



SUBSCRIPTION AND SERVICES AGREEMENT

This subscription and services agreement (this “**Agreement**”) is made by and between Acquia Inc., a Delaware corporation, with a principal place of business at 53 State Street, Boston, MA 02109 (“**Acquia**”) and City of Saint Paul, with a principal place of business at 15 West Kellogg Boulevard, Saint Paul, MN 55102 (“**Customer**”). 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 govern the provision of the Services and shall be effective between Acquia and Customer on the latest date signed below (“**Effective Date**”).

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.

“**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, but specifically excludes Sensitive Data for which the applicable Subscription Services have not 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. The Data Center Region is set forth in the applicable Order.

“**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 attached hereto as Exhibit A. 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.

“**Services**” means the Subscription Services and Professional Services that Customer may purchase 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.

“**Sensitive Data**” means any and all health, payment card or other sensitive personal information that requires specific regulatory, legal or industry data security obligations for the processing of such data.

“**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**”). The Order will specify the Data Center Region in which the Subscription Services environment will reside. Acquia and its affiliates 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 Sensitive 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 as of the effective date of the Order Form. 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, non-production or by a description of similar import. Trial Services are provided for evaluation purposes and not for production use, are not supported, 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. 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 use commercially reasonable efforts to maintain the security and integrity of the Subscription Services, and of the Customer Data, using the capabilities of currently available technologies and in accordance with prevailing industry practices and standards.



3.2. Data Privacy. In performing Subscription Services, Acquia will comply with the Acquia Privacy Policy attached hereto as Exhibit B. 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. Acquia subscribes to the United States/European Union Safe Harbor Principles, and as a result, appears on the U.S. Department of Commerce Safe Harbor list (available at <http://www.export.gov/safeharbor>) as of the effective date of this Agreement. Acquia's Safe Harbor certification specifically includes Acquia's performance of Subscription Services for Customer Data. Acquia will not move Customer Data from the selected Data Center Region without notifying Customer, 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 Regions Customer selects.

3.3. Compliance. 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) and, SOC 2 audits performed annually. Such audits 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 or the Trust Services Principles, specifically Security and Availability respectively., 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.

Customer remains solely responsible for its legal and regulatory compliance in its use of any Subscription Services. Customer must make Acquia aware of any technical requirements that result from its regulatory obligations prior to contract execution. Customer must not provide Acquia with Sensitive Data that requires specific regulatory, legal or industry data security obligations for the processing of such data unless specified in the applicable Order. If available, Customer may purchase services from Acquia designed to address particular data protection requirements applicable for the processing of Sensitive Data within the Subscription Services environment. Acquia may require Customer to purchase specific Subscription Services prior to any requirement by Customer for Acquia to sign a Business Associate Agreement (BAA) due to the processing of personal health information (PHI) Sensitive Data subject to the U.S. Health Insurance Portability and Accountability Act (HIPAA) Note that such additional services are not available for all Subscription Services.

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 attached hereto as Exhibit C; (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 Sensitive 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 all 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. Restrictions. Customer agrees that it will not: (a) license, sublicense, sell, resell, rent, lease, transfer, distribute or otherwise similarly exploit the Subscription Services; (b) use the Subscription Services to store, collect, transmit or process any material that is infringing, obscene, threatening, libelous, or otherwise unlawful or tortious, including material that is harmful to children or violates third party rights; (c) use the Subscription Services to send, store, publish, post, upload or otherwise transmit any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; (d) interfere with or disrupt the integrity or performance of the Subscription Services; (e) attempt to gain unauthorized access to the Subscription Services or its related systems or networks; (f) use or knowingly 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; (g) 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 (h) perform or disclose any benchmark or performance tests of the Services.

4.3. Service Monitoring. Acquia monitors all use of the Subscription Services for security and operational purposes. Acquia may temporarily suspend Customer's access to the Subscription Services in the event that Customer is engaged in, or Acquia in good faith believes Customer is engaged in or is supporting, any unauthorized conduct (any applicable law or third party right or Acquia's Acceptable Use Policy). Acquia will attempt to contact Customer prior to or contemporaneously with any suspension related to illicit or illegal content, or any suspension mandated by court order, or (ii) provide forty-eight hours notice prior to any suspension relating to any other any other unauthorized conduct; provided, however, that Acquia's exercise of the suspension rights herein shall not be conditioned upon Customer's receipt of any notification. Acquia shall use all reasonable endeavours to ensure only such part or parts of the account as are directly affected by the unauthorized conduct are suspended. Acquia shall end any suspension on receiving notice from Customer that there is no ongoing unauthorised conduct or, where such suspension was required by law, as soon as possible. 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. Acquia shall remove such suspension immediately after Customer cures such unauthorized conduct.

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 a written Change Order signed by 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 independent contractors,

licensors or subcontractors ("**Authorized Contractors**") to assist in the delivery of the Services, provided that Acquia shall remain liable for the actions or omissions of such Authorized Contractors. Customer shall designate at least one employee with knowledge of Customer's business as its primary contact to be available for communication with Acquia in providing the Professional Services. 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 pre-approved 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-five (35) 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. Suspension of Service. If any undisputed amounts owed by Customer for Services are 35 or more days overdue, Acquia may, without limiting any other Acquia right or remedy, suspend Customer's access to the Services until such amounts are paid in full.

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

6.6. Taxes. 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 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. Additionally, Acquia shall exclusively own all right, title and interest in and to any and all suggestions, enhancement requests, recommendations or other feedback provided by Customer

relating to the Subscription Services ("**Feedback**"), and Customer hereby assigns to Acquia all of its right, title, and interest in and to the Feedback, including all intellectual property rights therein or relating thereto.

7.2. Customer Data and Customer Applications. To enable Acquia to provide Customer with the Subscription Services, Customer hereby grants Acquia a worldwide, limited term license to use, process, 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 perpetual, royalty-free, non-exclusive, non-transferable (subject to Section 14.12) 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: (a) Customer Confidential Information shall include the Customer Data and Customer Applications; and (b) unless otherwise prohibited by law, Confidential Information of each party shall include pricing and other terms set forth in all Order Forms and/or SOWs hereunder.

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. The Receiving Party will make reasonable efforts to notify the disclosing party of the disclosure requirement.

8.5. Injunctive Relief. The parties agree that any unauthorized disclosure of Confidential Information may cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Disclosing will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

9. WARRANTIES AND DISCLAIMERS

9.1. Acquia Warranties. Acquia 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) and/or (iii), 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 Warranties. Customer warrants that (i) it has the legal authority to enter into this Agreement, and (ii) it will use the Services only as authorized by 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, 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 A PARTICULAR PURPOSE, OR ANY WARRANTY WITH RESPECT TO THE QUALITY, PERFORMANCE, ACCURACY OR FUNCTIONALITY OF THE SERVICES OR THAT THE SERVICES WILL BE ERROR FREE.

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 Services

hereunder infringes or misappropriates the 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 Services may infringe or misappropriate, Acquia may in Acquia's sole discretion and at no cost to Customer (i) modify the 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 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 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, Customer Applications, or Customer's use of the Services in breach of this Agreement, 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 8 (CONFIDENTIALITY) OR 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 BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT. THE FOREGOING SHALL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER SECTION 5 (FEES AND PAYMENT).

11.2. Exclusion of Consequential and Related Damages. OTHER THAN EACH PARTY'S OBLIGATIONS SET FORTH IN SECTION 8 (CONFIDENTIALITY) OR SECTION 10 (MUTUAL INDEMNIFICATION), 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.

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. The Subscription Services fees for any such renewal shall be at the annual renewal value as set forth in the Order Form. 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. Effect upon Termination. Upon termination or expiration of the Subscription Services under an applicable Order, Customer will no longer have right to access or use the Subscription Services; however, for a period of up to 30 days after the applicable Subscription Term, and upon Customer's written request, Acquia will make available Customer Data and Customer Applications in a tar.gz file for the purpose of retrieval by Customer. At the end of such 30 day period, Acquia will delete or otherwise render inaccessible any Customer Data and Customer Applications residing in the Subscription Services environment, 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. This Agreement shall be governed and construed in accordance with the laws of the State of Minnesota, including the Minnesota Governing Data Practice Act, excluding its conflicts of law rules. 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. Export Compliance. The Services, other technology that Acquia makes available, and any derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions, with which Customer shall comply. 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. Customer has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Acquia employees or agents in connection with this Agreement. If Customer learns of any violation of the above restriction, Customer will use reasonable efforts to promptly notify Acquia.

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 restricted in accordance with Federal Acquisition Regulation 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Services and Acquia Property are COMMERCIAL ITEMS AS DEFINED BY THE FEDERAL ACQUISITION REGULATION. Use of the Services and Acquia Property by the Government is further restricted according to the terms of the 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. Each party agrees that during the term of each Order Form and/or SOW and for twelve (12) months thereafter, it will not knowingly solicit, hire or attempt to hire, any person employed by the other party. Nothing in this clause shall be construed to prohibit individual employees from responding to public employment advertisements, postings or job fairs of a party, provided such response is not prompted by a party intentionally circumventing the restrictions of this Section.

14.7. Use of Name. Upon Customer's prior written consent, Acquia may reference and use Customer's name and trademarks and may disclose the nature of the Services provided hereunder in Acquia's business development and marketing efforts, including without limitation its website.

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

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

14.10. 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.

14.11. 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.

14.12. 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. In the event of such permitted assignment, the assigning party will notify the other party within thirty (30) days of such assignment, and such non-assigning party shall have the right to terminate this Agreement upon notice to the assignment party within thirty (30) days after receipt of such notice. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

14.13. 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. Such modifications are not effective or otherwise applicable to this Agreement unless Customer consents in writing. 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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last set forth below.

ACQUIA INC.

By: _____
Name: _____
Title: _____
Date: _____

City of Saint Paul

By: _____
Name: _____
Title: Office of Financial Services Director
Date: _____

Approved as to form:

By: _____
Name: _____
Title: City Attorney
Date: _____