



STATE OF UTAH COOPERATIVE CONTRACT AMENDMENT

AMENDMENT #: 4

CONTRACT #: AR2472

Starting Date: Unchanged

Expiration Date: Unchanged

TO BE ATTACHED AND MADE PART OF the specified contract by and between the State of Utah Division of Purchasing and Carahsoft Technology Corporation (Referred to as CONTRACTOR).

BOTH PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

Attachment E in the master agreement is hereby amended as follows:

1. The "Exhibit A Product Passthrough Terms – Google Apps for Work (for Customers)" document is replaced with the "Passthrough Terms – G Suite HIPPA Business Associate Addendum" attached herein this Amendment 4.
2. The "Acquia Subscription and Services Agreement" attached herein this Amendment 4 is made a part of Attachment E.

Nothing within this amendment is to be construed to amend any term or condition provided outside of Attachment E.

Effective Date of Amendment: 6/16/2017

All other terms and conditions of the contract, including those previously modified, shall remain in full force and effect.
IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

06/16/17

Contractor's Signature

Date

STATE OF UTAH

Kent Beers Director
State of Utah Division of Purchasing

6/19/17

Date

Ellen Lord

Contractor's Name (Print)

Contracts Manager

Title (Print)

Purchasing Agent

Phone #

e-mail

Contract #

Solomon Kingston

801-538-3228

skingston@utah.gov

AR2472

Passthrough Terms – G Suite HIPAA Business Associate Addendum

Customer has entered into a certain written agreement (the "Agreement"), including the applicable Product Passthrough Terms, pursuant to which Customer is entitled to access and use the Product: G Suite. This HIPAA Business Associate Addendum ("HIPAA BAA") is effective as of the date of the Product Passthrough Terms for the purpose of implementing the requirements of HIPAA (defined below) to support the compliance requirements thereunder. Together with the Product Passthrough Terms, this HIPAA BAA will be applicable to Protected Health Information (defined below).

1. **Definitions.** For purposes of this HIPAA BAA, any capitalized terms not otherwise defined herein will have the meaning given to them in the Product Passthrough Terms and under HIPAA.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 and the rules and the regulations thereunder, as amended (including with respect to the HITECH Act).

"HIPAA Implementation Guide" means the informational guide that Google makes available describing how Customer can configure and use the Services to support HIPAA compliance. The HIPAA Implementation Guide is available for review at the following URL:

https://static.googleusercontent.com/media/www.google.com/en/us/work/apps/terms/2015/1/hipaa_implementation_guide.pdf (as the content at such URL and the URL itself may be updated or modified from time to time).

"HITECH Act" means the Health Information Technology for Economic and Clinical Health Act enacted in the United States Congress, which is Title XIII of the American Recovery & Reinvestment Act, and the regulations thereunder, as amended.

"Included Functionality" means functionality within the Product as described at the following URL:

www.google.com/work/apps/terms/2015/1/hipaa_functionality.html

(as the content at that URL, or such other URL as may be provided, may be updated from time to time).

"Product" means only the G Suite Core Services that Provider makes available to Customer under the applicable Product Passthrough Terms as further described at the following URL:

http://www.google.com/apps/intl/en-in/terms/user_features.html (as the content at such URL and the URL itself may be updated or modified from time to time).

"Protected Health Information" or "PHI" will have the meaning given to it under HIPAA to if provided as Customer Data in connection with Customer's permitted use of Included Functionality.

"Provider" means the third party provider of the Product.

"Security Rule" means 45 C.F.R., Part 164, Subpart C, under HIPAA.

2. Applicability.

2.1. **Parties.** This HIPAA BAA applies to the extent Customer is acting as a Covered Entity or Business Associate, to create, receive, maintain or transmit PHI via the Included Functionality and where Provider, as a result, is deemed under HIPAA to be acting as a Business Associate of Customer.

2.2. **Services Scope.** This HIPAA BAA is applicable only to the Included Functionality. The scope of Included Functionality may expand. If the scope of Included Functionality expands, then this HIPAA BAA will automatically apply to such additional new functionality and features as of the date the Included Functionality description is updated, or the date Provider has otherwise provided written communication regarding an update to the scope of Included Functionality to Customer's Notification Email Address (whichever date is earlier).

3. Permitted Use and Disclosure.

3.1. **By Provider.** Provider may use and disclose PHI only as permitted under HIPAA as specified in the Product Passthrough Terms and under this HIPAA BAA. Provider may also use and disclose PHI for the proper management and administration of Provider's business, for provisioning the Product, and to carry out the legal responsibilities of Provider, provided that any disclosure of PHI for such purpose may

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only occur if: (1) required by applicable law; or (2) Provider obtains written reasonable assurances from the person to whom PHI will be disclosed that it will be held in confidence, used only for the purpose for which it was disclosed, and that Provider will be notified of any Breach.

- 3.2. **By Customer.** Customer will not request Provider or the Product to use or disclose PHI in any manner that would not be permissible under HIPAA if done by a Covered Entity itself (unless otherwise expressly permitted under HIPAA for a Business Associate). In connection with Customer's management and administration of the Product to End Users, Customer is responsible for using the available controls within the Product to support its HIPAA compliance requirements, including reviewing the HIPAA Implementation Guide and enforcing appropriate controls to support Customer's HIPAA compliance. Customer will not use the Product to create, receive, maintain or transmit PHI to other products or services outside of the Included Functionality, except where Customer has expressly entered into a separate HIPAA business associate agreement for use of such other products or services. If Customer uses Included Functionality in connection with PHI, Customer will use controls available within the Product to ensure: (i) all other products or services not part of the Product are disabled for all End Users who use Included Functionality in connection with PHI (except those products or services where Customer already has an appropriate HIPAA business associate agreement in place); and (ii) it takes appropriate measures to limit its use of PHI in the Product to the minimum extent necessary for Customer to carry out its authorized use of such PHI. Customer agrees that Provider has no obligation to protect PHI under this HIPAA BAA to the extent Customer creates, receives, maintains, or transmits such PHI outside of the Included Functionality (including Customer's use of its offline or on-premise storage tools or third party applications).
4. **Appropriate Safeguards.** The Product is subject to appropriate safeguards designed to prevent against unauthorized use or disclosure of PHI, consistent with this HIPAA BAA, and as otherwise required under the Security Rule, with respect to the Included Functionality. Customer will use appropriate safeguards designed to prevent against unauthorized use or disclosure of PHI, consistent with this HIPAA BAA, and as otherwise required under the Security Rule, with respect to the Included Functionality.
5. **Reporting.** Customer will be promptly notify following the discovery of a Breach resulting in the unauthorized use or disclosure of PHI in violation of this HIPAA BAA in the most expedient time possible under the circumstances, consistent with the legitimate needs of applicable law enforcement and applicable laws, and after taking any measures necessary to determine the scope of the Breach and to restore the reasonable integrity of the Services system by using commercially reasonable efforts to mitigate any further harmful effects to the extent practicable. Customer will receive any applicable Breach notifications via the Notification Email Address (as such contact is designated in the Product by Customer) or via direct communication with the Customer. For clarity, Customer and not Provider, is responsible for managing whether its End Users are authorized to create, receive, maintain or transmit PHI within the Product and Provider does not have any obligations relating thereto. This Section 5 will be deemed as notice to Customer that Provider periodically receives unsuccessful attempts for unauthorized access, use, disclosure, modification or destruction of information or interference with the general operation of Provider's information systems and the Services and even if such events are defined as a Security Incident under HIPAA, Customer will not receive any further notice regarding such unsuccessful attempts.
6. **Agents and Subcontractors.** As related to the Product, appropriate measures are taken to ensure that any agents and subcontractors used by Provider to perform its obligations related to the provision of the Product that require access to PHI on behalf of Provider are bound by written obligations that provide the same material level of protection for PHI as this HIPAA BAA. To the extent Provider uses agents and subcontractors in its performance of obligations hereunder, Provider will remain responsible for their performance as if performed by Provider itself under the Product Passthrough Terms.
7. **Accounting Rights.** PHI will be made available to Customer via the Product so Customer may fulfill its obligation to give individuals their rights of access, amendment, and accounting in accordance with the requirements under HIPAA. Customer is responsible for managing its use of the Product to appropriately respond to such individual requests.
8. **Access to Records.** To the extent required by law, and subject to applicable attorney client privileges, Provider will make its internal practices, books, and records concerning the use and disclosure of PHI received from Customer, or created or received by Provider on behalf of Customer, available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for the purpose of the Secretary determining compliance with this HIPAA BAA.

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9. **Return/Destruction of Information.** Upon termination of the Product Passthrough Terms or the Agreement, all PHI received from Customer, or created or received by Provider on behalf of Customer, which is still maintained in accordance with the section titled "Effects of Termination" (or as otherwise expressly agreed in writing) under the Product Passthrough Terms will be returned or destroyed; provided, however, that if such return or destruction is not feasible, the protections of this HIPAA BAA will extend to the PHI not returned or destroyed and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible. In the event this HIPAA BAA is terminated earlier than the the Product Passthrough Terms or Agreement Customer may continue to use the Product in accordance with the the Product Passthrough Terms, but must delete any PHI it maintains in the Product and cease to create, receive, maintain or transmit such PHI to Provider or within the Product.
10. **Breach/Cure.** Customer may immediately terminate this HIPAA BAA and the Product Passthrough Terms upon 10 days written notice if Provider has materially breached this HIPAA BAA and such breach is not reasonably capable of being cured.
11. **Term.** This HIPAA BAA will expire upon the earlier of: (i) a permitted termination in accordance with this HIPAA BAA; (ii) the natural expiration or termination of the Product Passthrough Terms; (iii) the natural expiration or termination of the existing Agreement; or (iv) the execution of an updated HIPAA BAA that supersedes this HIPAA BAA.
12. **Interpretation.** It is the parties' intent that any ambiguity under this HIPAA BAA be interpreted consistently with the intent to comply with applicable laws.
13. **Effect of Addendum.** This HIPAA BAA supersedes in its entirety any pre-existing HIPAA BAA executed by the parties covering the same Product. To the extent of any conflict or inconsistency between the terms of this HIPAA BAA and the Product Passthrough Terms or the Agreement, the terms of this HIPAA BAA will govern. Except as expressly modified or amended under this HIPAA BAA, the terms of the Passthrough Terms and the Agreement remain in full force and effect.

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Product Passthrough Terms – G Suite (for Customers)

Customer has entered into a certain written agreement (the "Agreement") pursuant to which Customer has purchased the right to access and use the Product. These Product Passthrough Terms set forth the terms and conditions under which Customer may access and use such Product.

1. Product.

1.1 Facilities and Data Transfer. All facilities used to store and process Customer Data will adhere to reasonable security standards no less protective than the security standards at facilities where Provider stores and processes its own information of a similar type. As part of providing the Product, Provider may transfer, store and process Customer Data in the United States or any other country in which Provider or its agents maintain facilities. By using the Product, Customer consents to this transfer, processing and storage of Customer Data.

1.2 No Ads. Notwithstanding any other term of the Product Passthrough Terms, Provider will not process Customer Data for Advertising purposes or serve Advertising in the Product.

1.3 New Features or Product. Provider may make new applications, features or functionality for the Product available from time to time, the use of which may be contingent upon Customer's Product Passthrough Terms to additional terms.

1.4 Modifications.

(a) Changes to Product. Provider may make commercially reasonable changes to the Product from time to time. If Provider makes a material change to the Product, Provider will inform Customer, by either sending an email to the Notification Email Address or alerting Customer through the Admin Console.

(b) Changes to URL Terms. Provider may make commercially reasonable changes to the URL Terms from time to time. If Provider makes a material change to the URL Terms, Provider will inform Customer by either sending an email to the Notification Email Address or alerting Customer through the Admin Console. If the change has a material adverse impact on Customer and the change is not a result of Provider complying with a court order or applicable law, Customer may notify Provider within thirty days after being informed of the change that Customer does not agree with the change. If Customer notifies Provider as required, then Customer will remain governed by the terms in effect immediately prior to the change until the earlier of: (i) the end of the then-current Term or (ii) 12 months after Provider informs Customer of the change, unless the modification to the URL Terms is in response to a court order or to comply with applicable law. If used of the Product renews, it will do so under the updated URL Terms.

(c) Discontinuance of Product. Subject to Section 1.4(d), Provider can discontinue any Product or any portion or feature for any reason at any time without liability to Customer.

(d) Deprecation Policy. Provider will notify Customer if it intends to make a Significant Deprecation. Provider will use commercially reasonable efforts to continue to provide the Product without a Significant Deprecation for at least one year after that notification, unless (as Provider determines in its reasonable good faith judgment): (i) otherwise required by law or by contract (including if there is a change in applicable law or contract), or (ii) doing so could create a security risk or a substantial economic or technical burden. This policy is the "Deprecation Policy."

1.5 Customer Domain Name Ownership. Prior to providing the Product, Provider may verify that Customer owns or controls the Customer Domain Names. If Customer does not own, or control, the Customer Domain Names, then Provider will have no obligation to provide Customer with the Product.

1.6 Google Vault - Retention. If Customer purchases Google Vault, Provider will have no obligation to retain any archived Customer Data beyond the retention period specified by Customer (other than for any legal holds). If Customer does not renew Google Vault, Provider will have no obligation to retain any archived Customer Data.

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1.7 Federal Information Security Management Act (FISMA). The Provider's Product known as "G Suite Core Services" received a FISMA "Authorization to Operate" for a Moderate impact system. Provider will continue to maintain a System Security Plan (SSP) for the G Suite Core Services, based on NIST 800-53 Rev. 3, or a similarly applicable standard. If Provider does not maintain this SSP as stated, Customer's sole and exclusive remedy, and Provider's entire liability, will be Customer's ability to terminate use of the Product upon thirty days prior written notice.

2. Customer Obligations.

2.1 Compliance. Customer must ensure that all use of the Product by Customer and its End Users complies with this Product Passthrough Terms including the Acceptable Use Policy.

2.2 Additional Products. Provider may make Additional Products available to Customer and its End Users in accordance with the applicable product-specific Additional Product Terms. Additional Products are not subject to or governed by this Product Passthrough Terms. Customer can enable or disable Additional Products and is not required to use Additional Products in order to use the Product.

2.3 Customer Administration of the Product. Customer may specify one or more Administrators through the Admin Console who will have the rights to access Admin Account(s) and to administer the End User Accounts. Customer is responsible for: (a) maintaining the confidentiality of the password and Admin Account(s); (b) designating those individuals who are authorized to access the Admin Account(s); and (c) ensuring that all activities that occur in connection with the Admin Account(s) comply with the Product Passthrough Terms. Customer agrees that Provider's responsibilities do not extend to the internal management or administration of the Product for Customer and that Provider is merely a data-processor.

2.4 Administrator Access; End User Consent.

- (a) Administrator Access. Administrators will have the ability to access all Customer's End User Accounts, including the ability to access, monitor, use, modify, withhold, or disclose any data available to End Users associated with their End User Accounts.
- (b) Reseller as Administrator. If Customer orders Product via Reseller, Reseller may have Administrator access to Customer's Account and Customer's End User Accounts. As between Provider and Customer, Customer is solely responsible for: (i) any access by Reseller to Customer's Account or Customer's End User Accounts; and (ii) defining in the Reseller Product Passthrough Terms any rights or obligations as between Reseller and Customer with respect to the Product.
- (c) End User Consent. Customer will obtain and maintain all required consents from End Users to allow: (i) Administrators to have the access described in these Product Passthrough Terms; and (ii) Provider's provision of the Product to Administrators and End Users.

2.5 Unauthorized Use. Customer will use commercially reasonable efforts to prevent unauthorized use of the Product and to terminate any unauthorized use. Customer will promptly notify Provider of any unauthorized use of, or access to, the Product of which it becomes aware.

2.6 Restrictions on Use. Unless Provider specifically agrees in writing, Customer will not, and will use commercially reasonable efforts to make sure a third party does not: (a) sell, resell, lease, or the functional equivalent, the Product to a third party (unless expressly authorized in this Product Passthrough Terms); (b) attempt to reverse engineer the Product or any component; (c) attempt to create a substitute or similar service through use of, or access to, the Product; (d) use the Product for High Risk Activities; (e) use the Product to store or transfer any Customer Data that is controlled for export under Export Control Laws; or (f) use the Product on behalf of or for the benefit of any entity or person who is prohibited from using the Product by United States laws or regulations. Customer is solely responsible for any applicable compliance with HIPAA.

2.7 Support. Customer will, at its own expense, respond to questions and complaints from End Users or third parties relating to Customer's or End Users' use of the Product. Customer will use commercially reasonable efforts to resolve support issues before escalating them to Provider.



2.8 **Aliases.** Customer is solely responsible for monitoring, responding to, and otherwise processing emails sent to the "abuse" and "postmaster" aliases for Customer Domain Names but Provider may monitor emails sent to these aliases for Customer Domain Names to allow Provider to identify Product abuse.

3. **Intentionally Omitted.**

4. **Technical Support Services.** Provider will provide TSS to Customer during the Term in accordance with the TSS Guidelines subject to payment of support Fees, if applicable.

5. **Suspension.**

5.1 **Of End User Accounts by Provider.** If Provider becomes aware of an End User's violation of the Product Passthrough Terms, then Provider may specifically request that Customer Suspend the applicable End User Account. If Customer fails to comply with Provider's request to Suspend an End User Account, then Provider may do so. The duration of any Suspension by Provider will be until the applicable End User has cured the breach which caused the Suspension.

5.2 **Emergency Security Issues.** Notwithstanding the foregoing, if there is an Emergency Security Issue, then Provider may automatically Suspend the offending use. Suspension will be to the minimum extent and of the minimum duration required to prevent or terminate the Emergency Security Issue. If Provider Suspends an End User Account for any reason without prior notice to Customer, at Customer's request, Provider will provide Customer the reason for the Suspension as soon as is reasonably possible.

5.3 **Suspension for Non-Payment and Delinquent Payment.** As of the first date Customer becomes delinquent on Fees owed, Customer's Account may be Suspended until all delinquent Fees have been paid.

5.4 **Suspension to Comply with Laws.** Provider may at its sole discretion Suspend the provision of any Product at any time if required to comply with any applicable law.

6. **Confidential Information.**

6.1 **Obligations.** Subject to Section 6.2 (Disclosure of Confidential Information), the recipient will not disclose the discloser's Confidential Information, except to employees, Affiliates, agents, or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under these Product Passthrough Terms, while using reasonable care. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations.

6.2 **Disclosure of Confidential Information.**

(a) **General.** Subject to Section 6.2(b), the recipient may disclose the discloser's Confidential Information (i) in accordance with a Legal Process or (ii) with the discloser's written consent.

(b) **Notification.** Before the recipient discloses the discloser's Confidential Information in accordance with a Legal Process, the recipient will use commercially reasonable efforts to promptly notify the discloser. Provider will give notice via the Notification Email Address. The recipient does not need to provide notice before disclosure if the recipient is informed that (i) it is legally prohibited from giving notice or (ii) the Legal Process relates to exceptional circumstances involving danger of death or serious physical injury to any person.

(c) **Opposition.** Recipient will comply with the other party's reasonable requests opposing disclosure of its Confidential Information.

7. **Intellectual Property Rights; Brand Features.**

7.1 **Intellectual Property Rights.** Except as expressly set forth herein, these Product Passthrough Terms does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, Customer owns all Intellectual Property Rights in Customer Data and Provider owns all Intellectual Property Rights in the Product.

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7.2 **Display of Brand Features.** Provider may display only those Customer Brand Features authorized by Customer (such authorization is provided by Customer uploading its Brand Features into the Product) within designated areas of the Service Pages. Customer may specify the nature of this use using the Admin Console. Provider may also display Provider Brand Features on the Service Pages to indicate that the Product are provided by Provider. Neither party may display or use the other party's Brand Features beyond what is allowed in these Product Passthrough Terms without the other party's prior written consent.

7.3 **Brand Features Limitation.** Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights in those Brand Features. A party may revoke the other party's right to use its Brand Features pursuant to these Product Passthrough Terms with written notice to the other and a reasonable period to stop the use.

8. **Publicity.** In connection with Customer's use of the Product, (a) Customer may state publicly that it is a Provider customer and display Provider Brand Features consistent with the Trademark Guidelines and (b) Provider may (i) orally state that Customer is a Provider customer and (ii) include Customer's name or Customer Brand Features in a list of Provider customers in Provider's online or offline promotional materials. Neither party needs approval if it is using the other party's name or Brand Features in a manner that is substantially similar to a previously approved manner. Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

9. **Representations, Warranties and Disclaimers.**

9.1 **Representations and Warranties.** Each party represents that (a) it has full power and authority to enter into the Product Passthrough Terms; and (b) it will comply with all laws and regulations applicable to its provision, or use, of the Product, as applicable. Provider warrants that it will provide the Product in accordance with the applicable SLA.

9.2 **Disclaimers.** EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS PRODUCT PASSTHROUGH TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, (A) NEITHER PARTY NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT; AND (B) NEITHER PROVIDER NOR ITS SUPPLIERS WARRANTS THAT OPERATION OF THE SOFTWARE OR THE PRODUCT WILL BE ERROR-FREE OR UNINTERRUPTED. NEITHER THE SOFTWARE NOR THE PRODUCT ARE DESIGNED, MANUFACTURED, OR INTENDED FOR HIGH RISK ACTIVITIES. EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS PRODUCT PASSTHROUGH TERMS, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, PROVIDER MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION MADE ACCESSIBLE BY OR THROUGH THE PRODUCT. CUSTOMER ACKNOWLEDGES THAT THE PRODUCT ARE NOT A TELEPHONY SERVICE AND THAT THE PRODUCT ARE NOT CAPABLE OF PLACING OR RECEIVING ANY CALLS, INCLUDING EMERGENCY SERVICES CALLS, OVER PUBLICLY SWITCHED TELEPHONE NETWORKS.

10. **Term.** These Product Passthrough Terms will remain in effect for the Term.

11. **Termination.**

11.1 **Termination for Cause.** Either party may suspend performance or terminate these Product Passthrough Terms if: (i) the other party is in material breach of the Product Passthrough Terms and fails to cure that breach within thirty days after receipt of written notice; (ii) the other party ceases its business operations or becomes subject to insolvency proceedings and the proceedings are not dismissed within ninety days; or (iii) the other party is in material breach of these Product Passthrough Terms more than two times notwithstanding any cure of such breaches.

11.2 **Effects of Termination.** If these Product Passthrough Terms terminates or expires, then: (i) the rights granted by one party to the other will cease immediately (except as set forth in Section 11.2 and Section 14.12 (Survival)); (ii) Customer will not have access to, or the ability to export, the Customer Data after the effective date of termination or expiry of the Product Passthrough Terms; (iii) all Fees owed by Customer to Provider are immediately due upon receipt of the final invoice; (d) Customer will delete the Customer Data in a manner consistent with the functionality of the Product and in accordance with the terms of the Product Passthrough Terms; (e) Provider will delete Customer Data in accordance with the

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terms of the Product Passthrough Terms; and (f) upon request each party will promptly use reasonable efforts to return or destroy any remaining Confidential Information of the other party.

12. Miscellaneous.

- 12.1 Product Development. The Product was developed solely at private expense and is commercial computer software and related documentation within the meaning of the applicable civilian and military federal acquisition regulations and any supplements thereto.
- 12.2 Force Majeure. Neither party will be liable for inadequate performance to the extent caused by a condition (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance) that was beyond the party's reasonable control.
- 12.3 No Waiver. Failure to enforce any provision of this Product Passthrough Terms will not constitute a waiver.
- 12.4 Severability. If any provision of this Product Passthrough Terms is found unenforceable, the balance of the Product Passthrough Terms will remain in full force and effect.
- 12.5 No Agency. The parties are independent contractors, and this Product Passthrough Terms does not create an agency, partnership or joint venture.
- 12.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Product Passthrough Terms.
- 12.7 Survival. The following sections will survive expiration or termination of this Product Passthrough Terms: Section 3 (Payment), 6 (Confidential Information), 7.1 (Intellectual Property Rights), 11.2 (Effects of Termination), 12 (Defense and Indemnity), 13 (Limitation of Liability), 14 (Miscellaneous) and 15 (Definitions).
- 12.8 Entire Product Passthrough Terms. This Product Passthrough Terms, and all documents referenced herein, is the parties' entire Product Passthrough Terms relating to its subject and supersedes any prior or contemporaneous Product Passthrough Terms on that subject. The terms located at a URL and referenced in this Product Passthrough Terms are hereby incorporated by this reference.
- 12.9 Interpretation of Conflicting Terms. If there is a conflict between the documents that make up this Product Passthrough Terms, the documents will control in the following order: the Order Form, the Product Passthrough Terms, and the terms located at any URL.

13. Definitions.

"Acceptable Use Policy" means the acceptable use policy for the Product available at https://gsuite.Provider.com/terms/use_policy.html or such other URL as may be provided by Provider.

"Account" means Customer's Provider account credentials and correlating access to the Product under this Product Passthrough Terms.

"Account Manager" means the Provider business person working with Customer regarding Customer's purchase of the Product.

"Additional Products" means products, Product and applications that are not part of the Product but that may be accessible, via the Admin Console or otherwise, for use with the Product.

"Admin Account(s)" means the administrative account(s) provided to Customer by Provider for the purpose of administering the Product. The use of the Admin Account(s) requires a password, which Provider will provide to Customer.

"Admin Console" means the online tool provided by Provider to Customer for use in reporting and certain other administration functions.

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"Administrators" mean the Customer-designated technical personnel who administer the Product to End Users on Customer's behalf.

"Advertising" means online advertisements displayed by Provider to End Users, excluding any advertisements Customer expressly chooses to have Provider or any Provider Affiliate display in connection with the Product under a separate Product Passthrough Terms (for example, Provider AdSense advertisements implemented by Customer on a website created by Customer using the "Provider Sites" functionality within the Product).

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with a party.

"Annual Charge" means the annual charge for the Product set forth in the Order Form.

"Billing Start Date" means the date upon which Customer will begin paying Provider for the Product.

"Brand Features" means the trade names, trademarks, service marks, logos, domain names, and other distinctive brand features of each party, respectively, as secured by such party from time to time.

"Confidential Information" means information that one party (or Affiliate) discloses to the other party under this Product Passthrough Terms, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient. Subject to the preceding sentence, Customer Data is Customer's Confidential Information.

"Customer Data" means data, including email, provided, generated, transmitted or displayed via the Product by Customer or End Users.

"Customer Domain Names" mean the domain names owned or controlled by Customer, which will be used in connection with the Product and specified in the Order Form.

"Effective Date" means the date this Product Passthrough Terms is countersigned.

"Emergency Security Issue" means either: (a) Customer's or End Users' use of the Product in violation of the Acceptable Use Policy, in a way that disrupts: (i) the Product; (ii) other customers' use of the Product; or (iii) the Provider network or servers used to provide the Product; or (b) to prevent unauthorized third party access to the Product or data within the Product.

"End Users" means the individuals Customer permits to use the Product.

"End User Account" means a Provider-hosted account established by Customer through the Product for an End User.

"Export Control Laws" means all applicable export and reexport control laws and regulations, including trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control, and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State, but excluding the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce.

"Fees" means the amounts invoiced to Customer by Provider, or Reseller, if applicable, for the Product as described in this Product Passthrough Terms.

"G Suite Core Services" means the Product specified in the Order Form which are more fully described here: https://gsuite.Provider.com/terms/user_features.html or other such URL as Provider may provide.

"Help Center" means the Provider help center accessible at <http://www.Provider.com/support/>, or other such URL as Provider may provide.

"High Risk Activities" means uses such as the operation of nuclear facilities, air traffic control, or life support systems, where the use or failure of the Product could lead to death, personal injury, or environmental damage.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as may be amended from time to time, and any regulations issued thereunder.

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"Initial Term" means the term for the applicable Product beginning on the Service Commencement Date and continuing for the "Current Term" set forth in the Order Form from the Billing Start Date.

"Initial Term Charge" means the charge for the Product for the Initial Term (excluding any applicable one time fees), as set forth in the Order Form.

"Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

"Legal Process" means a data disclosure request made under law, governmental regulation, court order, subpoena, warrant, governmental regulatory or agency request, or other valid legal authority, legal procedure, or similar process.

"Notification Email Address" means the email address(es) designated by Customer in the Admin Console to receive certain notifications from Provider. It is Customer's responsibility to keep the Notification Email Address(es) valid and current.

"Order Form" means an order form, which is the written document provided to Customer by Provider or by a Reseller specifying the Product Customer will use under the Product Passthrough Terms.

"Product" means, as applicable, the G Suite Core Services set forth in the Order Form.

"Product Passthrough Terms" means the combination of the Order Form and this G Suite Product Passthrough Terms.

"Provider" means the third party provider of the Product.

"Purchase Order" means a Customer issued purchase order.

"Reseller" means, if applicable, the authorized reseller that sells or supplies the Product to Customer.

"Service Commencement Date" is the date upon which Provider makes the Product available to Customer, and will be within one week of Provider's receipt of the applicable Order Form signed by Customer, unless otherwise agreed by the parties.

"Service Pages" mean the web pages displaying the Product to End Users.

"Significant Deprecation" means to discontinue or to make backwards incompatible changes to the Product that results in Provider no longer providing to its enterprise-customer base the ability to: (1) to send and receive e-mail messages; (2) schedule and manage events; (3) create, share, store and sync files; (4) communicate with other end users in real time; or (5) search, archive, and export email messages.

"SLA" means the Service Level Product Passthrough Terms located here for applicable Product: <https://gsuite.Provider.com/terms/sla.html> or such other URL as Provider may provide.

"Suspend" means the immediate disabling of access to the Product, or components of the Product, as applicable, to prevent further use of the Product.

"Term" means the Initial Term and all renewal terms for the applicable Product.

"TSS" means the technical support services provided by Provider to the Administrators under the TSS Guidelines.

"TSS Guidelines" means Provider's technical support services guidelines then in effect for the Product. TSS Guidelines are at the following URL: <https://gsuite.Provider.com/terms/tssg.html> or such other URL as Provider may provide.

"URL Terms" means the Acceptable Use Policy, the SLA, and the TSS Guidelines.

v2/1/2017



Pass-through Terms of Service for Google Professional Services

The following Terms of Service govern Google's performance and delivery of certain services and deliverables as described below.

1. Definitions.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control with, a party.

"Background IP" means all Intellectual Property owned or licensed by a party (a) before the provision of any Professional Services; or (b) independent of the Professional Services.

"Brand Features" means each party's trade names, trademarks, logos, domain names, and other distinctive brand features.

"Confidential Information" means information that one party (or an Affiliate) discloses to the other party under the Terms of Service, and that is marked as confidential or would normally be considered confidential information under the circumstances. It does not include information that is independently developed by the recipient, is rightfully given to the recipient by a third party without confidentiality obligations, or becomes public through no fault of the recipient.

"Deliverables" means any tangible or intangible work product (including third party materials) specific to the Customer to be provided by Google to Customer in connection with the Professional Services.

"Developed IP" means any Intellectual Property (other than Background IP) created or discovered by or on behalf of either party in connection with the Terms of Service.

"Fees" means the applicable fees for the Professional Services, including any reimbursable expenses (if applicable). The Fees for the Professional Services are stated in the applicable Ordering Document or other Partner document.

"Google Product" means any Google services or products made available to Customer under a separate agreement.

"Including" or **"including"** means "including but not limited to," and any examples listed are illustrative and not the sole examples of a particular concept.

"Indemnified Liabilities" means any (a) settlement amounts approved by the indemnifying party; and (b) damages and costs in a final judgment awarded against the indemnified part(ies) by a competent court.

"Intellectual Property" or **"IP"** means anything protectable by an Intellectual Property Right.

"Intellectual Property Rights" means all patent rights, copyrights, trademark rights, rights in trade secrets (if any), design rights, database rights, domain name rights, moral rights, and any other intellectual property rights (registered or unregistered) throughout the world.

"Ordering Document" means an order form or statement of work issued by a Partner, referencing the Terms of Service and signed by Customer and Partner (as applicable). An Ordering Document will describe, at a minimum, the following: (a) details of the Google Professional Services being ordered; (b) the Fees; and (c) the applicable form of payment.

"Partner" means a third party entity authorized by Google to resell the Professional Services.

"Personnel" means a party's directors, officers, employees, agents, other staff and subcontractors.

"Product Agreement" means the separate agreement (if any) entered into between Google and Customer with respect to a Google Product, as amended from time to time in accordance with its terms.

"Professional Services" means Google professional services ordered by Customer subject to the Terms of Service, as more fully described in the datasheet associated with the applicable SKU referenced in an applicable Ordering Document.

"Third-Party Legal Proceeding" means any formal legal proceeding filed by an unaffiliated third party before a court or government tribunal (including any civil, administrative, investigative or appellate proceeding).

"Trademark Guidelines" means Google's guidelines for third party use of Google's Brand Features, located at: <http://www.google.com/permissions/guidelines.html>.

2. Professional Services.

2.1 Professional Services. Google will provide Professional Services and Deliverables to Customer in accordance with the Terms of Service, subject to Customer fulfilling its obligations under Section 2.2 (Customer Cooperation). The scope of the Google Professional Services will be detailed in the Ordering Document.

2.2 Customer Cooperation. Time will not be of the essence for performance of the Professional Services or delivery of the Deliverables. Customer will provide reasonable and timely cooperation in connection with Google's performance of the Professional Services and delivery of the Deliverables. Customer will fulfill any responsibility described in the Ordering Document. Customer will also provide any information that Google needs to provide Professional Services or that is necessary for a Deliverable. If necessary, Customer will provide access to customer controlled facilities and locations. All information that Customer provides Google will be accurate in all material respects. If Customer's failure to comply with the foregoing causes any delay in Google's performance of the Professional Services or delivery of the Deliverables, neither Google nor Partner will be liable for such delay. Partner may charge additional reasonable fees or cancel any uncompleted Professional Services or Deliverables by notifying Customer in writing (email permitted).

2.3 Personnel. Google will determine its Personnel assigned to perform the Professional Services. If Customer has a reasonable basis for requesting a change of such Personnel, Google will reasonably consider the request and use reasonable efforts to replace the assigned Personnel with alternative Google Personnel.

3. Payments. If Customer orders Professional Services from a Partner: (a) Customer will pay Partner for the Professional Services; (b) all payment terms are to be decided upon between Customer and Partner; (c) there will not be an Ordering Document between Google and Customer; (d) Google will provide to Partner any refunds or credits that may be due to Customer; and (e) any obligation on the part of Partner to provide any such refunds or credits to Customer will depend on the terms decided upon between Customer and Partner.

4. Intellectual Property.

4.1 Background IP. Except for the license rights under Section 5 (Licenses), neither party will own or acquire any right, title, or interest in or to the other party's Background IP under the Terms of Service.

4.2 Deliverables and Developed IP.

(a) Title to Deliverables. Subject to Sections 4.1 (Background IP) and 4.2(b) (Ownership of Developed IP), title to the Deliverables will transfer to Customer upon delivery.

(b) Ownership of Developed IP. As between the parties, and subject to Section 5.3 (License to Developed IP):

(i) Google owns any Developed IP; and

(ii) to the extent that Customer or any of its Personnel owns any rights in the Developed IP, Customer assigns to Google (or agrees to procure the assignment to Google of) all rights (including Intellectual Property Rights), title, and interest in or to the Developed IP, provided

however that if applicable law prevents future assignments, Customer will assign (or will procure the assignment of) such rights as these are created.

(c) Moral Rights. Customer will not assert, and to the extent permitted by applicable law, otherwise waives, any moral rights in the Developed IP. Customer will ensure that its Personnel and other third parties in its control who have moral rights in the Developed IP will also not assert, and to the extent permitted by applicable law, will waive, those moral rights.

5. Licenses.

5.1 Google IP. Subject to Customer's payment of applicable Fees, Google grants a limited, non-exclusive, royalty-free, fully-paid, worldwide license (with the right to sublicense to Affiliates only) to Customer to do the following for Customer's internal business purposes:

(a) use the Developed IP solely in connection with the Deliverables; and

(b) use any Google Background IP included in the Deliverables solely in connection with the Deliverables.

5.2 Customer Background IP. Customer grants to Google and its Personnel a limited, non-exclusive, non-transferable, royalty-free, fully-paid, worldwide license (with the right to sublicense) to reproduce, maintain, prepare derivative works of, distribute and use Customer Background IP solely in connection with Google's performance of Professional Services and creation and delivery of the Deliverables under the Terms of Service.

5.3 License to Developed IP. If applicable law prevents Customer from assigning ownership to Google of any Developed IP, Customer grants Google a perpetual, irrevocable, exclusive, royalty-free, fully-paid, transferable, worldwide license (with the right to sublicense) to:

(a) reproduce, prepare derivative works of, distribute, publicly perform, publicly display and otherwise use such Developed IP; and

(b) make, use, sell, offer for sale, import, export any component of and otherwise dispose of such Developed IP.

6. Confidentiality. The recipient will not disclose the Confidential Information, except to its Personnel, Affiliates, or professional advisors ("Delegates") who need to know it and who have a legal obligation to keep it confidential. The recipient will use the Confidential Information only to exercise rights and fulfill obligations under the Terms of Service, while using reasonable care. The recipient will ensure that its Delegates are also subject to the same non-disclosure and use obligations. The recipient may disclose Confidential Information when required by law after giving reasonable notice to the discloser, if permitted by law. Except for the limited use rights under the Terms of Service, neither party acquires any right, title, or interest in the other party's Confidential Information.

7. Publicity. Unless Customer agrees to different terms with the Reseller, then in connection with Customer's purchase and receipt of the Professional Services, (a) Customer may state publicly that it is a Google customer and display Google Brand Features consistent with the Trademark Guidelines, and (b) Google may (i) orally state that Customer is a Google customer and (ii) include Customer's name or Customer Brand Features in a list of Google customers (whether in Google's online or offline promotional materials). Any use of a party's Brand Features will inure to the benefit of the party holding Intellectual Property Rights to those Brand Features. A party may revoke the other party's right to use its Brand Features under this Section with written notice to the other party and a reasonable period to stop the use.

8. Warranties and Disclaimers.

8.1 Google Warranties.

(a) Quality. Google will perform the Professional Services in a professional and workmanlike manner, with reasonable skill and care, in accordance with generally-accepted industry standards. All of Google's Personnel performing the Professional Services have the requisite skills, experience, and qualifications.

(b) No Conflicts. There are no actual or potential conflicts of interest concerning the provision of the Services.

(c) Compliance with Customer's Onsite Policies and Procedures. If Google's Personnel perform Professional Services onsite at Customer's facilities, they will comply with Customer's reasonable procedures and policies made known to Google in writing in advance.

8.2 Remedies. Google's entire liability and Customer's sole remedy for failure to provide Professional Services or Deliverables that conform with Section 8.1(a) (Quality) will be for Google to use reasonable efforts to re-perform the applicable Professional Services or to terminate the applicable Ordering Document, and refund any applicable Fees received for the nonconforming Professional Services.

8.3 Disclaimers. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS SECTION 8, GOOGLE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT. GOOGLE MAKES NO REPRESENTATIONS ABOUT ANY GOOGLE PRODUCTS OR ANY CONTENT OR INFORMATION MADE ACCESSIBLE OR AVAILABLE BY OR THROUGH THE PROFESSIONAL SERVICES.

9. Termination.

9.1 Effects of Termination.

(a) Effects of Termination on Professional Services and Deliverables. If there is a termination of the agreement between the Customer and Partner, Google will immediately stop work on any Professional Services and Deliverables that remain incomplete as of the effective date of termination.

(c) Survival. Sections 1 (Definitions), 3 (Payment), 4 (Intellectual Property), 5.3 (License to Developed IP), 6 (Confidentiality), 8.2 (Remedies), 8.3 (Disclaimers), 9.1 (Effects of Termination), 10 (Defense and Indemnity), and 11 (General) will survive expiry or termination of the Terms of Service.

10. Defense and Indemnity.

10.1 Google Indemnification Obligations. Subject to Section 10.4 (Conditions), Google will defend and indemnify Customer against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Customer's use in accordance with the Terms of Service of any of the following (collectively, the "Google Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Deliverables including Developed IP and Google Background IP (in each case, excluding any open source software and any Developed IP licensed by Customer to Google); or (b) Google's Brand Features.

10.2 Customer Indemnification Obligations. Subject to Section 10.4 (Conditions), Customer will defend Google, its Personnel, and its Affiliates ("Google Indemnified Parties"), and indemnify them against Indemnified Liabilities in any Third-Party Legal Proceeding to the extent arising from an allegation that Google Indemnified Parties' use in accordance with the Terms of Service of any of the following (collectively, the "Customer Indemnified Materials") infringes the third party's Intellectual Property Rights: (a) Customer Background IP, any Developed IP licensed to Google by Customer and any other information, materials or technology provided to Google by Customer in connection with the Professional Services (in each case, excluding any open source software); or (b) Customer's Brand Features. If Customer is a U.S. (federal, state, or local) government agency, then Customer's indemnification obligations will apply to the extent permitted by law.

10.3 Exclusions. This Section 10 will not apply to the extent the underlying allegation arises from:

(a) modifications to the Google Indemnified Materials or Customer Indemnified Materials (as applicable) by anyone other than the indemnifying party;

(b) combination of the Google Indemnified Materials or Customer Indemnified Materials (as applicable) with materials not provided by the indemnifying party; or

(c) compliance with the indemnified party's instructions, design or request for customized features.

10.4 Conditions. Obligations under Sections 10.1 (Google Indemnification Obligations) and 10.2 (Customer's Indemnification Obligations) are conditioned on the following:

(a) The indemnified party must have promptly notified the indemnifying party in writing of any allegation(s) that preceded the Third-Party Legal Proceeding and must cooperate reasonably with the indemnifying party to resolve the allegation(s) and Third-Party Legal Proceeding. If breach of this Section 10.4(a) prejudices the defense of the Third-Party Legal Proceeding, the indemnifying party's obligations under Section 10.1 or 10.2 (as applicable) will be reduced in proportion to the prejudice.

(b) The indemnified party must tender sole control of the indemnified portion of the Third-Party Legal Proceeding to the indemnifying party, subject to the following: (i) the indemnified party may appoint its own non-controlling counsel, at its own expense; and (ii) any settlement requiring the indemnified party to admit liability, pay money, or take (or refrain from taking) any action, will require the indemnified party's prior written consent, not to be unreasonably withheld, conditioned, or delayed.

10.5 Infringement Remedies.

(a) If Google reasonably believes the Professional Services or Deliverables (including the Developed IP and Google Background IP) might infringe a third party's Intellectual Property Rights, then Google may, at its sole option and expense: (i) procure the right for Google to provide the Professional Services or for Customer to use the Deliverables including the Developed IP and Google Background IP (as applicable) in accordance with the Terms of Service; (ii) modify the Professional Services or Deliverables to make them non-infringing without materially reducing their functionality; or (iii) replace the Professional Services or Deliverables with a non-infringing, functionally equivalent alternative.

(b) If Google notifies Customer that Google does not consider the remedies in Section 10.5(a) to be commercially reasonable in the circumstances, or if such remedies are not provided within ninety (90) days of an injunction:

(i) either party may terminate the work described in the Ordering Document immediately on written notice; or

(ii) Google may, with prior written notice, suspend or terminate Customer's use of the impacted Deliverables and provide a pro-rated refund of any Fees paid for such Professional Services to Partner for return to Customer.

10.6 Sole Rights and Obligations. Without affecting either party's termination rights, this Section 10 states the parties' only rights and obligations under the Terms of Service for any third party's Intellectual Property Rights allegations and Third-Party Legal Proceedings.

11. Miscellaneous.

- 11.1 Independent Development. Nothing in the Terms of Service will be construed to limit or restrict either party from independently developing, providing, or acquiring any materials, services, products, programs or technology that are similar to the subject of the Terms of Service t, provided that the party does not violate its obligations under the Terms of Service.
- 11.2 Force Majeure. Neither party will be liable for failure or delay in performance to the extent caused by circumstances beyond its reasonable control.
- 11.3 Severability. If any term (or part of a term) in the Terms of Service is invalid, illegal or unenforceable, the rest of the terms will remain in effect.
- 11.4 No Third-Party Beneficiaries. The Terms of Service do not confer any benefits on any third party unless it expressly states that it does.
- 11.5 Interpretation of Conflicting Terms. Unless stated otherwise in the applicable Ordering Document, if there is a conflict between any term of the Terms of Service and a term of an Ordering Document, the Terms of Service will govern.



SUBSCRIPTION AND SERVICES AGREEMENT

This subscription and services agreement (the "**Agreement**"), the relevant terms of the Guide, and any executed Orders and/or SOWs between the parties, are incorporated herein and shall govern the provision of the Services. Customer and its Affiliates may place orders under this Agreement by submitting separate Order(s) and SOW(s), pursuant to which an Affiliate will be considered the Customer as forth herein. This Agreement shall commence on the Effective Date of Customer's first executed Order or SOW ("**Effective Date**") and will continue until otherwise terminated in accordance with Section 12 below.

1. DEFINITIONS.

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

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

"**Customer Applications**" means all software programs, including Drupal, that Customer uses on the Platform as a Service. Subscription Services do not fall within the meaning of Customer Applications.

"**Customer Data**" means all data, records, files, images, graphics, audio, video, photographs, reports, forms and other content and material, in any format, that are submitted, stored, posted, displayed, transmitted or otherwise used with the Subscription Services and includes Regulated Data for which the applicable Subscription Services have been subscribed by Customer.

"**Data Center Region**" refers to the geographic region in which the Platform environment is physically located and the Customer Data is housed.

"**Deliverable**" means any work product, deliverables, programs, interfaces, modifications, configurations, reports, or documentation developed or delivered in the performance of Professional Services.

"**Documentation**" means the Guide as updated from time to time.

"**Guide**" means the documented descriptions of the products and services that are applicable to the Services under Customer's Order and is made accessible via the URL at <https://docs.acquia.com/guide>. The Guide is subject to change at Acquia's discretion to reflect changes in technology, industry practices and patterns of system use; however, Acquia's changes to the Guide will not result in a material reduction in the level of performance or availability of the applicable Services provided to Customer for the duration of the Subscription Term.

"**Order Form**" or "**Order**" means each ordering document for Services purchased from Acquia hereunder executed by Acquia and Customer from time to time. Customer Affiliates may purchase Services subject to this Agreement by executing Order Forms hereunder.

"**PaaS**", "**Platform as a Service**", or "**Platform**" means the cloud platform ordered by Customer under an Order Form and made available by Acquia to Customer as a managed service.

"**Professional Services**" means fee-based migration, implementation, training or consulting services that Acquia performs as described in an Order Form or SOW, but excluding Support Services.

"**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.

"**Services**" means the Subscription Services and Professional Services that Customer may purchases under an Order Form or SOW.

"**Statement of Work**" or "**SOW**" means a statement of work entered into and executed by the parties describing Professional Services to be provided by Acquia to Customer.

"**Subscription Services**" means SaaS, PaaS, and associated Support Services, as applicable.

"**SaaS**" or "**Software as a Service**" means the software ordered by Customer under an Order Form and made available by Acquia to Customer online via the applicable customer logins.

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

"**Third Party Marketplace**" means any non-Acquia products or services made available as an accommodation on Acquia's website, which are subject to change during the Subscription Term.

2. SUBSCRIPTION SERVICES

2.1. Provision of Subscription Services. Acquia will make the Subscription Services available to Customer pursuant to this Agreement, the Guide and the relevant Order Form during the subscription term as set forth in the Order Form (the "**Subscription Term**"). Acquia, its Affiliates and its Authorized Contractors may perform certain aspects of the Subscription Services, such as service administration and Support Services, as well as other Services (including Professional Services and disaster recovery), from locations and/or through the use of Authorized Contractors, worldwide. The Order shall also set forth any Regulated Data to be provided by Customer and the relevant Subscription Services. Customer's use of the Subscription Services includes the right to access all functionality available in the purchased Subscription Services during the Subscription Term and any renewals thereto. Subsequent updates, upgrades, enhancements to the Subscription Services made generally available to all subscribing customers will be made available to Customer at no additional charge, but the purchase of Subscription Services is not contingent on the delivery of any future functionality or features. New features, functionality or enhancements to the Subscription Services may be marketed separately by Acquia and may require the payment of additional fees. Acquia will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require an additional fee.

2.2 Trial Services. From time to time Acquia may invite Customer to try, at no charge, Acquia products or services not generally available to Acquia customers ("**Trial Services**"). Customer may accept or decline any such trial in Customer's sole discretion. Any Trial Services will be clearly designated as trial, beta, pilot, limited release, or by a similar description on the applicable Order. Unless otherwise set forth in an Order, Trial Services are provided for evaluation purposes and not for production use. Acquia may provide Customer with product, support, 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 Trial Services. Acquia shall be under no obligation to provide such services, or to make any tests, fixes, workarounds, revisions, or repairs to the Trial Services, to maintain the Trial Services at any Customer-desired level of performance, to keep to keep the Trial Services in operating condition, or to market or license the Trial Services. Trial Services may contain bugs or errors, and may be subject to additional terms. TRIAL SERVICES ARE NOT CONSIDERED "SERVICES" HEREUNDER AND ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. Customer shall have sole responsibility and Acquia assumes no liability for any Customer Data or Regulated Data that Customer may choose to upload on the Trial Services. Acquia may, in its sole discretion, discontinue Trial Services at any time.

2.3. Third Party Marketplace. As part of the Subscription Services, Acquia may provide access to the Third Party Marketplace solely as an accommodation to Customer. Customer may choose to use any, all or none of such Third Party Marketplace at its sole discretion. Customer's use of the Third Party Marketplace is subject to such provider's terms and conditions and any such terms and conditions associated with such use are solely between Customer and such third party provider. Acquia does not provide any Support Services for Third Party Marketplace products and services.

3. SECURITY AND DATA PRIVACY

3.1. Security. Acquia shall maintain a security framework of policies, procedures and controls that includes administrative, physical and technical safeguards for the protection of the security and integrity of the Subscription Services, and of the Customer Data contained within the Subscription Services ("Safeguards") using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards, such Safeguards shall be materially consistent with Acquia's implementation of NIST 800-53 which forms the basis of Acquia's current FedRAMP certification. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Acquia personnel except (a) to provide the Subscription Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permits in writing.

3.2 Internal Controls. The internal controls of the Subscription Services are subject to periodic testing by independent third party audit organizations with Service Organization Controls 1 (SOC 1), SOC 2 audits and ISO 27001 certification or surveillance audits performed annually. Such audits and certifications may be based on the Statement on Standards for Attestation Engagements (SSAE) No. 16, Reporting on Controls at a Service Organization, the International Standard on Assurance Engagements (ISAE) No. 3402, Assurance Reports on Controls at a Service Organization, the Trust Services Principles, specifically Security and Availability respectively, or ISO/IEC 27001:2013 (ISO 27001). Customer may, upon prior written request, request a copy of the current published audit report available for the Subscription Services. Such audit reports, and the information they contain, are Acquia Confidential Information, and must be handled by Customer accordingly. Such reports may be used solely by Customer to evaluate the design and operating effectiveness of defined controls applicable to Subscription Services and are provided without any warranty.

3.3. Data Privacy. In performing Subscription Services, Acquia will comply with the Acquia Privacy Policy available at <https://www.acquia.com/about-us/legal/privacy-policy> and 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.

3.4 Data Center Region. Customer may select the Data Center Region in which the PaaS environment will reside and may identify such region in the Order Form. Acquia will not move the selected Data Center Region without Customer's written consent or unless required to comply with the law or requests of a governmental or regulatory body (including subpoenas or court orders). Customer consents to Acquia's collection, use and disclosure of information associated with the Subscription Services to the processing of Customer Data in, and transfer of Customer Data into, the Data Center Region Customer selects.

4. CUSTOMER OBLIGATIONS

4.1. Responsibilities. Customer shall (i) access and use the Services in accordance with this Agreement, applicable laws and government regulations and Acquia's Acceptable Use Policy available at <https://www.acquia.com/about-us/legal/acquia-acceptable-use-policy>; (ii) be responsible for the accuracy, quality and legality of Customer Data and the means by which Customer acquired Customer Data; (iii) not cause, or otherwise request that Acquia create, receive, maintain or transmit Regulated Data for Customer or on Customer's behalf in connection with the Services without first subscribing to the required applicable Subscription

Services; (iv) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify Acquia promptly of any such unauthorized access or use, (v) take commercially reasonable steps necessary to ensure the security and compliance of the Customer Applications; and (vi) be responsible for obtaining and maintaining all telephone, computer hardware, Internet access services and other equipment or services needed to access and use the Services and all costs and fees associated therewith.

4.2. Regulated Data. Customer is responsible for its legal and regulatory compliance in its use of any Subscription Services and shall make Acquia aware of any technical requirements that result from its regulatory obligations prior to contract execution. If available, Customer may order Subscription Services from Acquia designed to address particular data protection requirements applicable for the processing of Regulated Data within the Subscription Services environment. Where Customer's use of the Subscription Services includes the processing of personal data subject to the EU Data Protection Directive 95/46/EC, Acquia will provide Customer with an Acquia data protection agreement with the EU Standard Contractual Clauses, which upon the parties' mutual execution, will form part of this Agreement.

4.3 Restrictions. Customer shall not (a) license, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise similarly exploit the Subscription Services; (b) use or permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Subscription Services; (c) copy, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Subscription Services or any part thereof or otherwise attempt to discover any source code or modify the Subscription Services; or (d) disclose any benchmark or performance tests of the Services.

4.4. Compliance. Acquia monitors the Subscription Services for any unauthorized conduct (including any violation of this Agreement, Acquia's Acceptable Use Policy, any applicable law or third party right) and may suspend access to the Subscription Services and any publicly facing Customer Applications to the extent and for the duration of any such violation if Customer is engaged in, or Acquia in good faith believes Customer is engaged in, such violation. Acquia will attempt to contact Customer prior to or contemporaneously with such suspension; provided, however, that Acquia's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. A suspension may take effect for Customer's entire account and Customer understands that such suspension would therefore include Affiliate and/or user sub-accounts. Customer agrees that Acquia will not be liable to Customer or to any Affiliate or user or any other third party if Acquia exercises its suspension rights as permitted by this Section.

5. PROFESSIONAL SERVICES

5.1. Standard Professional Services. A description of Acquia's standard Professional Services offerings, including training, and workshops, may be found in the Guide. Standard Professional Services may be identified in an Order Form without the need for issuance of an SOW.

5.2. Other Professional Services. For any non-standard Professional Services, Acquia will provide Customer with Professional Services as set forth in the applicable SOW. Each SOW will include, at a minimum: (i) a description of the Professional Services and any Deliverable to be delivered to Customer; (ii) the scope of Professional Services; (iii) the schedule for the provision of such Professional Services; and (iv) the applicable fees and payment terms for such Professional Services, if not specified elsewhere.

5.3. Change Orders. Changes to an SOW or Order Form will require, and shall become effective only when, fully documented in a written change order (each a "Change Order") signed by duly authorized representatives of the parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. Change Orders shall be deemed part of, and subject to, this Agreement.

5.4. Staffing, Designated Contact and Cooperation. Acquia shall have sole discretion in staffing the Services and may use Authorized Contractors to assist in the delivery of the Professional Services, provided that Acquia shall remain liable for the actions or omissions of such Authorized Contractors. Each party will designate in each SOW an individual who will be the primary point of contact between the parties for all matters relating to the Professional Services to be performed thereunder. Customer will cooperate with Acquia, will provide Acquia with accurate and complete information, will provide Acquia with such assistance and access as Acquia may reasonably request, and will fulfill its responsibilities as set forth in this Agreement and the applicable SOW. If Acquia personnel are required to be present on a Customer site, Customer will provide adequate workspace and may provide reasonable worksite safety and security rules to which such personnel are to conform.

6. FEES AND PAYMENT

6.1. Fees. Customer shall pay all fees specified in each Order Form and SOW. Except as otherwise specified herein or in an Order Form or SOW, (i) fees are quoted and payable in United States dollars, (ii) fees are based on Services purchased, regardless of usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, (iv) all Services shall be deemed accepted upon delivery, and (v) the Subscription Services purchased cannot be decreased during the relevant Subscription Term. Customer shall reimburse Acquia for out-of-pocket expenses incurred by Acquia in connection with its performance of Services. Acquia will provide Customer with reasonably detailed invoices for such expenses. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

6.2. Invoicing and Payment. All fees for Subscription Services will be invoiced in advance and, unless otherwise set forth in an SOW, all fees and expenses for Professional Services will be invoiced monthly in arrears on a time and materials basis. Except as otherwise stated in the applicable Order Form or SOW, Customer agrees to pay all invoiced amounts within thirty (30) days of invoice date.

6.3. Overdue Charges. If Acquia does not receive fees by the due date, then, at Acquia's discretion, such fees may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

6.4. Payment Disputes. Acquia agrees that it will not exercise its rights under Section 6.3 (Overdue Charges) if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

6.5. Taxes. Fees for Services exclude all sales, value added and other taxes and duties imposed with respect to the sale, delivery, or use of any product or Services covered hereby. Customer is responsible for payment of all taxes, levies, duties, assessments, including but not limited to value-added, sales, use or withholding taxes, assessed or collected by any governmental body (collectively, "**Taxes**") arising from Acquia's provision of the Services hereunder, except any taxes assessed on Acquia's net income. If Acquia is required to directly pay or collect Taxes related to Customer's use or receipt of the Services hereunder, Customer agrees to promptly reimburse Acquia for any amounts paid by Acquia.

7. PROPRIETARY RIGHTS

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

7.2. Customer Data and Customer Applications. To enable Acquia to provide Customer with the Subscription Services, Customer hereby grants Acquia, its Affiliates and sublicensees (including Authorized Contractors

whose technologies and services interface with the Subscription Services that include the Customer Data and Customer Applications) a worldwide, royalty-free, non-exclusive, limited term license to use, process, store, display and transmit Customer Data and Customer Applications solely as necessary for Acquia to provide the Services in accordance with this Agreement. Subject to the limited licenses granted herein, Acquia acquires no right, title or interest from Customer or Customer licensors hereunder in or to Customer Data and Customer Applications, including any intellectual property rights therein.

7.3. Deliverables. Excluding any property that constitutes Outside Property, any Deliverables shall be the sole property of Customer upon Customer's payment in full of all associated Professional Services fees. Acquia shall execute and, at Customer's written request, require its personnel to execute any document that may be necessary or desirable to establish or perfect Customer's rights to the ownership of such Deliverables. For purposes of this Agreement, "Outside Property" means any and all 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 prior to the commencement of Professional Services or which it develops independent of any activities governed by this Agreement, and any derivatives, modifications or enhancements made to any such property. Outside Property shall also include any enhancements, modifications or derivatives made by Acquia to the Outside Property while performing Professional Services hereunder, and any software, modules, routines or algorithms which are developed by Acquia during the term in providing the Professional Services to Customer, provided such software, modules, routines or algorithms have general application to work performed by Acquia for its other customers and do not include any content that is specific to Customer or which, directly or indirectly, incorporate or disclose Customer's Confidential Information.

7.4 Outside Property License. To the extent that Acquia incorporates any Outside Property into any Deliverables, then Acquia hereby grants Customer a limited, royalty-free, non-exclusive, non-transferable (subject to Section 14.11) license to use such Outside Property delivered to Customer solely as necessary for and in conjunction with Customer's use of the Deliverables.

8. CONFIDENTIALITY

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

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

8.3. Protection of Confidential Information. The Receiving Party shall use the same degree of care used to protect the confidentiality of its own

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

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

9. REPRESENTATIONS, WARRANTIES AND DISCLAIMERS

9.1. Acquia Representations & Warranties. Acquia represents and warrants that (i) Acquia has the legal authority to enter into this Agreement, (ii) the Subscription Services will materially conform with the relevant Documentation, (iii) the functionality and security of the Subscription Services will not be materially decreased during a Subscription Term, and (iv) Professional Services will be performed in a competent and workmanlike manner consistent with generally accepted industry standards.

9.2. Remedies. For any failure of any Subscription Services or Professional Services, as applicable, to conform to their respective warranties, Acquia's liability and Customer's sole and exclusive remedy shall be for Acquia, in the case of a breach of the warranty set forth in Section 9.1 (ii), (iii), and/or (iv), to use commercially reasonable efforts to correct such failure; or, in the case of a breach of the warranty set forth in Section 9.1 (iv) to re-perform the affected Professional Services. If the foregoing remedies are not commercially practicable, Acquia may, in its sole discretion, terminate the applicable Order Form or SOW upon providing Customer with written notice thereof, and, as Customer's sole and exclusive remedy, refund to Customer: (a) in the case of breach of the warranty set forth in Section 9.1(ii), any Subscription Services fees paid by Customer with respect to the unexpired portion of the current Subscription Term for the non-conforming Subscription Services; or (b) in the case of breach of the warranty set forth in Section 9.1(iv), any fees paid by Customer for the portion of Professional Services giving rise to the breach.

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

9.4. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, ACQUIA MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND ACQUIA HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, 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.

10. MUTUAL INDEMNIFICATION

10.1. Indemnification by Acquia. Acquia shall indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging that the use of the Subscription Services hereunder infringes or misappropriates the valid intellectual property rights of a third party (a "Claim Against Customer"); provided that Customer (a) promptly gives Acquia written notice of the Claim Against Customer;

(b) gives Acquia sole control of the defense and settlement of the Claim Against Customer (provided that Acquia may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to Acquia all reasonable assistance, at Acquia's expense. In the event of a Claim Against Customer, or if Acquia reasonably believes the Subscription Services may infringe or misappropriate, Acquia may in Acquia's sole discretion and at no cost to Customer (i) modify the Subscription Services so that they no longer infringe or misappropriate, without breaching Acquia's warranties hereunder, (ii) obtain a license for Customer's continued use of Subscription Services in accordance with this Agreement, or (iii) terminate Customer's subscriptions for such Subscription Services and refund to Customer any prepaid fees covering the remainder of the term of such subscriptions after the effective date of termination. Notwithstanding the foregoing, Acquia shall have no obligation to indemnify, defend, or hold Customer harmless from any Claim Against Customer to the extent it arises from Customer Data or Customer Applications, use by Customer after notice by Acquia to discontinue use of all or a portion of the Subscription Services or Customer's breach of this Agreement.

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

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

11. LIMITATION OF LIABILITY

11.1. Limitation of Liability. OTHER THAN EACH PARTY'S OBLIGATIONS SET FORTH IN SECTION 10 (MUTUAL INDEMNIFICATION), NEITHER PARTY'S TOTAL AGGREGATE LIABILITY RELATING TO THIS AGREEMENT (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) SHALL EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT.

11.2. Exclusion of Consequential and Related Damages. NEITHER PARTY SHALL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

12. TERM AND TERMINATION

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

12.2. Term of Subscription Services. Subscription Services purchased by Customer commence on the start date specified in the applicable Order Form and continue for the subscription term specified therein (each, a "Subscription Term"). Except as otherwise specified in such Order Form, the Subscription Services shall automatically renew for successive one-year periods, unless and until terminated by either party in accordance herewith or either party provides written notice of non-renewal to the other party at

least 30 days prior to the end of the then-current Subscription Term. Acquia may adjust the pricing applicable to any renewal of any then-current Subscription Term, by providing Customer with written notice thereof at least 30 days prior to the end of such term.

12.3. Termination for Cause. A party may terminate this Agreement (or, at such party's option, the individual Order Forms or SOWs affected by the applicable breach), for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such same 30 day period, or (ii) automatically if the other party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

12.4. Refund upon Termination. Upon termination for cause by Customer and upon Customer's written request, Acquia shall refund to Customer the prepaid fees covering the remainder of the applicable Subscription Term after the effective date of termination. Upon termination for cause by Acquia, Customer shall pay the unpaid fees covering the remainder of the Subscription Term of the Order Forms after the effective date of termination. In no event shall any termination relieve Customer of the obligation to pay all fees payable to Acquia for the period prior to the effective date of termination.

12.5. Data Portability and Deletion. Upon written request made by Customer within 30 days of termination or expiration of the Subscription Services, Acquia will make Customer Data and Customer Applications available to Customer for export or download as provided in the Documentation. At the end of such 30 day period, Acquia will delete or otherwise render inaccessible any Customer Data and Customer Applications, unless legally prohibited. Acquia has no obligation to retain the Customer Data for Customer purposes after this 30 day post termination period.

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

13. NOTICES, GOVERNING LAW AND JURISDICTION

13.1. Manner of Giving Notice. Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder shall be in writing and shall be deemed to have been given upon (i) personal delivery, (ii) the fifth business day after being sent by certified mail return receipt requested, or (iii) the first business day after sending by a generally recognized international guaranteed overnight delivery service. Each party shall send all notices, demands, requests or other communications which may be or are required to be given hereunder to the other party at the address set forth in the applicable Order Form or SOW, as such party may update such information from time to time, with, in the case of notices sent by Customer, a copy sent to the Acquia Legal Department at the address first set forth above.

13.2. Governing Law and Jurisdiction. If Customer is entering into this Agreement from a European Union member country, then this Agreement is governed by the laws of England and subject to the exclusive jurisdiction of the courts of England and Wales. If Customer is entering into this Agreement from Australia, then this Agreement is governed by the laws of New South Wales and subject to the exclusive jurisdiction of the courts of Sydney. Otherwise, this Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its conflicts of law rules. Any civil action or legal proceeding arising out of or relating to this Agreement shall be brought in the courts of record of the Commonwealth of Massachusetts in Suffolk County or the United States District Court, Eastern District of Massachusetts. Each party consents to the jurisdiction of such court in any such civil action or legal proceeding

and waives any objection to the laying of venue of any such civil action or legal proceeding in such court. Notwithstanding the foregoing, the parties acknowledge that any unauthorized disclosure of Confidential Information or any actual or alleged infringement of such party's or third party's intellectual property rights might cause the other party to suffer irreparable harm for which damages would be an inadequate remedy and that, in such event, the aggrieved party may seek, in addition to any other available remedies, injunctive and other equitable relief in any state, federal, or national court of competent jurisdiction, without bond and without the necessity of showing actual monetary damages. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to the Agreement.

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

14. GENERAL PROVISIONS

14.1. Import and Export Compliance. Each party shall comply with all applicable import, re-import, export and re-export control laws, treaties, agreements, and regulations. Export controls may include, but are not limited to, those of the Export Administration Regulations of the U.S. Department of Commerce (EAR), the Department of State International Traffic in Arms Regulations (ITAR), and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control (OFAC), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries. Each party represents that it is not named on any U.S. government denied-party list. Customer shall not permit users to access or use Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.

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

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

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

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

14.6. Non-Solicitation. Customer agrees that during the term of each Order Form and/or SOW and for twelve (12) months thereafter, it will not recruit or otherwise solicit for employment any person employed by Acquia who

participated in the performance of Services under the applicable Order Form and/or SOW. Nothing in this clause shall be construed to prohibit individual Acquia employees from responding to public employment advertisements, postings or job fairs of Customer, provided such response is not prompted by Customer intentionally circumventing the restrictions of this Section.

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

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

14.9. Force Majeure. Neither party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction, or malfunction of any equipment, or any consequence thereof, caused or occasioned by, or due to fire, earthquake, flood, water, the elements, labor disputes or shortages, utility curtailments, power failures, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties, or any other cause beyond its reasonable control. This Section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the Services. If the force majeure event continues for more than thirty (30) calendar days, then either party may terminate the Agreement upon written notice to the other party.

14.10. 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.

14.11. Assignment. Neither party may assign its rights and obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms and SOWs), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.12. 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 relating to the same. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both parties with the exception that Acquia may, from time to time, modify the terms of the Guide in its sole discretion. To the extent of any conflict or inconsistency between the provisions of this Agreement, the Guide, any Order Form or SOW, the terms of such Order Form or SOW shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or other order documentation (excluding Order Forms and/or SOWs) shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.