge Your credit card for your subscription fees either monthly or annually in advance (depending on your subscription). We will also charge your credit card for any usage based fees (if applicable to your subscription). If we are unable to effect payment via your credit card, we will attempt to notify you via email. We may disable your access to the Services until payment is received. You agree to pay reasonable attorneys' fees and court costs incurred by Us to collect any unpaid amounts owed by You. Amounts paid for the Services are not refundable. Until Your Subscription to the Service is terminated, You acknowledge and understand that We will continue to charge You for the Services regardless of whether the Services are used or not until You notify us to cancel Your subscription. You must pay for an entire subscription for which you order regardless if you use all the Services you are entitled to or cancel your subscription during the Subscription Term.

#### 5. YOUR OBLIGATIONS

You shall comply with the laws applicable to Your use of the Services, the Acquia Privacy Policy and the [Acquia Acceptable Use Policy](#) incorporated herein by reference. You shall cooperate with our reasonable investigation of Services outages, security problems, and any suspected breach of these Terms.

You shall use reasonable security precautions in connection with Your use of the Services.

You understand that staging environment is a shared development staging environment and is only for low impact testing and development activities.

You shall not permit or assist others to access or use the Services for any purpose other than as permitted herein. You shall not, directly or indirectly (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Services; (iv) use the Services for timesharing or service bureau purposes; (v) modify, remove, or obscure any copyright, trademark or other proprietary rights notices from the Services; (vi) publish or disclose to third parties any evaluation of the Services without Acquia's prior written consent, (vii) use the Services in order to build a competitive product or service, or (viii) copy any features, functions, or graphics of the Services.

You shall only register for Services using a valid and active email address.

## 6. YOUR CONTENT

You represent to us that You have all necessary rights in Your Content to permit You to use the Services without infringing the rights of any copyright owners, violating any applicable laws, or violating the terms of any license or agreement to which You are bound.

To enable Us to provide You with the Services, You hereby grants Us, our Affiliates and sublicensees (including Authorized Contractors whose technologies and services interface with the Services that include the Content) a worldwide, royalty-free, non-exclusive, limited term license to use, process, store, display, and transmit Content solely as necessary for Us to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, We acquire no right, title, or interest from You or Your licensors hereunder in or to Content, including any intellectual property rights therein.

You acknowledge we do not screen Content but that we shall have the right (but not the obligation) to refuse, move, or delete any Content that violates these Terms. We also have the right to remove any Content that violates these Terms or is otherwise objectionable in our sole discretion. You acknowledge and agree that we may preserve Content and may also disclose Content if required to do so by law or in the good faith belief that such preservation or disclosure is reasonably necessary to (a) comply with legal process, (b) enforce these Terms, (c) respond to claims that any Content violates the rights of third parties, or (d) protect our rights, property, or personal safety and those of the users and the public.

We may immediately disable Your access to the Services, and/or terminate Your Services, without refund, if we believe that You have violated any of these Terms.

## 7. UNAUTHORIZED ACCESS TO YOUR CONTENT OR USE OF THE SERVICES

We are not responsible to You or any third party for unauthorized access to Your Content or the unauthorized use of the Services. You are responsible for the use of the Services by any employee of Yours, any person You authorize to use the Services, any person to whom You have given access to the Services, and any person who gains access to Your Content or the Services as a result of Your failure to use reasonable security precautions, even if such use was not authorized by You. We are not responsible for any Content that includes any Regulated Data that you submit to the Services. You shall have the sole responsibility for adequate protection and backup of any Content used in connection with the use of the Services.

## 8. PROPRIETARY RIGHTS

You will not receive any object code or source code relating to the Acquia Technology and Services. Acquia, its licensors, and its service providers own and reserve all rights, title, and interest in and to the Acquia Technology and Services, including all related intellectual property rights. Subject to the limited rights expressly granted to You, no rights are granted to You in the Services.

Except as provided in Section 6, Acquia acknowledges and agrees that it obtains no right, title or interest from You (or Your licensors) under these Terms in or to any Content that You create, submit, post, transmit or display on, or through, the Services, including all related intellectual property rights.

## 9. CANCELLATION AND TERMINATION

**By You.** You may elect not to renew Your subscription by notifying us at least 30 days prior to the start of a Renewal Subscription Term. For monthly subscription plans You may elect not to renew such subscription by notifying us at least 15 days prior to the start of Your next monthly billing period and for annual subscription plans You may elect not to renew such subscription by notifying us at least 15 days prior to the start of Your next annual billing period. To notify us of non-renewal or cancelation, You will need to complete the steps outlined at: <https://docs.acquia.com/support/billing>. Deleting Your website does not result in canceling Your subscription.

**Termination by Us.** We may stop offering any of our Services at any time. If we do, we may terminate Your subscription without cause by notifying You in writing at least twenty-five (25) days prior to such termination. We may also terminate Your subscription for cause and Your use of the Services if, in our opinion, You have breached or otherwise fail to comply with any of these Terms. Depending on the breach, we may offer You a limited period of time to cure Your breach, not to exceed five days. We may terminate Your subscription and/or Your access to the Services if Your non-payment of any fees owed to us that are delinquent by twenty-five (25) days or more. You agree to provide us with complete and accurate billing and contact information. We may terminate Your Subscription if the billing or contact information is false, fraudulent, or invalid.

**Effect of Termination.** Upon termination, You will no longer have access to the Services and We will delete any Content residing on the Platform. We do not issue any refunds upon termination or cancellation.

## 10. CONFIDENTIAL INFORMATION.

You and We agree to maintain the confidentiality of any proprietary information received by the other party during, or prior to entering into, these Terms that a party should know is confidential or proprietary based on the circumstances surrounding the disclosure including, without limitation, non-public technical and business information, security information security audit reports, and business and marketing plans ("Confidential Information") during the Subscription and for a period of two (2) years after the termination of Your subscription. This section shall not apply to any publicly available or independently developed information. The receiving party of any Confidential Information of the other party agrees not to use said Confidential Information for any purpose except as necessary to fulfill its obligations and exercise its rights under these Terms. The receiving party shall protect the secrecy of and avoid disclosure and unauthorized use of the disclosing party's Confidential Information to the same degree that it takes to protect its own confidential information and in no event less than reasonable care. We may use Your registration information to contact You for marketing purposes and We may reference and use Your name, logos and the nature of the Services provided hereunder in Our business development and marketing efforts.

You and we may disclose Confidential Information of the other 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.

## 11. WARRANTY DISCLAIMER

YOU EXPRESSLY UNDERSTAND AND AGREE THAT:

YOUR USE OF THE SERVICE IS AT YOUR SOLE RISK. THE SERVICES ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE BASIS”. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

WE DO NOT REPRESENT OR WARRANT THAT (i) THE USE OF THE SERVICES WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE OR SOFTWARE, (ii) THE SERVICES OR SUPPORT WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (iii) ERRORS OR DEFECTS WILL BE CORRECTED, OR (iv) THE SERVICES OR SUPPORT ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICES MAY BE SUBJECT TO LIMITATIONS OR ISSUES INHERENT IN THE USE OF THE INTERNET AND ACQUIA IS NOT RESPONSIBLE FOR ANY PROBLEMS OR OTHER DAMAGE RESULTING FROM SUCH LIMITATIONS OR ISSUES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES AND SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO YOU. YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY FAILURE OR NONPERFORMANCE OF THE SERVICE OR ANY ERROR OR OMISSION IN THE SERVICE AND OUR SOLE OBLIGATION SHALL BE FOR US TO USE COMMERCIALY REASONABLE EFFORTS TO REMEDIATE THE ERROR OR DEFECT IN THE SERVICE.

## 12. INDEMNIFICATION

You agree to indemnify and hold us and our subsidiaries, affiliates, officers, directors, agents, partners and employees harmless from any claim or demand (including reasonable attorneys’ fees and any damages award, fine or other amount imposed on us) made by any third party due to or arising out of Your Content, inappropriate use of the Services, violation of these Terms, Your gross negligence, willful misconduct, or violation of law or violation of any rights of another. Your obligations under this subsection include claims arising out of the acts or omissions of Your employees and agents, any other person to whom You have given access to the Services, and any person who gains access to the Services as a result of Your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by You. We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to You. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. You must pay expenses due under this Section as we incur them.

## 13. LIMITATION OF LIABILITY

We are not liable to You for special, indirect, incidental, consequential, punitive, exemplary, or other similar damages, including, without limitation, loss revenue or profits, in any way arising out of or related to these Terms even if we have been advised of the possibility of such damages. We are not liable to You for any lost Content. Our maximum aggregate liability for all claims by You relating to these Terms shall not exceed the fees paid by You in the immediately preceding six(6) months period giving rise to the claim.

## 14. 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. You 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.

## 15. USER CONTRIBUTIONS AND PRIVACY

There are many opportunities within the Service, including but not limited to the Acquia forums and commenting on Acquia blog posts, for You to actively participate. In the process of doing so, You may provide certain comments, suggestions, data, or other information to us about the Service (collectively "Information"). We reserve the right to retain and use any such Information in current or future products or services without further compensation to You. To the extent such Information is protectable under intellectual property laws, You agree to cooperate with us as needed to obtain such protection as we may desire and You agree to assign Your rights to such Information to us.

## 16. SUBSCRIPTION SERVICE ANALYSES

We may (i) compile statistical and other information related to the performance, operation, and use of the Services, and (ii) use and share data from the 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 "Service Analyses"). Service Analyses will not incorporate any information, including Customer Data, in a form that could serve to identify You or an individual. Acquia retains all intellectual property rights in Service Analyses.

## 17. DEFINITIONS

**"Acquia Technology"** means Acquia Cloud, Acquia Cloud UI, Acquia Search, Acquia Insight, and any other technology and information, methodologies, data, designs, ideas, concepts, know-how, techniques, user-interfaces, templates, documentation, software, hardware, modules, development tools, and other tangible or intangible technical material or information that Acquia possesses or owns.

**"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.

**"Authorized Contractors"** means independent contractors, licensors, or subcontractors that assist Us in the delivery of the Services.

**"Content"** means all applications, software programs, data, records, files, images, graphics, audio, video, photographs, reports, forms, and other content and material, in any format, that are submitted, stored, posted, displayed, transmitted, or otherwise used by You with the Subscription Services.

**"Data Center Region"** refers to the geographic region in which the Acquia Cloud Professional cloud platform environment is physically located and the Content is housed.

**"Platform"** means the cloud platform ordered by You and made available by Acquia to You.

**"Regulated Data"** means individual personal data to which Acquia is exposed during the provision of Services that is regulated by various acts, legislations and directives relating to privacy and security requirements for its protection and processing both in the United States and elsewhere in world.

## 18. GENERAL

We may provide notices to You via either email, via our ticketing system, through the Acquia Cloud user interface, or regular mail. The Services may also provide notices of changes to these Terms or other matters by displaying notices or links to notice to You generally on the Service.

You may not assign these Terms to another party. These Terms are governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of law provisions. In the event of any dispute or claim arising out of this Agreement cannot be resolved within thirty (30) days, either party may make a written demand for one

day mediation. If the dispute is not resolved by mediation, the dispute shall be settled by binding arbitration conducted in accordance with the JAMS procedures pursuant to its Streamlined Arbitration Rules and Procedure, by a single arbitrator, in Boston, Massachusetts. The arbitrator shall be selected as provided in the Streamlined Arbitration Rules and Procedure. The arbitrator may not award non-monetary or equitable relief of any sort. No discovery shall be permitted in connection with the arbitration unless it is expressly authorized by the arbitrator upon a showing of substantial need by the party seeking discovery. All aspects of the arbitration shall be treated as confidential and will not be disclosed by either party except as necessary to comply with legal or regulatory requirements. Judgment on the arbitrator's award may be entered in any court having jurisdiction. Each party shall bear its own costs of the arbitration. The fees and expenses of the mediator and the arbitrator shall be shared equally by the parties. If any part of these Terms are found to be invalid or unenforceable that part will be enforced to the maximum extent permitted by law and the remainder of these Terms will remain in full force. Nothing contained herein shall be construed as creating an agency, partnership, or other form of joint enterprise between the parties. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of our Services or these Terms must be filed within one (1) year after such claim or cause of action arose or be forever barred. More than one person's claims may not be consolidated under any circumstances in any form of any class or representative proceeding or otherwise.

If any part of these Terms are found unenforceable by a court, the rest of these Terms will nonetheless continue in effect, and the unenforceable part shall be reformed to the extent possible to make it enforceable but still consistent with the business and financial objectives of the parties underlying these Terms. Each of us may enforce each of our respective rights under these Terms even if we have waived the right or failed to enforce the same or other rights in the past. The relationship between us is that of independent contractors and not business partners. Neither of us is the agent for the other and neither of us has the right to bind the other on any agreement with a third party.

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