

Master Services Agreement

This Master Services Agreement (together with any Purchase Schedules, this “**Agreement**”) is a legally binding contract made by and between Deep Instinct and the party accepting this Agreement on its behalf and its Affiliates, if applicable (“**You**” or “**Licensee**”) and governs Your access and use of the Software (each of Deep Instinct and Licensee are also referred to as a “**Party**” and collectively as the “**Parties**”).

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING OR USING THE SOFTWARE. BY PLACING AN ORDER AND PURCHASING OR OTHERWISE OBTAINING ACCESS TO THE SOFTWARE, EITHER DIRECTLY OR THROUGH DEEP INSTINCT’S AUTHORIZED PARTNERS, BY INSTALLING AND/OR USING THE SOFTWARE, AND/OR BY CLICKING THE “**I ACCEPT**” OR “**I AGREE**” BUTTON AS PART OF THE DEPLOYMENT OF THE SOFTWARE, YOU ARE REPRESENTING, WARRANTING AND EXPRESSLY AGREEING THAT YOU HAVE READ AND CAREFULLY REVIEWED THE TERMS AND CONDITIONS OF THIS AGREEMENT, UNDERSTAND THEM, AND AGREE TO BE LEGALLY BOUND BY THEM. YOU AGREE THAT YOU ARE AUTHORIZED ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY AND REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY AND ARE LAWFULLY PERMITTED TO BIND SUCH LEGAL ENTITY TO THIS AGREEMENT (AND IN SUCH EVENT, “**YOU**” AND “**LICENSEE**” AS USED HEREIN SHALL REFER TO SUCH LEGAL ENTITY). IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU HAVE NOT READ AND UNDERSTOOD AND OR SUCH LEGAL ENTITY DO NOT AGREE TO FOLLOW AND BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU SHALL NOT PLACE AN ORDER FOR, INSTALL OR USE, AND SHALL NOT BE GRANTED USE OF THE SOFTWARE.

1. **SCOPE.** This Agreement governs Licensee’s use of the Software. All Purchase Schedules are expressly conditioned on Licensee’s acceptance of all of the terms and conditions set forth herein. All Purchase Schedules along with all Annexes attached hereto shall be deemed a part of and subject to this Agreement. In the event of inconsistencies or conflicts between this Agreement and any Purchase Schedule or Annex, the terms of this Agreement will control, unless the Purchase Schedule or Annex expressly states that it supersedes a specifically identified provision in this Agreement. Variance from or addition to the terms and conditions of this Agreement in any Licensee issued purchase schedule or other written notification from Licensee will be of no force or effect, unless otherwise expressly acknowledged and agreed in writing by Deep Instinct.
2. **Definitions.**
 - 2.1. “**Affiliate**” means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party, for as long as such control exists.
 - 2.2. “**Combined Solution**” means the Licensee Software where Licensee had bundled, embedded, incorporated or combined any portion of the Deep Instinct Software object code which Combined Solution is then provided to Customers.
 - 2.3. “**Customer**” means any person or entity subscribing and/or using the Combined Solution from Licensee.
 - 2.4. “**Deep Instinct**” means Deep Instinct Ltd., Deep Instinct (USA), Inc., Deep Instinct (UK) Limited, Deep Instinct K.K., Deep Instinct (Germany) GmbH and/or any other Deep Instinct Affiliates.
 - 2.5. “**Documentation**” means the written and/or electronic manuals regarding the installation and use of the Software that are provided by DI to Licensee together with the delivery of the Software.
 - 2.6. “**Scanned Files**” means the electronic files uploaded by Customer into the Combined Solution.
 - 2.7. “**Intellectual Property Rights**” means any and all now known or hereafter existing (a) rights associated with works of authorship throughout the universe, including exclusive exploitation rights, copyrights, moral rights, and mask works, (b) trade secret rights and rights in confidential and proprietary information, (c) patents, inventions, designs, and algorithms, (d) other intellectual and industrial property and proprietary rights of every kind and nature throughout the world, whether arising by operation of law, by contract or license, or otherwise, (e) trademarks, service marks, trade dress and similar rights, and (f) all registrations, applications, renewals, extensions, combinations, divisions, or reissues of any of the foregoing.
 - 2.8. “**Licensee Software**” means the hosted products and services provided by Licensee that permits any Customer end users to access online content storage and enables sharing, processing and other related

features, developed, marketed and distributed by Licensee.

- 2.9. "**Purchase Schedule**" means the purchase schedule executed by and between Licensee and DI or authorized partner that references and incorporates this Agreement and that identifies the Software licensed hereunder and any applicable licensing and/or billing parameters.
 - 2.10. "**Deep Instinct Software**" means, collectively, (a) the executable code form of DI's software programs and applications (and each of their components) identified in a Purchase Schedule and as provided or made available to Licensee by an authorized partner or DI subject to compliance with this Agreement, and (b) any software updates that DI may provide to Licensee but only to the extent such software updates are not provided under separate license terms.
3. License Grant.
- 3.1. Enterprise License. Subject to the terms and conditions herein, DI hereby grants Licensee a limited, non-exclusive, non-transferable, non-sublicensable license during the Term (as defined below) to (i) Deploy the Deep Instinct Software and the Combined Solution on Licensee's owned or controlled environments or systems and host and manage the Deep Instinct Software and the Combined Solution on behalf of Customers; (ii) use the Deep Instinct Software in executable code form solely as part of the Combined Solution which it provides to its Customers ; (iii) install and use the Deep Instinct Software in object code form to internally maintain, support, and test the Combined Solution; and (iv) the right to maintain one copy of the Deep Instinct Software on its systems for backup and recovery purposes. Licensee shall be solely responsible to ensure that the Deep Instinct Software is properly used. Licensee agrees that its license of the Deep Instinct Software is not contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by DI with respect to future functionality or features.
 - 3.2. Upon the sooner of either (i) expiration or termination of this Agreement in accordance with section 11 or (ii) the expiration or termination of the agreement with the authorized partner, Licensee is obligated to uninstall and remove all instances of the Software from its environment. The Deep Instinct Software will not provide any of its intended functionality upon expiration or termination of this Agreement, and DI shall have no responsibility or liability for Licensee's failure to abide by its obligation to cease using, and delete all instances of, the Deep Instinct Software.
 - 3.3. Licensee is solely responsible for the use of the Deep Instinct Software, including any actions that violate the terms of this Agreement. Licensee shall use commercially reasonable efforts to prevent unauthorized access to or use of the Deep Instinct Software and shall promptly notify DI of any unauthorized access or use of the Deep Instinct Software.
4. Prohibited Uses. Other than the rights explicitly granted in this Agreement, and for the sole purpose as stated in Section 3 above, Licensee shall have no other rights, express or implied, in the Deep Instinct Software. Without limiting the generality of the foregoing, Licensee agrees and undertakes not to allow any party to, directly or indirectly: (i) sell, lease, sublicense, rent, loan, or distribute the Software or Documentation, or any part thereof, or otherwise transfer the Deep Instinct Software or Documentation; (ii) reverse engineer, decompile, disassemble, or otherwise attempt to derive the Deep Instinct Software's source code (or any part thereof) or any third party software provided by DI; (iii) modify, revise, enhance, alter, translate or create derivative works from the Deep Instinct Software or Documentation; (iv) copy or allow copies of the Deep Instinct Software to be made, unless expressly permitted herein; (v) represent that Licensee possesses any proprietary interest in the Deep Instinct Software; (vi) use the Deep Instinct Software in any illegal manner or for unlawful purposes; (vii) provide the Deep Instinct Software as a service to third parties, including but not limited to on a service bureau, SaaS, or time-sharing basis; (viii) unbundle any component of the Deep Instinct Software or any part thereof; (ix) use the Documentation except for supporting Licensee's authorized use of the Deep Instinct Software; (x) employ or authorize a DI competitor to use or view the Deep Instinct Software or Documentation, or to provide management, hosting, support or similar services with regard to the Deep Instinct Software without the prior written consent of DI; (xi) use the Deep Instinct Software or Documentation in any manner to build a product that competes with the Deep Instinct Software; (xii) disclose to any third party the results of testing or benchmarking the Deep Instinct Software; (xiii) remove or alter any proprietary notices, labels, or marks in the Deep Instinct Software or Documentation; (xiv) circumvent or disable the Deep Instinct Software's protection or license management mechanisms; or (xv) otherwise use the Deep

Instinct Software except as expressly allowed under Section 3.

5. Payment; Additional Licenses; Reporting; Taxes.

- 5.1. Licensee shall pay DI (or its authorized partner, as may be applicable) the fees set forth in the applicable Purchase Schedule on the payment schedule set forth therein. All fees are non-refundable. Deep Instinct may increase the fees up to 10% once per calendar year following the first anniversary of the Effective Date.
- 5.2. Every three (3) months (starting on the three (3) month anniversary of the Effective Date and continuing until the expiration or termination of the Agreement), DI shall have the right, and Licensee shall provide DI with the necessary access and information, to audit the overall usage of the Combined Solution and the Deep Instinct Software during the immediately preceding three (3) month period (the "Overall Usage"). Such audit may involve reviewing the actual number of Scanned Files per month, storage capacity covered, and user count. If the actual number of scanned files per month exceed the number scanned files purchased by Licensee in the applicable Purchase Schedule, then Deep Instinct shall submit the Licensee an invoice for the additional usage.
- 5.3. DI fees do not include any local, state, federal or foreign taxes, levies or duties of any nature, including value-added, sales use or withholding taxes ("**Taxes**"). Licensee is responsible for paying all Taxes, excluding only taxes based on DI's net income. If DI has the legal obligation to pay or collect any Taxes for which Licensee is responsible under this Section, the appropriate amount shall be invoiced to and paid by Licensee unless Licensee provides DI with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 5.4. Disputed amounts. If any portion of an amount due to Deep Instinct under this Agreement is subject to a bona fide dispute, the Licensee shall, within four-teen (14) days as of invoice date, give written notice to Deep Instinct of the amounts it disputes ("Disputed Amounts") and include in such written notice the specific details and reasons for disputing each item. The Licensee shall pay when due all undisputed amounts. The Parties shall diligently proceed to resolve such Disputed Amounts.
- 5.5. Overdue Payments; Interest. On overdue balances, Deep Instinct may suspend delivery or continued availability of its Products and/or Services until all past due payments are made in full, provided that Deep Instinct provides Licensee seven (7) days advance notice of its intention of suspension. Any payments of any undisputed amounts made after the due date shall bear interest of the lesser of either (a) 1.5% per month or (b) the maximum rate permitted by Applicable Law. Such interest shall be calculated starting on the day after the amounts are due and shall continue to accrue such interest until such payment is made.

6. Support and Maintenance Services. Support and maintenance services shall be provided in accordance with the support and maintenance terms and conditions specified in the following link <https://www.deepinstinct.com/pdf/support-services-guide> (the "**Maintenance and Support Terms**") which are subject to change by DI from time to time. For the avoidance of doubt, if Licensee is eligible for certain premium support features or extended warranties pursuant to the Maintenance and Support Terms, the terms of this Agreement shall not void them.

7. Title & Ownership; Data Usage.

- 7.1. Licensee acknowledges that the Deep Instinct Software (including its structure, organization, and source code) and Documentation are valuable trade secrets and property of DI or its suppliers and any disclosure or unauthorized use thereof will cause irreparable harm and loss to DI and/or its suppliers. All right, title and interest in and to the Deep Instinct Software and Documentation, and any derivatives thereof and modifications thereto, and all associated Intellectual Property Rights evidenced thereby or embodied therein, are and will remain exclusively owned by DI and/or its suppliers. Except for the limited license rights granted to Licensee in Section 3, this Agreement does not convey to Licensee any interest in or to the Deep Instinct Software. All rights to the Deep Instinct Software and Documentation not expressly granted herein are reserved by DI and its suppliers. Nothing in this Agreement constitutes a waiver of DI's and/or its suppliers' Intellectual Property Rights under any law.
- 7.2. Licensee undertakes to receive all required approvals for each and every file before sending the file to the Combined Solution. DI shall have no responsibility towards the Customer(s) and Licensee shall, at its own expense, defend DI from and against any and all claims made by third parties relating to the use of the

Combined Solution by Licensee and shall indemnify DI from and against all Losses to the extent based upon such claims (in accordance with Section 12 herein).

7.3. Notwithstanding anything to the contrary herein, Licensee acknowledges and agrees that DI may collect, compile, analyze, use, and store data and information related to the performance, operation, and use of the Deep Instinct Software (such as usage data, metrics, and metadata), and data derived therefrom, in aggregated form (collectively, “**Analyses Data**”) for security and operations management, product development and improvement, support and maintenance services, research and development purposes, and to create statistical analyses and contribute to analytical models used by DI. DI may disclose Analyses Data, provided that such Analyses Data does not incorporate Licensee’s Confidential Information, or Personal Data in a form that could serve to identify Licensee or any individual. DI owns and retains all Intellectual Property Rights in all Analyses Data.

8. Confidentiality.

8.1. The term “**Confidential Information**” means, except as set forth in Section 9.2: (a) as pertaining to DI, the Deep Instinct Software, Documentation, and Analyses Data; (b) the terms of this Agreement; and (c) any other commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that: (i) in the case of information in tangible form, is marked “confidential” or “proprietary;” (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information.

8.2. Notwithstanding the foregoing, the following shall not be Confidential Information: (a) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (b) information that was rightfully in the receiving party’s possession without restriction prior to disclosure; (c) information that was rightfully disclosed to the receiving party by a third party without restriction; and (d) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party’s Confidential Information.

8.3. Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use Confidential Information except to the extent necessary to perform its obligations or exercise its rights under this Agreement or as directed by the disclosing party in writing. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who are subject to confidentiality and non-use obligations at least as restrictive as those in this Section 9.3. Either party may disclose Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation, provided that prior written notice of such disclosure is furnished to the disclosing party as soon as practicable in order to afford it an opportunity to seek a protective order.

8.4. The receiving party shall notify the disclosing party immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any breach of this Section by the receiving party, and shall fully cooperate with the disclosing party to assist the disclosing party to prevent the further prohibited use or disclosure of the Confidential Information.

9. Warranty; Disclaimer.

9.1. For a period of ninety (90) days (“**Warranty Period**”) following the date the Deep Instinct Software is first made available to Licensee, DI represents and warrants to Licensee that the Deep Instinct Software materially conforms to the specifications specified in the relevant Documentation. Licensee’s sole and exclusive remedy and the entire liability of DI for any breach of the foregoing warranty shall be that DI will use commercially

reasonable efforts to repair, replace or re-install the non-conforming Deep Instinct Software, or if DI cannot substantially correct the non-conforming Deep Instinct Software in a commercially reasonable manner and timeframe, Licensee may terminate this Agreement and DI will refund to Licensee the fees for the non-conforming Deep Instinct Software that Licensee pre-paid to DI for the period following the effective date of such termination. The foregoing warranty is contingent upon DI's receipt of written notice of warranty breach from Licensee as soon as reasonably possible during the Warranty Period.

- 9.2. The warranty set forth in Section 10.1 does not apply if the applicable Deep Instinct Software (i) has been modified, except by or at the direction of DI, (ii) has not been installed, used, or maintained in accordance with this Agreement and the Documentation, (iii) has been subjected to abnormal physical or electrical stress, misuse, negligence or accident, or (iv) is used with equipment, products or systems not specified in the Documentation.
- 9.3. DI DOES NOT WARRANT THAT THE DEEP INSTINCT SOFTWARE WILL BE ERROR-FREE OR ITS USE UNINTERRUPTED, THAT DI WILL BE ABLE TO CORRECT ANY ERRORS WITH THE DEEP INSTINCT SOFTWARE, OR THAT THE DEEP INSTINCT SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS. DI IS NOT RESPONSIBLE OR LIABLE FOR ANY ISSUES RELATED TO THE PERFORMANCE, OPERATION OR SECURITY OF THE DEEP INSTINCT SOFTWARE THAT ARISE FROM LICENSEE'S SYSTEMS OR DEVICES, OR APPLICATIONS OR SERVICES PROVIDED BY THIRD PARTIES. DI IS NOT RESPONSIBLE OR LIABLE FOR ANY DATA THAT IS DELAYED, LOST, ALTERED, INTERCEPTED, OR STORED DURING ITS TRANSMISSION ACROSS NETWORKS NOT OWNED OR OPERATED BY DI, INCLUDING THE INTERNET AND LICENSEE'S LOCAL NETWORKS.
- 9.4. EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10.1 AND TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, THE DEEP INSTINCT SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT WARRANTY OF ANY KIND, AND DI AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

10. **OWNERSHIP**

- 10.1. All right, title and interest in the Deep Instinct Software, Services and/or Documentation, and all modifications, derivative works and enhancements to the foregoing, and all Intellectual Property Rights therein or related thereto, shall remain with Deep Instinct. For the avoidance of doubt, use of the terms such as "purchase", "sell" and "resell" when used in reference to the Deep Instinct Software and/or Services means the granting of a license to use any such software, that comprises or is embedded in a Deep Instinct Software or Service, but not transfer of any Intellectual Property Rights.
- 10.2. Nothing in this Agreement shall be deemed an assignment of, or otherwise restrict Deep Instinct's use of, Deep Instinct's trademarks or other Intellectual Property Rights, all of which trademarks and other Intellectual Property Rights shall continue to be owned by Deep Instinct. Deep Instinct reserves all rights not expressly granted to Licensee hereunder, and no right or license is granted to Licensee by implication or estoppel.

11. **Term; Termination; Suspension.**

- 11.1. The initial term of this Agreement will be as specified in the applicable Purchase Schedule ("**Initial Term**" and, together with any Renewal Term, the "**Term**"). A "**Renewal Term**" shall be agreed by the Parties in an additional Purchase Schedule. Upon the expiration of the Initial Term, this Agreement will renew for the Renewal Term or will be expired.
- 11.2. Either party may terminate this Agreement: (a) upon thirty (30) days' written notice of a material breach by the other party, unless the breach is cured within the 30-day notice period, or (b) immediately, if the other party ceases to do business, becomes insolvent, or seeks protection under any bankruptcy or comparable proceedings.
- 11.3. DI reserves the right to suspend Licensee's and any of its Affiliate's access to and/or use of the Deep Instinct Software and or support and maintenance services if any undisputed payment is due but unpaid but only after DI has provided Licensee a delinquency notice, and at least thirty (30) days have passed since the transmission

thereof. Licensee agrees that DI shall not be liable to Licensee or to any of its Affiliates or any third party for any suspension pursuant to this Section.

- 11.4. Upon termination of this Agreement: (i) the license granted to Licensee in this Agreement shall immediately terminate and Licensee shall cease all further use of the Deep Instinct Software and promptly, permanently, and securely remove all copies of the Software from its systems and devices, and confirm such removal in writing to DI; and (ii) each party shall promptly return to the other party, or at the other party's option, promptly, permanently and securely erase and destroy, all tangible property representing the other party's Confidential Information and all copies thereof. If this Agreement is terminated by Licensee for any reason other than a termination expressly permitted by this Agreement, then DI shall be entitled to all of the fees due under this Agreement for the remainder of the then current Term. If this Agreement is terminated as a result of DI's material breach of this Agreement, then Licensee shall be entitled to a refund of the pro rata portion of any fees pre-paid by Licensee to DI under this Agreement for the terminated portion of the Term. The following provisions of this Agreement shall survive any termination of this Agreement: Sections 3, 4, 5, 8, 9, 10, 12, 13 and 16.

12. Indemnification.

- 12.1. DI shall, at its own expense, defend Licensee from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "**Claims**") alleging that the Deep Instinct Software, as delivered to Licensee by DI and used by Licensee in accordance with this Agreement and the Documentation, infringes such third party's patents, copyrights or trademarks, or misappropriates such third party's trade secrets, and shall indemnify Licensee from and against liability, damages, and costs finally awarded or entered into in settlement (including reasonable attorneys' fees) (collectively, "**Losses**") to the extent based upon such Claim(s). DI will have no liability for Claims or Losses to the extent arising from (a) use of the Deep Instinct Software in violation of this Agreement or applicable law; (b) use of the Deep Instinct Software after DI notifies Licensee to discontinue use because of an infringement or misappropriation claim; (c) modifications to the Deep Instinct Software not made by DI or made by DI based on Licensee's specifications or requirements; (d) use of the Deep Instinct Software in combination with any non-DI software, hardware or service not set forth in the Documentation or otherwise approved in writing by DI; or (e) Licensee's use of any version of the Deep Instinct Software which is not the latest available version of the Deep Instinct Software provided by DI to Licensee. If the Deep Instinct Software or part thereof becomes, or in DI's opinion may become, subject to an infringement or misappropriation Claim or Licensee's use thereof may be otherwise enjoined, DI will, at its sole option and expense, use commercially reasonable efforts either (i) to procure a license that will protect Licensee against such Claim without cost to Licensee; (ii) to modify or replace all or portions of the Deep Instinct Software as needed to avoid infringement or misappropriation, such update or replacement having substantially similar or better capabilities; or (iii) if (i) and (ii) are not commercially feasible, terminate the Agreement and refund to the Licensee a pro-rata refund of the fees pre-paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted to Licensee under this Section state DI's entire liability, and Licensee's exclusive remedy, with respect to any claim of infringement or misappropriation of the Intellectual Property Rights of a third party by DI or the Deep Instinct Software.

- 12.2. In the event of a potential indemnity obligation under this Section 12, the indemnified party shall: (a) promptly notify the indemnifying party in writing of such Claim; (b) allow the indemnifying party to have sole control of its defense and settlement; and (c) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section 12 are expressly conditioned upon the indemnified party's compliance with this Section 12 except that failure to notify the indemnifying party of such Claim shall not relieve that party of its obligations under this Section 12 but such obligations shall be reduced to the extent of any damages attributable to such failure.

13. Limitation of Liability.

- 13.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER PARTY OR ITS AFFILIATES

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING AS ARISING OUT OF ANY SOFTWARE, SERVICES, MAINTENANCE OR SUPPORT HEREUNDER, FOR ANY LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES SHALL BE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 13.2 BELOW.

- 13.2. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EITHER PARTY AND ITS AFFILIATES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING AS ARISING OUT OF ANY SOFTWARE, SERVICES, MAINTENANCE OR SUPPORT HEREUNDER, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, SHALL NOT EXCEED THE TOTAL FEES PAID TO DI BY LICENSEE DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE, BUT IN THE EVENT OF A BREACH OF SECTION 9 OF THIS AGREEMENT, SUCH MAXIMUM AGGREGATE LIABILITY SHALL BE INCREASED TO THE TOTAL FEES PAID DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OUT OF WHICH THE LIABILITY AROSE.
- 13.3. BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN SECTION 13.2 SHALL NOT APPLY TO: (A) FEES DUE UNDER THIS AGREEMENT; (B) A BREACH OF SECTIONS 4 AND/OR 9 OF THIS AGREEMENT; OR (C) EITHER PARTY'S DEFENSE AND INDEMNITY OBLIGATIONS UNDER SECTION 12 OF THIS AGREEMENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS SECTION 13, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.
14. Records; Audits. During this Agreement and for a period of three (3) years thereafter, Licensee shall keep accurate financial records and accounts in accordance with standard business practices including, but not limited to, Customer counts and logs and related information required in order to verify fees due to Deep Instinct. During the same time period and with reasonable advance notice, Licensee shall permit Deep Instinct or any of its designated representatives (including Deep Instinct's independent accountants) to audit the applicable Licensee records and facilities in order to verify Licensee's compliance with the terms of this Agreement. Any such audit will be conducted during regular business hours at Licensee's facilities and will be paid for by Deep Instinct; however, in the event that such audit determines that Licensee underpaid Deep Instinct by more than 5% of the total amount actually due to Deep Instinct during the audit period, Licensee shall reimburse Deep Instinct for all audit costs in addition to the underpaid amounts and interest due thereon. Deep Instinct may not exercise this right more than once per calendar year and will perform the audit in a way so as to minimize any disruption to Licensee's normal business operations.
15. In-Licensed Materials and Open Source. The Deep Instinct Software may contain or may operate with software, services or other technology that is not owned by DI but has been licensed to DI by a third party and is necessary for the normal operation of the Deep Instinct Software, including software and technology that is made available to DI under open source or free software licenses (collectively, "**In-Licensed Materials**"). The In-Licensed Materials may be subject to additional terms and conditions, as identified in the Documentation, or as otherwise made available to Licensee. Any fees charged by DI in connection with the Deep Instinct Software do not apply to any

In-Licensed Materials for which fees may not be charged under the applicable In-Licensed Materials licenses. All In-Licensed Materials are provided "AS IS" without warranty of any kind, and subject to the applicable license terms attached to such In-Licensed Materials or if no such terms are attached, then under the terms of this Agreement and accordingly, the restrictions contained in this Agreement shall apply to such In-Licensed Materials.

16. Affiliates. An Affiliate of Licensee may purchase a license to the Deep Instinct Software by executing a separate agreement with DI or through DI's acceptance of a Purchase Schedule issued by such Affiliate. Upon the execution by DI and such an Affiliate of Licensee of such a participation agreement or Purchase Schedule referring to this Agreement, such Affiliate shall be deemed to have purchased a license to the Deep Instinct Software hereunder, and such Affiliate shall be bound by and shall comply with all of the terms and conditions of this Agreement as a "**Licensee**" under this Agreement.
17. Governing Law; Equitable Relief. If the Licensee that has purchased access and use of the Software in UK or EMEA, then this Agreement shall be governed by and construed in accordance with the laws of England and Wales, without regard to conflict of laws principles, and all claims arising out of, or relating to, this Agreement or the Software shall be brought exclusively in the courts of England and Wales; If the Licensee that has purchased access and use of the Software in Japan, then this Agreement shall be governed by and construed in accordance with the laws of Japan without regard to conflict of laws principles, and all claims arising out of, or relating to, this Agreement or the Software shall be brought exclusively in the courts of the Tokyo District Court; If the Licensee that has purchased access and use of the Software is located in any other country, then this Agreement shall be governed by and construed in accordance with the laws of the State of New York, notwithstanding its conflicts of law principles, and all claims arising out of or relating to this Agreement or the Software shall be brought exclusively in the federal or state courts located in New York. The parties waive any right to a jury trial in any litigation arising out of or relating to this Agreement or the Software. The parties agree that the UN Convention on Contracts for the International Sale of Goods (CISG, Vienna, 1980) shall not apply to this Agreement.
18. General. This Agreement (including, for the avoidance of doubt, all Purchase Schedules, appendices and policies referenced herein) constitutes the entire agreement between the parties and may not be modified except by a written amendment signed by each party. If a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to affect the intent of the parties, and the remainder of the Agreement shall continue in full force and effect. This Agreement shall inure to benefit and bind the parties hereto, their successors and permitted assigns, but neither party may assign this Agreement, in whole or in part, without written consent of the other, except that DI may assign this Agreement without consent to an Affiliate or to the successor of all or substantially all of DI's business or assets to which this Agreement relates. No waiver of any breach shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party. There are no third-party beneficiaries to this Agreement. This Agreement does not create any joint venture, partnership, agency, or employment relationship between the parties. Neither party shall be liable for loss, delay, nonperformance (excluding payment obligations) to the extent resulting from any force majeure event, including, but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts or orders or restrictions, failure of suppliers, labor stoppage or dispute, or shortage of materials, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible. All notices or other communications required or permitted to be given under this Agreement will be in writing and sent via commercial overnight courier to each party at the address specified on the Purchase Schedule or such other address as the party provides to the other in writing, except that operational communications regarding may be delivered by email. DI may list Licensee as a customer of DI and a licensee of the Software on DI's website and marketing and other promotional materials.