daq.io

Consulting Service Agreement

This Consulting Services Agreement ("Agreement") sets forth the terms and conditions under which daq.io, LLC. ("daq.io") will perform certain consulting services for the undersigned Client ("Client").

1 <u>Work</u>. daq.io agrees to provide consulting services as described in Exhibit A attached hereto ("Work") and to use commercially reasonable efforts to complete the Work in accordance with the schedule set forth therein. daq.io agrees to notify Client if, at any time, it becomes apparent that the parties need to revise the schedule.

2 <u>Price and Payment</u>. In full consideration of the consulting services provided hereunder and for any licenses granted under this Agreement, Client agrees to pay daq.io the fees set forth in Exhibit A within thirty (30) days of the date of invoice.

2.1 Client agrees that any license of software or other technology as proposed in Exhibit A shall be provided exclusively under terms of a separate Software License Agreement and shall be distinct and separate from the Work Product. Any license fees relating thereto set forth in Exhibit A shall be payable to daq.io under such agreement without further performance by daq.io regardless of the disposition of any services to be provided by daq.io under this Agreement.

2.2 Client shall be responsible for all travel and living expenses incurred by daq.io's staff in connection with this Agreement, if necessary. Client shall submit a purchase order to daq.io valid for the term of this Agreement for all fees. Payment shall be made in U.S. dollars. All services fees and expenses payable to daq.io shall be exclusive of any sales, use, value-added or similar taxes, duties, imposts, customs, levies or other withholding ("Tax"). Any such Tax shall be paid by Client in addition to fees or expenses. In the event of local tax withholding on Client payments to daq.io, such payments shall be grossed-up to provide daq.io the same amount after such withholding as it would have received without the imposition of such withholding, together with tax receipts or similar evidence of any withholding made by Client. Client shall retain title to and ownership of any and all materials, equipment, inputs or supplies which are purchased by daq.io and incorporated into or used for the performance of the Work ("Client Materials"), despite being under the possession, care, control and custody of daq.io. daq.io, at its sole discretion, may invoice the Client for the Client Materials.

3 <u>Ownership</u>. Any and all deliverables, plans, specifications, documentation, and other materials delivered to Client hereunder, together with all ideas, concepts, know-how, techniques, inventions, discoveries or improvements, including but not limited to computer software, whether in object code or source code form, developed by daq.io and arising out of or relating to the Work (collectively referred to as the "Work Product") under this Agreement shall be Client's sole property, except to the extent that the Work Product contains any daq.io Confidential Information to which daq.io will retain all right, title and interest. While daq.io may retain copies of such Work Product solely for archival purposes, it shall not use or disclose to any third party any information or data which is contained in such Work Product.

4 <u>Force Majeure</u>. daq.io shall not be liable for failure to perform any of its obligations hereunder where such performance is prevented or interfered with by any cause beyond the reasonable control of daq.io. This provision shall not be construed as relieving Client from its obligation to pay any sums due to daq.io.

5 <u>Term and Termination</u>. This Agreement shall commence on the Effective Date below and shall continue until completion of all Work unless earlier terminated. Either party may terminate this Agreement if the other party fails to perform any of its material obligations hereunder and such failure to perform has not been cured within ten (10) days of the receipt of written notice of such material breach by the defaulting party. Upon such termination, Client shall promptly pay daq.io for all Work satisfactorily performed up to the date of termination and daq.io shall deliver to Client all Work developed hereunder up to the time of termination, except that daq.io will not be required to deliver any daq.io Confidential Information. The parties' obligations under Sections 3, 7, 8, and 10 hereof shall survive expiration or termination of this Agreement regardless of the manner of termination.

6 <u>Warranty</u>.

6.1 <u>Engineering Services</u>. During the term of the applicable Work, daq.io warrants that any service rendered by daq.io during such time shall be performed in a professional, workmanlike manner with the care and skill ordinarily used by other members of daq.io's profession practicing under similar conditions at the same time and in the same locality.

6.2 <u>Application Code</u>. As specified in the Work, certain portions of a system, custom software code, application software, and/or interfaces, all of which are proprietary to

daq.io will be developed or delivered by daq.io hereunder ("Application Code").

6.3 Client Responsibilities. Client is solely responsible for the use to which it puts any deliverable or information provided by daq.io hereunder and any decisions it makes in using such deliverable or information. Client shall be solely responsible for the use of any daq.io product or related maintenance, support or service. Client represents and warrants that it has all right and authority from any third party suppliers to allow daq.io to perform the Work hereunder and shall defend, indemnify, and hold harmless daq.io from any claims or damages incurred relating thereto.

6.4 Limitation/Remedies. For a period of thirty (30) days after the completion of the Work, daq.io's obligation will be limited to repair or replacement only solely with regard to material, system-critical defects in the Work or Application Code. daq.io's sole liability under Clause 6.1 shall be to re-perform any service which fails to conform to the specified standard. In no event shall daq.io's liability under this Section 6 exceed the value of the product or service provided which gave rise to the claim hereunder, and daq.io's warranties and representations provided hereunder are contingent upon all non-daq.io products (hardware, software, and firmware) properly exchanging accurate date data with the Application Code, Work or any other products provided by daq.io hereunder. The Client must submit any claim for breach of these provisions to daq.io within thirty (30) days of completion of the applicable Work. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 6.2 ABOVE, DAQ.IO MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, WITH REGARD TO THE WORK OR WORK PRODUCT, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, AND IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.

7 DAMAGES. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO LOSS OF ANTICIPATED PROFITS OR OTHER ECONOMIC LOSS IN CONNECTION WITH OR ARISING OUT OF THE WORK. DAQ.IO'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL DAMAGES SHALL NOT EXCEED THE TOTAL CONTRACT PRICE.

8 Confidentiality.

8.1 Confidential Information. "Confidential Information" means all information provided by a party ("Disclosing Party") to the other party ("Receiving Party") relating to the Work which the Disclosing Party has identified as being proprietary or confidential, except information which (i) is public knowledge at the time of disclosure; (ii) becomes public knowledge through no act or omission of the Receiving Party; (iii) has been furnished to the Receiving Party by a third party whom the Receiving Party believes may legitimately provide the information without restriction on disclosure; or (iv) was in the Receiving Party's possession, as evidenced by written or computerized records, prior to the date of this Agreement and which was not acquired under obligations of confidentiality from the Disclosing Party.

8.2 Nondisclosure. The Receiving Party shall protect as proprietary and confidential all Confidential Information disclosed to the Receiving Party under this Agreement using at least as great a degree of care as used to maintain the confidentiality of its own most Confidential Information, but in no event less than a reasonable degree of care. Except with specific prior written authorization, the Receiving Party shall not use, either directly or indirectly, any of Disclosing Party's Confidential Information other than for the purpose for which it has been disclosed in connection with the performance of the Work. The Receiving Party agrees that it will disclose the Disclosing Party's Confidential Information only to its employees who need to know such information, provided that such employees are bound by terms and conditions protecting such Confidential Information substantially similar to those of this Agreement. This paragraph shall survive the expiration or termination of this Agreement for a period of three (3) years.

9 No Assignment. Neither party shall assign this Agreement without the prior written consent of the other party, which will not be unreasonably withheld. Any transfer by merger, consolidation or liquidation shall constitute an assignment or purposes of this Agreement.

10 Export Assurance. Any and all reports, computer software or technologies to be delivered in connection with the Work and any technical data incorporated therein ("Deliverables") shall be exported outside the United States only in compliance with all applicable United States export control laws. Client will not directly or indirectly use or re-export such Deliverables in any manner contrary to U.S. export law s and regulations, including but not limited to use in nuclear, chemical/biological warfare and/or missile activities. Client also agrees that it will not, without first procuring a BXA license or License Exception, (a) re-export or release any Deliverable to a national of a country in Country Code D:1 or E:2; nor (b) export to Country Groups D:1 or E:2 the direct product of a Deliverable, if such foreign produced product is subject to national security controls as identified on the Commerce Control List (See General Prohibition Three Sec. 736.2(b)(3) of the Export Administration Regulations).

11 Non-Solicitation. During the term of this Agreement and for a period of one (1) year thereafter, neither party shall hire, solicit or offer employment, directly or indirectly, to any employee or staff of the other party, without the other party's prior written approval.

12 <u>Amendment; Waiver</u>. Neither this Agreement nor any term, covenant, condition or other provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Except as otherwise provided, failure or delay of either party to exercise any right or remedy hereunder shall not constitute a waiver of rights or remedies under this Agreement.

13 <u>Governing Law</u>. This Agreement shall be construed according to the laws of the State of Texas, without regard to its conflicts of laws provisions.

14 <u>Entire Agreement</u>. This Agreement shall constitute the entire agreement between the parties hereto with respect to its subject matter; and, except as otherwise expressly provided herein, this Agreement shall not be affected by reference to any other document. Variance from, or additions to, the terms and conditions of this Agreement in any purchase order or other written notification from Client shall be of no effect. In the event of any conflict between this Agreement, (including any associated proposals) and Exhibit A, this Agreement shall control.

15 <u>Severability</u>. If any provision of this Agreement is held unenforceable or inoperative by any court of competent jurisdiction, either in whole or in part, the remaining provisions shall be given full force and effect to the extent not inconsistent with the original terms of this Agreement.

16 <u>Notices</u>. Notices and communications required by this Agreement shall be in writing and may be delivered in person, by courier, transmitted by facsimile, or mailed prepaid first class, return receipt required, to the respective parties at the address listed herein or other address most recently designated in writing. Notices directed to daq.io shall be sent "Attention: Legal Department".