



## **Annual Hosting Service Level Agreement**

Premium+ level: \$7,499/year

\$1,000 one-time setup fee

This Agreement (the “Agreement”) for AtoM (the “Software”) hosting service (the “Service”) is entered into between Artefactual Systems Inc. (“Artefactual”) located in New Westminster, British Columbia, Canada and the customer (the “Customer”) identified on the invoice (the “Invoice”) prepared for the Customer.

This Agreement establishes the terms and conditions pursuant to which the Customer wishes to obtain Service and Artefactual wishes to provide Service. Artefactual agrees to provide Service to Customer and Customer agrees to pay Artefactual for Service subject to the following terms and conditions:

**1. Term, Renewal and Termination:**

- (a) The effective date of this Agreement shall be the earlier of either: (i) the date on which Customer is first notified by an Artefactual invoice of Service availability or (ii) the date on which Customer first logs on to the Service.
- (b) This Agreement shall be for an initial term of 12 months.
- (c) This Agreement shall be automatically renewed for 12 months, unless terminated by the Customer by giving thirty (30) days written notice to Artefactual prior to expiration of the initial term or any successive term.
- (d) No later than thirty (30) days prior to termination of Service, Customer may request a copy of all Customer data (the “Customer Data”) that is stored as part of Service, in a format that can be directly uploaded into any instance of the Software of the same version as that used to provide the Service. Artefactual shall make Customer Data available for download by Customer and will notify Customer of the availability of Customer Data via email within ten (10) days of termination of Service. Artefactual will make Customer Data available for download for thirty (30) days after notifying Customer of the availability of Customer Data, after which Customer Data shall be deleted by Artefactual. In the event that Customer does not request a copy of Customer Data before termination of Service, any Customer Data may be deleted by Artefactual upon termination.

- (e) In the event of early termination by Customer, Customer agrees to pay Artefactual for any months remaining in the term.
- (f) Artefactual may terminate the term of this Agreement at any time and for any or no reason upon the provision of one hundred and eighty (180) days written notice to the Customer, in which case the Artefactual shall provide the Customer with a pro rata refund of the applicable Fees for the remainder of the months in the then current term of the Agreement. In the case of termination under this Condition, any Customer data will be made available to the Customer as per the terms of Condition 1(d).
- (g) Artefactual reserves the right to amend this Agreement from time to time in its sole discretion by informing the Customer via the Customer's email address of record and any such amendment may include material changes in Artefactual's services to the Customer. Unless otherwise noted in an amendment, amendments shall automatically be deemed to take effect on the first day of the calendar month that occurs at least thirty (30) days after the date that Artefactual first posted the amendment. In the event that Customer objects to any such amendment, Customer may terminate this Agreement by providing Artefactual with written notice thereof no later than the date that the amendment takes effect, in which case Artefactual shall provide the Customer with a pro rata refund of the applicable Fees for the remainder of the months in the then current term of the Agreement.

**2. Fees and Payments:**

- (a) Fees for the Service term and any associated services shall be invoiced in advance and shall be payable on receipt or in accordance with any payment terms that are included on the Invoice.
- (b) If payment is not made within thirty (30) days of the Invoice date, a one and one half percent (1.5%) per month interest charge may be assessed until date of payment. If payment is not made within ninety (90) days of the Invoice date, Artefactual reserves the right to terminate service and delete all stored Customer data.

**3. Services Provided:**

- (a) Artefactual shall host a copy of the "Software" which is freely and publicly available to Artefactual, the Customer and any other party as per the terms of the free and open-source license under which it is released.
- (b) Artefactual shall provide Customer with application level access to the Software via an Internet Uniform Resource Locator (URL) together with a User ID and password. Customer will also be provided command-line access to the virtual machine on which the software is installed in order to perform bulk data imports, digital object uploads and other batch actions.
- (c) Artefactual shall store all Customer data created and managed by the Software, including files, text and parameters; data shall be backed up on a separate storage system nightly.
- (d) The amount of storage capacity available to Customer for uploaded files under the standard Fees for the Service shall not exceed 250 gigabytes (250 GB) unless otherwise specified in

the contract for services. Customer has the option to prepay monthly or annually for increased storage capacity.

- (e) Artefactual may apply patches to improve the security and performance of the Software used by the Service as deemed necessary by Artefactual. Artefactual shall update the Software used by the Service within ninety (90) days of a new Software version release. This agreement does not include additional customization or development of new Software features but Artefactual may choose to provide these additional services under the terms of a separate support services agreement.
- (f) The Customer will submit any technical or administrative questions related to the hosting Service in writing via Artefactual's email address of record. Artefactual agrees to answer all questions related to the Service in a timely and professional manner. If the issue cannot be resolved via email, the Customer will have the option to contact Artefactual technical staff directly via telephone during Artefactual business hours.
- (g) This agreement does not include Software training or documentation. The Customer will use existing Software documentation as is freely available on the Internet and the Software user discussion list to answer questions about how to operate and use the Software.
- (h) To the extent that in providing the Service, Artefactual processes personal data of data subjects in the European Union, the provisions of Schedule 1 and Schedule 2 shall apply.

**4. Customer Responsibilities:**

- (a) Customer shall use reasonable efforts to protect User IDs and passwords.
- (b) Customer agrees that authorized Artefactual support personnel may access system as required to diagnose and resolve technical issues.
- (c) Customer agrees that the use of Service and Software is at their sole risk and Artefactual is not responsible for any alleged or actual damages caused by or attributed to the use of the Service and Software.
- (d) Customer represents and warrants to Artefactual that it:
  - i) is engaged in a lawful business enterprise;
  - ii) can form legally binding contracts and is authorized to enter into this Agreement; and
  - iii) is in compliance with all applicable laws appropriate to its location of business and nature of work.
- (e) Customer acknowledges that use of Service is subject to all applicable local, provincial, national and international laws and regulations and Customer agrees not to violate such laws and regulations. Any attempt by any Customer to deliberately damage the Service is a violation of criminal and civil laws. Artefactual reserves the right to seek damages from any Customer to the fullest extent permitted by law.

- (f) Customer agrees that Artefactual will not be held responsible for any content posted or transmitted through the service.
- (g) The Customer may not engage in any activity that restricts or inhibits any other user from using the Service by "hacking", "cracking", "spoofing", or defacing any portions of them.
- (h) The Customer may not knowingly post or transmit through the Service or Software any materials that contain viruses, worms, time bombs, Trojan horses, or other harmful or disruptive component, political campaign materials; chain letters; mass mailings, spam mail, any robot, spider, site search/retrieval application, or other manual or automatic device or process to retrieve, index, "data mine", or in any way reproduce or circumvent the navigational structure or presentation of the Service or its contents.
- (i) The Customer may not knowingly post or transmit through the Service or Software any materials that cause Denial of Service (DoS) attacks. If the Customer site is the target of a Denial of Service (DoS) attack the site will be changed to an unavailable state until such a time as the DoS threat has been remediated.

**5. Artefactual Responsibilities:**

- (a) Artefactual shall use reasonable efforts to protect User IDs and passwords.
- (b) Artefactual represents and warrants to Customer that it:
  - i) is engaged in a lawful business enterprise;
  - ii) can form legally binding contracts and is authorized to enter into this Agreement;
  - iii) and is in compliance with all applicable laws appropriate to its location of business and nature of work.

**6. Service level definitions:**

- (a) **Severity 1:** Produces a high priority situation in which those components of the Software that are available to the general public via the Service are inoperable or fail catastrophically  
RESPONSE:
  - i) The customer shall notify Artefactual via email (support@artefactual.com) or phone (1-604-527-2056) of the Severity 1 problem.
  - ii) Artefactual will provide a response by a qualified member of its personnel to begin to diagnose and to correct a Severity 1 problem as soon as reasonably possible during regular business hours 09:00 to 17:00 Pacific Time (UTC8 standard time; UTC7 daylight savings time), Monday to Friday and excluding statutory Canadian holidays.
  - iii) Artefactual will respond via email to the addresses listed by the Customer on the "AtoM Hosting Information" form, section 4, within one (1) hour if the issue is

reported during regular business hours (see above), or the next business day if reported outside business hours, to provide a status update on the resolution process.

- iv) The resolution to the Severity 1 problem will be delivered as a resumption of the Service.
  - v) Artefactual will email the addresses listed by the Customer on the “AtoM Hosting Information” form, section 4, to notify them when the Service is operational again and to identify any related Severity 2 or Severity 3 issues that were part of the original problem or which were introduced as a workaround or emergency fix to remedy the Severity 1 issue.
  - vi) Artefactual may, if required, revert to a previous backup of the Customer data to resolve a Severity 1 issue that results from incorrect or corrupt data. In no case shall Artefactual be held responsible for data loss that may occur when reverting to a previous data backup when it is necessary to resolve a Severity 1 issue.
- (b) **Severity 2:** Produces a high priority situation in which the performance (throughput or response) of the Software degrades substantially under reasonable loads, such that there is a severe impact on use; the Software is usable, but materially incomplete; one or more functions or commands is inoperable; or the use is otherwise significantly impacted.
- RESPONSE:
- i) The Customer shall notify Artefactual via email (support@artefactual.com) of the Severity 2 problem;
  - ii) Artefactual will provide a response by a qualified member of its personnel to begin to diagnose and to correct a Severity 2 problem as soon as reasonably possible during regular business hours 09:00 to 17:00 Pacific Time (UTC8 standard time; UTC7 daylight savings time), Monday to Friday and excluding statutory Canadian holidays.
  - iii) Artefactual will respond via email to the addresses listed by the Customer on the “AtoM Hosting Information” form, section 4, within four (4) hours if the issue is reported during regular business hours (see above), or the next business day if reported outside business hours, to provide a status update on the status of the resolution process.
  - iv) Artefactual will exercise best efforts to resolve Severity 2 problems within five (5) business days.
  - v) The resolution to the Severity 2 problem will be delivered to the Client as a workaround, or as a software code patch to the Software, or as a configuration change to the web server hosting the Software. Those issues which are applicable to users of the Covered Software other than the Client will be filed in the public issue tracking system and the fixes applied to the next release of the software.
  - vi) Artefactual will email the addresses listed by the Customer on the “Hosting Information” form, section 4, to notify them when work to rectify the Severity 2 issue has been completed, and to detail any Severity 3 issues that were part of the original

problem or which were introduced as a workaround or emergency fix to remedy the Severity 2 issue.

- (c) **Severity 3:** Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner. RESPONSE:
  - i) Artefactual will exercise best efforts to resolve Severity 3 problems in the next public release of the Software.
  - ii) Artefactual may, at its discretion, apply a software patch to the Software to resolve a Severity 3 issues prior to the next public software release.
  - iii) A “hosting support ticket” may be used by the Customer to request a fix for a Severity 3 issue before the next software release. Please see Section 7: Hosting support tickets for more details and conditions regarding redeeming a “hosting support ticket”.

**7. Hosting support tickets:**

- (a) The Premium+ hosting service entitles the Customer to six (6) “hosting support tickets”, which may be redeemed by the Customer to request technical support services from Artefactual Systems that fall outside the basic services guaranteed under this Agreement.
- (b) One or more “hosting support tickets” may be redeemed by the Customer at any time during the Agreement term for:
  - i) resolution of a Severity 3 issue before the next public release of the Software;
  - ii) import of a dataset that is too large to be imported via the web interface of the Software;
  - iii) making direct changes to data in the Software database (e.g. to correct data that was incompletely or incorrectly imported);
  - iv) deploying a custom AtoM theme provided by the client;
  - v) updating a custom AtoM theme for compatibility with a new release of the hosted software;
  - vi) providing any other technical support services outside of the basic services guaranteed under this Agreement, at Artefactual’s discretion
- (c) A request to redeem a “hosting support ticket” for technical support services must be made by the Customer to Artefactual, in written form, and must clearly describe the desired outcome of the requested services.
- (d) Artefactual will evaluate the estimated work required to deliver the requested services, and may accept or refuse the request based a number of criteria, including, but not limited to, the effort required to fulfil the request, the effect of any changes to the functionality,

maintainability and performance of the Software or Service, and the relevance and potential benefits to other users of the Software.

- (e) In general Artefactual Systems will consider one “hosting support ticket” to entitle the Customer to up to four (4) hours of technical services by a qualified member of its personnel; however Artefactual reserves the right to refuse any “hosting support ticket” request if Artefactual determines the requested fix has the potential to adversely affect the security, performance, maintainability or functionality of the Software or Service.
- (f) In the case that a “hosting support ticket” request is refused by Artefactual, the ticket shall be considered “unused” and may be redeemed by the Customer at any later date within the Agreement term, for any other support request as per the conditions and terms specified in this section.
- (g) Hosting support tickets have no cash value and may not be transferred, exchanged or sold.
- (h) Hosting support tickets are only valid for the duration of this Agreement. If at any time this agreement is cancelled, then any unused hosting support tickets are considered null and void and may not be redeemed. If this Agreement is renewed at the end of the current term, then any unused hosting support tickets will be considered null and void, and the Customer shall be issued a number of hosting support tickets equal to the amount granted in the initial agreement. Unused hosting support tickets may not be carried over or accumulated when renewing the Agreement.

**8. Disclaimer of Warranties:**

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, ARTEFACTUAL DISCLAIMS ANY AND ALL PROMISES, REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICE, SOFTWARE, AND CORRECTIONS PROVIDED HEREUNDER, INCLUDING PROMISES, REPRESENTATIONS AND WARRANTIES AS TO CONDITION, THE EXISTENCE OF ANY LATENT OR PATENT DEFECTS, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NONINFRINGEMENT, OR ANY IMPLIED WARRANTY OF INFORMATION CONTENT, SYSTEM INTEGRATION OR SYSTEM PERFORMANCE.

**9. No Liability for Consequential Damage:**

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING DISCLAIMER, ARTEFACTUAL DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE. IT IS EXPRESSLY AGREED THAT IN NO EVENT SHALL ARTEFACTUAL BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF DATA, BUSINESS INTERRUPTION, OR OTHER CONSEQUENTIAL, EXEMPLARY, SPECIAL OR INDIRECT LOSSES) ARISING FROM THE CUSTOMER’S USE, OR INABILITY TO USE, THE SERVICE, REGARDLESS OF WHETHER ARTEFACTUAL HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. ARTEFACTUAL’S ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY CUSTOMER FOR THE SERVICE THAT GAVE

RISE TO THE CLAIM WITHIN THE CALENDAR YEAR DURING WHICH THE CLAIM AROSE.

10. **Legal Relationship:**

The parties enter this Agreement as, and shall remain, independent contractors with respect to one another. Nothing in this Agreement is designed to create, nor shall create between them, a partnership, joint venture, agency, or employment relationship.

11. **Notices:**

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered and addressed to Artefactual or the Customer at the address indicated for each party on this Agreement or the Invoice. Notice shall be deemed to have been received by any party, and shall be effective on the day given, if personally delivered or if sent by confirmed facsimile or electronic mail transmission, receipt verified, to a facsimile number or electronic mail address provided by the receiving party to the sending party for the purpose of receiving such notices; Artefactual or Customer may change its address for notice purposes upon issuance of notice thereof in accordance with this Section.

12. **Force Majeure:**

Neither party will be liable to the other by reason of any failure in performance of this Agreement if the failure arises out of the unavailability of communications facilities or energy sources, acts of God, acts of the other party, acts of governmental authority, fires, strikes, delays in transportation, riots, terrorism, war, or any causes beyond the reasonable control of that party. If a Force Majeure event occurs, Artefactual will have up to five (5) business days to determine if and when the Service will resume.

13. **Interpretation:**

The headings used in this Agreement are for convenience only and are not intended to be used as an aid to interpretation. If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall then be enforceable and enforced.

14. **Governing Law:**

This Agreement shall be governed by and construed in accordance with the laws of Canada.

15. **Mediation:**

If the parties disagree over an interpretation of this Agreement or whether a party or a Customer is in breach of any part of this Agreement, the parties shall in good faith enter into negotiations to resolve the disagreement and discuss the feasibility of resolving the disagreement by mediation or other means short of litigation. The parties shall cooperate in good faith in pursuing mediation or such other means.



16. **Entire Agreement; Waiver:**

This Agreement incorporates by reference the Invoice. This Agreement and the Invoice collectively contain the entire understanding of the parties with respect to the subject matter hereof, and supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to the subject matter of this Agreement, including (without limitation) any pre-existing agreement.

**For Artefactual**

**For the Customer** (please print)

Name:

Name:

Title:

Title:

Email address:

Organization name:

Signature:

Organization address:

Date:

Email address:

Signature:

Date:

**Schedule 1**

This Data Protection Addendum (**Addendum**) supplements the AtoM Annual Hosting Service Level Agreement (**Agreement**). This Schedule 1 applies solely to Artefactual's processing of the personal data of data subjects who are in the European Union, as uploaded by the Customer to the Software, when providing the Service.

**DEFINITIONS**

<b>Appropriate Safeguards</b>	means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time.
<b>Data Controller</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Data Processor</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>Data Protection Laws</b>	means, as binding on either party or the Service provided under the Agreement: (a) the GDPR; (b) any laws which implement any such law; and (c) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.
<b>Data Subject</b>	has the meaning given in applicable Data Protection Laws from time to time.
<b>GDPR</b>	means the General Data Protection Regulation (EU) 2016/679.
<b>Personal Data</b>	has the meaning given in applicable Data Protection Laws from time to time.

**1. DATA PROTECTION**

- 1.1 Both parties will comply with all applicable requirements of the Data Protection Laws. This paragraph 1 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 1.2 The parties acknowledge that for the purposes of the Data Protection Laws, the Customer is the Data Controller and Artefactual is the Data Processor. Schedule 2 sets out the scope, nature and purpose of processing by Artefactual, the duration of the processing and the types of Personal Data and categories of Data Subject.
- 1.3 Without prejudice to the generality of paragraph 1.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Artefactual for the duration and purposes of the Agreement. The Customer shall ensure

all instructions given by it to Artefactual in respect of Personal Data shall at all times be in accordance with Data Protection Laws.

1.4 Without prejudice to the generality of paragraph 1.1, Artefactual shall, in relation to any Personal Data processed in connection with the performance by Artefactual of its obligations under the Agreement:

- a) process that Personal Data only on the written instructions of the Customer unless Artefactual is required by law to process that Personal Data. The parties agree that this Agreement and Schedules constitute the Customer's documented instructions regarding Artefactual's processing of the Customer's Personal Data;
- b) immediately inform the Customer if Artefactual is requested to take any action which may infringe the GDPR or other data protection laws of the EU or a member state;
- c) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected;
- d) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- e) assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- f) notify the Customer without undue delay on becoming aware of a Personal Data breach;
- g) at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Agreement unless required by Data Protection Laws to store the Personal Data;
- h) maintain complete and accurate records and information to demonstrate its compliance with the Data Protection Laws and to assist with any further information required to ensure that both parties meet their obligations under Article 28 of the GDPR; and
- i) permit audits by the Customer or the Customer's designated auditor, subject to a maximum of one audit request in any 12 month period.

1.5 The Customer consents to Artefactual appointing sub-processor(s) as third-party processors of Personal Data under the Agreement, and provides a general authorisation for Artefactual to appoint further sub-processors. Artefactual confirms that it has entered or (as the case may be) will enter into a written agreement with such third-party processors incorporating terms which are substantially similar to those set out in this paragraph 1. As between the Customer and

Artefactual, Artefactual shall remain fully liable for all acts or omissions of any third-party sub-processor appointed by it pursuant to this paragraph 1.6.

- 1.6 The Customer shall indemnify and keep indemnified Artefactual against all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to data subjects, demands and legal and other professional costs (calculated on a full indemnity basis and in each case whether or not arising from any investigation by, or imposed by, a supervisory authority) arising out of or in connection with any breach by the Customer of its obligations under this Schedule 1.

## **Schedule 2**

### **Processing, Personal Data and Data Subjects**

Processing of Personal Data by Artefactual under the Agreement shall be for the subject-matter, duration, nature and purposes and involve the types of Personal Data and categories of Data Subject set out in this Schedule 2.

#### **Processing by Artefactual**

##### **Subject-matter of processing**

The subject matter of the data processing under this Addendum is the Customer Personal Data processed by Artefactual pursuant to the Service provided to the Customer under the Agreement.

##### **Nature and purpose of processing**

Artefactual will process Personal Data for the purposes of providing the Service to the Customer in accordance with the Agreement.

##### **Duration of the processing**

The duration of the processing under the Agreement is determined by the Customer and as set forth in the Agreement.

##### **Types of personal data**

Personal Data relating to individuals uploaded by the Customer to the Software under the Agreement, including but not limited to the following:

- First and last name
- Contact details including home addresses
- Biographies
- Work history
- Photographs and images
- Audio and video recordings
- Textual records

##### **Categories of data subject**

The data subjects may include the Customer's archive record creators, authenticated users, record subjects and record donors.