SOFTWARE LICENSE AND SERVICES AGREEMENT

This Software License and Services Agreement (the "<u>Agreement</u>") is entered into as of _____ (the "<u>Effective Date</u>") by and between DeepSee.ai Inc. ("<u>DeepSee</u>") and _____ ("<u>Customer</u>"). This Agreement, together with any and all Exhibits, Statements of Work, and Orders, governs Customer's purchase and use of DeepSee Services. Capitalized terms have the definitions set forth herein.

WHEREAS, the Services may not be accessed for purposes of monitoring their availability, performance, or functionality, or for any other competitive purposes;

WHEREAS, DeepSee's direct competitors are prohibited from accessing the Services, except with DeepSee's prior written consent;

WHEREAS, Customer desires to obtain from DeepSee, and DeepSee desires to grant to Customer, a right to access and use the Services;

WHEREAS, the parties intend for this Agreement to permit Customer and its Affiliates to access and use the Services for the internal use and benefit of Customer and its Affiliates;

NOW, **THEREFORE**, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. DEFINITIONS

1.1 "<u>Affiliate</u>" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 "<u>Agreement</u>" means this Software License and Services Agreement, together with any and all Exhibits, Statements of Work, and Orders.

1.3 "<u>Beta Services</u>" means DeepSee services or functionality that may be made available to Customer to try at its option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

1.4 "<u>Content</u>" means information obtained by DeepSee from publicly available sources or its third-party content providers and made available to Customer through the Services, Beta Services or pursuant to an Order, as more fully described in the Documentation (as defined below).

1.5 "<u>Customer</u>" means _____, with offices located _____.

1.6 "<u>Customer Data</u>" means electronic data and information submitted by or for Customer to the Services, excluding Content and Non-DeepSee Applications (as defined below) that are not provided by Customer.

1.7 "Documentation" means the applicable DeepSee usage guides and policies, as updated from time to time, as published and made available to DeepSee's users upon request.

1.8 "Intellectual Property" means all (i) patents, patent applications, patent disclosures and inventions (whether patentable or not); (ii) trademarks, service marks, trade dress, trade names, logos, corporate names, Internet domain names, and registrations and applications for the registration thereof together with all of the goodwill associated therewith; (iii) copyrights and copyrightable works (including computer programs and mask works) and registrations and applications thereof; (iv) trade secrets, know-how and other Confidential Information; (v) waivable or assignable rights of publicity, waivable or assignable moral rights; and (vi) all other forms of intellectual property, such as software, methods, documentation, templates, processes, reports, designs, drawings, specifications, data and databases.

1.9 "Marketplace" means an online directory, catalog, or marketplace of applications that interoperate with the Services.

1.10 "Non-DeepSee Application" means a Web-based, mobile, offline, or other software application functionality that interoperates with a Service, that is provided by Customer or a third party, and/or listed on a Marketplace. Non-DeepSee Applications, other than those obtained or provided by Customer, will be identifiable as such.

1.11 "Open Source Software" means any: (a) software, or portion thereof, subject to any Open Source License, or (b) other third-party component, or portion thereof, in each case, linked to, incorporated into, used or combined with, and/or required to be accessed or downloaded for the proper operation of, the then-current version or release of DeepSee's software or the Services.

1.12 "Order" means the document entered into and executed by and between DeepSee and Customer (or their Affiliates) pursuant to which Customer commits to purchase and DeepSee commits to provide the Services specified in the document. By entering into and executing an Order, an Affiliate agrees to be bound by the terms of this Agreement as if it were an original party hereto.

1.13 "Purchased Services" means Services that Customer or Customer's Affiliate purchases under an Order or online purchasing portal.

1.14 "Services" means the products and services that are ordered by Customer under an Order or online purchasing portal or provided to Customer free of charge (as applicable) or under a free trial, and made available online by DeepSee, including associated DeepSee offline or mobile components, as described in the Documentation. "Services" exclude Content and Non-DeepSee Applications.

1.15 "DeepSee" means DeepSee.ai, Inc. with offices located at 13907 South Minuteman Drive, Suite 175, Draper, Utah 84020.

1.16 "User" means, in the case of an individual accepting these terms on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of a company or other legal entity, an individual who is authorized by Customer to use a Service, for whom Customer has purchased a subscription (or in the case of any Services

provided by DeepSee without charge, for whom a Service has been provisioned), and to whom Customer (or, when applicable, DeepSee at Customer's request) has supplied a user identification and password (for Services utilizing authentication). Users may include, for example, employees, consultants, contractors, and agents of Customer, and third parties with which Customer transacts business.

1.17 "<u>Viral Material</u>" means any material (including, without limitation, data, code, computer software, computer database, software libraries or files, documentation, specifications, design drawings, reports, blueprints and the like, or portions thereof) licensed under an agreement that requires, or purports to require, the user, to do any of the following as a condition of use, modification, distribution, and/or remote access through a computer network either of such material itself or of other material incorporated into, derived from, linked to, or used, made available, combined or distributed with, such licensed material: (a) make available any source code, object code, or design information thereof; (b) grant any permission to create modifications to or derivative works thereof; (c) include any attribution of authorship or copyright notices thereof; (d) replicate, make available, and/or distribute license terms thereof; or (e) grant any licenses under the user's intellectual property rights.

2. **DEEPSEE RESPONSIBILITIES**

2.1 **Provision of Purchased Services.** DeepSee will (a) make the Purchased Services and Content available to Customer pursuant to this Agreement and the applicable Order and Documentation; (b) provide applicable DeepSee standard support for the Purchased Services to Customer at no additional charge and/or upgraded support if purchased; (c) use commercially reasonable efforts to make the online Purchased Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which DeepSee shall give advance electronic notice); and (ii) any unavailability caused by circumstances beyond DeepSee's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike, or other labor problem (other than one involving DeepSee employees), Internet service provider failure or delay, Non-DeepSee Application, or denial of service attack (i.e., a Force Majeure Event, as defined below in <u>Section 12.11</u>); and (d) provide the Purchased Services in accordance with laws and government regulations applicable to DeepSee's provision of its Purchased Services to its customers generally, and subject to Customer's use of the Purchased Services in accordance with this Agreement, the Documentation, and the applicable Order.

2.2 **Protection of Customer Data.** DeepSee will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data, as described in the Documentation. Those safeguards will include, but will not be limited to, measures designed to prevent unauthorized access to or disclosure of Customer Data (other than by Customer or Users). The terms of the data processing addendum ("<u>DPA</u>") are hereby incorporated by reference and shall apply to the extent Customer Data includes Personal Data, as defined in the DPA, and will be made to Customer upon written request. To the extent Personal Data from the European Economic Area (EEA), the United Kingdom and Switzerland are processed by DeepSee, its Processor Binding Corporate Rules, the EU-US and/or Swiss-US Privacy Shield, and/or the Standard Contractual Clauses shall apply, as further set forth in the DPA. For the purposes of the Standard Contractual Clauses, Customer and its applicable Affiliates are each the data

exporter, and Customer's acceptance of this Agreement, and an applicable Affiliate's execution of an Order, shall be treated as its execution of the Standard Contractual Clauses and Appendices. Within fifteen (15) days after the effective date of the termination or expiration of this Agreement, DeepSee will return Customer Data to Customer as provided in the Documentation. After such return of Customer Data, DeepSee will have no obligation to maintain or provide any Customer Data, and as provided in the Documentation, will thereafter delete or destroy all copies of Customer Data in its systems or otherwise in its possession or control, unless legally prohibited.

2.3 **DeepSee Personnel.** DeepSee will be responsible for the performance of its personnel (including its employees and contractors) and their compliance with DeepSee's obligations under this Agreement, except as otherwise specified in this Agreement.

3. USE OF SERVICES AND CONTENT

3.1 **Subscriptions.** Unless otherwise provided in the applicable Order or Documentation, (a) Purchased Services and access to Content are purchased as subscriptions for the term stated in the applicable Order or in the applicable online purchasing portal, (b) subscriptions for Purchased Services may be added during a subscription term at the same pricing as the underlying subscription pricing, prorated for the portion of that subscription term remaining at the time the subscriptions are added, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by DeepSee regarding future functionality or features.

3.2 **Usage Limits.** Services and Content are subject to usage limits specified in Orders and Documentation. If Customer exceeds a contractual usage limit, DeepSee may work with Customer to seek to reduce Customer's usage so that it conforms to that limit. If, notwithstanding DeepSee's efforts, Customer is unable or unwilling to abide by a contractual usage limit, Customer will execute an Order for additional quantities of the applicable Services or Content promptly upon DeepSee's request and/or pay any invoice for excess usage in accordance with the "Invoicing and Payment" section below.

3.3 **Customer Responsibilities.** Customer will (a) be responsible for Users' compliance with this Agreement, Documentation, and Orders; (b) be responsible for the accuracy, quality and legality of Customer Data, the means by which Customer acquired Customer Data, Customer's use of Customer Data with the Services, and the interoperation of any Non-DeepSee Applications with which Customer uses the Services or Content; (c) use commercially reasonable efforts to prevent unauthorized access to or use of Services and Content, and notify DeepSee promptly of any such unauthorized access or use; (d) use Services and Content only in accordance with this Agreement, Documentation, the Acceptable Use and External Facing Services Policy, which will be made available to Customer upon written request; Orders, and applicable laws and government regulations; and (e) comply with terms of service of any Non-DeepSee Applications with which Customer uses Services or Content. Any use of the Services in breach of the foregoing by Customer or Users that in DeepSee's judgment threatens the security, integrity, or availability of DeepSee's Services, may result in DeepSee's immediate suspension of the Services; however, DeepSee will use commercially reasonable efforts to provide Customer

with notice and an opportunity to remedy such violation or threat prior to any such suspension.

3.4   **Usage Restrictions.**   Customer will not (a) make any Service or Content available to anyone other than Customer or Users, or use any Service or Content for the benefit of anyone other than Customer or its Affiliates, unless expressly stated otherwise in an Order or the Documentation; (b) sell, resell, license, sublicense, distribute, make available, rent, or lease any Service or Content, or include any Service or Content in a service bureau or outsourcing offering; (c) use a Service or Non-DeepSee Application to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights; (d) use a Service or Non-DeepSee Application to store or transmit Viral Material; (e) interfere with or disrupt the integrity or performance of any Service or third-party data contained therein; (f) attempt to gain unauthorized access to any Service or Content or its related systems or networks; (g) permit direct or indirect access to or use of any Services or Content in a way that circumvents a contractual usage limit, or use any Services to access or use any of DeepSee intellectual property except as permitted under this Agreement, an Order, or the Documentation; (h) modify, copy, or create derivative works based on a Service or any part, feature, function, or user interface thereof; (i) copy Content except as permitted herein or in an Order or the Documentation; (j) frame or mirror any part of any Service or Content, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation; (k) except to the extent permitted by applicable law, disassemble, reverse engineer, or decompile a Service or Content or access it to (l) build a competitive product or service; (m) build a product or service using similar ideas, features, functions, or graphics of the Service; (n) copy any ideas, features, functions, or graphics of the Service; or (o) determine whether the Services are within the scope of any patent.

3.5   **Removal of Content and Non-DeepSee Applications.**   If Customer receives notice that Content or a Non-DeepSee Application must be removed, modified, and/or disabled to avoid violating applicable law, third-party rights, or the Acceptable Use and External Facing Services Policy, Customer will promptly do so. If Customer does not take required action in accordance with the above, or if in DeepSee's judgment continued violation is likely to reoccur, DeepSee may disable the applicable Content, Service, and/or Non-DeepSee Application. If requested by DeepSee, Customer shall confirm such deletion and discontinuance of use in writing and DeepSee shall be authorized to provide a copy of such confirmation to any such third-party claimant or governmental authority, as applicable. In addition, if DeepSee is required by any third-party rights holder to remove Content or receives information that Content provided to Customer may violate applicable law or third-party rights, DeepSee may discontinue Customer's access to Content through the Services.

4.   **NON-DEEPSEE PRODUCTS AND SERVICES**

4.1   **Non-DeepSee Products and Services.**   DeepSee or third parties may make available (e.g., through a Marketplace or otherwise) third-party products or services, including, for example, Non-DeepSee Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any Non-DeepSee provider, product, or service is solely between Customer and the applicable Non-DeepSee provider. DeepSee does not warrant or support

Non-DeepSee Applications or other Non-DeepSee products or services, whether or not they are designated by DeepSee as "certified" or otherwise, unless expressly provided otherwise in an Order. DeepSee is not responsible for any disclosure, modification, or deletion of Customer Data resulting from access by such Non-DeepSee Application or its provider.

4.2 **Integration with Non-DeepSee Applications.** The Services may contain features designed to interoperate with Non-DeepSee Applications. DeepSee cannot guarantee the continued availability of third-party Service features and may cease providing them without entitling Customer to any refund, credit, or other compensation, if, for example, and without limitation, the provider of a Non-DeepSee Application ceases to make the Non-DeepSee Application available for interoperation with the corresponding Service features in a manner acceptable to DeepSee.

5. **FEES AND PAYMENT**

5.1 **Fees**. Customer will pay the fees specified in all Orders. Except as otherwise specified herein or in an applicable Order, (i) fees are based on Services and Content subscriptions purchased and not actual usage; (ii) payment obligations are non-cancelable and fees paid are non-refundable; and (iii) quantities purchased cannot be decreased during the relevant subscription term.

5.2 **Invoicing and Payment**. Customer will provide DeepSee with a valid purchase order. Payment for all Purchased Services listed in the Order for the initial subscription term and any renewal subscription term(s) as set forth in the "Term of Purchased Subscriptions" section below shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order. DeepSee will invoice Customer in advance and otherwise in accordance with the relevant Order. Unless otherwise stated in the Order, invoiced fees are due net 30 days from the date of the invoice. Customer is responsible for providing complete and accurate billing and contact information to DeepSee and notifying DeepSee of any changes to such information.

5.3 **Overdue Charges**. If any invoiced amount is not received by DeepSee by the due date, then, without limiting DeepSee's rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by applicable law, whichever is lower, and/or (b) DeepSee may condition future subscription renewals and Orders on payment terms shorter than those specified in the "Invoicing and Payment" section above.

5.4 **Suspension of Services and Acceleration**. If any charge owing by Customer under this or any other agreement for services is 30 days or more overdue, DeepSee may, without limiting its other rights and remedies, accelerate Customer's unpaid fee obligations under such agreements so that all such obligations become immediately due and payable, and suspend Services until such amounts are paid in full, provided that DeepSee will give Customer at least 10 days' prior notice that its account is overdue, in accordance with the "Manner of Giving Notice" section below for billing notices, before suspending services to Customer.

5.5   **Payment Disputes**. DeepSee will not exercise its rights under "Overdue Charges" or "Suspension of Service and Acceleration" section above if Customer is disputing the applicable charges reasonably and in good faith and is cooperating diligently to resolve the dispute.

5.6   **Taxes**. DeepSee's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with its purchases hereunder. If DeepSee has the legal obligation to pay or collect Taxes for which Customer is responsible under this section, DeepSee will invoice Customer and Customer will pay that amount unless Customer provides DeepSee with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, DeepSee is solely responsible for taxes assessable against it based on its income, property, and employees.

6.   PROPRIETARY RIGHTS AND LICENSES

6.1   **Reservation of Rights**. DeepSee and its Affiliates reserve all of their rights, title, and interest in and to its Services, Confidential Information, Documentation, and Intellectual Property that existed prior to and independent of the performance of Services. DeepSee also exclusively owns and retains all rights, title, and interest in all modifications, enhancements, and improvements developed, created, or otherwise made to its Services, Confidential Information, Documentation, and Intellectual Property during the term of this Agreement and any applicable Order.

6.2   **Access to and Use of Content**. Customer has the right to access and use applicable Content subject to the terms of applicable Orders, this Agreement, and the Documentation.

6.3   **License by Customer to DeepSee**. Customer grants DeepSee, its Affiliates, and applicable contractors a worldwide, limited-term license to host, copy, use, transmit, and display any Non-DeepSee Applications and program code created by or for Customer using a Service or for use by Customer with the Services, and Customer Data, each as appropriate for DeepSee to provide and ensure proper operation of the Services and associated systems in accordance with this Agreement. If Customer chooses to use a Non-DeepSee Application with a Service, Customer grants DeepSee permission to allow the Non-DeepSee Application and its provider to access Customer Data and information about Customer's usage of the Non-DeepSee Application as appropriate for the interoperation of that Non-DeepSee Application with the Service. Subject to the limited licenses granted herein, DeepSee acquires no right, title, or interest from Customer or its licensors under this Agreement in or to any Customer Data, Non-DeepSee Application, or such program code.

6.4   **License by Customer to Use Feedback**. Customer grants to DeepSee and its Affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into its Services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Users relating to the operation of DeepSee's or its Affiliates' Services.

7. CONFIDENTIALITY

7.1 **Definition of Confidential Information**. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of Customer includes Customer Data; Confidential Information of DeepSee includes the Services and Content, and the terms and conditions of this Agreement and all Orders (including pricing). Confidential Information of each party includes business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party without use of, reference to, or reliance on the other party's Confidential Information. For the avoidance of doubt, the non-disclosure obligations set forth in this "Confidentiality" section apply to Confidential Information exchanged between the parties in connection with the evaluation of additional DeepSee Services.

7.2 **Protection of Confidential Information**. As between the parties, each party retains all ownership rights in and to its Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of this Agreement or any Order to any third party other than its Affiliates, legal counsel, and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel, or accountants will remain responsible for such Affiliate's, legal counsel's, or accountant's compliance with this "Confidentiality" section. Notwithstanding the foregoing, each party may disclose the terms of this Agreement and any applicable Order to a subcontractor or Non-DeepSee Application Provider to the extent necessary to perform their respective obligations under this Agreement, under terms of confidentiality materially as protective as set forth herein.

7.3 **Compelled Disclosure.** Notwithstanding the above, Receiving Party may disclose certain Confidential Information of Disclosing Party, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid order of a court or other governmental body having jurisdiction, *provided that*, if legally permitted to do so, Receiving Party provides Disclosing Party with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain or to assist Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that

the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

8.   REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES AND DISCLAIMERS

8.1   Representations. Each party represents: (i) it is a corporation duly incorporated, validly existing, and in good standing under the laws of the State of incorporation; (ii) that it has validly entered into this Agreement and has the legal power to do so; (iii) it has adequate fraud prevention, anti-bribery, and corruption policies and procedures in place and personnel are familiar with such policies and procedures; (iv) to its knowledge, neither it nor its Affiliates, nor their respective directors, officers, agents, employees, or Affiliates are subject to economic or financial sanctions measures imposed by the United Nations, the European Union, the United Kingdom, the United States, or any relevant and applicable jurisdiction ("Restricted Persons"); and (v) to its knowledge, it is not currently under any actual or threatened investigation or inquiry, or being audited by any governmental authority in relation to any offense or alleged offense involving fraud, corruption, or dishonesty, and neither it nor any of its current owners, directors, officers, employees, Affiliates, or agents have been convicted of or pleaded guilty to an offense involving fraud, corruption, or dishonesty, and that none of the foregoing have been listed by any government agency or non-governmental organization as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for procurement programs.

8.2   DeepSee Warranties. DeepSee warrants that during an applicable subscription term (a) this Agreement, the applicable Order, and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Customer Data; (b) DeepSee will not materially decrease the overall security of the Services; (c) the Services will perform materially in accordance with the applicable Documentation; and (d) subject to the "Integration with Non-DeepSee Applications" section above, DeepSee will not materially decrease the overall functionality of the Services. For any breach of a warranty above, Customer's exclusive remedies are those described in the "Termination" and "Refund or Payment upon Termination" sections below.

8.3   Warranty Disclaimers. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. CONTENT AND BETA SERVICES ARE PROVIDED "AS IS" AND AS AVAILABLE EXCLUSIVE OF ANY WARRANTY WHATSOEVER.

9.   INDEMNIFICATION

9.1   Indemnification by DeepSee. DeepSee will defend Customer against any claim, demand, suit, or proceeding made or brought against Customer by a third party alleging: (a) that any Purchased Service infringes or misappropriates such third-party's intellectual property rights (a "Claim Against Customer"), and will indemnify Customer from any penalties,

damages, attorneys' fees, and all other paid costs finally awarded against Customer as a result of, or for amounts paid by Customer under a settlement approved by DeepSee in writing of, a Claim Against Customer, provided Customer (a) promptly (and in no event more than fifteen (15) days) after the assertion of any Claim Against Customer or the occurrence of any event which may give rise to a Claim Against Customer, gives DeepSee written notice of the Claim Against Customer; (b) gives DeepSee sole control of the defense and settlement of the Claim Against Customer (except that DeepSee may not settle any Claim Against Customer unless it unconditionally releases Customer of all liability); and (c) gives DeepSee all reasonable assistance, at DeepSee's expense. If DeepSee receives information about an infringement or misappropriation claim related to a Service, DeepSee may in its discretion and at no cost to Customer (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching DeepSee's warranties under "DeepSee Warranties" above; (ii) obtain a license for Customer's continued use of that Service in accordance with this Agreement; or (iii) terminate Customer's subscriptions for that Service upon 30 days' written notice and refund Customer any prepaid fees covering the remainder of the term of the terminated subscriptions. Notwithstanding the foregoing, the above defense and indemnification obligations do not apply if (1) the allegation does not state with specificity that the Services are the basis of the Claim Against Customer; (2) a Claim Against Customer arises from the use or combination of the Services or any part thereof with software, hardware, data, or processes not provided by DeepSee, if the Services or use thereof would not infringe without such combination; (3) a Claim Against Customer arises from Services under an Order for which there is no charge; or (4) a Claim Against Customer arises from Content, a Non-DeepSee Application, or Customer's breach of this Agreement, the Documentation, or applicable Order.

9.2 **Indemnification by Customer.** Customer will defend DeepSee and its Affiliates against any claim, demand, suit, or proceeding made or brought against DeepSee by a third party alleging: (a) that any Customer Data or Customer's use of Customer Data with the Services; (b) a Non-DeepSee Application provided by Customer; or (c) the combination of a Non-DeepSee Application provided by Customer and used with the Services infringes or misappropriates such third-party's intellectual property rights, or arising from Customer's use of the Services or Content in an unlawful manner, or in violation of the Agreement, the Documentation, or the applicable Order (each a "Claim Against DeepSee"), and will indemnify DeepSee from any penalties, damages, attorneys' fees, and all other paid costs finally awarded against DeepSee as a result of, or for any amounts paid by DeepSee under a settlement approved by Customer in writing of, a Claim Against DeepSee, provided DeepSee (a) promptly (and in no event more than fifteen (15) days) after the assertion of any Claim Against DeepSee or the occurrence of any event which may give rise to a Claim Against DeepSee, gives Customer written notice of the Claim Against DeepSee; (b) gives Customer sole control of the defense and settlement of the Claim Against DeepSee (except that Customer may not settle any Claim Against DeepSee unless it unconditionally releases DeepSee of all liability); and (c) gives Customer all reasonable assistance, at Customer's expense. The above defense and indemnification obligations do not apply if a Claim Against DeepSee arises from DeepSee's breach of this Agreement, the Documentation, or applicable Orders.

9.3 **Exclusive Remedy.** This "Indemnification" section states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third-party claim described in this section.

10. LIMITATION OF LIABILITY

10.1 **Limitation of Liability.** EXCEPT AS SET FORTH IN SECTION 10.3, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER AND ITS AFFILIATES HEREUNDER FOR THE SERVICES GIVING RISE TO THE LIABILITY IN THE TWELVE MONTHS PRECEDING THE FIRST INCIDENT OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S AND ITS AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2 **Exclusion of Consequential and Related Damages.** EXCEPT AS SET FORTH IN SECTION 10.3, IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY, OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

10.3 **Exclusions.** Nothing in this Agreement, shall operate to exclude or limit either party's liability for: (i) their respective indemnification obligations as set forth in Sections 9.1 and 9.2 herein; (ii) damages arising out of a party's breach of its representations and warranties as set forth in Section 8 herein; (iii) damages arising out of a party's breach of its confidentiality obligations as set forth in Section 7 herein; (iv) any gross negligence or willful misconduct by a party; (v) damages arising from a party's breach of the DPA; and (vi) any other liability that cannot be excluded by law.

11. TERM AND TERMINATION

11.1 **Term of Agreement.** This Agreement commences on the Effective Date and continues for a period of _____ (the "Initial Term"), unless or until otherwise terminated pursuant to Section 11.3 or 11.4. At the end of the Initial Term, the Parties may extend this Agreement, or any applicable Order, by mutually executing proper documentation contemplating the extension. Unless otherwise stated in the applicable Order, the termination or expiration of this Agreement shall not terminate any existing Orders, and the terms of this Agreement shall survive for purposes of governing such Orders. Additionally, the termination or expiration of any Order shall not terminate any other Order, unless otherwise stated in the applicable Order. No new Orders may be

entered into under this Agreement by the parties after the termination or expiration of this Agreement.

11.2   **Term of Purchased Subscriptions.** The term of each subscription shall be as specified in <u>Section 11.1</u> above, unless the applicable Order, as executed by both parties, states otherwise.

11.3   **Termination for Cause.** A party may terminate this Agreement for cause if the other party materially breaches this Agreement and fails to cure such breach within thirty (30) days after receipt of written notice or immediately in the event of an incurable breach.

11.4   **Termination for Convenience**. Beginning one (1) year after the Effective Date, either party may terminate this Agreement without cause upon thirty (30) days' written notice, but such termination shall not terminate any existing Orders.

11.5   **Refund or Payment upon Termination.** If this Agreement is terminated by Customer in accordance with <u>Section 11.3</u> above, DeepSee will refund Customer the pro-rated portion of any prepaid fees covering the remainder of the term of the applicable Order(s) after the effective date of termination. If this Agreement is terminated by DeepSee in accordance with <u>Sections 11.3</u> or <u>11.4</u> above, Customer will pay any unpaid fees covering the remainder of the term of the applicable Order(s) to the extent permitted by applicable law. In no event will termination relieve Customer of its obligation to pay any fees payable to DeepSee for the period prior to the effective date of termination.

11.6   **Surviving Provisions.** The sections that, by their nature, are intended to survive the expiration or termination of the Agreement, shall survive the expiration or termination of the Agreement.

12.   **GENERAL PROVISIONS**

12.1   **Export Compliance.** The Services, Content, other DeepSee technology, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. DeepSee and Customer each represents that it is not named on any U.S. government denied-party list. Customer will not permit any User to access or use any Service or Content in a U.S.-embargoed country or region (currently Cuba, Iran, North Korea, Sudan, Syria, or Crimea) or in violation of any U.S. export law or regulation.

12.2   **Anti-Corruption.** Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

12.3   **Entire Agreement and Order of Precedence.** This Agreement is the entire agreement between DeepSee and Customer regarding Customer's use of Services and Content and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. The parties agree that any term or condition stated in a Customer purchase order or in any other Customer order documentation (excluding Orders) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order, (2) this Agreement, and (3) the Documentation. Titles and headings of sections of this Agreement

are for convenience only and shall not affect the construction of any provision of this Agreement.

12.4   **Relationship of the Parties.**   The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

12.5   **Third-Party Beneficiaries.**   There are no third-party beneficiaries under this Agreement.

12.6   **Waiver.**   No failure or delay by either party in exercising any right under this Agreement will constitute a waiver of that right.

12.7   **Severability.**   If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

12.8   **Assignment.**   Neither Party will assign or transfer any rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void, except that a Party may assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. The terms of this Agreement will be binding upon the permitted assignees of the Parties.

12.9   **Governing Law, Jurisdiction, and Venue.**   This Agreement and the applicable Order, and all claims or causes of action (whether in contract, tort or statute) that may be based upon, arise out of, or relate to this Agreement, or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), will be governed by, and enforced in accordance with, the internal laws of the State of Utah, including its statutes of limitations, without giving effect to any conflicts of law principles. Each of the parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of Utah located in Salt Lake County and the United States District Court for the District of Utah for the purpose of any suit, action, proceeding, or judgment relating to or arising out of this Agreement.

12.10   **Notices.**   All notices required under this Agreement will be in writing and will be delivered by either electronic mail or a nationally recognized, next-day courier service (e.g., UPS, FedEx). Any notice under this Agreement will be deemed to have been effectively delivered or given and received: (i) upon acknowledgment of receipt by the receiving Party of the electronic transmission, if by electronic mail; or (ii) on the first business day following the date of dispatch, if delivered by a nationally recognized, next-day courier service, specifying next-day delivery. Notice by electronic mail will be sent to Ken Saunders (ken@deepsee.ai) for DeepSee and to the email provided on the Order or in connection with its acceptance of this Agreement on the Effective Date. Notice by nationally recognized, next-day courier service to DeepSee will be sent to 13907 South Minuteman Drive, Suite 175, Draper, UT 84020 and to Customer at the address provided

on the Order or in connection with its acceptance of this Agreement on the Effective Date (or at such other address as either party may specify in writing). If the day a notice is deemed received is not a business day, the notice will be deemed to have been given on the next business day.

12.11 **Force Majeure**. Neither party will be responsible or liable for delays or failure of performance resulting from acts beyond the party's reasonable control, including denial-of-service attacks, acts of God, strikes, walkouts, labor or material shortages, riots, acts of war, acts of terrorism, epidemics, failure of suppliers to perform, governmental regulations, power or communications failures, delays or failures due to Internet access connections or congestions, hostile network attacks, earthquakes, or other disasters (each a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the non-performing party will be excused from any further performance of its obligations affected by the Force Majeure Event for so long as the event continues, the delayed party gives the other party written notice of such cause, and the delayed party uses commercially reasonable efforts to minimize any delays or failures and resume performance. For the avoidance of doubt, nothing in this provision shall be construed to suggest that Customer will be relieved of its obligation to pay for any Services rendered.

12.12 **Publicity**. Except as provided herein or in the applicable Order, neither party may, without the prior written consent of the other party in each instance: (i) formally use in advertising, publicity, press releases, promotional, or other public-facing materials, the other party's name nor the name of any of the other party's Affiliates, nor any trade name, trademark, trade device, service mark, symbol, or any abbreviation, contraction, or simulation thereof owned by the other party or any of the other party's Affiliates; or (ii) represent, directly or indirectly, that any service or product provided by the a party has been approved or endorsed by the other party or any of the other party's Affiliates.

[Remainder of page intentionally left blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date by their duly authorized representatives.

DeepSee.ai Inc.   **[Customer]**

By: _____   By: _____

Name: _____   Name: _____

Title: _____   Title: _____