

## **DRUPALCON LICENSE AGREEMENT**

This DrupalCon License Agreement ("Agreement"), effective as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), is between DrupalCon Inc., a District of Columbia (USA) nonprofit corporation, dba Drupal Association ("DA") and \_\_\_\_\_, a \_\_\_\_\_ ("Licensee"). DA and Licensee are each referred to as a "Party" and collectively as the "Parties."

### **RECITALS**

A. DA developed, owns and/or has the right to use certain trademarks that DA uses and has used in connection with its operation of "DrupalCon," an international educational event for the Drupal community that brings together the people who use, develop, design, and support the Drupal platform.

B. Licensee wishes to use certain of DA's trademarks in connection with Licensee's organization, operation and promotion of one or more Events (as defined below) under the terms and conditions of this Agreement.

### **TERMS AND CONDITIONS**

**1. Definitions.** Unless otherwise defined in this Agreement, capitalized terms are defined as set forth in this Section 1:

**1.1.** "DA Marks" means the Event Name, and such other trademarks, service marks and logos specifically listed on Exhibit A.

**1.2.** "Event" means an annual DrupalCon conference located in the Territory, as further described in the Event Rules, and which is organized, operated and promoted by Licensee pursuant to the terms and conditions of this Agreement.

**1.3.** "Event Rules" means the DrupalCon License Rules attached to this Agreement as Exhibit B, and also available on DA's website at \_\_\_\_\_, as may be amended from time to time upon notice to Licensee.

**1.4.** "Event Name" means the specific name of each Event, which will contain the location of the Event together with the DA Trademark "DrupalCon," and which will be approved by DA in writing.

**1.5.** "Gross Revenue" means all revenues received or receivable by or credited to Licensee arising from the Event, whether evidenced by cash, check, credit, charge account, exchange, or otherwise.

**1.6.** "Net Profit" means Gross Revenue less Operating Expenses.

**1.7.** "Net Profit Threshold" means the point at which an Event achieves a Net Profit of at least \$\_\_\_\_\_.

**1.8.** "Operating Expenses" means all costs and expenses directly incurred by Licensee in connection with the organization, operation and promotion of the Event.

**1.9.** "Term" means the period of time this Agreement is in effect, as described in Section 5 below.

**1.10.** "Territory" means the following geographic location(s): Europe.

#### **2. Trademark License.**

**2.1. License Grant.** Subject to the terms and conditions of this Agreement (including Licensee's compliance with the Event Rules), DA grants to Licensee a non-exclusive, non-transferrable, limited license (the "Trademark License") to use the DA Marks during the Term solely in connection with organizing, operating and promoting the Event(s), and only in the Territory.

**2.2. Ownership Rights.** Licensee acknowledges that, as between DA and Licensee, DA (and/or its licensors) owns and will continue to own the DA Marks and all goodwill in the DA Marks. Licensee agrees that

all use of the DA Marks by Licensee will inure to the benefit of and be on behalf of DA and/or its licensors. Licensee agrees that nothing contained in this Agreement gives Licensee any right, title or interest in the DA Marks other than the right to use the DA Marks in accordance with the terms of the Trademark License granted in Section 2.1.

**2.3. Restrictions on Use.** Licensee will not, directly or indirectly: (a) challenge DA's right, title or interest in or to the DA Marks or the validity of the Trademark License granted in Section 2.1; (b) attempt to register the DA Marks in its own name in any jurisdiction; or (c) do anything inconsistent with DA's ownership in the DA Marks; (d) use the DA Marks, either individually or in combination, as a business or trade name; (e) use the DA Marks in conjunction with any other mark without the prior written consent of DA; (f) use any marks confusingly similar to the Licensed Marks; or (g) use the Licensed Marks in any manner that may reflect adversely on them, on the good name of DA, or on DA's programs or policies. DA expressly reserves to itself the right to use the DA Marks for any purpose. All rights not granted in this Agreement to Licensee are expressly retained by DA, including the right to grant licenses to persons or entities other than Licensee to use the DA Marks in connection with similar events.

**2.4. Quality Standards.** The Event(s), all services offered by Licensee in connection with the Event(s) and the DA Marks, and all related advertising, promotional and other related uses of the DA Marks by Licensee will: (a) be of at least equal or greater quality to DA's previous DrupalCon events; (b) conform to DA's reasonable quality standards now in existence or established in the future; (c) conform to commercially reasonable standards in Licensee's industry; and (d) conform at all times to applicable law (including the law in the Territory). Licensee will provide DA (and its representatives) reasonable access to inspect the Event(s), all Event planning efforts, and all materials bearing the DA Marks. Upon DA's request, Licensee will provide to DA reasonable quantities of samples of all advertising and promotional materials bearing the DA Marks. DA will be the sole judge of whether or not Licensee has met or is meeting the standards of quality and usage requirements established under this Agreement, as they relate to the nature and quality of the Event.

**2.5. Prior Approval; Form of Use.** Licensee will obtain DA's written approval prior to Licensee's use of the DA Marks on advertising or promotional materials, and DA's approval or disapproval will not be unduly delayed or unreasonably withheld. Licensee agrees to use the DA Marks only in the form and manner set forth in all applicable trademark usage guidelines, which DA may update or revise from time to time upon written notice to Licensee, including the logo guidelines available at \_\_\_\_\_.

**2.6. Press Releases.** Licensee must obtain DA's written approval prior to issuing any press releases related to the Event, this Agreement, or containing the DA Marks, and all such press releases must contain language and disclaimers provided by DA.

**2.7. Infringement.** If Licensee becomes aware of any unauthorized use of the DA Marks by others, Licensee will promptly notify DA. DA will have the sole right and discretion to commence any action or proceeding for infringement or unfair competition involving the DA Marks. Licensee will cooperate fully with DA in providing any information or documentation in support of the action or proceeding.

**3. Licensee Obligations.** In addition to the obligations and requirements set forth in this Agreement, Licensee will: (a) be solely responsible for organizing, operating and promoting the Event in accordance with this Agreement; (b) comply at all times with the Event Rules, including all policies, codes and guidelines set forth in the Event Rules; and (c) be solely responsible for (i) all costs and expenses associated with the Event, (ii) all taxes, tax obligations and liabilities associated with the Event and any income therefrom, and (iii) collecting all fees and payments associated with the Event. Without limiting the foregoing, and for the avoidance of doubt, Licensee will be solely responsible and liable for, and hereby releases DA from any responsibility or liability for, the Events and/or any claims related to the Events or arising out of this Agreement.

#### **4. License Fees.**

**4.1. License Fees.** As consideration for the Trademark License, and subject to Licensee reaching the Net Profit Threshold for an Event, Licensee will pay to DA royalties equal to \_\_\_\_% of all Net Profit arising from each Event (such amounts, the "Earned Royalties"). If a particular Event does not result in a Net Profit, or does not reach the Net Profit Threshold, then Licensee will have no obligation to pay any Earned Royalties to DA for such Event.

**4.2. Payment.** Licensee will pay all Earned Royalties to DA within 30 days after the end of each Event, based on Licensee's Net Profit arising from such Event (if any). Earned Royalties payable to DA pursuant to this Agreement, and not paid within 30 days after the due date, will bear interest at the lesser of 1.5% per month or the maximum legal rate. Licensee will pay all costs of collection of any amounts due pursuant to this Agreement, including reasonable attorney fees at trial and on appeal. All amounts will be paid in United States Dollars.

**4.3. Other Consideration.** In addition to the Earned Royalties, Licensee will provide DA with the additional benefits described in the Event Rules, at no charge to DA.

## **5. Recordkeeping; Reporting; Audit Rights.**

**5.1. Recordkeeping.** During the Term and for two years following the expiration or termination for any reason of this Agreement: (a) Licensee will make and keep at its principal office complete and accurate books and records of account showing its Gross Revenues and Operating Expenses in sufficient detail to enable DA to calculate Net Profit and to determine Earned Royalties payable hereunder; and (b) DA is entitled to enter Licensee's principal office, or obtain access to Licensee's electronic or online books and records, to examine and copy such books and records at all reasonable times during normal business hours and upon reasonable notice to Licensee.

**5.2. Reporting.** Within 15 days after the end of each calendar quarter during the term, and together with its payment of Earned Royalties as described in Section 4, Licensee will provide DA with a report, in a form reasonably acceptable to DA, of the Gross Revenues and Operating Expenses arising from the Event.

**5.3. Audit Rights.** DA is entitled to audit, or cause an independent third party to audit, any and all books and records that Licensee maintains under Section 5.1. If Licensee understates Net Profit, Licensee will immediately pay to DA the amount of the Earned Royalties due on account of the understatement. Further, if an audit discloses a discrepancy in the amount of Earned Royalties payable by Licensee to DA during the period audited, of greater than 5%, Licensee will reimburse DA for all reasonable costs associated with performing the audit

## **6. Term and Termination.**

**6.1. Term; Renewals.** This Agreement will take effect on the Effective Date and, unless earlier terminated as provided in this Agreement, will remain in effect until the end of Licensee's initial Event under this Agreement, unless the Parties have renewed this Agreement in writing for subsequent Event(s), in which case this Agreement will terminate at the end of Licensee's final approved Event if no further renewals have been agreed upon. DA's agreement to renew this Agreement for subsequent Event(s) will be in its sole discretion, and will be subject to: (a) Licensee's continued compliance with this Agreement; (b) Licensee's payment of all Earned Royalties; and (c) DA's approval of Licensee's plan and proposal for the subsequent Event(s).

### **6.2. Termination by Either Party.**

(a) **For Breach.** Either Party (the "Non-Breaching Party") may terminate this Agreement, effective immediately, by giving the other Party (the "Breaching Party") written notice if the Breaching Party is in material breach of this Agreement and that material breach: (a) is not capable of being cured; or (b) if it is capable of being cured, that material breach remains uncured for 30 days after the Breaching Party receives written notice of that material breach.

(b) **Insolvency; Bankruptcy.** To the extent permitted by law, either Party may terminate this Agreement immediately by written notice, if the other Party: (a) becomes insolvent; (b) files a voluntary petition in bankruptcy; (c) makes an assignment for the benefit of creditors or otherwise enter into any scheme or composition with its creditors; (d) is adjudicated a bankrupt; (e) suffers a receiver to be appointed for the operation of its business; or (f) makes a liquidation of substantially all of its assets.

**6.3. Effect of Termination or Expiration.** In the event of termination for any reason, including the expiration without renewal, this Agreement and the Trademark License will immediately terminate, and Licensee will immediately cease all use of the DA Marks.

**6.4. Survival.** Section 1, Section 6.3, Section 6.4, and Sections 7 through 14, and each other provision of this Agreement that expressly or by its nature provides for rights, obligations, or remedies that extend beyond the expiration or earlier termination of this Agreement, will survive and continue in full force and effect after this Agreement expires or is earlier terminated.

## **7. Confidentiality.**

**7.1. Definition.** "Confidential Information" includes all confidential and proprietary information relating to DA's business, whether disclosed before, on or after the Effective Date, regardless of the medium on which the information is stored, recorded, conveyed or communicated, and whether or not specifically identified as "Confidential" or "Proprietary," including: (a) cost, pricing, profit, production, forecast and other accounting, economic and financial data; (b) information about DA's members or suppliers; (c) personnel and human resources data, files and information; (d) business and marketing plans and strategies; and (e) information and data about Event attendees and participants, including names and email addresses.

**7.2. Restrictions.** Licensee will:

(a) Not use any Confidential Information for any purpose other than to perform its obligations or exercise its rights under this Agreement;

(b) Hold all Confidential Information in strict confidence and will not disclose, without DA's prior written consent, any Confidential Information to any person other than to Licensee's employees or agents who (i) have a "need to know"; (ii) have been advised of the confidential and proprietary nature of the Confidential Information; and (iii) are bound by confidentiality and non-use obligations that are at least as restrictive as those described in this Agreement. Licensee will be responsible for any use or disclosure of Confidential Information by its employees or agents that is not permitted pursuant to this Section 7; and

(c) Protect all Confidential Information by using the same degree of care regarding the Confidential Information that Licensee would exercise regarding its own confidential information, but not less than a reasonable standard of care.

**7.3. Exceptions.** The obligations described in this Section 7 will not apply to any Confidential Information that Licensee can document (i) was disclosed or became generally available to the public without breach of this Agreement and through no act or omission of Licensee or its employees; provided, that Confidential Information will not be considered to be available to the public merely because individual elements thereof are in the public domain; (ii) Licensee independently developed and recorded in writing without reference to the Confidential Information; (iii) Licensee received from a third party that did not violate any agreement, duty or applicable law in disclosing the information to Licensee; or (iv) was disclosed as required by applicable law.

## **8. Representations, Warranties and Covenants; Warranty Disclaimers.**

**8.1. Representations, Warranties and Covenants of Licensee.** Licensee represents, warrants and covenants the following:

(a) Licensee has full corporate power and authority to enter into this Agreement and to perform its obligations hereunder;

(b) Licensee is not a party, and does not expect to become a party, to any suit, action or proceeding which, if adversely determined against Licensee, could have a material adverse effect on Licensee's ability to perform its obligations hereunder;

(c) Licensee and each of Licensee's employees have all necessary licenses and certifications necessary to operate the Event(s) and perform under this Agreement;

(d) Licensee will operate the Event(s) and perform all services in a professional and workmanlike manner, and Licensee possesses the requisite experience, facilities, personnel and equipment necessary and appropriate to perform under this Agreement; and

(e) Licensee has complied, and will in the future comply, with all applicable laws in connection with the execution, delivery, and performance of this Agreement, including the operation,

organization and promotion of the Event(s), and Licensee's operation of the Event(s) for the purposes contemplated by this Agreement will not violate any law, regulation or order of any national, state or local governmental authorities, whether domestic or foreign, or interfere with any third party contracts.

**8.2. Warranty Disclaimer.** The DA Marks are provided by DA on an "as is" basis. DA expressly disclaims all warranties relating in any way to the da marks, express, implied and statutory, including the implied warranties of merchantability and fitness for a particular purpose. No statements of DA, its officers, directors, agents, affiliates, or employees, will create any new warranties unless they are made in writing and are signed by an officer of DA.

## **9. Indemnification.**

**9.1. Definition.** "Loss" or "Losses" means (a) all reasonable attorney fees (whether incurred prior to, at trial or any other proceeding and in any appeal or other post judgment proceedings) paid or payable by an Indemnitee in defense of any claim subject to indemnification under this Section 9, whether prior to, at trial or any other proceeding and in any appeal or other post judgment proceeding; and (b) all sums paid or payable to any other person, including all direct losses and damages (including property damage and all incidental, consequential, punitive and exemplary damages), injuries (including personal injury, sickness and death), interest, costs, fines, taxes, premiums, assessments, penalties, expenses, and attorney fees (whether incurred prior to, at trial or any other proceeding and in any appeal or other post judgment proceedings).

**9.2. Licensee's Indemnification Obligations.** Licensee will indemnify, defend, and hold harmless DA and its officers, directors, shareholders, employees and agents (the "Indemnitees") from and against all Losses related to or arising out of an Event, including Losses asserted directly or indirectly by any person for any actual or alleged: (a) breach of this Agreement by Licensee; (b) negligence, recklessness, intentional misconduct, violation of law, or other wrongful act or omission of Licensee or any of its employees, volunteers, or agents; (c) any physical injury or damage to property arising out of the Event; and (d) infringement of any trademark, patent, copyright, right of privacy, publicity, name or likeness, or any other intellectual property right of that person, or misappropriation or unauthorized use or disclosure of any trade secret of that person, by Licensee or the Event; in each case, whether arising from or in connection with a demand, action, regulatory action, lawsuit, proceeding, judgment, settlement, appeal or other post judgment proceeding and whether asserted in contract, tort, strict liability or otherwise.

**9.3. Procedure.** Indemnitee will give Licensee reasonably prompt notice of any Loss; provided, however, that failure to give timely notice will not relieve Licensee of its indemnification obligations except to the extent it is prejudiced thereby. Licensee, in its sole discretion, then may take such action as it deems advisable to defend the action, claim or proceeding on behalf of the Indemnitee. Indemnitee will provide Licensee all reasonable information and assistance to settle or defend the action. No compromise or settlement of any action, claim or proceeding may be made unless full releases as to the subject matter are obtained for Indemnitee.

**10. Injunctive Relief.** Licensee acknowledges that any breach of Sections 2 or 7 will irreparably harm DA, and that such harm will not be susceptible to accurate measurement for the purpose of calculating money damages. Accordingly, DA, in addition to seeking and recovering money damages and other remedies available at law, will have the right to obtain an injunction or other equitable relief to prevent a breach or threatened breach of such Sections, without the necessity of posting a bond or other security.

**11. Limitation of Liability; Limitation of Damages.** In no event will DA's liability to Licensee exceed the amounts received by DA under this Agreement during the six (6) month period immediately preceding the date the cause of action arises, whether its liability arises under or relates to this Agreement, any other contract, any tort, statute, or otherwise. In no event will DA be liable under this Agreement for any indirect, incidental, consequential, special, or punitive damages, including any loss of revenues or loss of profits, even if DA has been advised of the possibility of those damages. These limitations will apply regardless of the legal theory of liability, whether under contract, tort (including negligence and strict liability), or any other theory whatsoever.

**12. Insurance.** Licensee will maintain at all times during the Term, at its own cost and expense, insurance policies with companies reasonably acceptable to DA and licensed to do business in the Territory. At a minimum, Licensee will maintain the following coverages, and will name DA as an additional insured: (a)

Commercial general liability insurance insuring bodily injury, property damage and personal injury liability arising from premises, operations, independent contractors, products completed operations, including contractual liability, products liability and advertising liability, with a limit of at least US\$ \_\_\_\_\_ per occurrence and US\$ \_\_\_\_\_ in the aggregate; (b) Worker's compensation insurance at statutory limits; and (c) Business automobile liability insurance for any auto, including owned, non-owned and hired autos, with a limit of not less than US\$ \_\_\_\_\_ per occurrence. Upon DA's written request, Licensee will furnish certificates evidencing the required coverage to DA.

**13. Relationship of Parties.** Nothing contained in this Agreement will create a joint venture or partnership, establish a relationship of principal and agent, establish a relationship of employer and employee, franchisor and franchisee, or any other relationship of a similar nature between the Parties. Neither Party will represent the other Party in any capacity, bind the other Party to any contract, or create or assume any obligation on behalf of the other Party for any purpose whatsoever. Except as expressly required by this Agreement, Licensee retains sole and absolute discretion as to the manner and means of carrying out its obligations under this Agreement, and DA will have no right or obligation to direct or control Licensee's working conditions or activities. Licensee acknowledges and agrees that it is not entitled to receive, and DA will not and is not obligated to deliver, any disclosures or other information that might be described or required under state or federal franchise laws, and Licensee agrees to hold DA harmless from any obligation to comply with such laws.

**14. Miscellaneous.**

**14.1. Entire Agreement.** This Agreement (including the Recitals and all Exhibits) is the entire agreement between the Parties concerning its subject matter; and supersedes all prior and contemporaneous oral and written agreements, commitments, and understandings concerning its subject matter.

**14.2. Assignability.** Licensee will not assign any right or delegate any duty under this Agreement, whether by transfer, merger, operation of law, or otherwise, without the consent of an authorized DA representative. A change in the control (voting or otherwise) of Licensee will be deemed an assignment for purposes of this Section. DA may grant, withhold, or condition its consent to assignment or delegation in its sole discretion. If DA authorizes an assignment or delegation, that authorization will not release Licensee from any of its obligations under this Agreement unless: (a) that authorization expressly releases Licensee; (b) the assignee or delegate agrees in writing to be bound by this Agreement; and (c) any agreement between Licensee and the assignee or delegate states that DA has the right to enforce Licensee's rights against the assignee or delegate. Any attempted assignment or delegation by Licensee without DA's consent will be void, and DA may terminate this Agreement immediately notwithstanding any notice requirement that would otherwise apply. DA may assign its rights and delegate its duties under this Agreement to any third party at any time without Licensee's consent.

**14.3. Amendment.** The Parties may amend this Agreement only by a written instrument that: (a) expressly refers to the provision(s) of this Agreement to be amended; (b) provides the full text of the amendment; and (c) is signed by an authorized representative of each Party.

**14.4. Notice.** Whenever notice is to be served hereunder, service will be made personally, by electronic mail transmission, by overnight courier or by registered or certified mail, return receipt requested at the addresses for the Parties listed below. Notice will be effective only upon receipt by the Party being served. Each Party may change its address for purposes of this Agreement by giving written notice to the other Party in the manner set forth above.

**14.5. Waiver.** A Party's delay or failure to enforce or insist on strict compliance with any provision of this Agreement will not constitute a waiver or otherwise modify this Agreement. A Party's waiver of any right granted under this Agreement on one occasion will not: (a) waive any other right; (b) constitute a continuing waiver; or (c) waive that right on any other occasion.

**14.6. Governing Law; Jurisdiction and Venue.** This Agreement will be interpreted under, and any disputes arising out of this Agreement will be governed by, the laws of the State of Oregon, USA, without reference to its conflicts of law principles. The United Nations Convention on Contracts for the International Sale of Goods will not apply to the interpretation or enforcement of this Agreement. The Parties consent to the jurisdiction of the courts located in \_\_\_\_\_, in connection with all actions arising out of or in connection with this Agreement.

**14.7. Interpretation.** Section and paragraph headings are for convenience only and do not affect the meaning or interpretation of this Agreement. The words "includes" and "including" are not limited in any way and mean "includes or including without limitation." The word "person" includes individuals, corporations, partnerships, limited liability companies, co-operatives, associations and other natural and legal persons. The term "and/or" means each and all of the persons, words, provisions or items connected by that term; i.e., it has a joint and several meaning. The word "will" is a synonym for the word "shall." All Exhibits attached to or referenced in this Agreement are a part of and are incorporated in this Agreement. Both Parties have had the opportunity to have this Agreement reviewed by their attorneys. Therefore, no rule of construction or interpretation that disfavors the Party drafting this Agreement or any of its provisions will apply to the interpretation of this Agreement. Instead, this Agreement will be interpreted according to the fair meaning of its term.

**14.8. Severability.** If any court, arbitrator, or arbitration panel finds any provision of this Agreement to be invalid or otherwise unenforceable, that provision will be void to the extent it is contrary to applicable law. However, that finding will not affect the validity of any other provision of this Agreement, and the rest of this Agreement will remain in full force and effect unless enforcement of this Agreement without the invalidated provision would be grossly inequitable under all of the circumstances or would frustrate the primary purposes of this Agreement. Alternatively, if a court, arbitrator, or arbitration panel determines that any provision of this Agreement is not enforceable as expressly written, it is the intention of the Parties that those provisions be modified by the court, arbitrator, or arbitration panel only as is necessary for them to be enforceable.

**14.9. Counterparts.** This Agreement may be executed in counterparts. Each counterpart will be considered an original, and all of them, taken together, will constitute a single Agreement. Facsimile signatures will be deemed original signatures for all purposes under this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

<b>DA:</b>  <b>DrupalCon Inc.</b> <b>dba Drupal Association</b> <b>3439 NE Sandy Blvd # 269</b> <b>Portland, OR 97232</b> <b>United States of America</b>  By: _____  Name: _____  Title: _____	<b>LICENSEE:</b>      By: _____  Name: _____  Title: _____
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## **Exhibit A**

### **DrupalCon Trademarks**

This Exhibit is incorporated into and made a part of that certain DrupalCon License Agreement, dated \_\_\_\_\_, 20\_\_, between DrupalCon Inc., dba Drupal Association ("DA") and \_\_\_\_\_ ("Licensee") (the "Agreement"). All undefined terms which are capitalized in this Exhibit will have the meaning set forth in the Agreement.




## **Exhibit B**

### **Event Rules**

This Exhibit is incorporated into and made a part of that certain DrupalCon License Agreement, dated \_\_\_\_\_, 20\_\_, between DrupalCon Inc., dba Drupal Association ("DA") and \_\_\_\_\_ ("Licensee") (the "Agreement"). All undefined terms which are capitalized in this Exhibit will have the meaning set forth in the Agreement.

*[Insert "DrupalCon License Rules"]*

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