



## BETA AGREEMENT

PLEASE READ THIS BETA AGREEMENT ("Beta Agreement") CAREFULLY BEFORE USING (OR DOWNLOADING AS THE CASE MAY BE) ANY BETA PRODUCTS. BY USING OR DOWNLOADING ANY BETA PRODUCTS, AS APPLICABLE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS BETA AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS BETA AGREEMENT, DO NOT USE THE BETA PRODUCTS.

This Beta Agreement sets forth the terms and conditions for any non-generally available products, features and services and related documentation that are provided to Customer or accessed by Customer and designated as beta, pilot, limited release, developer preview, evaluation, development or by a description of similar import (hereinafter, the "Beta Product(s)"). From time to time, Acquia may invite Customer to try the Beta Products by submitting a Beta Order to Customer. Customer may accept or decline any such Beta Order in its sole discretion. Each Beta Order shall be executed by Customer and Acquia and shall incorporate the provisions of this Agreement. In the event of any conflict between the terms of this Beta Agreement and of a Beta Order, the terms of the Beta Order shall prevail.

**1. Term of Beta Agreement; Termination.** This Beta Agreement shall commence upon the Effective Date indicated on the first duly executed Beta Order and shall expire upon the earlier of (a) the beta period as set forth in the applicable Beta Order, (b) the completion of the beta and any related services pursuant to Section 6, or (c) termination by either party upon five (5) days' prior written notice to the other party (the "Beta Period"). The term of the limited rights granted hereunder may be extended only with the written consent of Acquia. Any extension shall be for the period permitted by Acquia, and otherwise under the terms and conditions of this Beta Agreement. Upon termination or expiration of this Beta Agreement, Customer shall immediately surrender all rights, licenses, and privileges granted under this Beta Agreement, and shall cease using the Beta Products and all property in its possession belonging to Acquia, including without limitation any Confidential Information.

**2. Beta License Grant.** Subject to the terms and conditions of this Beta Agreement, Acquia hereby grants to Customer a limited, non-exclusive, non-transferable license, with no right to sublicense to access and use the Beta Product solely to evaluate the suitability of the Beta Product for Customer's internal business requirements and in combination with only products and/or services owned, or otherwise made available for use, by Acquia, during the Beta Period ("Purpose"). Customer shall not use the Beta Product for any production or commercial purpose. Beta Products are not supported, may contain bugs or errors, and may be subject to additional terms. Acquia may, in its sole discretion, discontinue Beta Products at any time. Without limiting the restrictions set forth in Section 4, Beta Products may be in the form of Software Components (as defined herein). Such Beta Products shall only be used to upload, download and synchronize files between Customer's Application or other devices and Acquia's Services. By using such Beta Products Customer grants Acquia permission to access Customer Applications or other devices for the purpose of providing or enabling the Beta Products. For the avoidance of doubt, when Customer's right to receive, and use the Beta Products terminates, Customer's rights to access and use the Software Components shall also terminate. Upon such termination, Customer must (a) immediately destroy all copies of the Software Components, and (b) immediately and, upon Acquia request, provide Acquia with written certification of such destruction. Beta Products (including Software Components) 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 Software"). Such Third-Party Software is provided to the Customer without liability or obligation by Acquia and is governed by a license agreement directly between the Customer and the respective owner of the Third-Party Software. Such license agreement may be found in the relevant section of the user interface subdirectory made available to Customer.

For purposes of this Beta Agreement, Software Component(s) means certain enabling software and associated Documentation and explanatory materials for such Software Components, which may be separately provided by Acquia as an interoperability enabling or incidental part of the Subscription Services, only to be used in conjunction with the Subscription Services

**3. General Testing Obligations.** Customer agrees to (a) evaluate, operate and test the Beta Products in accordance with this Beta Agreement and any specific instructions provided to Customer by or on behalf of Acquia from time to time during the Beta Period, and (b) provide promptly to Acquia comments, suggestions, feedback, enhancement requests, and other information regarding Customer's evaluation, operation and testing of the Beta Products it proposes, creates, or authors relating to the Beta Products (collectively, "Feedback"). Customer will report promptly to Acquia any functional flaws, errors or problems with respect to the Beta Products.

**4. Restrictions on Use.** Except as expressly permitted in this Beta Agreement, Customer shall not, and shall not permit others to (a) use, modify, copy, create a derivative work of, or otherwise reproduce the Beta Products (including Software Components as defined below) in whole or in part; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code or structure of the Beta Products (including Software Components), except to the extent expressly permitted by applicable law; (c) distribute, sublicense, assign, share, timeshare, sell, rent, lease, use for service bureau purposes, or otherwise transfer the Beta Products or Customer's right to access and use the Beta Products; (d) cause or allow robots or other automated processes to act upon or interact with the Beta Products; (e) use the Beta Products in a way that causes unreasonable load on Acquia's systems; (f) process or store any health, payment card or other sensitive personal information that requires specific regulatory,

legal or industry data security obligations for the processing of such data; (g) remove any proprietary notices or labels on the Beta Products; (h) create a competitive offering based on the Beta Products, (i) provide access to the Beta Products to anyone other than Customer's employees, contractors, or consultants who have agreed in writing to be bound by terms at least as protective of Acquia as those in this Beta Agreement ("Authorized Users"), or (j) use, demo, or otherwise make available the Beta Products to Acquia competitors, or to evaluate suitability of the Beta Product for use with competing products or services.

**5. User Content.** Customer agrees that it is solely responsible for any Content (as defined herein) that Customer creates, transmits, submits, or displays while using the Beta Product. "Content" means all information (including data files, images, hyperlinks and written text) to which Customer may have access as part of, or through use of, the Beta Product. Customer shall have the sole responsibility for adequate protection and backup of any Content used in connection with the use of the Beta Product.

**6. Beta Services.**

a. During the term of this Beta Agreement, Acquia may provide Customer with product, engineering and/or technical services on an "as needed" basis as determined by Acquia in its sole discretion. Such services may include, for example, but without limitation, reviewing Customer's goals and objectives; assessing the current state of Customer's infrastructure, files, and databases; and planning implementation of the Beta Products. Acquia shall be under no obligation to provide such services, or to make any tests, revisions, or repairs to the Beta Product, to maintain the Beta Product at any Customer-desired level of performance, to keep the Beta Product in operating condition, or to market or license the Beta Product.

b. Customer may request additional services, that if Acquia agrees, will be documented in a mutually executed statement of work ("Statement of Work" or "SOW"). Acquia will use commercially reasonable efforts to perform such services. Acquia shall own and retain title to the Beta Products, deliverables and work product performed pursuant to a Statement of Work, including but not limited to technical design and documentation, including all intellectual property rights embodied therein. The parties acknowledge that performance hereunder may result in the development of new concepts, software, modules, methods, techniques, processes, adaptations and ideas in addition to Acquia's prior technology that may be embodied in the services. The parties agree that the same shall belong to Acquia exclusively regardless of origin.

**7. Fees and Payment.** If applicable, Customer shall pay the fees specified in the applicable Beta Order, and/or Statement of Work. Except as otherwise specified herein or in an Beta Order and/or Statement of Work, (i) fees are quoted and payable in United States dollars, (ii) services are provided on a time-and-materials basis ("T&M"), and (iii) Customer agrees to pay for travel, lodging, and other reasonably necessary out-of-pocket expenses for the performance of services hereunder. Except as otherwise stated in the applicable Beta Order Form or Statement of Work, Customer agrees to pay all invoiced amounts within 30 days of invoice date.

**8. Mutual Confidentiality Obligations.** Each party may provide Confidential Information (as defined in Section 8(b) below) to one another in the course of this Beta Agreement. Accordingly, Acquia and Customer agree to the following: Each party shall at all times exercise a reasonable standard of care with respect to the Confidential Information and shall at all times exercise a reasonable standard of care with respect to the Confidential Information of the other party, which shall be no less than the standard of care such party exercises in protecting its own confidential property. Neither party will permit or authorize access to or disclosure of the other party's Confidential Information to any person or entity other than the following: (i) employees who have a "need to know" such information consistent with the rights and obligations of the recipient with respect thereto; (ii) legal and financial consultants in the ordinary course of its business; and (iii) independent contractors and consultants specifically engaged for the Purpose and as to whom written notice is provided Acquia. Each party shall promptly notify the other in writing of the existence of any unauthorized knowledge, possession, or use of the other party's Confidential Information. For purposes of this Beta Agreement, "Confidential Information" shall mean all non-public information and know-how disclosed pursuant to this Beta Agreement, whether oral or in writing, that is either designated as proprietary and/or confidential or, by the nature of the



circumstances surrounding disclosure, should in good faith be treated as proprietary and/or confidential, including but not limited to the Beta Product, the terms of this Beta Agreement, and all information related thereto, and all Customer reports, summaries, or other internal documentation, and any results, conclusions, or Feedback related to Customer's evaluation of the Beta Product. Confidential Information shall not include information that (i) is generally known to the public or readily ascertainable from public sources; (ii) is independently developed by the recipient without reliance on other Confidential Information of the other party; or (iii) is obtained from an independent third party that created or acquired such information without reliance on other Confidential Information of the other party; without reliance on other Confidential Information of the other party, and free of any obligation to the other party. Each party may seek equitable relief (as well as money damages) to protect its interests under this Section.

## 9. Proprietary Rights.

a. The Beta Products, including Software Components, and related documentation are proprietary to Acquia and its licensors and protected by applicable U.S. and international patent, copyright, trademark and trade secret laws. Acquia and its licensors shall retain ownership in the Beta Products and related documentation; all derivatives thereof (in whole or part); and any intellectual property or other rights embodied therein. All rights not expressly granted to Customer are reserved by Acquia. There are no implied rights. All proprietary notices incorporated in or affixed to any Beta Products and related documentation shall be duplicated by Customer on all copies of the Beta Products and related documentation, as applicable, and shall not be altered, removed or obliterated. Nothing in this Beta Agreement gives Customer a right to use any of Acquia's trade names, trademarks, service marks, logos, domain names, and other distinctive brand features.

b. Customer agrees that all intellectual property rights and all other ownership in any Feedback are proprietary to, and shall be the sole and exclusive property of Acquia. Customer agrees to execute such further instruments as Acquia may reasonably request confirming Acquia's ownership interest in such Feedback. Acquia will have sole discretion as to whether and how to implement any such Feedback into the Beta Products.

**10. Disclaimer of Warranty.** THE BETA PRODUCTS AND ANY DELIVERABLES AND WORK PRODUCT PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" AND ALL WARRANTIES, EXPRESS OR IMPLIED, ARE EXCLUDED AND DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE.

**11. Disclaimer of Liability.** ACQUIA AND ITS LICENSORS SHALL HAVE NO LIABILITY TO CUSTOMER (OR ANY OF ITS EMPLOYEES, AFFILIATES, AGENTS, OR PARTNERS) OR ANY THIRD PARTY RELATING TO THIS BETA AGREEMENT WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE. IN NO EVENT WILL ACQUIA OR ITS LICENSORS OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE PERFORMANCE OF THIS BETA AGREEMENT ON BEHALF OF ACQUIA, INCLUDING ITS EMPLOYEES, AFFILIATES, AGENTS, PARTNERS, REPRESENTATIVES, OR SUBCONTRACTORS, BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, RELIANCE, INCIDENTAL, EXEMPLARY, COVER OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR REVENUE, LOST BUSINESS OPPORTUNITIES, LOST SAVINGS, LOST DATA, OR COMPUTER FAILURE, EVEN IF ACQUIA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## 12. General Provisions.

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

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

(c) **Severability.** If any provision of this Beta 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 Beta Agreement shall remain in effect.

(d) **Assignment.** Neither this Beta Agreement nor any interest herein may be assigned or otherwise transferred (by operation of law or otherwise) in whole or in part by Customer.

(e) **Notices.** Any notice required to be provided pursuant to this Beta Agreement shall be in writing and shall be deemed given (a) if by hand delivery, upon receipt thereof or (b) if mailed, three (3) days after deposit in the U.S. mails, postage prepaid, registered or certified mail, return receipt requested. A facsimile shall be deemed to be received upon completion of transmission, as verified by a printout showing satisfactory transmission, except that should a facsimile be sent on a non-business day, receipt shall be deemed to occur on the next business day. All notices shall be addressed to the parties at the respective addresses set forth on the cover page. If Customer is located in a country other than the U.S., all notices shall be sent by facsimile. Each party shall promptly notify the other party of any address change.

(f) **Survival.** All rights and obligations of the parties that by their nature are reasonably intended to survive such termination or expiration will survive termination or expiration of the Beta Agreement.

(g) **Equitable Relief.** Customer hereby acknowledges that unauthorized disclosure or use of the Beta Products would cause irreparable harm and significant injury to Acquia that may be difficult to ascertain. Accordingly, Customer agrees that Acquia will have the right to seek injunctive relief to enforce Customer's obligations under this Beta Agreement in addition to any other rights and remedies Acquia may have.

(h) **Compliance with Law.** Customer is solely responsible for ensuring that its use of the Beta Products is in compliance with all foreign, federal, state, and local laws and regulations, and Customer represents and warrants to Acquia that it will comply with this subsection.

(i) **Governing Law.** This Beta Agreement shall be governed by and construed under the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws, and both parties hereby waive objection to the jurisdiction and venue of the state and federal courts thereof. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to the Beta Agreement.

(j) **Export Compliance.** The Beta Products, other technology that Acquia makes available, and any derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. 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 Beta Products in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

(k) **Subscription Service Analyses.** Acquia may (i) compile statistical and other information related to the performance, operation and use of the Beta Products, and (ii) use, and share data from the Beta Products' 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 "Beta Product Analyses"). Beta Product Analyses will not incorporate any information in a form that could serve to identify Customer or an individual. Acquia retains all intellectual property rights in Beta Product Analyses.

(l) **Federal Government End Use Provisions.** If the Beta Products 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 ("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 restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Beta Products are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Beta Products and Acquia property by the Government is further restricted according to the terms of this Beta Agreement and any amendment hereto.

(m) **Entire Agreement.** This Beta Agreement, including all exhibits is the entire agreement of the parties, and supersedes all prior and contemporaneous agreements and communications, whether oral or in writing, between the parties with respect to the subject matter of this Beta Agreement, and no amendment or modification of this Beta Agreement shall be effective unless made in writing and duly signed by authorized representatives of Acquia and Customer.