

## Training and Services Terms and Conditions

### CONFIDENTIALITY

D3 acknowledges that certain information obtained by D3 during the course of its performance under this SOW concerning the business or affairs of Client is the exclusive property of Client and must be treated as confidential. D3 agrees not to disclose to any third party, or use for its own account, any of such information without the prior written consent of Client. Confidential information shall not include any information that: is already in the possession of or has already been independently developed by D3; is or becomes publicly available through no fault of D3; or is obtained from a third party who is under no obligation of confidence to the party owning the software. D3 agrees to deliver to Client at the termination of the engagement created by this SOW, or at such other time as Client may request, any confidential information which it then has in its possession.

### NON-SOLICITATION

Client recognizes that D3's employees and consultants are assets that have been heavily invested in and developed to perform unique and specialized services. During the term of this SOW and for a period of one year after completion or early termination hereof, Client will not, and will ensure that its employees and affiliates will not, directly or indirectly: (i) solicit for employment, or for performance of any services, any person employed or engaged by D3 involved directly or indirectly with the Project, or (ii) hire or engage for any services any person employed by D3 during the immediately preceding one year period. In the event of a breach of this provision, Client agrees to pay D3 compensation equal to 150% of the D3 employee's yearly salary, or of such consultant's annual compensation, as liquidated damages, which Client agrees is fair and reasonable compensation for D3.

### OWNERSHIP OF WORK

The parties agree that D3 owns all rights, including copyrights, to any original works of authorship created while providing Services to Client hereunder but excluding templates, families and drawings (the "Inventions"), except that such Inventions shall not include any original works that use Client's confidential or proprietary information. D3 hereby grants Client a worldwide, nonexclusive, perpetual, non-transferable and non-sublicensable, royalty free, license to use the Inventions, including the rights to enhance, adapt and modify same, in accordance with the terms of this SOW.

### WARRANTIES

All Services provided by D3 hereunder will be in a professional manner in accordance with applicable industry standards. Client's sole remedy for any defect in the Services or any Deliverable will be to correct the defect. **Except as expressly provided in this section, D3 disclaims all warranties, presentations and statements, express or implied, statutory or otherwise.**

### CONSENT TO RECEIVE EMAIL

Client consents to receive email communications from D3 TECHNOLOGIES, including messages regarding customer service information and other matters. Client may opt not to receive email communications, other than technical notifications and emails regarding issues related to Client's account matters, at any time by following the link included in the email. Registration for a class or event hosted by D3 may reset Client's email preferences in order to ensure necessary attendance information is received.

## **LIMITATION OF LIABILITY**

**In no event will either party be liable to the other for any indirect damages, including any lost profits or consequential damages, arising out of the Services provided hereunder. Each party agrees that the other party's liability hereunder for damages will not exceed the total amount paid or payable for the Services that directly gave rise to the damages.** Notwithstanding the above, the liability of Client shall be increased to include any costs of collection of amounts due hereunder incurred by D3 including, without limitation, reasonable attorneys' fees and costs.

## **FORCE MAJEURE**

If either party is delayed or prevented from performing hereunder (excluding Client's payment obligations to D3 hereunder), due to a cause beyond its reasonable control including, without limitation, civil unrest, protest, criminal acts, acts of government, acts or attempted acts of war or terrorism, pandemic or epidemic, or acts of God or nature, the delay will be excused during the continuance of the delay and the period of performance hereunder will be extended as reasonable after the cause of the delay is removed. If a delay continues for a period of more than 30 days, either party may terminate this SOW upon written notice to the other party and Client will pay D3 for all Services performed through the effective date of termination.

## **MISCELLANEOUS**

This SOW may not be amended, in whole or in part, except by an agreement in writing duly authorized and executed by both parties. The waiver of any breach of any of the provisions of this SOW by either party shall not constitute a waiver any subsequent breach. This SOW contains the entire agreement between the parties. Invalidation of any of the provisions of this SOW shall not affect the validity of the remainder of this SOW. This SOW shall bind and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns, except that Client may not assign any of its rights or obligations hereunder without the prior written consent of D3. In the event an action is brought to enforce this SOW, the prevailing party in such action shall be entitled to recover its attorneys' fees and costs incurred in conjunction therewith. This SOW shall be construed in accordance with the laws of the State of Missouri and venue and jurisdiction for any dispute hereunder shall be proper only in Springfield Missouri. Facsimile or electronic signatures on this SOW shall be the same as original signatures. This SOW may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same original.