



SOFTWARE AS A SERVICE AGREEMENT

This **Software As a Service Agreement** (the “Agreement”) is made as of [month, day, year], (“Effective Date”) between [name of customer] with principal offices at [address of customer] (“Customer”) and 3Di, Inc., a California corporation, with its principal office at 3 Pointe Drive, Suite 307, Brea, CA 92821 (“Vendor”).

WHEREAS, Vendor is in the business of supplying software applications and related services to organizations in the Public Sector_Industry, including, among other things, 3Di Engage, a CRM based customer engagement SaaS Platform designed for the digital transformation of the delivery of civic services with the highest levels of transparency, efficiency, and accountability.

WHEREAS, Customer is a public sector City Government that desires the use of the 3Di Engage Citizen Engagement software solution and services;

WHEREAS, Customer desires to have Vendor provide Cloud Hosting with Vendor providing Installation Qualification (“IQ”) and the Customer retaining responsibility for Operational Qualification (“OQ”) and User Acceptance/Production Qualification (“UAT/PQ”); and

WHEREAS, Vendor and Customer desire to enter into this Agreement defining their respective rights and responsibilities and memorializing the terms and conditions pursuant to which Vendor will provide to Customer the Services for a fee.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein, the parties intending to be legally bound hereby agree as follows:

Definitions

- a. **“SaaS”** is an acronym for “Software As A Service” and means the combined hosting and support services provided in this Agreement.
- b. **“SaaS Materials”** shall mean the written materials relating to the operation and use of the Vendor Software including, but not limited to, user manuals, user guides, technical manuals, release notes, and online help files regarding use of the Vendor Software provided as part of the Service, and any other materials prepared in connection with any Vendor Software modification, correction, or enhancement, and shall include any updated versions of SaaS Materials as may be provided by Vendor from time to time (1) in the course of providing the Service; (2) as part of an online tutorials or help files provided with the Service; or (3) in the course of providing web seminars in which Customer or Customer’s Users enroll.
- c. **“Application Support Services”** shall mean the support not included in the Product Support Services and defined in Schedule C.
- d. **“Base Components”** means the hardware, software, and hosting environment as specified in Schedule D that Vendor makes available for use by Customer as part of the Service.

- e. **“Cloud Hosting”** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- f. **“Vendor Software”** means Vendor proprietary software applications and user interfaces as defined in Schedule A and made available to Customer by Vendor as part of the Service. Vendor Software may contain third-party components licensed to Vendor.
- g. **“Customer Data”** means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding identification and other information provided by Customer relative to Customer Users.
- h. **“Electronic Communications”** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- i. **“Infrastructure Support Services”** shall mean the support provided by Vendor for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- j. **“Product Support Services”** shall mean the support provided by Vendor to remediate, correct, or abate errors in the out of the box Vendor Software that is provided as part of the Service as defined in Schedule B. Support for customer specific configurations and customizations (if any) are handled by Application Support Services defined in schedule C.
- k. **“Purchase Order Form(s)”** refers to a Customer document, in either electronic or written form, issued by Customer to confirm Customer’s purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon the parties or in any way modify, amend, or supersede the terms and conditions of this Agreement.
- l. **“Service”** shall mean the software and infrastructure in a hosted environment provided and maintained by Vendor to which Customer is being granted access under this Agreement via a web site or another designated IP address. Service or Services includes Product Support Services and Application Support Services described in this Agreement.
- m. **“Term”** means any Initial Term and/or Renewal Term as defined in Section 6 of this Agreement.
- n. **“Third Party Products”** means application software products provided by third party vendors, including operating system and application software with which the Vendor Software interfaces and which provides certain functionality essential to the operation of the Vendor Software. Third Party Products are licensed to Vendor for incorporation and use in the hosted environment as part of the Service as set forth in the Statement of Work. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Vendor Software.
- o. **“User(s)”** means Customer’s employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by Customer or on Customer’s behalf.

1 PROVISION OF SERVICES

In consideration of the fees paid by Customer under this Agreement, Vendor agrees to provide Customer access to the Service. Specific components of the Service to be provided to Customer are as outlined in the Schedules annexed hereto.

2 INSTALLATION SCHEDULE

Vendor will implement the infrastructure described in Schedule D in conformance with the Statement of Work entered into by separate agreement between the Parties and dated of -TBD-, to provide Customer the Services described in this Agreement.

This schedule is contingent on:

- (i) the Vendor Software having been installed and accepted by Customer
- (ii) Customer providing: all data required by Vendor in order to implement the infrastructure as defined in the Statement of Work between the Parties and dated as of the -TBD-.
- (iii) Customer completing all tasks and activities required as a prerequisite in order for the system to be placed into production use. Example of these types of activities are, but not limited to, validation activities, document approval, data migration, user training etc.
- (iv) Customer providing their internal infrastructure and connectivity needed to access the Services.

Failure of Customer to achieve all the contingencies described above as well as all other reasonable tasks required of Customer will require an adjustment in the schedule and may require the payment of additional fees by Customer.

3 LICENSE GRANTS

Subject to the terms and conditions of this Agreement, Vendor grants to Customer during the Term of this Agreement the nontransferable, nonexclusive worldwide right to permit Users to (a) use the Service, including the Base Components thereof, (b) display and print Customer Data, (c) export Customer Data, and (d) use the SaaS Materials solely in connection with the Service, all solely for Customer's own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For purpose of this license grant, "Customer" shall include any outsourced or other third-party consultants or similar personnel supporting Customer as part of its typical business practices, acting under Customer's direction and for whom Customer is fully responsible hereunder. Customer acknowledges and agrees that the license granted, for the items listed in Schedule A herein, is not a concurrent user license and that the rights granted to Customer in this Agreement are subject to all of the following agreements and restrictions: (i) the maximum number of Users that Customer authorizes to access the Service shall not exceed the number of licenses Customer has been granted, as set forth in Schedule A; (ii) licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who are no longer permitted to access the Service; (iii) Customer shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose or otherwise commercially exploit or make the Service or the SaaS Materials available to any third party other than an authorized User; (iv) Customer shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Service, including without limitation the Vendor Software and or SaaS Materials that are provided as a part thereof, or access the Service or SaaS Materials in order to build a similar or competitive product or service; (v) Customer shall not create Internet "links" to the Service or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (vi) except as expressly stated herein, no part of the Service or SaaS Materials may be copied, reproduced, distributed, republished,

downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means; (vii) Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (viii) Customer acknowledges and agrees that Vendor or its Third Party Vendors shall own all right, title and interest in and to all intellectual property rights in the Service and the SaaS Materials and any suggestions, enhancement requests, feedback, or recommendations provided by Customer or its Users relating to the Service or the SaaS Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how and other trade secret rights, and all other intellectual property rights, derivatives or improvements thereof; (ix) unauthorized use, resale or commercial exploitation of any part of the Service or SaaS Materials in any way is expressly prohibited; (x) Customer does not acquire any rights in the Service or SaaS Materials, express or implied, other than those expressly granted in this Agreement and all rights not expressly granted to Customer are reserved by Vendor and Third Party Vendors; and (xi) this Agreement is not a sale and does not convey any rights of ownership in or related to the Service, Vendor Software, Third Party Products, or SaaS Materials to Customer.

4 LICENSES FROM CUSTOMER

Subject to the terms and conditions of this Agreement, Customer grants to Vendor and its Third Party Vendors the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer Data solely to the extent necessary to provide the Service and SaaS Materials to Customer, and (b) any trademarks that Customer provides Vendor for the purpose of including them in Customer's user interface of the Service ("Customer Trademarks"). Customer acknowledges and agrees that Customer Data and information regarding Customer and Customer's Users that is provided to Vendor and its Third Party Vendors in connection with this Agreement may be (a) processed by Vendor and its Third Party Vendors to the extent necessary to provide the Service and (b) transferred outside of the country or any other jurisdiction where Customer and Customer's Users are located. In addition, Customer acknowledges and agrees that it is Customer's obligation to inform Customer's Users and customers of the processing of Customer Data and information regarding Customer and Customer's Users pursuant to this Agreement and to ensure that such Users and customers have given any necessary consent to such processing as required by all applicable data protection legislation. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and information regarding Customer and Customer's Users. Customer agrees that the license to the Customer Data shall survive termination of this Agreement solely for the purpose of storing backup Customer Data in accordance with the terms of this Agreement.

By providing Customer with the Services, Vendor does not acquire any right, title and/or interest in the content material (including but not limited to text, Customer-provided software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that Customer makes available for use by Users by means of the Services (collectively "Content"). Except as expressly set forth in the Schedules as being the responsibility of Vendor, Customer is solely responsible for all Content.

5 PROPRIETARY RIGHTS

5.1 VENDOR PROPRIETARY RIGHTS

Customer acknowledges and agrees that the Service and any necessary software used in connection with the Service contain proprietary and confidential information that is protected by applicable intellectual property and other laws. Customer further acknowledges and agrees that the content or information presented to the Customer through the Service may be protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws. Except where expressly provided otherwise by Vendor, nothing in the Service, the SaaS Materials, or the Agreement shall be construed to confer any license to any of Vendor's (or its third party manufacturer's, author's, developer's, vendor's, and service provider's ("Third Party Vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Vendor Software listed on Schedule A and other Vendor service marks, logos and product service names are marks of Vendor (the "Vendor Marks"). Customer agrees not to display or use the Vendor marks, or the marks of any Third Party Vendor, in any manner without the owner's express prior written permission. Vendor reserves the right to subcontract any or all services provided hereunder to third parties.

5.2 CUSTOMER PROPRIETARY RIGHTS

Vendor understands that its work for Customer will involve access to and creation of confidential, proprietary and trade secret information and materials of Customer and/or its suppliers, partners or clients (collectively, "Proprietary Information"). The Proprietary Information includes, without limitation, (a) information, ideas or materials of a technical or creative nature, such as computer source and object code; (b) information, ideas or materials of a business nature; and (c) the terms and conditions of this Agreement.

5.3 RESTRICTIONS ON USE AND DISCLOSURE.

Vendor understands that Proprietary Information is extremely valuable to Customer. Accordingly, Vendor agrees during the term of this Agreement and thereafter that it (a) shall hold all Proprietary Information in confidence and trust for the benefit of Customer; (b) shall not copy or use (or allow any of its employees, contractors or agents to copy or use) any Proprietary Information, except as may be necessary to perform the Services; (c) shall use the Proprietary Information only for the benefit of Customer (and not for the benefit of Vendor or any third party); and (d) shall not disclose or otherwise make available any such Proprietary Information to any third party except as authorized in writing and in advance by Customer. All Proprietary Information is and shall remain the sole property of Customer.

6 LICENSE FEE, TERM AND PAYMENT

The initial term (“Initial Term”) of this Agreement will commence on the Effective Date and will terminate on the fifth (5th) anniversary of the Effective Date. Each 12 month period after the Effective Date will be defined as a “Service Year”, e.g. Months 1-12 will constitute Service Year 1 and months 13-24 will constitute Service Year 2, etc.). Following the expiration of the Initial Term, the Agreement shall automatically continue on a month-to-month basis, until such time as either party provides thirty (30) days’ written notice to the other party of its intent to cancel the Agreement. Additionally, the Initial Term may be renewed (a “Renewal Term”) upon mutual agreement of the parties in writing. For the Initial Term Customer shall pay fees as detailed in the Payment Schedule set forth below. Invoices shall be payable within thirty (30) days after receipt thereof. In addition to any remedies Vendor may have pursuant to this Agreement or at law for non-payment, delinquency in payment may result in a delay or suspension of the right to use the Service. In the event Vendor incurs any costs (including reasonable attorney’s fees) from efforts collecting overdue fees from Customer, Customer agrees to pay such costs. Customer further agrees to pay all foreign, federal, states, and local taxes, if applicable, to Customer’s access to, use, or receipt of the Service.

Payment Schedule	Payment Due Upon	Amount
Implementation of the SaaS Application as per Schedule E – Scope of Work	SaaS “Go-Live”	\$-TBD-
SaaS Fees Service Year 1	Within 30 days of SaaS “Go-Live”	\$-TBD-
SaaS Fees Service Year 2	Within 30 days of start of Service Year 2	\$-TBD-
SaaS Fees Service Year 3	Within 30 days of start of Service Year 3	\$-TBD-
SaaS Fees Service Year 4	Within 30 days of start of Service Year 4	\$-TBD-
SaaS Fees Service Year 5	Within 30 days of start of Service Year 5	\$-TBD-
Total:		\$-TBD-

7 TERMS OF SERVICE

7.1 *Service Extensions or Updates*

Customer further agrees that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new service subsequently purchased by Customer pursuant to an amendment accepted by Vendor referencing this Agreement will be subject to this Agreement.

7.2 *Customer Must Have Internet Access*

In order to use the Service, Customer must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. Customer must also provide

all equipment necessary to make (and maintain) such connection to the World Wide Web in accordance with the requirements set out in Schedule D.

7.3 Email and Notices

Customer agrees to provide Vendor with Customer's e-mail address (es), and to accept emails (or other Electronic Communications) from Vendor at the e-mail address Customer specifies. Notwithstanding any provision in the Agreement to the contrary, acknowledgement by an officer of Customer is not required with respect to e-mail communications pertaining to the Customer's routine use of the Service, including without limitation communications relating to the support, maintenance, or the updating of the Service. Customer further agrees the Vendor may provide any and all required notices including legal notices to Customer through either e-mail (or other electronic transmission), or by mail or express delivery service in accordance with Section 14.

7.4 Passwords, Access, and Notification

Customer may designate up to the number of Users that corresponds to the number of permitted Users set forth in Schedule A. Customer will provide and assign unique password and user names to each authorized User for each license purchased. Customer acknowledges and agrees that Customer is prohibited from sharing passwords and or user names with unauthorized users. Customer will be responsible for the confidentiality and use of Customer's (including its employees') passwords and user names. Customer will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Customer Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Customer's account. Vendor will act as though any Electronic Communications it receives under Customer's passwords, User name, and/or account number will have been sent by Customer. Customer agrees to notify Vendor if Customer becomes aware of any loss or theft or unauthorized use of any of Customer's passwords, user names, and/or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the Customer for further User licenses.

7.5 Customer's Responsibilities

Customer agrees to comply with all applicable local, state, national and foreign laws, treaties, regulations and conventions in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. Customer will ensure that any use of the Service by Customer's Users is in accordance with the terms of this Agreement. Customer agree to notify Vendor immediately of any unauthorized use of any password or account or any other known or suspected breach of security or any known or suspected distribution of Customer Data. Customer acknowledges and agrees that the Service is subject to the U.S. Export Administration Laws and Regulations. Customer agrees that no part of the Service or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations and are subject to change without notice, and Customer must comply with the list as it exists in fact. Customer certifies that neither Customer nor any Users

are on the U.S. Department of Commerce's Denied Persons List or affiliated lists or on the U.S. Department of Treasury's Specially Designated Nationals List. Customer agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

In addition to its responsibilities in this Agreement, Customer is responsible for all Customer responsibilities indicated in the Schedules attached hereto or entered into pursuant hereto and all other responsibilities not designated as responsibilities of Vendor.

Customer is solely responsible for obtaining all licenses and permissions necessary related to the Content, including without limitation licenses for any third-party software included in the Content.

Customer shall not resell the Services directly or indirectly to third parties.

7.6 Transmission of Data

Customer understands that the technical processing and transmission of Customer's Electronic Communications is fundamentally necessary to Customer's use of the Service. Customer expressly consents to Vendor's interception and storage of Electronic Communications and/or Customer Data, and Customer acknowledges and understands that Customer's Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned and/or operated by Vendor. Customer acknowledges and understands that changes to Customer's Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. Customer further understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Customer agrees that Vendor is not responsible for any Electronic Communications and/or Customer Data which are lost, altered, intercepted or stored without authorizations during the transmission of any data whatsoever across networks not owned and/or operated by Vendor.

7.7 Vendor's Support

Vendor will make commercially reasonable efforts to promote Customer's successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing Customer with user guides and on-line help, and product support as set forth in Schedule B. Infrastructure Support Services shall be provided as set forth in Schedule D. Infrastructure Support Services pertain to the maintenance of the computer hardware and hosting environment provided as part of the Service. Vendor will also provide Product Support for Vendor Software employed as part of the Service as set forth in Schedule B annexed hereto. Product Support pertains to support designed to remedy errors in Vendor Software that cause it to deviate from the specifications as described in the SaaS Materials. Vendor also offers "for fee" extended support options and Professional Services consultation, which services may include, among other things, training services, business and regulatory

process consulting, submission processing support, submission migration services and system configuration.

7.8 *Confidential Information*

Each party may have access to information that is confidential to the other party (“Confidential Information”). For purposes of this Agreement, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Customer’s Confidential Information shall include, but not be limited to, Customer Data. A party’s Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure without any obligation of confidentiality and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of or reference to the other party’s Confidential Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other’s Confidential Information available in any form to any third party. Notwithstanding the foregoing, Customer acknowledges and agrees that Vendor may disclose Customer’s Confidential Information to its Third Party Vendors solely to the extent necessary to provide products or services under this Agreement. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law or valid order of a court or other governmental authority; provided, however, that a party who has been subpoenaed or otherwise compelled by a valid law or court order to disclose Confidential Information (the “Responding Party”) shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order or take other appropriate action. The Responding Party will cooperate in the other party’s efforts to obtain a protective order or other reasonable assurance that confidential treatment will be afforded the Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

Notwithstanding anything to the contrary in this Agreement, Content is not included in Confidential Information as defined above. To the extent Vendor has any access to Content in the course of providing the Services, Vendor’s entire obligation to keep Content confidential is stated in this Section below. Vendor shall not, intentionally (i) access Customer’s Content or (ii) disclose Customer’s Content to any third party, except to the extent: (a) Customer makes its Content publicly available, (b) as necessary for Vendor to provide, or obtain third-party supplier support for, the Services or to provide information requested by Customer, or (c) as specifically authorized by Customer in writing. Vendor’s obligation to protect Content from unauthorized use, access or disclosure is: (i) to provide the Security Services specifically set forth in this Agreement and (ii) maintain and enforce the then-current standard Vendor security policies and standards applicable to the Services as practiced at the service locations from which Vendor is providing the Services to Customer.

The obligations in this Section shall not apply to the recipient of Confidential Information and/or Vendor with respect to Content to the extent disclosure of Confidential Information or

Content is required to comply with laws or respond to requests by a regulatory or judicial body and/or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, and/or Vendor with respect to Content, reserves the right to charge the other party on a time-and-materials basis for recipient's/Vendor's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

8 SUSPENSION/TERMINATION

8.1 Suspension for Delinquent Account

Vendor reserves the right to suspend Customer's access and/or use of the Service for any account for which any payment is due but remains unpaid after thirty day's written notice of such delinquency. Customer agrees that Vendor shall not be liable to Customer, or to any third party, for any suspension of the Service resulting from Customer's non-payment of the fees as described in this Section.

8.2 Suspension for Ongoing Harm

Customer agrees that Vendor may, with reasonably contemporaneous telephonic or electronic mail notice to Customer, suspend Customer's access to the Service if Vendor reasonably concludes that Customer's use of the Service is causing immediate and ongoing harm to Vendor or others. Vendor will use commercially reasonable efforts to resolve the issues causing the suspension of Service. Customer agrees that Vendor will not be liable to Customer or to any third party for any suspension of the Service under such circumstances as described in this Section.

8.3 In the Event of a Breach

- A. Either party may terminate this Agreement upon sixty (60) days' written notice to the other party in the event of a breach of any material obligation under this Agreement, provided that the alleged breach is not cured during the sixty (60) day notice period. Upon termination or expiration of this Agreement, Customer shall have no rights to continue use of the Service.
- B. Customer may cancel this Agreement, to be effective at the end of the then current Term, by providing Vendor with at least thirty (30) days' prior written notice

8.4 Handling of Customer Data In the Event of Termination

Customer acknowledges and agrees that following termination of this Agreement, Customer shall return all SaaS Materials (except that it may retain a copy for archival purposes or as otherwise provided in this Agreement) to Vendor and Vendor may immediately deactivate Customer's account. Furthermore, unless otherwise agreed-upon by the Parties in writing, Vendor shall remove or overwrite all applicable Content from Vendor's systems following the effective date of termination or cancellation, in accordance with Vendor's standard procedures. Customer shall provide Vendor with reasonable and prompt access to Customer's premises to allow Vendor to retrieve the hardware and software and /or, in accordance with Vendor's instructions, return to Vendor all hardware and software that Vendor has provided to Customer in connection with the Services (other than hardware and software that Customer has purchased from Vendor). In the event that Customer fails to either return the hardware or software, or allow Vendor to retrieve it, within thirty (30) days of the effective date of termination or cancellation, Vendor may charge Customer the then-current fair market value

of the hardware and software, and Customer shall be responsible for any costs/damages arising from any breach of Vendor's third- party license agreement. Prior to any such deletion or destruction, however, Vendor shall either (1) grant Customer reasonable access to the Service for the sole purpose of Customer retrieving Customer Data or (2) transfer all Customer Data to other media for delivery to Customer. Customer agrees that Vendor shall not be liable to Customer or to any third party for any termination of Customer access to the Service or deletion of Customer Data, provided that Vendor is in compliance with the terms of this Section. Notwithstanding the foregoing, nothing shall preclude Vendor from maintaining one copy of Customer Data if required by law.

8.5 Handling of Application In the Event of Termination

Customer data, Customer license keys used in hosting and Customer application documentation updated during the hosting period by application support would be returned to the Customer as defined in the Disentanglement section of this Agreement.

9 MODIFICATION/DISCONTINUATION/MAINTENANCE

9.1 Modification to or Discontinuation of the Service

Vendor reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof), provided such modification does not diminish the functionality of the Service to the Customer on which the Customer materially relies. Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in this Agreement, Vendor shall use commercially reasonable efforts to notify Customer prior to any such modification; further, Vendor shall consider the Customer's validation needs and requirements in connection with any modification of the Service and, except as otherwise noted in Section 9.3, shall validate the Service as modified to the same extent provided in the Schedules. Customer acknowledges that Vendor reserves the right to discontinue offering the Service at the conclusion of Customer's then current Term. Customer agrees that Vendor will not be liable to Customer or any third party for any modification or discontinuance of the Service as described in this Section 9.

9.2 Modification to Third Party Software and Support Cost

In the event that Vendor incur any increased cost from Third party software licenses or annual support fees during the term of this agreement, Vendor reserves the right to pass these costs onto the Customer.

9.3 Maintenance

In order to perform maintenance, including infrastructure and application upgrades, there will be routinely scheduled down time as set forth in Schedule D. Customer shall give Vendor one (1) week notice in the event that such routinely scheduled maintenance conflicts with its operations at a critical time. Upon the receipt of such notice, the parties shall work together to find a mutually convenient time to perform such maintenance. Vendor further reserves the right on approximately a quarterly basis to issue new releases in which Vendor adds functionality to the Service. Customer acknowledges that these periodic major releases can take several hours to complete (up to eight hours). The time necessary to provide such periodic releases shall not be counted in any System Availability calculations. Vendor shall consult with the Customer and, unless otherwise agreed upon, shall install such major releases during

routinely scheduled down time as set forth above. Customer shall be apprised of software upgrades and or patch releases to the Service; in addition, Vendor shall perform IQ validation with respect thereto, and provide Customer with copies of any applicable validation reports. In the event of a patch release, a full IQ validation may not be undertaken. It shall be the Customer's responsibility to perform any required UAT/PQ validation. These patches, fixes and service releases shall be performed in accordance with the Application Support Services described in Schedule C – Application Support and in accordance with the change control process.

In the event that Vendor, in its sole discretion, determines that any unscheduled maintenance is necessary, Vendor will use commercially reasonable efforts to notify Customer as soon as it becomes aware of such need.

10 WARRANTIES

*10.1 **Warranty of Functionality***

Vendor warrants to Customer during the Term of this Agreement that the Service will comply with the material functionality described in the SaaS Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. Customer's sole and exclusive remedy for Vendor's breach of this warranty shall be that Vendor shall use commercially reasonable efforts to correct such errors or modify the Service to achieve the material functionality described in the SaaS Materials within a reasonable period of time. However, Vendor shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, Vendor shall have no obligation with respect to this warranty claim, and Customer may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Vendor's Product Support Center. Vendor does not warrant that the Service will be will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

*10.2 **Data Maintenance and Backup Warranty***

Vendor warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures listed in Schedule D annexed hereto (and hereby incorporated by reference). In the event of a breach of this provision, Vendor will use commercially reasonable efforts to correct Customer Data or restore Customer Data within three (3) business days (or as otherwise agreed in writing between the parties depending upon the back-up options selected by Customer). Provided Vendor complies with the procedures set forth in Schedule D, it shall be deemed to have satisfied its obligation with respect to this warranty.

*10.3 **Non-Infringement Warranty***

Vendor warrants that it is the sole owner of and or has full power and authority to grant the license and use of the Service and other rights granted by the Agreement to Customer with respect to the Service and that neither the performance by Customer in its utilization of the Service, nor the license of and authorized use by Customer of the Service as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

11 DISCLAIMER OF WARRANTIES

EXCEPT AS OTHERWISE STATED IN SECTION 10 ABOVE, VENDOR DOES NOT REPRESENT THAT CUSTOMER'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR FREE, OR THAT THE SERVICE WILL MEET CUSTOMER REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE SYSTEM THAT MAKES THE SERVICE AVAILABLE WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS OR THE SERVICE WILL OPERATE IN COMBINATION WITH OTHER HARDWARE, SOFTWARE, SYSTEMS OR DATA NOT PROVIDED BY VENDOR OR THE OPERATION OF THE SERVICES WILL BE SECURE OR THAT VENDOR AND ITS THIRD PARTY VENDORS WILL BE ABLE TO PREVENT THIRD PARTIES FROM ACCESSING CUSTOMER DATA OR CUSTOMER'S CONFIDENTIAL INFORMATION, OR ANY ERRORS WILL BE CORRECTED OR ANY STORED CUSTOMER DATA WILL BE ACCURATE OR RELIABLE. THE WARRANTIES STATED IN SECTION 10 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY VENDOR. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 10 ABOVE, THE SERVICE IS PROVIDED TO CUSTOMER ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CUSTOMER ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR THE CUSTOMER'S PURPOSE.

12 LIMITATIONS OF LIABILITY

12.1 *No Consequential Damages*

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING WITHOUT LIMITATION, INTERRUPTION OF BUSINESS, LOST PROFITS, LOST OR CORRUPTED DATA OR CONTENT, LOST REVENUE ARISING OUT OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION THE SERVICE, THE USE OF THE SERVICE OR THE INABILITY TO USE SERVICE), EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.2 *DIRECT DAMAGE LIMITATIONS*

12.2.1 IN NO EVENT SHALL THE AGGREGATE LIABILITY OF VENDOR OR ANY THIRD PARTY VENDORS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING ANY LICENSE, USE, OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNTS ACTUALLY PAID BY CUSTOMER IN THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. THERE SHALL BE ONLY ONE AGGREGATE LIABILITY CAP

UNDER THIS AGREEMENT EVEN IF THERE ARE MULTIPLE CLAIMS; EACH CLAIM SHALL REDUCE THE AMOUNT AVAILABLE IN THE AGGREGATE LIABILITY CAP.

12.2.2 EXCEPT FOR A FAILURE OF VENDOR TO COMPLY WITH ITS OBLIGATIONS WITH RESPECT TO BACKUP SERVICES, AND SUBJECT TO SECTION 12.2.1 ABOVE, VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM THE LOSS OR CORRUPTION OF ANY DATA OR CONTENT WHETHER RESULTING FROM DELAYS, NONDELIVERIES, MISDELIVERIES, SERVICE INTERRUPTIONS OR OTHERWISE.

12.3 EXCLUSIONS

THE LIMITATIONS OF LIABILITY SET FORTH IN SECTIONS 12.1 AND 12.2 SHALL NOT APPLY WITH RESPECT TO: (I) DAMAGES TO PERSONS AND/OR TANGIBLE PROPERTY OCCASIONED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF A PARTY, (II) BREACHES BY CUSTOMER OF LICENSE TERMS APPLICABLE TO VENDOR PROVIDED SOFTWARE AND THIRD PARTY PRODUCTS AS SET FORTH IN SECTION 2 ABOVE, (III) CUSTOMER'S UNAUTHORIZED USE OF VENDOR'S OR THIRD PARTY VENDOR'S INTELLECTUAL PROPERTY, MATERIALS OR ASSETS; (IV) DAMAGES INCURRED AS A RESULT OF A BREACH BY A PARTY OF ITS OBLIGATIONS UNDER SECTION 7.8 THAT RESULT IN THE DISCLOSURE OF CONFIDENTIAL INFORMATION OF THE OTHER PARTY, OR (V) CLAIMS THAT ARE THE SUBJECT OF INDEMNIFICATION PURSUANT TO SECTION 13 (WHICH ARE SUBJECT TO THE LIMITS, IF ANY CONTAINED THEREIN). DAMAGES AS LIMITED BY THIS SECTION 12 ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY IF ANOTHER REMEDY IS PROVIDED AND SUCH REMEDY IS DEEMED TO FAIL OF ITS ESSENTIAL PURPOSE.

13 INDEMNIFICATION

13.1 *Personal Injury and Property Damage*

Each party (the “**Indemnifying Party**”) agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an “**Indemnified Party**”), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, “**Losses**”) arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

13.2 *Infringement*

Vendor will indemnify, defend and hold harmless Customer for Losses Customer incurs as a direct result of any unaffiliated third party claim based on any claim that the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from (i) Customer's modification of the Service or combination by Customer the Services with other products or

services if the Service would not have been infringing but for such combination or modification, (ii) Customer's use of the Service in a manner not authorized herein or for which it was not designed, (iii) Customer's failure to use an updated non-infringing version of the applicable intellectual property to the extent Customer was notified that the update cured an infringement, (iv) changes to the Service made by Vendor at the direction of the Customer or (v) Customer Data. If any item for which Vendor has an indemnification obligation under this Section becomes, or in Vendor's reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Vendor will, in addition to indemnifying Customer as provided in this Section, promptly take the following actions, at no additional charge to Customer, in the listed order of priority: (a) secure the right to continue using the item or (b) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by Vendor using commercially reasonable efforts, and only in such event, Vendor will remove the item from the Service and the applicable Service fee will be equitably adjusted to reflect such removal. This Section 13.2 states Customer's sole and exclusive remedy for Vendor's infringement or misappropriation of intellectual property of a third party.

13.3 Customer's Indemnity

Customer shall defend and indemnify Vendor and its Third Party Vendors against any and all Losses incurred by Vendor and its Third Party Vendors arising out of or in connection with a claim by a third party (i) alleging that the Customer Data or the Customer Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Customer's breach of Sections 7.5 and 7.8.

Customer will indemnify, defend and hold harmless Vendor, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys' fees Vendor incurs from any unaffiliated third-party claim arising from Customer's Content or Customer's or any end user's use of the Services.

13.4 Indemnification Procedures

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying shall promptly reimburse the indemnified party for all such costs and expenses.

14 NOTICES

Except as otherwise provided in Section 7.4 above, any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by registered or certified mail return receipt requested, (c) sent by overnight courier, (d) sent by facsimile (with a hard copy mailed on the same date), (e) by email whose receipt is acknowledged by an officer of the receiving Party. If to Vendor, a notice shall be forwarded to 3Di, Inc., at 3 Pointe Drive, Suite 307, Brea, CA 92821, Attn. Product Support Manager, with a copy to 3Di, Inc., 3 Pointe Drive, Suite 307, Brea, CA 92821, Attn: Mihir Desai, C.O.O. & C.F.O., and if to Customer, a notice shall be forwarded to Customer at the address provided on the signature page herein. Notices shall be considered to have been given at the time of actual delivery in person, five business days after posting if by mail, one business day if by overnight courier service, or upon receipt of machine confirmation of successful transmission by facsimile or email as described herein.

15 SURVIVAL

The following provisions shall survive any termination of this Agreement: Sections 5, 7.8, 11, 12, 13, 14, 15, 20 and 21.

16 NO ASSIGNMENT

Customer may not assign this Agreement without the prior written approval of Vendor. Any purported assignment in violation of this section shall be void.

17 U.S. GOVERNMENT RESTRICTED RIGHTS

Any use of the Service by or on behalf of the United States of America, its agencies and/or instrumentalities (“U.S. Government”), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

18 FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of such party’s non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

19 SECURITY AND SECURITY POLICIES

Vendor will provide the security services set forth in the Schedules (the “Security Services”). Except to the extent caused by Vendor’s failure to provide Security Services, Vendor is not

responsible for (i) unauthorized access to Customer's Content, or (ii) damages arising out of unauthorized access.

Customer acknowledges that some of the Services may be performed by Vendor or its third-party suppliers outside the country(ies) where the Services are obtained, and information pertaining to Customer's use of the Services may be incorporated into Vendor's global database(s) to assist Vendor in providing the Services. Customer shall be solely responsible for obtaining any required consents to such off-shore support from Customer's employees and other end users of the Services.

Vendor will provide the Services at the Service Levels set forth in the Schedules, if any, subject to all requirements and exceptions provided in the Schedules for each Service Level. **CREDITS ASSOCIATED WITH THE FAILURE TO MEET A PARTICULAR CRITICAL SERVICE LEVEL, IF ANY, ARE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR VENDOR'S FAILURE TO MEET THAT PARTICULAR CRITICAL SERVICE LEVEL.**

20 DISENTANGLEMENT

As part of the implementation, Vendor will deliver a proposed termination assistance/data transfer plan to Customer within ninety (90) business days after the Effective Date. Customer will have five (5) business days from the date of receipt of such proposed plan to accept the plan as-is or to provide feedback regarding the proposed plan in writing. The parties will then cooperate in good faith to finalize the plan within ten (10) business days. The termination assistance/data transfer plan will not become part of this Agreement. Instead, it is intended to further describe aspects of the Services and in the event the final plan involves any changes in scope, such changes will be addressed as part of the change control process.

21 GENERAL PROVISIONS

Any action related to this Agreement will be governed by California law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Orange County, California. This Agreement, together with the Schedules annexed hereto, represents the parties' entire understanding relating to the use of the Service and supersedes any prior or contemporaneous, conflicting or additional, communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Vendor and Customer as a result of this Agreement or use of the Service. The failure of Vendor to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Vendor in writing. Vendor reserves the right to assign its right to receive and collect payments hereunder. Any rights not expressly granted herein are reserved by Vendor.

IN WITNESS WHEREOF, this Agreement is duly executed by an authorized representative of both parties as of the Effective Date.

VENDOR

By: _____
Name: _____
Title: _____

CUSTOMER

By: _____
Name: _____
Title: _____

Customer Mailing Address:

Attn: **-TBD-**

Schedule A – Vendor Licensed Software

The licenses set forth below shall be available to Customer during the term of the agreement.

Licensed Software	Number of Production Systems	Number of Service Requests/Year	Number of Named Users
3Di Engage for [name of Engage Product], implemented as per Statement of Work (SOW) described under Schedule E	1	[-TBD-]	Unlimited

SCHEDULE B – PRODUCT MAINTENANCE & OPERATIONS SUPPORT

During the Term of this Agreement and for so long as Customer is entitled to receive the Service hereunder, Vendor shall provide the following Product Maintenance & Support Services through its Support Centers (“SC”) for the Service infrastructure and Vendor Software as follows

- a. The SC will be the primary point of contact for all product support inquiries. The SC may be contacted via email at [support email id].
- b. The SC will receive, log, and respond to inquiries from the Customer concerning errors or defects in the Vendor Software that cause the Vendor Software to deviate from the applicable SaaS Materials.
- c. The SC is and will be staffed with qualified product support engineers who have experience with the Vendor Software and SaaS Materials and are familiar with the environments in which they operate. The SC will endeavor to provide timely and accurate answers to the Customer’s inquiries through Vendor’s Product Support team. The SC shall endeavor to rectify Vendor Software errors that impact Customer’s use and operation of the Vendor Software as set forth below. However, Vendor does not warrant that the Vendor Software will be error free, will work in combination with third party software not provided by Vendor, or will perform in an uninterrupted manner.
- d. For as long as the Agreement remains in effect, Customer shall have unlimited telephone, e-mail, Website forum, and, where applicable, remote access support for the Vendor Software during the hours of operation of the SC. Excluding legal holidays in the respective geography, telephone and electronic mail support shall be available Monday through Friday.
- e. Support inquiries, whether initiated by electronic mail, telephone, or otherwise, will be recorded by Vendor in the SC issue-tracking system. All inquiries will be assigned a tracking number that will be used to communicate with the Customer and to track the progress of a specific support call or inquiry.
- f. Product Support inquiries shall be limited to Level 3 support. As used herein below, the following definitions apply:

Support Level	Description	Provided by
Level 1	Level 1 support includes the following activities: receipt, logging, tracking and managing support requests from end users; initial assessment of issues; escalation to Level 2 issues requiring application and business expertise.	Customer
Level 2	Level 2 support includes the following activities: receipt of issues escalated from Level 1; replication of issues; troubleshooting and diagnosis of issues; resolving issues; and escalation to Level 3 issues requiring development expertise. Level 2 will also include the receipt, logging, tracking and managing support requests. Application Support handles Level 2 questions, typically those required in-depth knowledge of the support applications.	Vendor as part of Application Support Coverage, further described in Schedule C

Support Level	Description	Provided by
Level 3	<p>Level 3 support includes the following activities: receipt of and the diagnosis of complex issues escalated from Level 2. Level 3 issues are those that require developer level expertise or product questions that are not answered in the product documentation.</p> <p>Level 3 support is provided by the Product Support Team working in tandem with the Application Support Team.</p>	Vendor

g. The Customer and the SC contact will work together to assign a priority level when the support inquiry is initiated in accordance with the Priority Level descriptions herein. The Priority Level describes the impact that the problem is having on the Customer's ability to effectively use the Vendor Software. The Priority Level initially assigned can be modified if circumstances warrant it and the appropriate representatives of the Customer and Vendor agree. In this instance, Vendor will agree to a target time-scale with the Customer for recovery of Services, although it may take longer to effectuate a resolution. As used herein below, the following definitions apply:

Response Time is the average time within which Vendor will take to first respond to a support inquiry.

Service Restoration is defined as the period of time until service is restored to a usable state. The service may not be restored to 100% of its original functionality or capacity but is restored to a sufficient state to reasonably continue business operations via corrective action or development of a workaround. A workaround is defined as a nonstandard method for performing a given operation which produces the same result that would be achievable if the portion of the Software affected by the problem were functioning according to the Documentation.

h. Priority Levels and SC average response times are as follows:

Priority Level	Description of Deficiency	Response Timeframe	Resolution Goal
1 - Critical	<p>Critical functionality is down or impaired or degraded; major impact to Customer's business; no reasonable workaround(s) exists or no current patch set or service pack is available.</p> <p><u>Examples of Critical Deficiencies:</u> Response Time is at or over four (4) times the agreed upon Response Time Baseline or does not function at all, as determined by the Customer. There is no way to circumvent the problem; a significant number of Users are affected. A production business System is inoperable.</p>	One (1) Business Hour	One (1) Business Day
2 – Severe	<p>Functionality is impaired or degraded, or an important function is not available, and operations are severely impacted. There are time-sensitive issues that impact ongoing production. A reasonable workaround exists, but it is only temporary. Hotfix, patch or service pack or upgrade is not available.</p> <p><u>Examples of Severe Deficiencies:</u> A component of the System is not performing in accordance with the Specifications (e.g., Response Time is at two (2) or three (3) times the agreed upon Response Time Baseline), which is creating significant Customer business impact, or its core functionality is not available, as determined by the Customer.</p> <p>OR</p> <p>Mandatory reporting within the System is inaccurate, or data is unavailable (unless the inaccuracy is due to inaccurate data provided by the Customer).</p>	Four (4) Business Hours	Five (5) Business Days or next scheduled maintenance, whichever is less
3 – Moderate	<p>Non-critical functionality is down or impaired. Does not have significant current production impact. Performance is degraded. A short to medium term work- around is available. Patch, service pack or upgrade is available.</p> <p><u>Examples of Moderate Deficiencies:</u> A component of the System is not performing in accordance with the Specifications, which is creating a moderate or minor operational impact, as determined by the Customer.</p>	One (1) Business Day	Two (2) weeks

Priority Level	Description of Deficiency	Response Timeframe	Resolution Goal
4 – Low	<p>Non-critical function impaired. No business impact. A medium to long term work-around is available. Patch, service pack or upgrade is available.</p> <p><u>Examples of Low Deficiencies:</u> This is a low impact problem and is not significant to operations or is related to education (e.g., general "how to" and informational Licensed Software questions, Documentation requests, understanding of reports or general "how to" create reports), as determined by the Customer.</p>	Two (2) Business Days	Next Version Release or 6 months unless otherwise agreed to by Customer and 3Di

All times specified may be impacted by availability of Customer internal support, if required, to assist in investigation or resolution.

Although Vendor will endeavor to provide a resolution for all errors within the times indicated above, Vendor does not guarantee that all errors will be resolved within these times or that a Resolution will be provided at all.

Vendor shall have the right to modify the foregoing support policies as agreed by Vendor and Customer, provided (1) Vendor provides Customer with at least thirty (30) days written notice of such changes, and (ii) such changes do not materially diminish Vendor's overall technical support obligations to Customer as set forth herein.

i. The Product Maintenance & Support scope consists of the following activities. Other related activities may be considered in scope as agreed in writing by Vendor and Customer.

Single Point of Contact

- Serve as single point of contact for application and infrastructure issues
- Receive, log, escalate and respond to inquiries from the Customer concerning infrastructure availability or connectivity concerns.

Issue Triage

- Field support questions on Customer-specific configurations and customizations.
- Serve as single point of contact for Third Party software support issues.
- Interface with Vendor support groups for technology issues which must be researched through the vendor support team.
- Interface with Product Support and Product Team.
- Interface with Customer IT organizations and network issues
- Level 2 Application Support

System Maintenance

- Defect correction for Customer specific configuration and customization errors (Including Critical and non-Critical issues)
- Apply software patches and minor releases as required with appropriate documentation.

- Updating Mobile Apps for iOS & Android as new versions of devices and operating systems are released by Apple and Google respectively.
- System software updates, patches
- Release Management and Version Control
- Bug Fixes and Patches related to Security: Bug fixes and patches related to security may be applied to the 3Di Engage instance of the customer as necessary.
- Minor version Updates and Enhancements: These updates and enhancement may include minor UI changes, features enhancements, minor new features. Minor version updates and enhancements may be applied to the 3Di Engage instance of the customer with customer's approval.
- Major version Upgrade: Major version upgrade may involve significant changes to UI and User Experience, addition of new features and functionalities. Major version upgrades are release as per our product roadmap. We will notify the customer of the product roadmap. Major version upgrades will be upon request by the customer and will be fully coordinated. Major version upgrades in some cases result in additional cost to the customer.

Bug fixes, Patches, Updates, Enhancements and Upgrades are applied only after thorough testing and system backup. All maintenance on the production environment is scheduled during non-business hours with approval of customer and 3Di.

Operations Support

Vendor will be responsible for operation of the SaaS system described in Schedule A. Operation responsibilities include:

- System & Application Hosting
- Hardware maintenance, repair and upgrades
- System software
- System & Application Monitoring and Customer notification of errors, downtime, breaches
- System & Application sizing and tuning for optimal performance
- System Security Monitoring and Notification (Unauthorized Use, Intrusion or Data Compromise)
- System Recovery from errors and/or downtime
- Reporting - Customer has access to a dashboard with reports for Utilization, System uptime, Planned/unplanned downtime and Hack attempts prevented

i. The following services are excluded from the Product Support Services:

- Support for software not listed in Schedule A
- End user training
- Level 1

SCHEDULE C – GENIE HOURS SUPPORT

1 SUPPORTED SOFTWARE

The Genie Hours Support Services includes application support for the solution comprised of the following Software:

Software
Software defined in Schedule A
Third party software integrated with the Software

2 GENIE HOURS SUPPORT SCOPE

Genie Hours support activities are defined as the activities required to support and maintain a solution which are excluded from the scope of standard product maintenance support (Schedule B).

The Genie Hours Support scope consists of the following activities. Other related activities may be considered in scope as agreed in writing by Vendor and Customer.

Single Point of Contact:

- Serve as single point of contact for application and infrastructure issues
- Receive, log, escalate and respond to inquiries from the Customer concerning infrastructure availability or connectivity concerns.

System Enhancements Scope Items:

- Modifications to current configurations
- New Customer specific configurations
- UI design, development, modifications
- Mobile application design, development modifications
- SR Management:
- New SRs
- SR Updates
- Knowledgebase Updates
- Technical Support
- Workflow changes
- Integration Services
- System configurations changes

Customer Specific Scope Items:

- Provide Level 2 support for third party tools integrated with Customer's system such as publishing tools in use by Customer. Customer agrees to ensure that the third party vendors will provide Level 3 support to the Vendor support team and to ensure that Vendor resources are provided sufficient training on the third party tools to provide effective Level 2 support.
- Provide additional "Train The Trainer" training for the software defined in Schedule A

3 GENIE HOURS SUPPORT SERVICE DESCRIPTION

The Genie Hours support service consists of a pool of hours offered in maximum hours per month to be utilized by Customer. The Genie Hours Support Services selected by Customer are defined in Section 15, Genie Hours Support Services Parameters, of this Schedule C.

Vendor and the Customer can use the pool of hours to perform any of the activities described in Section 4, as long as the effort of those activities fit within the allocated pool of hours. Changes to the system are documented in a Change Control Request which will provide estimates, risks etc. and must be agreed to by a designated Customer approver and managed through an agreed change management process (including roll-out).

Vendor will provide the Genie Hours support pool hours selected in Section 15 of this Schedule C for Customer to provide application support to the systems defined in Section 1 - Supported Software.

Customer may change the Genie Hours Support pool hours on a quarterly basis as agreed with Vendor unless otherwise agreed by Vendor and Customer. Vendor requires 30 days advance notice to change the Genie Hours Support service pool hours. Up to 60 days advance notice may be required to increase the level of the Genie Hours Support Service, depending on Vendor's resource availability.

If Customer desires a change in the Application Genie Support Service, the parties will define any changes in the form of an amendment hereto.

4 SUPPORT FEES

The Genie Hours Support fees for the Support Period are included in the SaaS payment schedule.

The Genie Hours support levels may be adjusted on a quarterly basis to a level that reflects the estimated support requirements for the period. It is accepted by both parties that there will be a requirement for greater support in the pre and post go-live phases. This requirement will be reflected in the estimated support hours in Table 6 – Customer Genie Hours Support Services.

If more than the maximum hours per month of application support are required on short notice, additional support is available on a time and materials basis. Genie Hours Support services required in excess of those currently selected by Customer shall not be performed by Vendor and therefore costs will not be incurred without Customer approval.

Additional Genie Hours support time will be allocated via approval of an amendment hereto by Customer and Vendor.

Any travel and living expenses associated with the delivery of the Services will be invoiced separately at cost.

Vendor Support Team Members will only travel to Customer facilities if requested by Customer in writing.

5 RENEWAL OF SERVICES

Renewal of services applies to additional support services above the minimum level specified in section 16 Genie Hours Support Services of this Schedule C.

After the initial Support Period, application support services may be renewed by Customer on an annual basis; provided that, (i) Customer pays to Vendor the then-current Support Fees charged by Vendor to its clients for the applicable renewal period on or before thirty (30) days prior to the expiration of the current annual Support Period; and (ii) Vendor shall not be obligated to provide support services after the Initial Term, unless otherwise mutually agreed in writing by the parties.

Prior to the commencement of each annual renewal period, Vendor shall be entitled to increase Support Fees to the then-current Support Fees charged by Vendor to its clients for Genie Hours Support and shall provide Customer with written notice of such fee increase (which written notice may be in the form of an invoice from Vendor for support services for the renewal period).

6 SUPPORT SERVICES AVAILABILITY

Genie Hours Support services availability shall be identical to the Product Maintenance & Support service availability defined in Schedule A.

7 OTHER TERMS

The terms and conditions defined in the current effective Master Services Agreement between Customer and Vendor shall apply to this Schedule C.

8 SUPPORT PROCESS

Vendor and Customer will follow the following process when handling both the Product Maintenance & Support issues or Genie Hours Support issues:

- Customer will contact the Vendor support team via email, online issue tracking system or telephone hotline.
- Customer will provide all relevant information regarding the problem, circumstances leading to the problem, confirmation of Customer's configuration details, and results of any investigations made, including any attempts to reproduce the problem.
- Vendor will log the call in the Vendor Issue Management System, assign a Support Call Reference number, and pass this information to Customer staff for future reference.
- Vendor will apply the priorities defined in the Priority Level Table in Schedule B, Section h to Application Support Service issues.

If the issue is a Problem Report or System Question

- Vendor staff will assign a severity to the reported problem and identify the next action(s) to be taken.
- Vendor staff will troubleshoot and identify the most effective resolution to the issue or if needed escalate the call to the technical specialist.
- Vendor staff will monitor the support request until it is resolved or it is agreed with the Customer staff that no further action can be taken.

If the issue is a request to modify a Customer system (Change Request)

- Vendor staff will initiate the Change Control process
- The effort to implement the request will be estimated and accommodated in accordance with the change control process agreed by Vendor and Customer.
- Vendor staff and Customer will agree on an implementation schedule

If access to Customer systems is only available via a Customer supplied laptop or other hardware, Vendor may only be able to work on a single issue at a time if access to the Customer system is required to resolve the issues.

9 METHODOLOGY

Any system enhancements or configuration changes work will follow the methodology defined in Vendor's Quality Management System.

10 SYSTEM CHANGE CONTROL PROCESS

Vendor and Customer shall follow Vendor's change control process.

11 REPORTING

Four reports will be sent to Customer via electronic mail each month – A Summary Report of all issues; an Open Issue Detail report of open issues; a Service Level Agreement Report of all service level agreement issues; and a Monthly Support Usage report.

Descriptions of the Vendor issue reports are listed in **Table 1 - Vendor Application Support Issue Reports**.

Table 2 - Vendor Application Support Issue Reports

Report	Description
Summary Report	A summary report of all Application Support issues
Open Issue Detail Report	A detail report of all non-closed Application Support issues including assigned severity level and time taken to close out issue
Service Level Agreement Report	A detail report of all Service Level Agreement incidences including assigned severity level and time taken to close out issue
Monthly Support Usage	Details on monthly usage of support hours listed by support issue

12 CUSTOMER RESPONSIBILITIES

Customer will designate a System Contact (Customer System Contact).

- The Customer System Contact will be responsible for managing Customer resources required to fulfill Application Support team requests.
- The Customer System Contact will serve as Vendor's point of contact for all Application Support Issues.
- The Customer System Contact will be trained on and will be familiar with the Customer's System as detailed in Schedule A.
- The Customer System Contact will meet with the Vendor Regional Support Manager (or his designee) on a monthly or other mutually agreed upon schedule.
- The Customer System Contact will manage and set priorities on all Customer issues including Change Requests.
- The Customer System Contact will escalate Application Support issues to Customer management when required.
- The Customer System Contact will request and obtain approval on any amendment to this Schedule C for additional Application Support services prior to performing additional services, if desired by Customer.
- The Customer will provide a steering committee governance body which will meet on an agreed upon schedule to monitor program performance and serve as an escalation mechanism to mitigate risk.

13 ESCALATION PATH

Vendor Escalation Path

The following path is defined for issues requiring escalation within Vendor's management structure:

Priority	Notified Party	Responsibilities
1 st Level	Vendor Regional Support Manager	Involved with the daily support activities. Liaise with support team members and progress problem resolution. Accelerate escalation procedure if required.
2 nd Level	Vendor Global Support Manager	Main Escalation contact after Regional Support Manager has been contacted. May allocate additional resources and may agree to on-site assistance if required.

Customer Management Escalation Path

Customer will designate a System Manager and Program Manager. The following path is defined for issues requiring escalation within the Customer management structure:

Priority	Notified Party	Responsibilities
1 st Level	System Manager	Involved with the daily support activities. Liaise with support team members and progress problem resolution. Accelerate escalation procedure if required.
2 nd Level	Program Manager	Main Escalation contact after Regional Support Manager has been contacted. May allocate additional resources and may agree to on-site assistance if required.

GENIE HOURS SUPPORT SERVICE MODELS

Application Support Service Description

App Support Service	Description
Genie Support Pool-10	Maximum of 10 Hrs/Month of Application Genie Support Services. Included in the subscription fees described under Section 6 – License Fees, Term and Payment.
System Replication	Vendor Hosted system for support issue triage. Hosted outside of production system environment
Replicated System Installation	Installation service for replica of customer system
Hosting Support	Covers single point of contact (POC), & Vendor Software maintenance, (including patch and maintenance release installation). Does not cover enhancements or configuration change requests, outside of included Genie Support Pool Hours.
24x7 Emergency Support	24x7 critical issue coverage

Application Support Hours

For the purposes of this agreement, the select Genie Hours Support Services hours are a maximum of 10 hours/month.

Monthly usage of Genie support hours shall not exceed the specified **Maximum Hours/Month** for the selected Genie Hours Support Service unless agreed upon by Vendor and Customer, or unless the customer chooses to purchase additional Genie Support hours in increments of 10 Hours/Month @ \$1,000/month. Application Support Services

SCHEDULE D – INFRASTRUCTURE SERVICE LEVEL TERMS

The Services shall be available 99.9%, measured monthly, excluding scheduled maintenance.

If Customer requests maintenance during these hours, any uptime or downtime calculation will exclude periods affected by such maintenance. Further, any downtime resulting from outages of third party connections or utilities or other reasons beyond Company's control will also be excluded from any such calculation. Customer's sole and exclusive remedy, and Company's entire liability, in connection with Service availability shall be that for each period of downtime lasting longer than **one hour**, Company will credit Customer **5% of Service fees** for each period of **60 or more consecutive minutes of downtime**; provided that no more than one such credit will accrue per day.

Downtime shall begin to accrue as soon as Customer (with notice to Company) recognizes that downtime is taking place, and continues until the availability of the Services is restored. In order to receive downtime credit, Customer must notify Company in writing within one (2) business day from the time of downtime, and failure to provide such notice will forfeit the right to receive downtime credit. Such credits may not be redeemed for cash and shall not be cumulative beyond a total of credits for one (1) week of Service Fees in any one (1) calendar month in any event.

Company will only apply a credit to the month in which the incident occurred. Company's blocking of data communications or other Service in accordance with its policies shall not be deemed to be a failure of Company to provide adequate service levels under this Agreement.

Excused Downtime From SLA Calculations

The Customer's Site shall be considered available to the extent any downtime is due to:

- regularly scheduled maintenance or service upgrades;
- intentional shutdowns due to emergency interventions and/or responses to security incidents;
- problems with third-party components for which fixes have not been provided by the vendor;
- content residing on the Customer's hosting environment;
- customer-managed hardware or software ;
- configuration changes initiated by the Customer;
- the Customer's failure to observe Vendor Hosting security and upgrade policies; or
- any outages caused by Vendor application support described in Schedule B
- any cause outside of Vendor's control.

SCHEDULE E – AGREEMENT STATEMENT OF WORK (SOW)

[Insert SOW Document]