

Akuity Master Subscription Agreement

Last Updated: August 1st, 2022

THIS DOCUMENT IS A LEGAL CONTRACT. PLEASE READ IT CAREFULLY.

This Master Subscription Agreement (“**Agreement**”) is an agreement between you as our customer (“**Customer**”, or “**you**”) and governs your access to and use of the Akuity software services (collectively, the “**Service**”) provided by Akuity, Inc. (“**Akuity**”, or “**we**”). Use of and access to the Service is conditioned upon your compliance with this Agreement and all applicable local, state, national, and international laws, rules and regulations. Your use of the Service indicates your acceptance of this Agreement, and that you understand and agree to be bound by this Agreement. We may modify this Agreement (including any policies we reference) at any time by posting a revised version on the Akuity website or by otherwise notifying you in accordance with Section 11.6. The modified Agreement will become effective upon posting or, if we notify you by email, as stated in the email message. By continuing to use the Service after the effective date of any modifications to this Agreement, you agree to be bound by the modified Agreement. We last modified this Agreement on the date listed at the beginning of this Agreement.

1. Free Trial

You can receive a free trial to our Service for the trial period of fourteen (14) days, or such longer period at the exclusive discretion of Akuity (the “**Trial Period**”). You may be required to agree to additional terms and conditions, which will be presented to you prior to your registration for the free trial. If you choose to subscribe to the Service at or before the end of the Trial Period, we will preserve your Data (as defined in Section 5.2) for continued use with your paid subscription plan. If you do not subscribe to a paid subscription plan at or before the end of the Trial Period, we reserve the right to delete your Data after the expiration of the Trial Period.

NOTWITHSTANDING SECTION 7 (REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS), DURING THE TRIAL PERIOD THE SERVICE IS PROVIDED “AS-IS” AND WITHOUT ANY WARRANTY

2. Use of Services

2.1 Account

In order to access and use the Service, you will need to register with us and create an account (“**Account**”). We reserve the right to suspend or terminate your Account if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading. You are responsible for maintaining the confidentiality of your Account, including any tokens we provide to you that enable you to send data to the Service (“**API Tokens**”), and of the login and passwords for all users whom you have authorized to access your Account (“**Authorized Users**”). You agree to notify Akuity if any API Tokens or passwords are lost, stolen, or disclosed to an unauthorized third party, or otherwise may have been compromised. You are responsible for all activities that occur under your Account, including those carried out by any Authorized Users associated with your Account. You will promptly notify Akuity of any unauthorized use of or access to the Service.

2.2 Rights to Use the Service

Subject to your compliance with this Agreement, we will make the Service available to you and your Authorized Users during the applicable subscription term or Trial Period. We hereby grant you and your Authorized Users a limited, non-exclusive, non-transferable, revocable right to access and use the Service during the applicable subscription term or Trial Period, solely for your own personal or internal business use. Your rights in the Service will be limited to those expressly granted in this Section 2.2. Akuity and its licensors reserve all rights and licenses in and to the Service not expressly granted under this Agreement.

2.3 Prohibitions

You will not: (i) sell, resell, license, sublicense, distribute, rent or lease the Service, whether for a fee or not; (ii) copy the Service in whole or in part; (iii) access the Service in order to build a competitive product or service; (iv) reverse engineer any part of the Service; (v) use the Service in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement or applicable documentation; (vi) attempt to gain unauthorized access to any part of the Service or its related systems or networks; (vii) transmit a virus to, overload, flood, spam, or paralyze the Service or take any action or inaction which interferes with the integrity of the Service; or (viii) encourage, authorize, or enable anyone to do any of the foregoing.

2.4 Subscriptions

The Service is purchased as a subscription. Each subscription plan is described in the applicable Order (defined in section 4.1).

2.5 Data Security

The security of your Data is very important to us. We take commercially reasonable administrative, technical, organizational, and physical measures designed to protect the confidentiality, security and integrity of your Data and secure it from accidental loss, unauthorized access, use, alteration and disclosure. When Data is transmitted via the Service, we encrypt this data in transmission using SSL or other technologies. Please be aware, however, that no method of transmitting information over the Internet or storing information is completely secure. Accordingly, we cannot guarantee the absolute security of any Data.

2.6 Modifications to Service

We may change the features within the Service and/or update the Service from time to time, without prior notice to you.

2.7 Beta Services or Features

From time to time, we may invite you to try our beta services or features under development (“**Beta Services or Features**”) at no charge. You may accept or decline any such invitation at your sole discretion. Beta Services or Features will be clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation or by a description of similar import. Beta Services or Features are for evaluation purposes only and not for production use, are not considered “Service” under this Agreement, are not supported, and may be subject to

additional terms. Unless otherwise stated, any Beta Services or Features trial period will expire upon the earlier of six (6) months from the trial start date or the date that a version of the Beta Services or Features becomes generally available. We may discontinue Beta Services or Features at any time at our sole discretion and may never make them generally available. We will have no liability for any harm or damage arising out of or in connection with a Beta Service or Feature.

3. Third Party Technology and Services

The Service may provide links to certain third party services, which are compatible with our Service, or plugins for our Service, or you may use third party services and technology with our Service (“**Third Party Technology**”). We do not endorse and are not responsible or liable for the products or services provided by such third parties and are not responsible for the operation or functionality of such Third Party Technology. You are solely responsible for your use of any Third Party Technology, including compliance with the terms and conditions governing use of such Third Party Technology and you enable, use or access them at your own risk.

We may provide you with software governed by an open source license. If there are provisions in those open source licenses that expressly conflict with this Agreement, the applicable open source license terms will apply. Please review our open source licenses at <https://github.com/akuity>.

ANY THIRD PARTY TECHNOLOGY DOWNLOADED BY YOU OR OTHERWISE OBTAINED OR USED IN CONNECTION WITH THE SERVICE IS DONE SO AT YOUR OWN DISCRETION AND RISK, AND YOU AND YOUR AUTHORIZED USERS WILL BE SOLELY RESPONSIBLE FOR AND HEREBY WAIVE ANY AND ALL CLAIMS AND CAUSES OF ACTION WITH RESPECT TO SUCH USE, INCLUDING, BUT NOT LIMITED TO ANY DAMAGE TO COMPUTER SYSTEMS, INTERNET ACCESS, DOWNLOAD OR DISPLAY DEVICE, OR LOSS OF DATA, THAT RESULTS FROM THE DOWNLOAD OR USE OF ANY SUCH THIRD PARTY TECHNOLOGY.

4. Fees and Payment for Services

4.1 Fees

By subscribing to the Service, you agree to pay Akuity all fees set forth in a customized order form (an “**Order Form**”) or an order receipt from an online purchase (the “**Order Receipt**”) (together, the Order Form and the Order Receipt are referred to as the Order (the “**Order**”). Except as otherwise specified in an Order: **(i) payment obligations are non-cancelable and fees paid are non-refundable, and (ii) quantities purchased cannot be decreased during the relevant subscription term.** You agree that you will be responsible for reimbursing Akuity for any and all reasonable costs and expenses incurred in collecting any past due amounts or service charges, including, but not limited to, reasonable attorneys’ fees, chargeback fees or other related charges.

4.2 Payment by Payment Card

If you provide credit or debit card (“**Payment Card**”) information to us, you authorize Akuity (i) to charge your Payment Card for verification, pre-authorization and payment

purposes at the beginning of each subscription term and any renewal subscription term(s) as set forth in Section 10.2 (Term of Purchased Subscriptions), and (ii) to bear any additional charges that your bank or other financial service provider may levy on you. Such charges shall be made in advance or in accordance with any different billing frequency stated in the applicable Order. We reserve the right to suspend or cancel your subscription plan if we are not able to charge your Payment Card for any payment period. If you have any concerns or objections regarding charges, you agree to raise them with Akuity first and you agree not to cancel or reject any Payment Card charges unless you have made a reasonable attempt at resolving the matter directly with Akuity.

4.3 Invoicing

If the Order specifies that payment will be by a method other than a Payment Card, we will invoice you in advance and otherwise in accordance with the relevant Order. Unless stated otherwise in the Order, invoiced charges are due net thirty (30) days from the invoice date. You are responsible for providing complete and accurate billing and contact information to us and notifying us of any changes to such information. Any past due payments shall be subject to a service charge equal to 1.0% per month of the amount due or the maximum amount allowed by law, whichever is less.

4.4 Changes to Fee Schedule

We reserve the right to change our fee schedule at any time and we will notify you in advance of such changes becoming effective. Changes to the fee schedule will not apply retroactively and will only apply at the conclusion of your subscription term for your subscription renewal. If you do not agree with the changes to the Akuity fee schedule, then your only recourse is to stop using the Service.

4.5 Taxes

All stated fees are exclusive of taxes or duties of any kind. You will be responsible for, and will promptly pay, all taxes and duties of any kind (including but not limited to sales, use and withholding taxes) associated with this Agreement or your use of the Service, except for taxes based on Akuity's net income.

4.6 Future Functionality

You agree that your purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by us regarding future functionality or features.

5. Proprietary Rights and Licenses

5.1 Reservation of Rights

We and our licensors exclusively own the Service and all copyrights, patents, trademarks, and other intellectual property rights therein. You may not remove, alter, or obscure any copyright, trademark, or other proprietary rights notices appearing on the Service.

5.2 License by You to Host Your Data

We do not claim any ownership rights in any data, files, text, graphics, software, works of authorship of any kind, and information or other materials that are captured, or that you transmit to, upload to, run on, process on, store in, cause to interface with, or use, in connection with, your Account on the Service (“**Data**”). Nothing in this Agreement will be deemed to restrict any rights that you may have to use and exploit this Data.

You hereby grant to Akuity a non-exclusive, worldwide, transferable license to use, reproduce and distribute this Data solely in connection with use of the Service and our provision of the Service to you. You represent and warrant that you or your licensors own all right, title and interest in and to this Data and that you have all rights in this Data necessary and sufficient to transmit to, upload to, run on, process on, store in, cause to interface with, or use, in connection with, your Account on the Service, and to grant the rights contemplated by this Agreement. You are solely responsible for all of this Data, including but not limited to the development, operation, maintenance, and use of this Data. We will store your Data in accordance with our standard data retention policies and procedures.

In order for the Service to perform the functions for which it was designed, the Service will gather and transmit certain technical information, Account information, and metadata associated with your use of the Service, to our servers, including but not limited to application telemetry, IP addresses, IP configurations, stored sessions, open ports, account credentials, network metadata, and device operating system, status, version, and configuration (collectively, “**Metadata**”). For clarity, Metadata does not include your Data. You agree and consent to access, collection, transmittal, storage, monitoring, copying, processing, analysis and use of the Metadata and your Data by Akuity in order to administer, support, develop and improve the Service and Akuity’s other products and services, and to monitor compliance with this Agreement.

You represent and agree that you shall not submit any third party personally identifiable information (collectively, “**PII**”) for use with the Service. PII means any information that, alone or in combination with other data, can be used to identify, contact, or precisely locate an individual person, including, but not limited to, an identifier such as a name, an identification number, location data or an online identifier, or any data that has heightened security requirements imposed by applicable laws.

5.3 Feedback

If you provide Akuity with any suggestions, comments, or other feedback regarding the Service (“**Feedback**”), you acknowledge that such Feedback will become the exclusive property of Akuity, and we may use (or not use) any such Feedback in any manner and for any purpose, without compensation to you and without implying or creating any interest on your part in any of our products or services that may be based on such Feedback. You hereby irrevocably assign to Akuity all right, title, and interest in any Feedback provided to Akuity.

6. Confidentiality

"Confidential Information" means the Service and Your Data; any features, and other information relating to the Service (including, without limitation, all Feedback); and any business or technical information of either party that is disclosed to the other party in connection with this Agreement. The obligations in this Section will not apply to the extent any information: (i) is or becomes generally known to the public through no fault or breach of

this Agreement by a party; (ii) is rightfully known by a party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by a party without access to or use of any Confidential Information; or (iv) is rightfully obtained by a party from a third party without restriction on use or disclosure. Each party will not use or disclose any Confidential Information, except as necessary to exercise the rights expressly granted to such party in this Agreement. Each party will use all reasonable efforts to protect Confidential Information from unauthorized use or disclosure, but in no event less than the efforts that such party ordinarily uses with respect to its own proprietary information of a similar nature and importance. The recipient may disclose Confidential Information only to individuals within its organization or entity who have a bona fide need to know such Confidential Information for the exercise of its rights under this Agreement, and such party will ensure that each such individual first executes a written agreement (or is otherwise already bound by a written agreement) that contains use and nondisclosure restrictions at least as protective of the Confidential Information as those set forth in this Agreement.

7. Representations, Warranties, Exclusive Remedies and Disclaimers

7.1 Representations

Each party represents that it has validly entered into this Agreement and has the legal power to do so. For the avoidance of doubt, if the Service is to be used by or on behalf of a company or other organization, the individual accepting this Agreement represents and warrants that he or she has the authority to bind that company or other organization to this Agreement, and “you,” and “your” will refer to that company or other organization

7.2 Our Warranties

We warrant that the Service will perform substantially in accordance with the standard user documentation for the Service that we make generally available to users (“**Documentation**”). As your sole and exclusive remedy and Akuity’s entire liability for any breach of this limited warranty, we will at our option and expense promptly correct the Service so that it conforms to this limited warranty or, if we are unable to do so after using reasonable efforts, we will, in our discretion, allow you to cancel your subscription for a refund of the pro-rata amount of the fee you have paid for the then-current payment period.

7.3 Disclaimers

We make no warranty that the Service will meet your requirements or be available on an uninterrupted, secure, or error-free basis. You acknowledge that the provision of the Service depends on necessary hardware, software, networks, storage, and other products and services provided by third parties which are not controlled by Akuity. We therefore will not be liable for any unavailability of the Service that is due to the outage or failure to perform of any such third party services on which the Service depends. You assume sole responsibility and liability for any output and/or results obtained from the use of the Service and for conclusions drawn from such use. We will have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to Akuity by you in connection with the Service or any actions taken by Akuity at your direction. We will have no liability for any claims, losses or damages arising out of or in connection with your Data.

8. Mutual Indemnification

8.1 Indemnification by You

You will indemnify, defend and hold Akuity and its officers, directors, employees and agents, harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees arising out of or in any way connected with (i) your access to or use of the Service, including, but not limited to, your breach of this Agreement, or (ii) your Data, including but not limited to, the transmission and submission of such Data to the Service, and infringement or misappropriation of any third party proprietary rights by your Data, provided that we: (a) promptly notify you in writing of the claim; (b) grant you sole control of the defense and settlement of the claim; and (c) provide you, at your expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

8.2 Indemnification by Us

We will indemnify, defend and hold you harmless from and against any claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including, without limitation, reasonable legal and accounting fees attributable to such claim that are awarded against you, only to the extent based upon a third party claim that the Service, as provided by under this Agreement and used within the scope of this Agreement, infringes any U.S. patent or any copyright or misappropriates any trade secret, provided that you: (i) promptly notify Akuity in writing of the claim; (ii) grant Akuity sole control of the defense and settlement of the claim; and (iii) provide Akuity, at its expense, with all assistance, information and authority reasonably required for the defense and settlement of the claim.

8.3 Exclusive Remedy

THE PROVISIONS OF THIS SECTION 8 SET FORTH AKUITY'S SOLE AND EXCLUSIVE OBLIGATIONS, AND YOUR SOLE AND EXCLUSIVE REMEDIES, WITH RESPECT TO INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF ANY KIND.

9. Limitation of Liability

AKUITY'S TOTAL LIABILITY TO YOU AND YOUR AUTHORIZED USERS FROM ALL CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY UNDER THIS AGREEMENT WILL BE LIMITED TO THE AMOUNTS PAID TO AKUITY BY YOU FOR THE SERVICE DURING THE LAST PAYMENT PERIOD (I.E. YOUR SUBSCRIPTION TERM, NOT TO EXCEED 12 MONTHS) IMMEDIATELY PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY. WE WILL NOT BE LIABLE TO YOU OR YOUR AUTHORIZED USERS FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, OR FOR COSTS OF SUBSTITUTE GOODS OR SERVICES, OR FOR LOSS OF PROFITS, DATA, USE, GOODWILL, OR OTHER INTANGIBLE LOSSES, ARISING IN ANY WAY OUT OF THIS AGREEMENT OR RESULTING FROM ACCESS TO, USE OF, OR INABILITY TO ACCESS OR USE THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE, AND EVEN IF AN EXCLUSIVE REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

10. TERM AND TERMINATION

10.1 Term of Agreement

This Agreement will remain in force and effect until all trials and subscriptions hereunder have expired or have been terminated.

10.2 Term of Purchased Subscription

The term of each subscription shall be as specified in the applicable Order, or as selected via the Akuity website or the functionality of the Service. Except as otherwise specified in an Order, subscriptions will automatically renew for the additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term, or, in the case of monthly subscriptions, at any time before the end of the subscription term. The subscription tier pricing during any automatic renewal term will be the same as that during the immediately prior term unless we have given you written notice of a pricing increase at least sixty (60) days before the end of that prior term, in which case the pricing increase will be effective upon renewal and thereafter.

10.3 Termination by You

You may terminate this Agreement for cause upon 30 days written notice to Akuity of a material breach if such breach remains uncured at the expiration of such period.

10.4 Suspension or Termination by Akuity

At Akuity's sole discretion, we may suspend or terminate your Account and use of the Service, immediately and without notice, if (a) you have breached any of the terms in this Agreement, if (b) you have acted in a manner that clearly shows you do not intend to, or are unable to, comply with the terms of this Agreement, or (c) you have not paid fees due under the Agreement. In addition, we may suspend or limit your Account and use of the Service as we deem appropriate to prevent, investigate, or otherwise address any suspected misuse of the Service.

10.5 Surviving Provisions

The provisions of Sections 2.3 and 3 through 11 will survive any expiration or termination of this Agreement. After termination or expiration of this Agreement and only upon your written request, for paid subscription plans Account holders only, we will return the portion of your metrics Data submitted to the Service and stored in accordance with our data retention policy and procedures, provided however that we are solely responsible for the form, delivery mechanism and composition of this Data to be returned to you.

11. General Provisions

11.1 Export Control

You agree to comply fully with all relevant export laws and regulations of the United States and other applicable jurisdictions to ensure that neither the Service, nor any direct product

thereof, are: (i) downloaded or otherwise exported or re-exported directly or indirectly in violation of such export laws and regulations; or (ii) used for any purposes prohibited by the such export laws and regulations, including but not limited to nuclear, chemical, or biological weapons proliferation.

11.2 U.S. Government End Users

The Service and Documentation are “commercial items” as that term is defined in FAR 2.101, consisting of “commercial computer software” and “commercial computer software documentation,” respectively, as such terms are used in FAR 12.212, DFARS 227.7202 and other government acquisition regulations, as applicable. If the Service and Documentation are being acquired by or on behalf of the U.S. Government, then, as provided in FAR 12.212 and DFARS 227.7202-1 through 227.7202-4, as applicable, the U.S. Government’s rights in the Service and Documentation will be only those specified in this Agreement.

11.3 Dispute Resolution

This Agreement and any action related thereto will be governed by the laws of the State of California without regard to its conflict of laws provisions. You and we irrevocably consent to the jurisdiction of, and venue in, the state or federal courts located in Santa Clara County, in the State of California for any disputes arising under this Agreement.

11.4 Publicity

You agree that we may identify you as a customer of the Service, and display your name and logo (if any) in connection with such identification, on the Akuity websites and in its other published marketing materials. We will use good-faith efforts to comply with any reasonable trademark usage guidelines you provide to Akuity in connection with your name and logo.

11.5. Assignment

You may not assign any rights or obligations under this Agreement, whether by operation of law or otherwise, without our prior written consent; provided, however, you may assign this Agreement in its entirety, without our consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of your assets. Notwithstanding the foregoing, if you are acquired by, sell substantially all of your assets to, or undergo a change of control in favor of, a direct competitor of Akuity, then we may terminate this Agreement upon written notice. In the event of such a termination, we will refund to you any prepaid fees covering the remainder of the term of all Account subscriptions. We may assign this Agreement freely to any affiliate or in the event of merger, acquisition, corporate reorganization, or sale of all or substantially all of our assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their successors and permitted assigns.

11.6 Notice

We may provide any notice to you under this Agreement by: (i) posting a notice on the Akuity website; or (ii) sending a message to the administrative email address(es) then associated with your Account. Notices we provide by posting on the Akuity website will be effective upon posting and notices we provide by email will be effective when we send the

email. It is your responsibility to keep your email address(es) current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email. Notices made by you to Akuity should be sent via email at legal@akuity.com.

11.7 Severability

In the event that any provision of this Agreement is held to be invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the remaining provisions of this Agreement will remain in full force and effect.

11.8 Waiver

Akuity's failure to enforce any right or provision of this Agreement will not be considered a waiver of such right or provision. The waiver of any such right or provision will be effective only if in writing and signed by a duly authorized representative of Akuity.

11.9 No Election of Remedy

Except as expressly set forth in this Agreement, the exercise by the parties of any of their remedies under this Agreement will be without prejudice to their other remedies under this Agreement or otherwise.

11.10 Force Majeure

Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

11.11 Entire Agreement

This Agreement constitutes the entire agreement between the parties regarding the Service, and it supersedes and replaces any prior agreements and understandings between the parties regarding the Service; provided that, in the event that any provision of this Agreement conflicts with the terms of an Order, such conflict or inconsistency shall be resolved by giving precedence to the Order.