# D2iQ MASTER LICENSE AND SUPPORT AGREEMENT

This Master License and Support Agreement (the "**Agreement**") is entered into as of _____, 20__ (the "**Effective Date**") between D2iQ, Inc., a Delaware corporation, with a principal address at 225 Bush Street, Suite 700, San Francisco, CA 94104 ("**D2iQ**"), and [INSERT CUSTOMER ENTITY NAME] a [INSERT CUSTOMER ENTITY TYPE/JURISDICTION], with a principal address at [INSERT CUSTOMER ENTITY ADDRESS] ("**Customer**").

1. <u>Definitions</u>. The following defined terms and definitions, together with any defined terms and definitions contained in the body of this Agreement apply:

   a. "**Agent Core**" means a Core that runs tasks based on instructions received from a Master Core.

   b. "**Cluster**" means any Kubernetes cluster, whether a D2iQ Kubernetes Konvoy cluster or third-party cluster, which is connected to D2iQ Software Edition identified in the Order Form. For the purposes of counting Clusters, each Cluster that is connected via a Kubernetes API server is counted as one (1) cluster.

   c. "**Core**" means all CPU cores on the physical or virtual processor-cores where the Licensed Software identified in the Order Form is installed and/or running. For the purposes of counting the number of Core(s) which require licensing, each multicore CPU chip with physical "n" processor cores shall be counted as "n" Cores.

   d. "**Customer Affiliate**" means any entity controlling or controlled by, or under control by, Customer, at the time of execution of this Agreement and any time thereafter. For purposes of this definition, "**control**" means the direct or indirect beneficial ownership of over fifty percent (50%) of the voting interests (representing the right to vote for the election of directors or other managing authority) in an entity.

   e. "**D2iQ Software Edition**" means the particular D2iQ-approved combination of Licensed Software and third-party software components (i.e., the Licensed Software and the Open Source Stack or other third-party software components or open source software) for which D2iQ provides Support Services hereunder, as identified on the Order Form, including any software, software updates, revisions, error corrections, and enhancements to the foregoing which are provided to Customer by D2iQ pursuant to the Support Services provided hereunder.

   f. "**License Metric**" means a unit of measurement, such as a Core or a Node, limiting the installation or use of the Licensed Software, as defined in the applicable Order Form.

   g. "**Licensed Software**" means the proprietary closed-source D2iQ software components which may be identified in an Order Form, including any software updates, revisions, error corrections, and enhancements to the foregoing which are provided to Customer by D2iQ pursuant to the Support Services provided hereunder.

   h. "**Master Core**" means a Core that is responsible for running three (3) processes (kube-apiserver, kube-controller-manager, and kube-scheduler) in order to manage Agent Cores within a Cluster.

   i. "**Node**" means a single server (either physical or virtual) that is owned, operated, or controlled by Customer operating the Licensed Software or Open Source Stack, as applicable, whether in a Production Environment or not.

   j. "**Open Source Stack**" means the D2iQ open source software and third-party open source software for which D2iQ offers Support Services.

   k. "**Production Environment**" means any live or production use of the Licensed Software (whether internal or external), including, without limitation, beta tests and limited releases of production applications for testing purposes.

   l. "**Support Services**" means the Support Level listed in an Order Form, as described in D2iQ's then-applicable standard Support and Maintenance Terms available at https://D2iQ.com/D2iQ-support-terms.

2. <u>Order Forms</u>. An "**Order Form**" is a document for the purchase of services or licenses that is (i) mutually executed by authorized representatives of D2iQ and Customer (or a Customer Affiliate) and (ii) incorporates, by reference, this Agreement. Each Order Form constitutes a bilateral agreement between D2iQ and Customer or the Customer Affiliate executing such Order Form, and in such circumstances, references to Customer in this Agreement are read, for purposes of such Order Form, to mean Customer or the Customer Affiliate identified in such Order Form. The Customer entity executing any such Order Form is liable for any Customer Affiliates who have access to, or use of any services or products pursuant to, such Order Form. A sample form of Order Form is attached hereto as <u>Exhibit A</u>. If Customer's business practices require a purchase order number be issued prior to payment of any D2iQ invoices issued pursuant to an Order Form, then such purchase order number must be provided to D2iQ prior to the effective date of such Order

Form. Customer's execution and return of applicable Order Form to D2iQ without designating a purchase order number is deemed an acknowledgement that no purchase order number is required for payment of invoices hereunder. Additionally, terms, provisions, or conditions on any purchase order, acknowledgement, or other business form or writing that Customer may provide to D2iQ will have no effect on the rights, duties, or obligations of the parties hereunder, regardless of any failure of D2iQ to object to such terms, provisions, or conditions.

3. <u>Support & Services</u>. During the Order Form Term (as defined in Section 10 of this Agreement), and provided that all applicable fees have been timely paid, D2iQ will use commercially reasonable efforts to provide the Support Services indicated on the applicable Order Form for the Open Source Stack and the D2iQ Software Edition set out in an applicable Order Form. If, and as indicated on an applicable Order Form, and subject to the terms set forth in therein (including payment of all fees), and the services terms appended hereto as Exhibit B, (the "**Services Terms**") D2iQ will use commercially reasonable efforts to provide the additional services as described in such Order Form and, if applicable, a statement of work (a "**Statement of Work**" or "**SOW**").

4. <u>Open Source</u>. Customer acknowledges that the components of the Open Source Stack are, and elements of the Licensed Software may be, provided pursuant to various open source licenses (as may be identified to Customer by D2iQ from time to time, including at https://docs.D2iQ.com/open-source-attribution), and Customer's use of such components are governed solely by (and nothing herein limits any of Customer's rights under) the applicable open source licenses.

5. <u>Grant of License</u>. Upon execution of an Order Form, and subject to Customer's compliance with all of the terms and conditions of the Agreement (including, without limitation, any limitations or restrictions set forth on the Order Form, payment of all fees, and any applicable use limitations), D2iQ grants Customer a personal, non-sublicensable, nonexclusive right during the Order Form Term (as defined below) to use the Licensed Software in object code form only for Customer's internal business purposes and in accordance with D2iQ's generally published technical documentation regarding the Licensed Software (the "**Documentation**"), which may be updated by D2iQ from time to time. Customer may only use the Licensed Software in accordance with the License Metric limitations set forth in a relevant Order Form; provided that Customer may not use more than one (1) instance of the Licensed Software on any one (1) instance of the applicable License Metric.

6. <u>Provision of the Licensed Software</u>. Upon execution of an Order Form, D2iQ will, at its expense, make the Licensed Software available for download. The Licensed Software will be deemed delivered when the electronic download is available. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by D2iQ regarding future functionality or features.

7. <u>Non-D2iQ Software & Services</u>. D2iQ, or third parties, may make available third-party products or services. Any acquisition by Customer of such non-D2iQ products or services, and any exchange of data between Customer and any non-D2iQ provider, is solely between Customer and the applicable non-D2iQ provider. D2iQ does not warrant or support non-D2iQ products or services, whether they are designated by D2iQ as "certified" or otherwise, except as specified in an Order Form.

8. <u>Ownership; Restrictions</u>. Customer agrees and acknowledges that, as between the parties, D2iQ and its licensors are the owners of all right, title, and interest in and to the Licensed Software, the Documentation, all updates, upgrades, and derivative works of the Licensed Software and Documentation, and all intellectual property rights therein, and that Customer does not obtain, or claim, any ownership interest in the foregoing. Customer agrees and acknowledges that the Licensed Software and Documentation contain the valuable trade secrets and proprietary information of D2iQ and its licensors, which have been developed at great expense. Customer will not, and must not, cause or permit any third-party to obscure, alter, or remove any patent, copyright, trademark or service mark, marking, or legend contained on, or in, any Licensed Software or Documentation. In addition, Customer will not (and will not cause, or permit, any third-party to) (i) reverse engineer or attempt to discover any source code or underlying ideas or algorithms of any Licensed Software (except to the extent that applicable law prohibits reverse engineering restrictions), (ii) sell, assign, distribute, provide, lease, lend, disclose, use for timesharing or service bureau purposes, or otherwise use or allow others to use for the benefit of any third-party, any Licensed Software (except as expressly and specifically authorized by D2iQ), (iii) possess or use any Licensed Software, or allow the transfer, transmission, export, or re-export of any Licensed Software, or portion thereof, in violation of any export control laws or regulations administered by the U.S. Commerce Department, U.S. Treasury Department's Office of Foreign Assets Control, or any other government agency, (iv) disclose to any third-party any benchmarking or comparative study involving any Licensed Software without D2iQ's written consent (not to be unreasonably withheld), or (v) modify, adapt, translate, or create derivative works based on any Licensed Software. Prior to disposing of any media or apparatus containing any part of the Licensed Software, at

the termination, or expiration, of the applicable Term, and upon the termination or expiration of any license, Customer must non-recoverably erase any Licensed Software contained therein, and, upon request, provide certification of such erasure from an officer of Customer that supervised the erasure. All the limitations and restrictions on Licensed Software in this Agreement also apply to Documentation. CUSTOMER ACKNOWLEDGES THAT THE LICENSED SOFTWARE MAY INCLUDE FEATURES TO PREVENT USE AFTER THE APPLICABLE ORDER FORM TERM AND/OR USE INCONSISTENT HEREWITH.

9. <u>Fees, Payment, and Taxes</u>. Customer will pay all license, support, and other fees as set forth on each Order Form ("**Fees**"). Unless otherwise set forth on an applicable Order Form, all Fees are payable within thirty (30) days of the date of D2iQ's invoice. If Customer requires the use of a third-party electronic processing platform, Customer agrees to either: (i) cooperate with D2iQ to establish an account with such platform that is free of charge, or, failing that, (ii) reimburse D2iQ for the applicable third-party fees for D2iQ's use of the electronic processing platform. Should Customer be unwilling or unable to achieve (i) or (ii), Customer agrees to accept invoices via e-mail. All payments will be made in United States Dollars, and within the borders of the United States. Any payments that are more than thirty (30) days overdue will bear a late payment fee of one-and-a-half percent (1.5%) per month, or, if lower, the maximum rate allowed by law. The Fees payable hereunder are exclusive of any sales, use, excise, value added, import, or other applicable taxes, tariffs, or duties ("**Taxes**"). Customer is solely responsible for payment of all Taxes except for any taxes based solely on D2iQ's net income. If Customer is required to pay any Taxes, Customer will pay such Taxes with no reduction or offset in the Fees payable to D2iQ hereunder. If D2iQ has the legal obligation to pay or collect Taxes for which Customer is responsible, Customer agrees to pay such Taxes and D2iQ will invoice the appropriate amount to be paid by Customer and Customer will pay each such invoice in accordance with the payment terms herein. D2iQ reserves the right to raise or change the Fees upon at least sixty (60) days' prior notice (which may be sent by e-mail) before the beginning of any subsequent Renewal Term (as defined in Section 10 of this Agreement). Except as expressly stated in this Agreement, all Fees paid are non-refundable. Customer will reimburse D2iQ for all reasonable travel and other related expenses incurred by D2iQ in its performance hereunder; provided, however, that such expenses have been pre-approved by Customer.

10. <u>Term and Termination</u>. The term of this Agreement commences as of the Effective Date and continues until the expiration of all Order Form Terms. If no Order Form has been mutually executed by the parties within one (1) year of the Effective Date, this Agreement automatically terminates. For each Order Form, unless otherwise specified therein, the term of the Order Form begins as of the Order Form Effective Date set forth on such Order Form, and, unless earlier terminated as set forth herein, continues for the initial term specified on such Order Form (the "**Initial Term**"). Following the Initial Term, the Order Form automatically renews for additional successive periods equal to the Initial Term (each, a "**Renewal Term(s)**") (the Initial Term and Renewal Term(s), collectively, are the "**Order Form Term**") unless either party notifies the other party of such party's intention not to renew no later than thirty (30) days prior to the expiration of the Order Form Initial Term or then-current Order Form Renewal Term, as applicable. If, immediately following the expiration of the then-current Order Form Term, the parties are negotiating a renewal of such Order Form, the Order Form Term will remain in effect for a reasonable period of time (not to exceed one (1) month) to allow the parties to effect such renewal. This Agreement, and any applicable Order Form, may be terminated (i) by either party, if the other party breaches any material provision of this Agreement (including, without limitation, any payment obligations hereof), and such breach remains uncured for at least thirty (30) days following receipt of notice thereof from the non-breaching party, (ii) by either party upon written notice to the other if any assignment is made by such other party for the benefit of creditors, or if a receiver, trustee in bankruptcy, or similar officer are appointed to take charge of any or all of such other party's property, or if such other party files a voluntary petition under federal bankruptcy laws or similar state or foreign statutes or such petition is filed against such other party and is not dismissed within one hundred twenty (120) days. Except as expressly provided herein, upon any expiration or termination of this Agreement, all rights, licenses, and obligations of the parties immediately ceases and terminates. The provisions of Sections 1, 2, 4, 7, 8, 9 (with respect to amounts incurred prior to termination or expiration), and 10 through 18 survive the termination or expiration of this Agreement in accordance with their terms. Termination is not an exclusive remedy and all other remedies will be available whether termination occurs.

11. <u>Confidentiality</u>. Each party (the "**Receiving Party**") understands that the other party (the "**Disclosing Party**") has disclosed, or may disclose, information relating to the Disclosing Party's technology or business in the course of this Agreement that should reasonably be considered to be confidential given the nature of the information disclosed or the circumstances of disclosure (hereinafter referred to as "**Proprietary Information**" of the Disclosing Party). Customer will not provide any Proprietary Information to D2iQ that is not necessary for D2iQ to perform its obligations under this Agreement. The Receiving Party agrees: (i) not to divulge to any third person any such Proprietary Information, (ii) to give access to such Proprietary Information solely to those employees and contractors with a "need-to-know" the

Proprietary Information to perform of its obligations under this Agreement and whom have entered into agreements with such employees and contractors that are just as protective of the Proprietary Information as the terms of this Agreement, (iii) to use such Proprietary Information only to the extent necessary to exercise its rights, or perform its obligations, under this Agreement, and (iv) to take the same security precautions to protect against disclosure or unauthorized use of, or access to, the Proprietary Information that the Receiving Party takes with its own Proprietary Information, but in no event will a party apply less than reasonable precautions to protect such Proprietary Information. The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is, or becomes, generally available to the public without any action by, or involvement of, the Receiving Party, (b) was in its possession, or known by it, prior to receipt from the Disclosing Party, (c) was rightfully disclosed to it without restriction by a third-party, or (d) was independently developed without access to, or use of, any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure (to the extent legally permitted) and the opportunity to contest such order.

12. Data. D2iQ may collect data relating to the use and performance of the Licensed Software and Open Source Stack. D2iQ is free to collect and analyze such data and other information relating to the provision, use, and performance of the Licensed Software and Open Source Stack provided that Customer cannot be identified, and such data is used *solely* in an aggregate or other de-identified form. D2iQ does not collect, and Customer will not provide, personally identifiable information in the course of Customer's use of the Licensed Software.

13. Feedback. Customer may, though has no obligation to, provide D2iQ with feedback related to the Licensed Software or Open Source Stack (e.g., feedback related to usability, performance, interactivity, bug reports, and test results of the Licensed Software or Open Source Stack) ("**Feedback**"). If Customer provides Feedback, Customer hereby grants D2iQ a nonexclusive, irrevocable, worldwide, perpetual, royalty free, fully paid-up license to use disclose, reproduce, license, or otherwise distribute and exploit any Feedback as it sees fit, entirely without obligation or restriction of any kind.

14. Usage Review; Certification. In addition to any product-specific certification requirements set out in an Order Form, Customer agrees that it will provide a written certification at least once (1) per annual period to certify its compliance with any License Metric limitations set out in any relevant Order Form(s) together with other restrictions set out herein (the, "**Certification**"). Such Certification must be submitted with corresponding diagnostic bundles evidencing Customer's compliance with the License Metric set out in the relevant Order Form(s) and must be signed an authorized representative (VP or higher) of Company. If such a Certification identifies use of the Licensed Software in excess of that for which Company is licensed, then Company must pay to D2iQ any fees attributable such use (which will be based on D2iQ's current price list then in effect from the date that Customer exceeded the relevant License Metric).

15. Audit. If Customer is unwilling, or unable, to provide the annual Certification described in Section 14, or if D2iQ has a reasonable good faith belief that Customer is in breach of Sections 5 or 8, then D2iQ reserves the right to audit Customer's use of the Licensed Software and Customer's compliance with this Agreement, including any license restrictions or support limitations in an applicable Order Form, upon five (5) days' notice, but no more frequently than once every twelve (12) months. Customer will provide reasonable information, access, and assistance in connection with such audit. Without limiting D2iQ's other rights and remedies in law or equity, should D2iQ learn that Customer has exceeded relevant license limitations, or other restrictions, in an applicable Order Form, or is otherwise not using the Licensed Software in accordance with the terms and conditions of this Agreement, then, (i) in addition to paying any additional fees attributable such use (which are be based on D2iQ's current price list then in effect from the date that Customer exceeded the relevant license limitations), if the Customer's usage exceeds five percent (5%) of what is specified in the Order Form, then Customer agrees to reimburse D2iQ for the cost of the audit without limiting D2iQ's other rights under this Agreement. Provided it does not identify Customer, D2iQ will be free to use for development, diagnostic, and corrective purposes any data and information it so collects relating to diagnosis, problems, systems, performance, use or functionality, and may allow others to do so.

16. Indemnification. D2iQ will defend Customer from any third-party claim or action brought against Customer to the extent the claim is based on the allegation that the use of Licensed Software in accordance with this Agreement infringes any United States patent, copyright, or trademark, or misappropriates any trade secret. D2iQ's obligation to defend the claims described in this Section is limited to: (i) the payment for the cost of defense of the third-party claim incurred by D2iQ, (ii) the payment of any settlements agreed to by D2iQ in a writing signed by an officer of D2iQ, and/or (iii) final judgments awarded to the third-party claimant by a court of competent jurisdiction. D2iQ's obligation to defend the claims described in this Section is conditioned on Customer (a) providing D2iQ with prompt written notice of any claim (provided that failure to give prompt notice limits D2iQ's obligations under this Section to the extent that such failure

prejudices D2iQ in its defense of the claim), (b) granting D2iQ sole control of the defense and settlement of the claim (provided that D2iQ will not settle any claim that requires Customer to pay any amounts not covered by D2iQ or make any admission of wrongdoing), and (c) providing reasonable information and assistance to D2iQ in the defense or settlement of the claim at D2iQ's expense. D2iQ's obligations under this Section will not apply with respect to any infringement arising from or related to: (i) the Open Source Stack or open source software components; (ii) any method or process in which the Licensed Software may be used; (iii) any compliance with Customer's designs or specifications; (iv) use of any version of the Licensed Software other than the current unaltered release of the Licensed Software; (v) the combination, operation, or use of the Licensed Software with the Open Source Stack or any software, data, or hardware that is not provided by D2iQ; (vi) any modifications to the Licensed Software that are not made by D2iQ; or (vii) Customer continuing allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (viii) Customer's using such Licensed Software in a manner that is not strictly in accordance herewith. THIS SECTION SETS FORTH D2iQ'S SOLE LIABILITY (AND CUSTOMER'S SOLE REMEDY) FOR ANY CLAIM OF INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

17. <u>Warranty and Warranty Disclaimer</u>. Each party represents and warrants that: (i) it is validly existing, and in good standing, under the laws of the place of its establishment or incorporation; (ii) it has full corporate power and authority to execute, deliver, and perform its obligations under this Agreement; (iii) the person signing this Agreement (or an Order Form adopting this Agreement) on its behalf has been duly authorized and empowered to enter into this Agreement; and (iv) this Agreement is valid, binding, and enforceable against it in accordance with its terms. EXCEPT AS OTHERWISE PROVIDED HEREIN**,** D2iQ DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED SOFTWARE, OPEN SOURCE STACK, SUPPORT SERVICES, AND DOCUMENTATION, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE FOREGOING, D2iQ SPECIFICALLY DISCLAIMS ANY WARRANTY THAT THE FUNCTIONS CONTAINED IN THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL MEET CUSTOMER'S REQUIREMENTS OR WILL OPERATE IN COMBINATIONS OR IN A MANNER SELECTED FOR USE BY CUSTOMER, OR THAT THE OPERATION OF THE LICENSED SOFTWARE OR OPEN SOURCE STACK WILL BE UNINTERRUPTED OR ERROR FREE.

18. <u>Limitation of Liability</u>. NOTWITHSTANDING ANYTHING ELSE HEREIN OR OTHERWISE, AND EXCEPT FOR BODILY INJURY, NEITHER D2iQ NOR ANY OF ITS LICENSORS ARE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT MATTER HEREOF OR UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL, OR EQUITABLE, THEORY (I) FOR ANY DAMAGES IN AMOUNTS IN EXCESS, IN THE AGGREGATE, OF THE FEES PAID TO IT HEREUNDER WITH RESPECT TO THE APPLICABLE LICENSED SOFTWARE DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT THAT GAVE RISE TO SUCH DAMAGES; (II) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES, OR RIGHTS; (III) FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES; (IV) FOR INTERRUPTION OF, USE, OR LOSS OR CORRUPTION OF DATA; OR (V) FOR ANY MATTER BEYOND ITS REASONABLE CONTROL. THE LICENSED SOFTWARE IS NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE WHERE THE FAILURE OF THE LICENSED SOFTWARE COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SIGNIFICANT PHYSICAL OR ENVIRONMENTAL DAMAGE ("**HIGH RISK ACTIVITIES**"). USE OF THE LICENSED SOFTWARE IN HIGH RISK ACTIVITIES IS NOT AUTHORIZED. THE PARTIES AGREE THAT THIS SECTION REPRESENTS A REASONABLE ALLOCATION OF RISK AND THAT D2iQ WOULD NOT PROCEED IN THE ABSENCE OF SUCH ALLOCATION.

19. <u>Miscellaneous</u>. Neither this Agreement nor any rights, obligations, or licenses granted hereunder may be assigned or delegated by either party without the prior written consent of the other party; provided that either party may assign this Agreement without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement. Customer acknowledges and agrees that (i) D2iQ may use Customer's name and logo to identify Customer as a customer of D2iQ on its website and in case studies, press releases, and other advertising, marketing, and promotional materials, any such statements will conform with the trademark use guidelines provided by Customer to D2iQ, and (ii) Customer will make itself reasonably available for reference calls and to provide quotes for marketing and publicity purposes. The provisions hereof are for the benefit of the parties only and not for any other person or entity. For all purposes hereof and in the performance of its obligations under this Agreement, D2iQ is and remains an independent contractor and nothing in this Agreement is deemed, or construed, to create an employment relationship between Customer and any employee, agent, or independent contractor of D2iQ. Neither party has any authority to, nor will a party attempt to, insure any obligations on behalf of the other party or to make any promise, representation, or contract of any nature on behalf of the other party. Any notice, report, approval,

authorization, agreement or consent required, or permitted, hereunder will be in writing; notices will be sent to the addresses set forth herein, or to any updated address that a party may provide by written notice. No failure or delay in exercising any right hereunder will operate as a waiver thereof, nor will any partial exercise of any right, or power hereunder, preclude further exercise. If any provision is adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision is limited or eliminated to the minimum extent necessary so that this Agreement otherwise remains in full force and effect and enforceable. This Agreement is deemed to have been made in, and construed pursuant to the laws of, the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods or the Uniform Computer Information Transactions Act. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter hereof and any waivers or amendments are effective only if made in writing; however, any pre-printed or standard terms of any purchase order, confirmation, or similar form, even if signed by the parties after the effectiveness hereof, have no force or effect. The substantially prevailing party in any action to enforce this agreement will be entitled to recover its attorney's fees and costs in connection with such action. The Licensed Software is a "**commercial item**" as that term is defined at 48 C.F.R. 2.101. Any use, modification, derivative, reproduction, release, performance, display, disclosure, or distribution of the Licensed Software by any government entity is prohibited, except as expressly permitted by the terms hereunder. Additionally, any use by U.S. government entities must be in accordance with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4. Contractor/manufacturer is D2iQ, Inc. with offices at 225 Bush Street, Suite 700, San Francisco, CA 94104.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date:

**D2iQ, Inc.**                                                    **[Insert Customer Entity Name]**

By: _____          By: _____

Name: _____          Name: _____

Title: _____          Title: _____

Date: _____          Date: _____

# Order Form

| CUSTOMER | D2iQ, INC. |
|---|---|

_____

SIGNATURE                                            SIGNATURE

NAME                                               NAME

TITLE                                             TITLE

DATE                                             DATE

## Exhibit B

## Services Terms

The following terms and conditions will apply where D2iQ has agreed to provide to Customer certain services ("**Services**") set forth in a Statement of Work ("**SOW**") describing the Services between D2iQ and Customer. Any changes, modifications, or amendments to an SOW will be made in writing and signed by both parties. In the event of conflict between the terms of the Agreement and an SOW, the terms of the SOW will prevail.

1. **Term of the Services.** D2iQ will provide a certain number of days of Services during a term ("**Services Term**") which are set out in the relevant Order Form. Services must be consumed within the relevant Services Term, after which they expire without refund. All Services, except where otherwise mutually agreed, are delivered consecutively. Each partial day will count as a full day, and each full day must be eight (8) hours or less. If D2iQ delivers the Services in less than the number of days specified, then D2iQ has no further obligation.

2. **Fees and Expenses.** Invoices will be issued in advance of any Services Term (as defined below) for the amount set forth in the relevant Order Form. Invoices are payable in accordance with the Agreement. Customer hereby approves reimbursement of reasonable travel, lodging, and incidental expenses that are actually incurred in connection with the Services. D2iQ will comply with Customer's travel and expense policy, provided that Customer provides such policy reasonably in advance of the start date of the Services. It is Customer's responsibility to promptly inform D2iQ of any changes to such policy or to provide D2iQ its most up-to-date policy. Should Customer notify D2iQ it needs to reschedule Service days after D2iQ has allocated resources and/or any such resources have made travel arrangements, Customer is responsible for any travel expenses reasonably incurred by D2iQ in preparation for such Services. D2iQ will use reasonable efforts to re-allocate any such resources, but should it be unable to do so, Customer will be invoiced for the Service days in accordance with the Agreement.

3. **Customer Responsibilities.** In connection with the Services, Customer will: (i) provide D2iQ with reasonable access to Customer's sites and facilities during its normal business hours, and as otherwise reasonably required, to perform the Services; (ii) provide a safe and secure working environment for D2iQ personnel; (iii) perform Customer's agreed duties and tasks, and such other duties and tasks as may be reasonably required to permit D2iQ to perform the Services; and (iv) not copy, record, or transcribe any D2iQ training materials without written authorization from D2iQ or as otherwise permitted in the Agreement. Customer will also make available to D2iQ any information and any materials reasonably required by D2iQ to perform the Services, including, but not limited to, any information or materials specifically identified in the applicable Order Form (collectively, "**Customer Materials**"). Customer will be responsible for ensuring that all such Customer Materials are accurate and complete.

4. **Ownership; License.** As between Customer and D2iQ, Customer will exclusively own all rights, title, and interest in and to the Customer Materials, including all worldwide patent rights, copyright rights, trade secret rights, know-how, and any other intellectual property rights therein. D2iQ acknowledges, and agrees, that Customer Materials may constitute Customer's Confidential Information. As between the parties, unless otherwise expressly set forth in an Order Form: (i) D2iQ will own all intellectual property rights with respect to derivatives, enhancements, or modifications of D2iQ's products or services (and all such rights are hereby retained by D2iQ); and (ii) D2iQ makes no assignment of any sort to Customer under this Agreement. Subject to the terms and conditions of the Agreement, and any applicable Order Form (including payment of all fees), D2iQ hereby grants Customer a nonexclusive, personal, worldwide license to use any work product of the Services which are delivered to Customer hereunder solely for Customer's internal business purposes during the term of the Agreement in connection with the Services. Customer will have no rights in any such materials except as expressly set forth in this Agreement.

5. **Representations and Warranties.** D2iQ represents and warrants that the Services will be performed in a workmanlike and professional manner and, in no event, be of a quality less than the quality of services performed and work product created by a skilled consultant with expertise in the area for which D2iQ is providing the Services. EXCEPT FOR THE EXPRESS WARRANTIES STATED HEREIN, IF ANY, D2iQ DISCLAIMS ALL WARRANTIES, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, and the stated express warranties, if any, are in lieu of all other obligations or performance liabilities arising out of or in connection with the rendering of the services hereunder.

6. **Indemnification.**

   a. <u>By D2iQ</u>. D2iQ will defend Customer against any damage, loss, liability, obligation, cost, or expense, including reasonable attorneys' fees, to the extent arising from a third-party claim may be made for bodily injury, death, or damage to real or tangible personal property resulting from the negligent acts or omissions of D2iQ, its employees, or agents while D2iQ is providing on-site Services.

   b. <u>By Customer</u>. Customer will defend D2iQ against any third-party to the extent arising from a third-party that may be made for bodily injury, death, or damage to real or tangible personal property, resulting from the negligent acts or omissions of Customer, its employees, or agents while D2iQ personnel are on Customer premises.

   c. <u>Indemnification Procedure</u>**.** A party's obligation to defend the claims described in this Section 9 is limited to: (i) the payment for the cost of defense of the third-party claim incurred by the indemnified party, (ii) the payment of any settlements agreed to by the indemnifying party in a writing signed by an officer of such party, and/or (iii) final judgments awarded to the third-party claimant by a court of competent jurisdiction. The indemnifying party's obligation to defend the claims described in this Section is conditioned on indemnified party (a) providing prompt written notice of any claim (provided that failure to give prompt notice only limits the indemnifying party's obligations under this Section to the extent that such failure prejudices such party in its defense of the claim), (b) granting the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party will not settle any claim that requires the indemnified party to pay any amounts not covered by the indemnifying party or make any admission of wrongdoing), and (c) providing reasonable information and assistance to the indemnifying party in the defense or settlement of the claim at the indemnifying party's expense.

7. **Non-solicitation.** During the Services Term, and for one (1) year thereafter, Customer must not, directly or indirectly, solicit, or assist in the solicitation of, any employees or contractors of D2iQ personally involved in the Services. This Section does not prohibit the placement of general advertisements or non-targeted third-party recruiting efforts for the purpose of recruiting employees generally.