Enterprise Software-as-a-Service
Master Services Agreement

Enterprise Terms and Conditions

1.   **Definitions.** Capitalized terms have the meanings set forth below.

1.1   "**Access Credentials**" means login information, passwords, security protocols, and policies through which Security Users access the DepthFirst Services.

1.2   "**Active Developer**" means an employee or contractor of Customer that: (a) develops, maintains or conducts quality assurance of Customer's source code for the benefit of Customer or (b) is identified as a user of, or otherwise is authorized by Customer to, directly or indirectly, access, use or otherwise check-in or check-out code from the Connected System.

1.3   "**Adopted**" means that Customer, via a Security User, Active Developer or otherwise, has reviewed the Sample Code and determined that: (a) the unmodified Sample Code or a version of the Sample Code as modified by Customer is appropriate for use (e.g., can be integrated into the applicable Customer Product, does not contain a vulnerability or malware, does not infringe or contribute to the infringement of any patent) and (b) is integrated with the Customer Products.

1.4   "**Adopted Code**" means any Sample Code that has been Adopted by Customer or that Customer has otherwise incorporated into any Customer Product, including any Sample Code that has been modified.

1.5   "**Confidential Information**" means all written or oral information, disclosed by one party (the "**Disclosing Party**") to the other (the "**Recipient**"), related to the business, products, services or operations of the Disclosing Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques, (b) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, employees, suppliers and agents, (c) information regarding the skills and compensation of the Disclosing Party's employees, contractors, and other agents, and (d) the existence of any business discussions, negotiations, or agreements between the Parties.

1.6   "**Connected Systems**" means: (a) proprietary Customer applications and systems and (b) third party applications and systems, including source code repositories and ticketing systems, that are connected to the DepthFirst Service via an API or similar technology, by or at the request of Customer.

1.7   "**Customer**" means the entity identified as Customer in the applicable Order Form.

1.8   "**Customer Materials**" means all information, content and other materials uploaded or input into the DepthFirst Services by or on behalf of Customer, including computer code, information, content, and other materials that are authorized by Customer to be made available to the DepthFirst Services, including any computer code, employee user names or other information made available to DepthFirst Services via any Connected System.

1.9   "**Customer Output**" means, collectively, the Report Information and Sample Code.

1.10   "**Customer Products**" mean Customer's products and services that are offered under trademarks and brands that are exclusively owned by Customer and internal, proprietary tools, so long as no such product or service is competitive with, or acts as a substitute for, the DepthFirst Services.

1.11   "**Customer Instance**" means the instance of the DepthFirst Services that have been trained and optimized solely for the benefit of Customer, which training and optimization occurs using information, content and materials that are Customer Materials.

1.12   "**DepthFirst Services**" means any software-as-a-service application(s) identified in any Order Form, the related Documentation, and all improvements, updates and upgrades to the application(s) and Documentation. Customer Materials, Customer Output and Adopted Code are expressly excluded from the definition of DepthFirst Services.

1.13   "**Documentation**" means text and/or graphical documentation, whether in electronic or printed format, provided by DepthFirst to Customer that are user manuals or user videos designed to describe the features, functions and operation of the DepthFirst Services.

1.14   "**Limitations**" mean the limitations on use as described in any applicable Order Form (e.g., limits on the deep scans or the number of Active Developers).

1.15 "**Master Enterprise Terms Effective Date**" means the date specified in any Order Form as the Master Enterprise Terms Effective Date, which date is intended to reference the date that the Master Enterprise Terms were agreed upon by the parties.

1.16 "**Order Form**" means a document signed by a representative of each party identifying the specific Service(s) to be made available, the fees to be paid and other relevant terms and conditions. For the avoidance of doubt, in the event that Customer's purchases are set forth in the Cover Page of this Agreement, the Cover Page is an Order Form.

1.17 "**Reports**" mean the reports provided to Customer through the use of the DepthFirst Services that analyze the Customer Materials, including to identify security vulnerabilities. The customer specific information that populates any Report, including in any case, the identification and description of the vulnerability, tracing the vulnerability path, and identifying the conditions that need to be met to be exploited is referred to "**Report Information**", with the understanding Report Information expressly excludes any Report template or the underlying technology used to generate the Report.

1.18 "**Sample Code**" means source code generated by and made available to Security Users and Active Developers via the DepthFirst Services.

1.19 "**Services**" means the DepthFirst Services, customer support services and any other services provided by DepthFirst pursuant to this Agreement.

1.20 "**Subscription Term**" means, collectively, the Initial Subscription Term and any and all Renewal Terms, each as described in the applicable Order Form.

1.21 "**Security Users**" mean employees or contractors of Customer that are provided Access Credentials by Customer, or at the direction of Customer, to access the features and functions of the DepthFirst Services, including to generate Reports and Sample Code.

2. ACCESS, RIGHTS AND SERVICES

2.1 **Access Credentials**. Customer will safeguard, and ensure that all Security Users safeguard the Access Credentials. As between DepthFirst and Customer, Customer will be responsible for any failure of Security Users to safeguard the Access Credentials. Customer will notify DepthFirst immediately if it learns of any unauthorized use of Access Credentials or any other known or suspected breach of security related to the DepthFirst Services.

2.2 **Proprietary Rights**

(a) **Customer Access and Use of DepthFirst Services**. Subject to the terms and conditions contained in this Agreement, DepthFirst grants to Customer during the Subscription Term a non-exclusive, non-transferable (except as provided in Section 9.1 (Assignment)), revocable right to enable Security Users to access and use the DepthFirst Services, including to generate Reports and Sample Code.

(b) **Customer Materials and Customer Output**. Customer will upload or otherwise make available to the DepthFirst Services Customer Materials and will receive Customer Output, in response. As between Customer and DepthFirst (a) Customer retains all ownership rights in the Customer Materials and (b) to the extent permitted by applicable law, Customer owns the Customer Output. DepthFirst hereby assigns to Customer all of DepthFirst's right, title, and interest in and to the Customer Output. **Customer is responsible for the Customer Materials and the Customer Output as provided in Section 3**. DUE TO THE NATURE OF THE DEPTHFIRST SERVICES AND ARTIFICIAL INTELLIGENCE GENERALLY, CUSTOMER OUTPUT MAY NOT BE UNIQUE AND OTHER DEPTHFIRST CUSTOMERS MAY RECEIVE SUBSTANTIALLY SIMILAR CONTENT FROM DEPTHFIRST'S SERVICES. REPORTS, SAMPLE CODE AND OTHER OUTPUT THAT ARE GENERATED FOR DEPTHFIRST OR OTHER DEPTHFIRST CUSTOMERS ARE NOT CONSIDERED CUSTOMER OUTPUT OR ADOPTED CODE AND NO USE OF SUCH REPORTS, SAMPLE CODE OR OTHER OUTPUT WILL BE DEEMED AN INFRINGEMENT OR MISAPPROPRIATION OF THE CUSTOMER OUTPUT OR ADOPTED CODE.

(c) **DepthFirst Access and Use of Customer Materials**. Customer grants to DepthFirst a non-exclusive license to use the Customer Materials, Report Information and use of Sample Code: (A) for purposes of providing and improving the Services and (B) to create, compile and use aggregated data and/or statistics (collectively, "**Statistical Data**") with the understanding that neither Customer nor any item of Customer Materials, Report Information or Sample Code will be identifiable from the Statistical Data. DepthFirst, during and after the Subscription Term, may use the Statistical Data for any purpose including to provide the Statistical Data to third parties, including as part of thought leadership. **For the avoidance of doubt, DepthFirst represents and warrants that, other than the Customer Instance or unless Customer expressly consents within the DepthFirst Services, the Customer Materials and the Customer Output will not be used to train any artificial intelligence product or service, including any component of the DepthFirst Services**.

(d) **Feedback.** DepthFirst in its sole discretion, may utilize, all comments and suggestions, whether written or oral, furnished by Customer to DepthFirst, including such comments and suggestions of Security Users and Active Developers, in connection with its access to and use of the Services (all comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer on behalf of itself, its Security Users and its Active Developers hereby grants DepthFirst a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into DepthFirst products and services. For the avoidance of doubt, the foregoing is not intended to provide DepthFirst any license in any Customer copyright or patent.

(e) **Continuous Development of DepthFirst Services**. Customer acknowledges that DepthFirst may continually develop, deliver and provide to Customer on-going innovation to the DepthFirst Services in the form of new features, functionality, and efficiencies. Accordingly, DepthFirst reserves the right to modify the Services, including the DepthFirst Services, from time to time. Some modifications will be provided to Customer at no additional charge. In the event DepthFirst adds additional functionality to a particular Service, DepthFirst may condition the implementation of such modifications on Customer's payment of additional fees

provided (i) such fees are generally made applicable to other customers and (ii) Customer may continue to use the version of the DepthFirst Services that DepthFirst makes generally available (without such features) without paying additional fees.

(f) **Reservation of Rights**. Except for the limited licenses provided to Customer in this Agreement, DepthFirst reserves all right, title and interest in its intellectual property and business including the DepthFirst Services and Reports (other than the Report Information) and all improvements and modifications made thereto. Customer's rights in the Customer Materials and Customer Output are as set forth in Section 2(b).

3. **CUSTOMER RESPONSIBILITIES.**

3.1   Accuracy, Quality and Legality of Customer Materials. Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Materials. This obligation includes an obligation to ensure that: (a) Customer has or will obtain all third party licenses, consents and permissions needed for DepthFirst to use the Customer Materials as contemplated in this Agreement and (b) all Customer Products do not infringe any third party intellectual property right.

3.2   Review and Adoption. Customer acknowledges that the DepthFirst Services, including the Reports and Sample Code, are generated through the use of machine learning and general artificial intelligence. Customer acknowledges that the Output may be inaccurate, ineffective or insufficient and that Customer will: (a) Adopt any Sample Code before incorporating it into any Customer Product and (b) review any Reports and make an independent decision on whether to rely on or implement any suggested changes contained in the Reports. Customer is solely responsible for, and DepthFirst has no liability for, the quality, effectiveness, sufficiency and legality of the Adopted Code and any Customer acts or omissions in response to the Reports.

3.3   Customer Restrictions. Customer will not, and will not permit or support any Security User, any Active Developer or any other party to: (a) adapt, alter, modify, improve, translate or create derivative works of the DepthFirst Services, (b) reverse engineer, decompile, disassemble or otherwise attempt to reconstruct or obtain the source code to all or any portion of the DepthFirst Services or to otherwise obtain, scrape or distill any logic, algorithm or AI model contained within the DepthFirst Services or used to generate the Customer Output; (c) use the DepthFirst Services for benchmarking or competitive analysis or to develop or improve any product, service or technology that could compete with the DepthFirst Services; (d) use the Customer Output or any Report to train any artificial intelligence product or service and (e) except as may be specifically provided in this Agreement, provide any third party: (i) access to the DepthFirst Services, any Reports, Report Information or any Sample Code (other than Sample Code that has been Adopted) or (ii) use the Services on behalf of any third party, including as part of a time-sharing, outsourcing, service bureau environment, managed service or any service that competes with the DepthFirst Services or otherwise acts as a substitute for the DepthFirst Services.

3.4   Content Backup. Customer is solely responsible for maintaining backups and copies of the Customer Materials and Customer Output. Customer acknowledges that DepthFirst is not the system of record for any information and DepthFirst will have no responsibility or liability for storing, maintaining backups of, or the loss of any Customer Materials, Customer Output or Adopted Code. DepthFirst reserves the right, in its sole discretion, to remove any Customer Materials, Customer Output and / or Adopted Code from the DepthFirst Services at any time.

3.5   Provisions Specific to Dynamic Tester. If Customer has purchased access to Dynamic Tester, the following provisions apply to Dynamic Tester:

(A) **Authorization and Control; Compliance with Law**. Customer may use the Dynamic Tester only on systems and applications that are both: (i) identified by Customer within the Dynamic Tester ("**Identified Systems**") and (ii) residing within the web domains listed in any applicable Order Form as Specified Secondary Domains. Customer represents and warrants that Customer owns the Identified Systems and Specified Secondary Domains and / or has obtained all consents and approvals necessary to use the Dynamic Tester and conduct penetration testing on such Identified Systems and Specified Secondary Domains. In the event that any Identified Systems reside in a third party environment (e.g., a third party cloud, an infrastructure-as-a-service) or are integrated into or are connected with a third party environment (e.g., Software-as-a-Service or Platform-as-a-Service), Customer represents and warrants that it has obtained the necessary approvals and consents from such third party. Customer acknowledges that it is solely responsible to ensure that its use of the Dynamic Tester is in compliance with all applicable laws, including in the jurisdictions in which Customer operates, Customer operates the Dynamic Tester or in which the Identified Systems are located. Customer will not use the Dynamic Tester on secondary domains that it does not own or control without the approval of DepthFirst.

(B) **Potential Adverse Impacts**. Customer acknowledges that the Dynamic Tester is an AI-powered penetration testing service that provides controlled attempts to identify, exploit and document security weaknesses and vulnerabilities in connection with the Identified Systems. When performed by humans or the Dynamic Tester, penetration testing can cause unintended adverse impacts ("**Adverse Impacts**") including: (i) system and application instability, degraded performance, outages and disruption of business operations; (ii) account lockouts; (iii) corruption of, loss of, or unauthorized access to confidential information, personal information and other of sensitive information; (iv) denial of service attacks and (v) interference with integrations to internal or third party systems.

(C) **Customer Responsibility for Human Monitoring and to Mitigate Risk**. To mitigate potential adverse impact, Customer represents and warrants that: (i) it will designate a qualified security professional to monitor the Identified Systems during any testing via the Dynamic Tester; (ii) Customer will configure the Dynamic Tester to exclude sensitive systems from testing before testing begins; (iii) Customer will implement backups and recovery procedures appropriate to the Identified Systems; (iv) maintain incident response contacts and change management processes and (v) it will halt testing upon (A) system instability; (B) unexpected data exposure, (C) third-party system impact, (D) any production impact or (E) any other Adverse Impact. Customer is

solely responsible to determine the accuracy of the Reports generated by the Dynamic Tester and to appropriately implement any remedial actions.

(D) **Allocation of Risk**. GIVEN THE INHERENT RISKS ASSOCIATED WITH PENETRATION TESTING, DEPTHFIRST EXPRESSLY DISCLAIMS THAT THERE WILL BE NO ADVERSE IMPACT OR THAT DYNAMIC TESTER WILL IDENTIFY ANY OR ALL LATENT DEFECTS, MISCONFIGURATIONS, OR VULNERABILITIES. IN NO EVENT WILL DEPTHFIRST BE LIABLE FOR ANY DAMAGES RESULTING FROM ANY ADVERSE IMPACTS OR ANY OTHER USE OF THE DYNAMIC TESTER. THIS IS TRUE WHETHER OR NOT THE DYNAMIC TESTER PERFORMS IN ACCORDANCE WITH ANY DOCUMENTATION.

4. CONFIDENTIAL INFORMATION

4.1 Use and Disclosure. During this Agreement, each party (the "**Recipient**") will have access to the other party's (the "**Disclosing Party**") Confidential Information. Except as otherwise expressly permitted, and without limiting each party's obligations, under this Agreement, each Recipient agrees as follows: (a) it will not disclose the Confidential Information of the Disclosing Party to anyone except its employees, contractors, third party service providers and advisors who have a need to know and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement (each a "**Representative**"), (b) to safeguard the Confidential Information using the same degree of care it uses to safeguard its own information of a similar nature, but no less than reasonable care, (c) it will not use or reproduce the Confidential Information disclosed by the Disclosing Party for any purpose other than exercising its rights and / or performing its obligations as described herein and (d) all items of Confidential Information are proprietary to the Disclosing Party or such third party, as applicable, and will remain the sole property of the Disclosing Party or such third party. Each Recipient will be liable for the acts and omissions of its Representatives with respect to the Disclosing Party's Confidential Information. The Customer Materials and Report Information are the Confidential Information of Customer as is the fact that Customer has used particular Sample Code.

4.2 Exceptions. The provisions of Section 4.1 will not apply to Confidential Information that: (a) is or becomes publicly available or enters the public domain through no fault of the Recipient, (b) is in the Recipient's possession without knowledge of any confidentiality obligations or (c) is independently developed by the Recipient without use of or reference to the Disclosing Party's Confidential Information. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required: (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Recipient making the disclosure pursuant to the order will first have given written notice (email being sufficient) to the other party and will reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, in its efforts to obtain a protective order or (ii) to establish a party's rights under this Agreement, including to make such court filings as it may be required to do.

5. CONSIDERATION

5.1 Invoicing. Unless otherwise set forth in the Order Form, all fees related to Customer's access to the DepthFirst Services are to be invoiced by DepthFirst in advance on an annual basis (the "**Subscription Fees**"). Unless otherwise set forth in any Order Form, all other fees set forth in an Order Form will be invoiced in arrears. The Subscription Fees and all other fees set forth in the Order Form will be called "**Fees**."

5.2 Payment of Fees. Customer will pay the Fees to DepthFirst, without offset or deduction, in accordance with the payment schedule set forth in the applicable Order Form or as set forth in Section 5.1. Customer must notify DepthFirst in writing of any dispute or disagreement with invoiced charges within ten (10) days after Customer's receipt of the applicable invoice. Absent such notice, Customer will be deemed to have agreed to the charges as invoiced after the expiration of such time period. Unless otherwise specified in the applicable Order Form, all Fees will be paid in U.S. dollars and exclude all applicable sales, use, and other taxes. Any portion of the Fees that is not paid when due will accrue interest at one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid. The Fees exclude, and Customer will be responsible for all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any governmental entity in connection with the Services (excluding taxes based solely on DepthFirst's income).

6. WARRANTIES; DISCLAIMERS; LIMITATIONS ON LIABILITY

6.1 Representations. Each party represents and warrants that: (i) as of the Subscription Effective Date and throughout the Subscription Term, it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization and (ii) the Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

6.2 Warranty Disclaimer.

(A) *GENERAL DISCLAIMER*. THE DEPTHFIRST SERVICES ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". CUSTOMER ACKNOWLEDGES AND AGREES THAT, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 6.1, ITS USE OF THE SERVICES IS AT ITS OWN RISK. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DEPTHFIRST EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE. NO WARRANTY IS MADE BY DEPTHFIRST ON THE BASIS OF USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE.

(B)   *SPECIFIC DISCLAIMERS*.

(I)   CUSTOMER OUTPUT. CUSTOMER ACKNOWLEDGES THAT THE DEPTHFIRST SERVICES, INCLUDING ANY REPORTS AND SAMPLE CODE, MAY NOT MEET CUSTOMER REQUIREMENTS, PERFORM AS WELL AS A HUMAN, OR IDENTIFY OR PROTECT AGAINST ALL VULNERABILITIES OR SECURITY CONCERNS WITHIN CUSTOMER MATERIALS OR CUSTOMER PRODUCTS. CUSTOMER ACKNOWLEDGES THAT THE SERVICES, REPORTS, AND SAMPLE CODE MAY NOT BE ACCURATE AND MAY CONTAIN FALSE NEGATIVES OR FALSE POSITIVES. THE DEPTHFIRST SERVICES ARE, COLLECTIVELY, DESIGNED TO BE ONE OF MANY TOOLS, PROCESSES AND SOLUTIONS USED BY CUSTOMER TO PROTECT AGAINST SECURITY VULNERABILITIES. CUSTOMER WILL NOT RELY SOLELY ON THE SERVICES TO PROTECT AGAINST SECURITY VULNERABILITIES AND SECURITY BREACHES. DEPTHFIRST WILL HAVE NO LIABILITY FOR ANY FAILURE INCLUDING ANY FAILURE TO IDENTIFY ANY VULNERABILITY OR FAILURE OF THE CUSTOMER PRODUCTS TO BE SECURE OR ERROR-FREE.

(II)   CONNECTED SYSTEMS. THE DEPTHFIRST SERVICES ARE DESIGNED TO WORK WITH CONNECTED SYSTEMS. DEPTHFIRST MAY CREATE CONNECTIONS TO AND FACILITATE THE INTEROPERABILITY OF SUCH CONNECTED SYSTEM AND THE DEPTHFIRST SERVICES WITH THE UNDERSTANDING THAT ANY CONNECTED SYSTEM OWNED BY A THIRD PARTY IS MADE AVAILABLE TO CUSTOMER PURSUANT TO A SEPARATE AGREEMENT BETWEEN CUSTOMER AND THE PROVIDER OF THE APPLICABLE CONNECTED SYSTEM (THE "**CONNECTED SYSTEM AGREEMENT**"). CUSTOMER WILL UNDERTAKE ALL MEASURES NECESSARY TO ENSURE THAT ITS USE OF ANY SUCH CONNECTED SYSTEM COMPLIES IN ALL RESPECTS WITH APPLICABLE LAW, THE CONNECTED SYSTEM AGREEMENT, AND ANY OTHER CONTRACTUAL OR LEGALLY BINDING OBLIGATIONS IN CONNECTION WITH THE CONNECTED SYSTEM. IN NO EVENT IS DEPTHFIRST TO BE LIABLE FOR ANY FAILURE OF OR CHANGES TO THE CONNECTED SYSTEM. ANY LIABILITY OR REMEDY AVAILABLE TO CUSTOMER ASSOCIATED WITH ANY THIRD PARTY CONNECTED SYSTEM IS GOVERNED ENTIRELY BY THE CONNECTED SYSTEM AGREEMENT.

6.3   Disclaimer of Indirect Damages. EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, INTERRUPTION OF SERVICE, COSTS OF DELAY, ANY FAILURE OF DELIVERY, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL DEPTHFIRST BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

6.4   Limitations on Liability. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID OR PAYABLE TO DEPTHFIRST UNDER THE APPLICABLE ORDER FORM DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE. THE LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 6.3 AND 6.4 WILL NOT APPLY TO A PARTY'S INDEMNIFICATION OBLIGATION.

6.5   Exceptions. BECAUSE SOME JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, IN SUCH JURISDICTIONS THE LIABILITY OF DEPTHFIRST WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 6 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE.

7.   INDEMNIFICATION

7.1   DepthFirst Indemnity. DepthFirst will indemnify, defend and hold Customer, its directors, officers, employees and representatives (each a "**Customer Indemnified Party**"), harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys' fees and court costs, (collectively "**Losses**") arising out of any third party claim alleging that the DepthFirst Services infringe any patent, copyright, trademark or trade secret.

7.2   Exclusions. Section 7.1 will not apply if the alleged claim arises, in whole or in part, from: (a) any Customer Output, (b) a Customer breach of the Agreement, (c) any use or modification of the DepthFirst Services by Customer, including any modifications made to any Sample Code or any Report Information, (d) a combination, operation or use of the DepthFirst Services with other software, hardware or technology not provided by DepthFirst if the claim would not have arisen but for such combination, operation or use or (e) the Customer Materials, any Connected Systems, any Customer Products or any act or omission of Customer in response to a Report (any of the foregoing circumstances under clauses (b) through (e) will be collectively referred to as a "**Customer Indemnity Responsibility**").

7.3   Customer Indemnity. Customer will indemnify, defend and hold harmless DepthFirst, its directors, officers, employees and representatives (each a "**DepthFirst Indemnified Party**"), from and against any and all Losses arising out of any Customer Indemnity Responsibility.

7.4   Indemnification Process. The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party with the understanding that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party, without consent.

7.5   Infringement. If any Service is, or in DepthFirst's opinion, is likely to become the subject of any infringement-related claim, then DepthFirst will, at its expense and in its discretion: (a) procure for Customer the right to continue using the Service, (b) replace or modify the infringing technology or material so that the Service becomes non-infringing and remains materially functionally equivalent or (c) terminate the Order Form(s) pursuant to which the Service is provided and give Customer a refund for any pre-paid but unused fees.

7.6 THE PROVISIONS OF THIS SECTION 7 STATE DEPTHFIRST'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT.

8. TERM AND TERMINATION

8.1 **Term and Termination**. The term of this Agreement will commence on the Subscription Effective Date and will continue for as long as the Subscription Term is in effect. Either party may terminate any Order Form, at its discretion, effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement that relates to such Order Form and does not substantially cure the breach within thirty (30) days after receiving written notice.

8.2 **Suspension of Service(s)**. At any time during the Term, DepthFirst may suspend access to any Service in its good faith discretion including for the following reasons: (a) a threat to the technical security or technical integrity of the Services, (b) any amount due under this Agreement is not received by DepthFirst within ten (10) days after a written notice was presented to Customer stating that the applicable payment is past due or (c) breach or violation by Customer of any applicable law.

8.3 **Termination upon Bankruptcy or Insolvency**. DepthFirst may, at its option, terminate any Order Form immediately upon written notice to Customer, in the event that: (a) Customer becomes insolvent or unable to pay its debts when due, (b) Customer files a petition in bankruptcy, reorganization or similar proceeding, or, if filed against, such petition is not removed within ninety (90) days after such filing, (c) Customer discontinues its business or (d) a receiver is appointed or there is an assignment for the benefit of Customer's creditors.

8.4 **Destruction of Customer Materials and Confidential Information**.

(a) _Customer Materials_. Whether or not Customer has downloaded its Customer Materials, Customer Output or any Adopted Code, DepthFirst reserves the right to permanently and definitively delete the Customer Materials, Customer Output or any Adopted Code within thirty days (30) following termination of the Agreement. Customer acknowledges that it is Customer's responsibilities to download all Customer Material, Customer Output and Adopted Code and any other information stored on the DepthFirst Services, prior to termination of the Agreement, or risk loss of such data. Customer may, at any time, request the destruction of any Customer Materials, Customer Output or Adopted Code and DepthFirst will perform that destruction within a reasonable period of time of receiving such notice, subject to reasonable technical or other limitations regarding the scope of such destruction.

(b) _Confidential Information_. Upon termination or expiration of this Agreement, each Party will, upon the request of the other, return to the other Party all Confidential Information disclosed by the other Party, and all copies thereof, or at the receiving Party's option, destroy such Confidential Information, and provide to the other Party certificates evidencing the return or destruction. Notwithstanding anything to the contrary contained herein, if this Agreement terminates for any reason, each Party (i) may retain one copy of the other Party's Confidential Information solely for archival, audit, legal or regulatory purposes and (ii) will not be required to search archived electronic back-up files of its computer systems for the other Party's Confidential Information in order to purge such Confidential Information from its archived files; provided, however, that Recipient must (A) maintain confidentiality of the Disclosing Party's Confidential Information under this Agreement as if the Agreement were still in effect and (B) not use the retained Disclosing Party's Confidential Information for any other purpose.

8.5 **Effects of Termination**. Upon termination or expiration of this Agreement for any reason: (a) any amounts owed to DepthFirst before such termination or expiration will be immediately due and payable and (b) all other terms and conditions will cease, provided that Sections 1, 2.2(b), 2.2(c), 2.2(d) and 2.2(f), 3 through 7, 8.4, 8.5 and 9 will survive any expiration or termination of this Agreement.

9. GENERAL

9.1 **Assignment**. This Agreement cannot be assigned by either Customer or DepthFirst without the prior written consent of the other; provided, however, that either Party may assign this Agreement to a sufficiently financed affiliate or any person or entity that acquires by sale, merger or otherwise, all or substantially all of its assets, stock or business. Any attempted assignment or delegation in violation of this Section will be null, void and of no effect.

9.2 **Notices**. All notices, consents, and approvals under this Agreement must be delivered via email, if to Customer the email address for the Point of Contact and if to DepthFirst to legal@depthfirst.ai. In the alternative, notice may be made in writing by courier, by electronic facsimile (fax), or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth below or, in the event that no Customer address appears below, to the address to which invoices are sent.

Notice to DepthFirst:	Notice to Customer:
DepthFirst AI, Inc. 250 Montgomery Street, STE 900 San Francisco, CA 94104 Attn: Office of the CEO legal@depthfirst.ai	

Notice will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

9.3 **Governing Law; Disputes**. This Agreement will be governed by the laws of the state of California, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement, will be made exclusively in the state or federal courts located in San Francisco County, California and both parties submit to the jurisdiction and venue of such courts.

9.4 **Remedies**. Customer acknowledges that any actual or threatened breach by Customer of any license granted herein, or any misappropriation or infringement of DepthFirst's intellectual property rights will constitute immediate and irreparable harm to DepthFirst for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive court costs and other collection expenses, in addition to any other relief it may receive.

9.5 **Waivers**. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

9.6 **Severability**. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

9.7 **No Third Party Beneficiaries**. The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity other than the parties, their successors and permitted assigns, any legal or equitable right whatsoever to enforce any provision of this Agreement.

9.8 **Construction**. The parties entered into this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including but not limited to."

9.9 **Force Majeure**. Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by a labor dispute, shortage of materials, fire, earthquake, flood, war, act of terror, epidemic, pandemic or any other event beyond the control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

9.10 **Entire Agreement**. This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. Except as otherwise provided herein, this Agreement may be amended only by a written document signed by both parties. Without limiting the foregoing, the parties acknowledge that Customer may issue a purchase order in connection with any Order Form. Purchase orders are for administrative purposes only and are of no force or effect. Purchase orders, terms attached to any DepthFirst invoice and / or any boilerplate terms in documents passed between the parties are null and void.