



Trial Services Agreement

Please read the following carefully.

THIS SELF-SERVE TRIAL AGREEMENT (“**TRIAL AGREEMENT**”), ACCEPTABLE-USE POLICY, GDPR PRODUCT NOTICE, PRODUCT DISCLAIMERS OR OTHER RESTRICTIONS SET OUT IN THE DOCUMENTATION OR PRESENTED TO YOU DURING THE USE OF THE TRIAL PRODUCT, AND ALL OTHER APPLICABLE TERMS (COLLECTIVELY, THE “**TRIAL TERMS AND CONDITIONS**”) GOVERN YOUR USE OF ACQUIA’S TRIAL SERVICES (AS DEFINED BELOW). ANY TERMS REFERENCED IN THIS TRIAL AGREEMENT, WHICH MAY BE UPDATED BY ACQUIA FROM TIME TO TIME, ARE HEREBY INCORPORATED BY REFERENCE INTO THIS TRIAL AGREEMENT.

As further set out below, Trial Services are for evaluation purposes only and not for production use.

This Trial Agreement contains provisions requiring that You (as defined below) agree to

- A specific governing law (the laws of the State of the Commonwealth of Massachusetts without regard to conflict of law principles, as further set out in Section 11.2 below), and
- To waive Your participation in class action of any kind against Acquia.

If You are entering into this Trial Agreement on behalf of a company, organization, or any other legal entity (“**Entity**”), it is Your obligation to ensure that You are authorized to represent and bind such Entity to this Trial Agreement. If You lack the authority or do not agree with this Agreement, You may neither continue the Trial Services account creation (by clicking “Create Account” or any similar button hereafter) nor use the Trial Services.

The Trial Services are offered by Acquia, Inc. located at 53 State Street, 10th Floor, Boston, MA 02109, USA. You may contact us by sending correspondence to the foregoing address or by emailing us at XXX@acquia.com. If you are a California resident, you may have this Agreement mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for this Agreement.

By clicking on the “**Create Account**” button or any similar button that is presented to You at the time of registering and signing up for these Trial Services, or by otherwise indicating Your acceptance of this Agreement, You agree to be bound by this Trial Agreement and any applicable Trial Terms and Conditions. Acquia may modify this Trial Agreement and the Trial Terms and Conditions from time to time, subject to the terms in Section 12.13 (“Changes to the Trial Agreement or Trial Terms and Conditions”) 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 Trial Services for purposes of facilitating You access to, operation of, and/or use with the Trial Services.

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

"**Your Data**" 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 or for You to the Trial Services.

"**Data Center Region**" refers to the geographic region in which Your Data is housed.

"**Documentation**" means Acquia's product guides and other end user documentation for the Trial Services and Ancillary Programs available online (at acquia.com) and through the help feature of the Trial Services, as either may be updated by Acquia from time to time to reflect the then-current Trial Services.

"**Services**" means the Trial Services and Professional Services that You may purchase under an Order or SOW.

"**Support Services**" means the level of support services provided to You pursuant this Trial Agreement and the herein referenced Documentation.

"**Trial Term**" means the term of Trial Services purchased by You 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**" or "**Services**" means any Acquia product, service or functionality that may be made available by Acquia to You to try at Your 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, as further set out by Acquia in the respective Trial Services' Documentation, as applicable.

"**You**" (or "your" or any other related capitalized term herein) refers to the person accepting the Trial Agreement, or, if You enter into this Trial Agreement on behalf of an Entity, such Entity.

2. TRIAL SERVICES

2.1. **Provision of Trial Services.** Acquia will make the Trial Services available to You pursuant to this Agreement and the Documentation:

- Trial Services are provided solely for evaluation purposes and not for production use.
- You shall have sole responsibility over and Acquia assumes no liability for any of Your Data that You 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 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. ACQUIA ALSO RESERVES THE RIGHT TO MODIFY CERTAIN PARTS OF OR THE WHOLE TRIAL SERVICES AT ANY TIME (INCLUDING WITHOUT LIMITATION, BY DISCONTINUING, CHANGING, OR LIMITING CERTAIN FEATURES OF THE TRIAL SERVICES) WITH OR WITHOUT ANY NOTICE TO YOU.
 - Acquia's Affiliates and its Authorized Contractors may perform certain aspects of the Services and access Your Data and Your Applications provided that Acquia remain fully liable for the Affiliates and Authorized Contractors 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.
 - Where You entered into this Trial Agreement on behalf of an Entity, The Entity's Affiliates may access certain aspects of the Trial Services hosted or provided through such Services provided that You remain fully liable for same and responsible for ensuring that any of Your obligations under this Agreement performed by its Affiliates are carried out in accordance with this Agreement.
 - Your use of the Trial Services includes the right to access all functionality available in the Trial Services during the Trial Term.
 - At any time during the Trial Services, Acquia may modify the systems and environment used to provide the Trial Services with or without updating the Documentation accordingly.
- 2.2. **Ancillary Programs.** As part of the Trial Services, Acquia may provide You with access to download certain Ancillary Programs for use with the Trial Services. Acquia grants You during the Trial Term a non-exclusive, non-transferable non-assignable, limited licensed to use such Ancillary Programs in object code (machine readable) format only to facilitate Your access to, operation of, and/or use of the Trial Services subject to the terms of this Trial Agreement. Ancillary Programs shall only be used to upload, download and synchronize files between Your computer or other You owned or controlled devices and the Trial Services.

3. DATA PRIVACY.

- 3.1. The terms of the Acquia Data Processing Addendum ("**DPA**"; available from the [Acquia Privacy Trust Center](#)) and the product-specific GDPR Product Notice (as available from the [Acquia Product & Services Guide](#) (marked as "GDPR Product Notice")) are hereby incorporated by reference and shall apply to the extent Your Data includes Personal Data, as defined in the DPA.
- 3.2. Where the sign-up process for Trial Services allows it, You may select the Data Center Region from those available for the applicable Trial Services. If there is no selection possible, Acquia may choose the default data center at its sole discretion, which may be located in the United States of America.
- 3.3. By signing up to these Trial Services, You has to acknowledge receipt and having read and understood Acquia's GDPR Product Notice further detailing personal data transfers, including data transfers cross border into regions with a lesser data protection level than the region from which it originates.

- 3.4. Acquia at its sole discretion may move the selected Data Center Region and Your Data contained within such Data Center Region, without obtaining Your prior consent. Acquia will use reasonable efforts to inform you about such change.

4. YOUR OBLIGATIONS.

- 4.1. **Responsibilities.** You shall (i) access and use the Trial Services in accordance with this Trial Agreement, applicable laws and government regulations and Acquia's [Acceptable Use Policy](#) incorporated herein by reference, (ii) use 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 reasonable steps necessary to ensure the security and compliance of Your Applications.
- 4.2. **Your Data.** You has and shall maintain all rights as are required to allow Acquia to provide the Trial Services to You as set forth in this Agreement, including without limitation to send Your Data to Acquia pursuant to this Agreement and to allow Acquia to access, use, and store Your Data to provide the Trial Services pursuant to this Agreement.
- 4.3. **Compliance with Laws.** You are responsible for its legal and regulatory compliance in its use of any Trial Services.
- 4.4. **No Productive Use.** THE TRIAL SERVICES ARE SOLELY FOR EVALUATION USE, AND MAY NOT BE USED NOT FOR PRODUCTIVE PURPOSE. IN YOUR DATA, YOU MAY NOT USE PRODUCTION DATA, CONFIDENTIAL DATA, INFRINGING DATA, PERSONAL DATA OR PERSONALLY IDENTIFIABLE INFORMATION, SENSITIVE DATA, PERSONAL HEALTH INFORMATION (HIPAA), FINANCIAL DATA, ANY DATA OF ANY MATERIAL VALUE, DATA THAT MAY CONSIDERED REGULATED DATA OR ANY OTHER DATA OF SIMILAR NATURE.
- 4.5. **Restrictions.** You shall not (i) license, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise similarly exploit the Trial 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 Trial Services, (iii) copy, create a derivative work of reverse engineer, reverse assemble, disassemble, or decompile the Trial Services, Ancillary Programs, or any part thereof or otherwise attempt to discover any source code or modify the Trial Services or the Ancillary Programs), (iv) create a competitive offering based on the Trial Services, and (v) disclose any benchmark or performance tests of the Trial Services.

5. PROPRIETARY RIGHTS

- 5.1. **Trial Services.** Except for the rights expressly granted under this Agreement, Acquia and its licensors retain all right, title and interest in and to the Trial Services and Documentation, including all related intellectual property rights therein. Acquia reserves all rights in and to the Trial Services and Documentation not expressly granted to You under this Agreement. You will not delete or in any manner alter the copyright, trademark, and other proprietary notices of Acquia.
- 5.2. **Ancillary Programs, Third Party Software.** The Trial Services (including Ancillary Programs) may interoperate with certain software products, including open-source software, owned by third parties and licensed directly to You by such third party ("**Third Party Software**"). Such Third Party Software is provided to You without liability or obligation by Acquia and is governed by a license agreement directly between You and the respective owner of the Third Party Software. Such license agreement may be found in the relevant section of the user interface subdirectory available through the Documentation.

5.3. Your Data and Your Applications.

- As between You and Acquia, You are and will remain the sole and exclusive owner of all right, title and interest to all Your Data, including any intellectual property rights therein. You hereby grant Acquia, its Affiliates and applicable Authorized Contractors all necessary rights to host, use, process, store, display and transmit Your Data and Your Applications solely as necessary for Acquia to provide the Services in accordance with this Agreement. By using Ancillary Programs You grant Acquia permission to access Your computer or other devices to the extent necessary in enabling Ancillary Programs. You represent that You have, and warrant that You shall maintain, all rights as required to allow Acquia to compile, use, store, and retain aggregated Your 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 You or Your customers). Subject to the limited licenses granted herein, Acquia acquires no right, title or interest from You or Your licensors hereunder in or to Your Data and Your Applications, including any intellectual property rights therein. You reserve all rights in and to Your Data that are not expressly granted to Acquia pursuant to this Agreement.
- Unless you retrieve Your Data before the end of the Trial Services, Your Data will be purged upon the end of the Trial Services and cannot be retrieved after that date. Acquia will not provide support to recover or export Your Data.

6. CONFIDENTIALITY.

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 ("**Confidential Information**") during the Trial Term and for a period of five (5) 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.

7. REPRESENTATIONS AND WARRANTIES 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, OR 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.

8. INDEMNIFICATION BY YOU.

You 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 Your Data or Your Application violates applicable law or a third party's rights (a "**Claim Against Acquia**"); provided that Acquia (a) promptly gives You written notice of the Claim Against Acquia; (b) gives You sole control of the defense and settlement of the Claim Against Acquia (provided that You may not settle any Claim Against Acquia unless the settlement unconditionally releases Acquia of all liability); and (c) provides to You all reasonable assistance, at Your expense.

9. LIMITATION OF LIABILITY

- 9.1. **LIMITATION OF LIABILITY.** EXCEPT FOR (I) DAMAGES FOR BODILY INJURY, DEATH, DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY; OR (II) ANY OTHER LIABILITY THAT MAY NOT BE LIMITED UNDER APPLICABLE LAW (THE "EXCLUDED MATTERS"), IN NO EVENT SHALL ACQUIA HAVE LIABILITY TO YOU (OR ANY OF YOUR EMPLOYEES, AFFILIATES, AGENTS, OR PARTNERS) OR ANY THIRD PARTY RELATING TO THIS TRIAL AGREEMENT WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE..
- 9.2. **EXCLUSION OF CONSEQUENTIAL AND RELATED DAMAGES.** EXCEPT FOR EXCLUDED MATTERS AND UNLESS APPLICABLE LAW DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN NO EVENT SHALL ACQUIA 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 ACQUIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. TERM AND TERMINATION.

- 10.1. **Term of Agreement.** The Trial Services continue until the expiration of the applicable Trial Term or as otherwise terminated. While the Trial Services may expire, your user account on accounts.acquia.com remains until you delete the account yourself or ask Acquia for deletion. This Trial Agreement shall expire upon deletion of your user account.
- 10.2. **Suspension or Termination by Acquia.** Acquia may at its sole discretion suspend access to or terminate the Trial Services and this Trial Agreement at any time, with or without notice for any or no reason at all.
- 10.3. **Termination by You.** You may terminate the Trial Services at any time through the Trial Service's dashboard or your Acquia account's dashboard.
- **No Data Portability and Deletion.** Any of Your Data present in the Trial Services at the expiration or otherwise termination of the Trial Services will be permanently purged by Acquia. Unless you retrieve Your Data before the end of the Trial Services, Your Data may not be retrieved after that date. Acquia will not provide support to recover or export Your Data.
- 10.4. **Survival.** Section 5 (Proprietary Rights), 6 (Confidentiality), 9.4 (Disclaimer), 8 (Indemnification), 9 (Limitation of Liability), 11 (Notices, Governing Law and Jurisdiction) and 12 (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.

11. NOTICES, GOVERNING LAW AND JURISDICTION

- 11.1. **Manner of Giving Notice.** Except as otherwise specified in this Agreement, all legal notices by You to Acquia (“**Legal Notices**”) hereunder shall be by certified mail. Acquia’s address for Legal Notices is: Acquia Inc., Legal Department, 53 State Street, 10th Floor, Boston, MA 02109, USA.
- 11.2. **Governing Law and Jurisdiction.** 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.
- 11.3. **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.

12. GENERAL PROVISIONS.

- 12.1. **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. 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.
- 12.2. **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.
- 12.3. **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 You are 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.

- 12.4. **Trial Service Analyses.** Acquia may (i) compile statistical and other information related to the performance, operation and use of the Trial Services, and (ii) use, and share data from the Trial 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 ‘Trial Service Analyses’). Trial Service Analyses may incorporate any information, including Your Data, in a form that could serve to identify You or an individual. Acquia retains all intellectual property rights in Subscription Service Analyses.
- 12.5. **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.
- 12.6. **No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.
- 12.7. **Consent to Electronic Communications.** By accepting this Trial Agreement and/or using the Trial Services, You consent to receiving certain electronic communications from us in line with our Privacy Policy. The Privacy Policy provides further details about the possibility to opt-out or otherwise exert your rights under the relevant data protection laws.
- 12.8. **Waiver.** No failure or delay by Acquia in exercising any right under this Agreement shall constitute a waiver of that right.
- 12.9. **Force Majeure.** Acquia shall not be liable under this Agreement for delays or failures to perform the Trial Services or this Trial 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 Acquia. Any such excuse for delay shall last only as long as the event remains beyond the reasonable control of Acquia. Acquia shall use its best efforts to minimize the delays caused by any such event beyond its reasonable control.
- 12.10. **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.
- 12.11. **Assignment.** You may not 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 Acquia.
- 12.12. **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.

- 12.13. **Changes to the Trial Agreement or Trial Terms and Conditions.** Acquia reserves the right to make modifications to this Agreement at any time. If a revision materially alters your rights Acquia shall use reasonable efforts to contact you to obtain Your consent to the updated terms, including sending a notification to the e-mail address(es) associated with Your account.