

**ATTACHMENT VII
END USER LICENSE AGREEMENT**

ACQUIA SERVICES AGREEMENT

THE TERMS AND CONDITIONS set forth below and any Exhibits attached hereto ("Agreement") are effective as of the date of execution ("Effective Date") and are made by and between

<Client>, <an individual/a corporation> having a <mailing address of/principal place of business at>
_____ ("Client")

and

Acquia Inc., a corporation having a place of business at 150 Presidential Way, Suite 310, Woburn, MA 01801 ("Acquia," and, together with Client, each a "Party" and together the "Parties").

WHEREAS, Client desires to engage Acquia for the services described in the attached Exhibits ("Services") and pursuant to the terms of this Agreement;

WHEREAS, Acquia wishes to provide the Services pursuant to the terms of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and otherwise contained herein, the Parties agree as follows:

1. REPRESENTATIONS AND WARRANTIES

1.1 ACQUIA'S REPRESENTATIONS AND WARRANTIES. ACQUIA HEREBY WARRANTS TO CLIENT:

- (a) That Acquia shall perform the Services in accordance with then prevailing professional standards.
- (b) That each of Acquia's employees, agents and subcontractors assigned to perform any Services hereunder shall have the proper skill, training, and background to perform such Services, and that such Services will be performed in a competent and professional manner.

Client's sole remedy and Acquia's sole obligation in the event of a breach of the foregoing representations shall be the re-performance of the Services.

1.2 Disclaimer of Warranties. THE PARTIES AGREE THAT EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

1.3 Limitation of Liability. ACQUIA SHALL NOT BE LIABLE TO CLIENT FOR ANY LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ACQUIA HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. ACQUIA'S AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID BY CLIENT TO ACQUIA HEREUNDER. ACQUIA IS NOT RESPONSIBLE FOR AND HEREBY EXPLICITLY DISCLAIMS ANY AND ALL LIABILITY ASSOCIATED WITH ANY AND ALL THIRD PARTY SOFTWARE AND ANY DAMAGES RESULTING FROM ANY INCOMPATIBILITIES AMONG THIRD PARTY SOFTWARE, REGARDLESS OF WHETHER SUCH DAMAGES RESULT FROM THE PERFORMANCE OF THE SERVICES OR OTHERWISE.

1.4 Force Majeure. Neither Party shall be responsible for delays in performance resulting from causes beyond the reasonable control of such party, including but not limited to acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations imposed after the fact, fire, theft, power failure, communication failure, storms, earthquakes, or other disasters; provided that the Party uses reasonable efforts to avoid and minimize such

occurrences and gives prompt notice thereof to the other Party.

2. CONFIDENTIAL INFORMATION

2.1 Confidential Information. For purposes of this Agreement, "Confidential Information" shall mean all information (i) identified in written or oral format by the disclosing party as confidential, trade secret or proprietary information and, if disclosed orally, summarized in written format within thirty (30) days of disclosure, or (ii) the receiving party knows or has reason to know is confidential, trade secret or proprietary information of the disclosing party.

2.1.2 Exclusion of Confidential Information. A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party without reference to the Confidential Information.

2.2 Non-Disclosure. Each party hereto agrees to hold each other's confidential information in confidence for a period of three (3) years from the date of disclosure, and to disclose confidential information only to its respective employees and/or agents who are required to protect it against unauthorized disclosure. In addition, each party agrees that Confidential Information received by it from the other party is to be used only in furtherance of the purposes set forth in this Agreement. Nothing shall prevent (i) either party from disclosing the terms or pricing under this agreement or orders or reports submitted under this agreement in any legal proceeding arising from or in connection with the terms of this agreement or (ii) either party from disclosing confidential information to a federal or state governmental entity as required by law.

3. FEES AND TAXES

3.1 Fees. Client shall pay to Acquia the fees set forth in the Exhibits in the manner and for the Services agreed to therein. All fees paid to Acquia are non-refundable. Client agrees to provide Acquia with complete and accurate billing and contact information. If invoiced by Acquia, payments for such invoices are due net thirty (30) days from the invoice date. Client agrees that Acquia may charge unpaid fees to Client credit card or otherwise bill Client for unpaid fees. Acquia shall be entitled to reimbursement of all reasonable collection costs incurred as a result of unpaid balances.

3.2 TAXES. CLIENT SHALL, IN ADDITION TO THE PAYMENTS REQUIRED HEREUNDER, PAY ALL APPLICABLE SALES, USE, TRANSFER OR OTHER TAXES, HOWEVER DESIGNATED, WHICH ARE LEVIED OR IMPOSED BY REASON OF THE TRANSACTIONS CONTEMPLATED HEREUNDER; EXCLUDING, HOWEVER, INCOME TAXES ON INCOME WHICH MAY BE LEVIED AGAINST ACQUIA. THE PARTIES AGREE THAT THE DETERMINATION OF THE AMOUNT OF STATE AND LOCAL SALES AND USE TAXES, IF ANY, THE JURISDICTION TO WHICH SUCH TAXES ARE TO BE PAID, AND ANY OTHER DETERMINATIONS OF A SUBSTANTIVE OR PROCEDURAL NATURE RELATING TO SUCH TAXES, WILL BE THE RESPONSIBILITY AND PREROGATIVE OF ACQUIA, IN ITS SOLE DISCRETION.

4. TERM AND TERMINATION

4.1 TERM

4.1.1 Term; Termination of Services. The initial term of this Agreement shall be twelve (12) months commencing on the Effective Date. Thereafter, this Agreement will automatically renew for successive additional 12-month terms, unless one party provides the other with written confirmation of non-renewal at least thirty (30) days prior to the expiration of the then-current term. Either party may terminate this Agreement and/or the applicable Exhibit if the other party fails to cure a material breach of this Agreement within thirty (30) days after receipt of written notice of such breach from the party not in default.

4.1.2 Insolvency. In the event that either Party (i) is adjudged insolvent or bankrupt, or (ii) upon the institution of any proceedings seeking relief, reorganization or arrangement under any laws relating to insolvency, or (iii) if an involuntary petition in bankruptcy is filed and is not discharged within sixty (60) days after such filing, or (iv) upon any assignment for the benefit of creditors, or (v) upon the appointment of a receiver, liquidator or trustee or any of its assets, or (v) upon the liquidation, dissolution or winding up of its business, or (vii) upon the filing of any liens (collectively an "Event of Bankruptcy"), then said Party shall immediately give notice thereof to the other Party,

and the other Party may, at its option and without liability or any further obligation, immediately terminate this Agreement.

4.1.3 Effects of Termination. Upon termination of this Agreement, each Party shall return to the other Party any property, tangible or intangible, of the other Party which is in such Party's possession.

5. GENERAL

5.1 Injunctive Relief. In the event of an actual or threatened breach of any of the terms and conditions of this Agreement, the non-breaching Party shall have the right to immediately seek injunctive or declaratory relief enjoining such act, or threatened act, in addition to any other legal remedies which may be available to it. Each Party acknowledges that the legal remedies for such violation or threatened violation may be inadequate.

5.2 Arbitration. The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations between executives of the parties. Any dispute that is not resolved (excepting any dispute relating to intellectual property rights which are subject to section 5.1) shall be subject to final and binding arbitration under the commercial arbitration rules of American Arbitration Association ("AAA") by three arbitrators appointed in accordance with AAA rules. Each Party shall nominate one arbitrator, and both arbitrators shall agree on the third arbitrator within thirty (30) days. The Arbitrators so appointed shall not award any damages in excess of the limits or limitations contained in this Agreement. The seat of arbitration shall be Boston, Massachusetts. Judgment upon the award rendered may be entered in any court of competent jurisdiction and shall be binding on both parties.

5.3 Governing Law & Forum. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts without regard to its provisions on conflicts of laws.

5.4 Notices. All notices required to be given under the terms of this Agreement or which any of the Parties hereto may desire to give hereunder, shall be in writing, shall be delivered via one of the following methods, and shall be deemed to have been received: (i) on the day delivered by hand (securing a receipt evidencing such delivery); (ii) on the second day after such notice is sent by a nationally recognized overnight or two (2) day air courier services, full delivery cost paid; or (iii) on the fifth day after such notice was mailed, registered mail, prepaid, return receipt requested, and addressed to the party to be notified at the following addresses:

FOR CLIENT:	FOR ACQUIA:
	Acquia Inc. 150 Presidential Way Woburn, MA 01801 Attn: Chief Financial Officer

5.5 Assignment. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. This Agreement shall not be assigned by either Party without the consent of the other Party; provided, however, that Acquia may upon notice to Client assign this Agreement to the successor to all or substantially all of Acquia's assets or business, provided that such assignee agrees in writing to be bound by the terms of this Agreement. Acquia may use independent contractors or subcontractors to assist in the delivery of Services; provided, however, that Acquia shall remain liable for the actions or omissions of such independent contractors or subcontractors.

5.6 Survival. Sections 1.3, 2, 3, and 5 shall survive the expiration, termination or rescission of this Agreement and continue in full force and effect.

5.7 Attorneys Fees. In the event of any proceeding or lawsuit brought by either Party in connection with this Agreement, the prevailing Party shall be entitled to recover its costs and reasonable attorneys' fees.

5.8 Publicity. Subject to the terms of section 5, Client agrees that Acquia may disclose that Client's status as an Acquia client and Client further agrees that Acquia may place Client's logo or trademark on Acquia's corporate website to indicate Client's relationship with Acquia.

5.9 No Waiver. No term or provision hereof shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing. Any consent by any Party to, or waiver of, any breach by the other Party,

whether express or implied, shall not constitute consent to, waiver of, or excuse for, any other different or subsequent breach. No waiver by either Party hereto of any breach of any provision herein shall constitute waiver of any other provision.

5.10 Independent Contractors. The Parties hereto are and shall remain independent contractors. Nothing herein shall be deemed to establish a partnership, joint venture, or agency relationship between the Parties. Neither Party shall have the right to obligate or bind the other Party in any manner to any third party.

5.11 Non-Solicitation. Client agrees that, while Acquia is performing Services pursuant to this Agreement and for a period of one year thereafter, Client will not, except with Acquia's prior written approval, hire, solicit or offer employment, directly or indirectly, to any Acquia employee or staff.

5.12 Subsequent Modifications. No amendment, alteration or modification of this Agreement shall be effective or binding unless it is set forth in a writing signed by duly authorized representatives of both Parties.

5.13 Severability. If any provision of this Agreement is determined to be invalid or unenforceable by any court of competent jurisdiction, it is to that extent to be deemed omitted, and the balance of the Agreement shall remain enforceable.

5.14 Counterparts. This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the Parties hereto.

5.15 Headings. The section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof.

5.16 Approvals and Similar Actions. Where agreement, approval, acceptance, consent or similar action by either Party hereto is required by any provision of this Agreement, such action shall not be unreasonably delayed or withheld.

5.17 Entire Agreement. These terms and conditions and any Exhibits constitute the entire Agreement between the Parties in connection with the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties, and there are no warranties, representations and/or agreements among the Parties in conjunction with the subject matter hereof except as set forth in this Agreement. In the event of any conflict between these terms and conditions and the terms and conditions of any Exhibit, these terms and conditions shall prevail.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed on its behalf by its duly authorized representatives as of the Effective Date.

AGREED BY:

ACQUIA INC.

By:

Name:

Title:

Effective

Date:

<CLIENT>

By:

Name

Title:

Date:
