



Terms of Service for Acquia Cloud Free

ACCEPTANCE OF TERMS

THESE TERMS OF SERVICE FOR ACQUIA CLOUD FREE (“TERMS OF SERVICE” OR “TERMS”) CONSTITUTES A BINDING CONTRACT ON YOU AND GOVERNS YOUR USE OF AND ACCESS TO THE SERVICES BY YOU, AGENTS AND END-USERS IN CONNECTION ACCESS TO OUR FREE VERSION OF ACQUIA CLOUD, WHICH IS OUR DEVELOPER HOSTING ENVIRONMENT (“ACQUIA CLOUD FREE” OR THE “SERVICES”).

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 “Subscriber,” “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.

THE SERVICES

We will provide you with access to the Services subject to these Terms. The Services have limited availability and are being provided ‘AS IS’ without warranties of any kind. We provide no assistance with migrating data onto Acquia Cloud Free. You will not receive any object code or source code relating to the Services. Acquia, its licensors and its service providers own and reserve all rights, title and interest in and to the 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.

Acquia Cloud Free is not to be used for production sites, has no production environment, does not allow interactive SSH into the servers, provides you with limited PHP processes (2 per website), limited storage (1 GB for codebase, 1 GB for database storage, and 1 GB for file system storage) and does not allow custom domains. Acquia Cloud Free is a shared development environment and such environment is only for low impact testing and development activities. Should your use of the shared development environment adversely impact server performance or should you regularly consume what we consider to be excessive shared server capacity (cpu, memory, disk, PHP processes), your access to Acquia Cloud Free may be terminated. We may suspend Services without liability at any time at our sole discretion. We may provide you with prior notification of any such suspension but you acknowledge that we are not required to do so. We may suspend your use of the Services immediately if you violate these Terms.

We will not back up any data as part of the Services or provide any support to you while using Acquia Cloud Free. We disclaim all warranties of every kind, whether express or implied, statutory or otherwise, and Acquia hereby disclaims all implied warranties and conditions, including, but not limited to implied warranties of merchantability, fitness for a particular purpose and non-infringement. We do not promise that (i) the use of the Services will be uninterrupted, error-free or completely secure, or (ii) the Services will meet your requirements or expectations.

YOUR OBLIGATIONS

You will not perform any load tests or vulnerability tests on websites hosted on Acquia Cloud Free. You must comply with the laws applicable to your use of the Services and with the Acquia Privacy Policy found at <https://www.acquia.com/about-us/legal/privacy-policy> (“Privacy Policy”). You must cooperate with our reasonable investigation of Services outages, security problems, and any suspected breach of these Terms. You must provide us with accurate information, including, but not limited to, account permissions, billing, and other account information, if applicable.

You shall not permit or assist others to access or use the Services for any purpose other than to run the Services for internal demonstration purposes. You have no right to copy or distribute the Services. You may not use the Services to provide services to any third party or resell the Services.

You must use reasonable security precautions in connection with your use of the Services. For the Services, this includes encrypting any PII transmitted to or from the Services. 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 not register for the Services using email addresses from throw-away email address providers such as mailinator.com, 10minuteemail.com, guerillamail.com, yotmail.com, tempinbo.com and instantemail.com. You agree to comply with all applicable laws, rules and regulations including the CAN-SPAM Act.

YOUR RIGHTS IN YOUR WEBSITE CONTENT

You represent to us that you have all necessary rights in your Content (as defined herein) 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. “Content” means all 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 Services. You retain ownership of all right, title and interest in and to all your Content. You give us permission to host your website and give us the right to access, retain, use and disclose your Content solely for the purpose of providing Services. This permission exists only for as long as you continue to use the Services.

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.

DIGITAL MILLENNIUM COPYRIGHT ACT

We respect the intellectual property rights of others and expect you to do the same. We will respond to notices of copyright infringement consistent with the Digital Millennium Copyright Act (the “DMCA”) and our response to such notices may include removing or disabling access to any allegedly infringing Content, suspending your access to the Services, and terminating access to the Services if we do not receive a satisfactory response from you following receipt of an infringement notice.

If you believe that Content residing or accessible on the Services infringes a copyright, you (the “Notifying Party”) are asked to send a notice of copyright infringement containing the following information to the Designated Agent at the address below: (a) description of the copyrighted work or material that the Notifying Party claims has been infringed; (b) the URL where the material that the Notifying Party claims is infringing is located on our Services, or a description of that location sufficiently detailed for us to find it; (c) contact information about the Notifying Party, including address, telephone number and e-mail address; (d) a written statement that the Notifying Party has a good faith belief that the disputed use is not authorized by the copyright owner, its agent or law; (e) a statement by the Notifying Party, made under penalty of perjury, that the information provided in the notice is accurate and that the Notifying Party is either the copyright owner or is authorized to make the complaint on behalf of the copyright owner; and (f) an electronic or physical signature of the Notifying Party.

Acquia’s Designated Copyright Agent to receive notifications of claimed infringement can be reached as follows: Attention: Legal Department at 53 State Street, 10th Floor, Boston, MA 02109, or legal@acquia.com. Please note that if you fail to comply with all of the requirements of this section, your DMCA notice may not be valid and any removal requests may not be acted upon. Please also note that under Section 512(f) of the DMCA, any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

TERMINATION

We may terminate this Agreement at any time in our sole discretion. We will provide advance written notice in the event we do so either by posting a notice on our website or contacting you directly. Upon such termination, You will no longer have access to the Services and Acquia will delete any Content residing in the Services environment.

CONFIDENTIAL INFORMATION.

Each of us agrees not to use the other’s Confidential Information except as required by law or in response to a subpoena or other legal process; provided that each of us agrees to give the other seven (7) days advance notice (where legally permitted) prior to disclosing Confidential Information. We may use your registration information to contact you for marketing purposes.

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 or 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. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services. 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.

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 is limited to Twenty-Five Dollars (\$25.00).

EXPORT

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Acquia is legally prohibited to provide the Services. You agree to comply with all applicable laws regarding the transmission of technical data exported from the United States or the country in which you reside. You acknowledge that the Services may be subject to the U.S. export control and sanctions laws (including the Export Administration Regulations (“Export Controls”) and that you will comply with all applicable Export Controls.

DEFINITIONS

"Confidential Information" means all information disclosed by one of us to the other, whether before or after the acceptance of these Terms, that the recipient should reasonably understand to be confidential including: (i) for you, all information transmitted to or from, or stored on, the Services, (ii) for Acquia, unpublished prices and other terms of service, audit and security reports, product development plans, and other proprietary information or technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is independently developed by one of us, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party. "PII" means: (i) a combination of any information that identifies an individual with that individual's sensitive and non-public financial, health or other data or attribute, such as a combination of the individual's name, address, or phone number with the individual's social security number or other government issued number, financial account number, date of birth, address, biometric data, mother's maiden name, or other personally identifiable information; (ii) any "non-public personal information" as that term is defined in the Gramm-Leach-Bliley Act found at 15 USC Subchapter 1, § 6809(4), and (iii) "protected health information" as defined in the Health Insurance Portability and Accountability Act found at 45 CFR §160.103.

GENERAL

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.

These Terms are the only agreement between You and Acquia regarding Acquia Cloud Free.

Updated February 7, 2017