deepset Cloud

Terms and Conditions for AWS Marketplace

These deepset Cloud Terms and Conditions ("***Terms and Conditions***") are between Deepset, Inc., a Delaware corporation, located at 80 Broad Street, 5th Floor, New York City 10004, New York (USA) (if Customer is located in the United States of America) or deepset GmbH c/o Spaces Spindlershof Wallstraße 9-13 10179 Berlin (if Customer is located outside of the United States of America) ("**deepset**"), and the client subscribing to the Services ("***Customer***"), and are effective as of the date of the Customer's purchase of the corresponding Subscription (the "***Effective Date***") or the date Customer first starts using the Services, whichever is earlier. deepset and Customer are each a "**party**" and together the "**parties**".

1.   Definitions

1.1   The following terms (and their grammatical variants provided the initial letter is capitalized), when used in these Terms and Conditions or a Subscription will have the following meanings:

"***Affiliates***" means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For the purposes of this definition, "***Control***" means beneficial ownership of fifty percent (50%) or more of the voting power or equity in an entity or under English law, the legal power to direct or cause the direction of the general management, of the company, partnership or other legal entity.

"***AI Applications***" means artificial intelligence applications created by Customer using the Services.

"***Authorized Users***" means those employees and other personnel of Customer who Customer permits to use the Services, who have created an account with deepset to use the Services and who are identified and named as users of the Services on their respective accounts.

"***AWS Marketplace***" means the marketplace operated by Amazon Web Services, Inc., which is currently located at https://aws.amazon.com/marketplace/, as it may be updated or relocated from time to time.

"***Background IP***" means any Intellectual Property used by deepset with its customers generally, including all Intellectual Property created, developed or conceived by or on behalf of deepset: (a) prior to the Effective Date; or (b) independently of any Subscription.

"***Bespoke Configurations***" means language models, training data and natural language programming pipeline configurations created or fine-tuned specifically for Customer using Customer Data.

"***Claim***" has the meaning given to it in Section 7.1.

"***Commercially Reasonable Efforts***" means with respect to activities of a party, those efforts and resources typically used by that party to achieve or fulfill a similar objective or obligation that was in its own interest in similar circumstances but in any event no less than the effort and resource that would be used by a similar company acting reasonably in such circumstances, provided, however, that the party will not be required to sacrifice its commercial interests in order to achieve or fulfil such objective.

"***Confidential Information***" means any information or data disclosed by either party that is marked or otherwise designated as confidential or proprietary or that should otherwise be reasonably understood to be confidential in light of the nature of the information and the circumstances surrounding disclosure. However, "Confidential Information" will not include any information which: (a) is in the public domain through no fault of receiving party; (b) was properly known to receiving party, without restriction, prior to disclosure by disclosing party; (c) was properly disclosed to receiving party, without restriction, by another person with the legal authority to do so; or (d) is independently developed by receiving party without use of or reference to the disclosing party's Confidential Information.

"***Contract Year***" means each successive twelve (12) calendar month period commencing on the Effective Date or an anniversary thereof.

"***Customer Data***" has the meaning given to it in Section 2.3.1(a).

"***Data Protection Laws***" means all applicable legislation relating to data protection and privacy.

"***Documentation***" means the documentation for the Services produced by deepset and delivered or made available by deepset to Customer, including product listing information for the Services made available on the AWS Marketplace.

"***Force Majeure Event***" has the meaning given to it in Section 11.14.

"***Foreground IP***" means any Intellectual Property created, developed or conceived by or on behalf of deepset as a result of any Professional Services but excluding Bespoke Configurations.

"***Intellectual Property***" means all patents, rights to inventions, copyright and related rights, moral rights, database rights, trademarks and tradenames, rights to goodwill and to sue for passing off, rights in designs, rights in Confidential Information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered, and including all applications (and rights to apply) for, and renewals and extensions of and rights to claim priority from such rights and all similar or equivalent rights and forms of protection which subsist or will subsist now or in the future in any part of the world.

"***Liable***" and "***Liability***" means any liability arising under, out of or in connection with these Terms and Conditions and any Subscription, whether or not foreseeable or in the contemplation of the parties at any time, in or under contract, tort (including negligence), breach of statutory duty, misrepresentation, indemnity, restitution or otherwise.

"***Permitted Purpose***" has the meaning given to it in Section 2.2.

"***Personal Data***" has the meaning given to it in Data Protection Laws.

"***Platform Updates***" has the meaning given to it in Section 2.6.

"***Professional Services***" means implementation, installation, configuration, customization, or other professional services expressly identified on a Subscription.

"***Records***" has the meaning given to it in Section 11.1.

"***Service Term***" means the length of the Subscription.

"Services" means deepset cloud, a cloud-based platform provided for production, access, and utilization by Customer, as further described in and the Documentation.

"**Subscription**" means a subscription purchased through the AWS Marketplace, entered into by each of the parties (or its Affiliate) that references these Terms and Conditions and sets forth the specific Service Term, pricing thereof and other commercial terms and is executed by both parties.

"*System Data*" means anonymised or aggregated Customer Data and other data collected by deepset regarding the Services and the use of the Services by Customer and Authorized Users.

"***Third Party Terms***" has the meaning given to it in Section 4.6.

2. Services

2.1   Provision of the Services. Subject to these Terms and Conditions, deepset will make the Services available to Customer pursuant to these Terms and Conditions and the applicable Subscription, and hereby grants Customer a non-exclusive, non-transferable, non-sublicensable limited right to access and use the Services internally for the Permitted Purpose. A Subscription will be subject to and are hereby incorporated into these Terms and Conditions, and no terms or conditions contained in any purchase order or other document issued by Customer shall form part of any contract between deepset and Customer. The pricing of the Subscription and Service Term are set forth in the Documentation.

2.2   Permitted Purpose. Customer may only use the Services to create AI Applications (the "***Permitted Purpose***").

2.3   Data Security.

2.3.1   deepset will maintain a security program materially in accordance with industry standards that is designed to: (a) ensure the security and integrity of data uploaded by or on behalf of Customer to, or collected or produced by, the Services ("***Customer Data***"); (b) protect against threats or hazards to the security or integrity of Customer Data; and (c) prevent unauthorized access to Customer Data.

2.3.2   deepset's security safeguards include measures for preventing access, use, modification or disclosure of Customer Data by deepset personnel except: (a) to provide the Services and prevent or address service or technical problems; (b) as required by applicable law; or (c) as Customer permits or under these Terms and Conditions.

2.3.3   To the extent that deepset processes any Personal Data contained in Customer Data, on Customer's behalf, the data processing agreement found at **[INSERT HYPERLINK]** shall apply and is incorporated into these Terms and Conditions by reference.

2.4   License Restrictions. The rights granted herein are subject to the following restrictions (the "***License Restrictions***"). Customer will not directly or indirectly:

2.4.1   reverse engineer, decompile, disassemble, modify, create derivative works (excluding AI Applications) of or otherwise create, attempt to create or derive, or permit or assist any third party to create or derive, the source code

underlying the Services, unless and to the extent allowable under applicable law;

2.4.2   remove or alter the conditions of use, any copyright notices and other identification disclaimers as they may appear on the Services or the Documentation;

2.4.3   use the Service in connection with any unlawful, illegal, fraudulent, deceptive or harmful purpose or activity;

2.4.4   frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes or as permitted in the Documentation;

2.4.5   attempt to probe, scan or test the vulnerability of the Services, breach the security or authentication measures of the Services without proper authorization or willfully render any part of the Services unusable for any user;

2.4.6   use the Services, nor upload any Customer Data in a manner that causes the distribution or execution by means of the Services of: (a) any viruses, worms, spyware, adware or other harmful or malicious software, programs, routines, applications or technologies; or (b) any software, programs, routines, applications or technologies that will or may have a material negative effect upon the performance of a computer or introduce material security risks to a computer;

2.4.7   use or access the Services or Intellectual Property of deepset: (a) to develop a product or service that is competitive with deepset's products or services; or (b) to engage in competitive analysis or benchmarking against products or services provided by third parties that are similar to the Services;

2.4.8   transfer, distribute, resell, lease, license, or assign the Services or use the Services to provide a service (other than provision of an AI Application) to a third party;

2.4.9   conduct or request that any other person conduct any load testing or penetration testing on the Services without the prior written consent of deepset;

2.4.10   allow the Services to become the subject of any charge, lien or encumbrance; or

2.4.11   otherwise use the Services: (a) in violation of applicable law; (b) to infringe or violate third party rights; or (c) other than for the Permitted Purposes or stated in the applicable Subscription.

2.5   Customer Responsibilities.

2.5.1   Customer acknowledges that deepset's provision of the Services is dependent on Customer providing all reasonably required cooperation (including the prompt provision of personnel, cooperation and materials as reasonably required and any other requirements as may be specified by deepset from time to time), and Customer will provide the same in a diligent and timely manner.

2.5.2   Customer will: (a) be responsible for all use of the Services under its account; (b) use Commercially

Reasonable Efforts to prevent unauthorized access to or use of the Services and Customer Data and notify deepset promptly of any unauthorized access or use of the same; and (c) be responsible for obtaining and maintaining any equipment, software and ancillary software, services or data needed to connect to, access or otherwise use the Services, including as set forth in the Documentation. Customer will be solely responsible for its failure to maintain such equipment, software and services, and deepset will have no liability for such failure.

2.5.3   Customer agrees that deepset may change, deprecate or republish application programming interfaces for the Services, and that it is Customer's responsibility to ensure that calls or requests Customer makes to the Services are compatible with the then-current application programming interfaces for the Services.

2.6   Usage Limitation. Customer shall comply with any usage limits set out in the Subscription and refrain from utilizing the Services in a manner that excessively consumes deepset's resources or causes substantial degradation to the services provided by deepset to its other customers. deepset may employ reasonable technical measures to curtail Customer's overuse of computing resources, ensuring the overall quality of services for its customer base.

2.7   Platform Updates. deepset may, from time to time, develop enhancements, upgrades, updates, improvements, modifications, extensions and other changes to the Services and Documentation ("**Platform Updates**"). Customer hereby authorizes deepset to provide Platform Updates to the Services provided that such updates do not have a material adverse effect on the functionality or performance of the Services.

2.8   New Packages. deepset may, from time to time, develop additional features and functionality to the Services and Documentation which are distinct to the current Services, but which may be used in conjunction with the Services ("**New Packages**"). Customer hereby agrees that deepset is under no obligation to provide these New Packages, but that deepset may, at its discretion, communicate an offer to Customer for trial use of such features to allow Customer to access these New Packages for a period and cost to be agreed between the parties. New Packages, once provided to Customer, form part of the Services provided.

2.9   Affiliates. Any Affiliate of Customer will have the right to enter into a Subscription executed by such Affiliate and deepset. With respect to such Subscriptions, such Affiliate becomes a party to these Terms and Conditions, references to Customer in these Terms and Conditions are deemed to be references to such Affiliate and each Affiliate of Customer shall be jointly and severally liable for the acts and omissions of other Affiliates of Customer.

2.10   Authorized Users. Customer may permit Authorized Users, up to the number specified in the Subscription, to use the Services. Customer shall: (a) ensure that all Authorized Users acknowledge and agree to the obligations and restrictions regarding use of the Services substantially similar to those herein; and (b) ensure that Authorized Users do not share passwords, usernames, or individual accounts/invitations to use the Services within Customer's organization or make the Services or Customer Data available to any unauthorized third party. Customer is responsible for the acts and omissions of any individual that uses the Services with accounts that were provided to Customer or have been registered to an Authorized User.

2.11   Training. deepset may provide Customer with training or other assistance in relation to the Services. Unless otherwise stated in a Subscription, such training and assistance may be provided via electronic or digital means, may be pre-recorded, will be provided at such cost as is agreed between the parties and shall constitute Professional Services. Furthermore, Customer shall, where required, provide deepset with safe access during opening hours to any premises to which it controls which deepset reasonably needs to enter in order to install any hardware or software to enable Customer to access the Services.

2.12   Withdrawal or Changes. Without prejudice to Section 10, deepset may withdraw any Services and terminate the part(s) of any Subscription governing such Services in the event that deepset ceases to make such Services available to its customers generally. In such circumstances, deepset will use Commercially Reasonable Efforts to give Customer six (6) months' prior written notice. Furthermore, deepset may modify, supplement, enhance, or otherwise change (including through routine upgrades and bug fixes) the Services (in whole or part) including the technical, functional, administrative and operative methods of supply of the same wherever deepset deems necessary (in its sole discretion) to: (a) comply with applicable law; (b) address unforeseen or imminent dangers or risks (including fraud, malware, spam, data breaches, cybersecurity or other risks); or (c) address actual or potential changes in the organisation of its business, technical systems or requirements, provided, in each case, the foregoing does not have a materially adverse impact on the functionality, performance or security of the Services. Customer agrees that nothing stated herein shall limit deepset in any way from determining in its sole discretion how to provide the Services to Customer.

2.13   Suspension. deepset shall be entitled to suspend or restrict access to all or part of the Services: (a) where it is entitled to terminate these Terms and Conditions pursuant to Section 10; (b) to carry out scheduled or emergency maintenance (in which case deepset shall use Commercially Reasonable Efforts to minimize the disruption caused to Customer); and (c) if Customer fails to pay any amounts that are due, provided always that deepset has given Customer thirty (30) days advance notice of the suspension.

3.   Fees

3.1   Fees. Customer will pay the fees set forth in the Subscription.

3.2   Excess Usage Charges. If Customer's use of the Services exceeds the Service capacity set forth in the Subscription or otherwise requires the payment of additional fees (as set out in the Subscription), Customer shall be billed for such usage and Customer agrees to pay the additional fees on demand.

4.   Proprietary Rights and Confidentiality

4.1   Proprietary Rights. As between the parties, deepset exclusively owns all right, title and interest in and to the Services and Background IP (and all improvements, enhancements or modifications thereto), Foreground IP, System Data and deepset's Confidential Information, and Customer exclusively owns all right, title and interest in and to Customer Data, Customer's Confidential Information, AI Applications and Bespoke Configurations.

4.2   Assignment and Licence. deepset hereby: (a) assigns to Customer all Bespoke Configuration; and (b) grants Customer a non-exclusive, fully paid up, non-transferable, non-sublicensable (other than to employees and other personnel of Customer and its Affiliates), perpetual and irrevocable limited licence to use

Foreground IP solely in connection with the exploitation of AI Applications. The foregoing assignment and licence shall take effect from the date deepset has been paid in full for the relevant Intellectual Property that is the subject of such assignment or licence.

4.3 <u>Feedback</u>. Customer may from time to time provide deepset with suggestions or comments for enhancements or improvements, new features or functionality or other feedback. deepset will have: (a) full discretion to determine whether or not to proceed with the development of any requested enhancements, new features or functionality; and (b) an unencumbered right, without any obligation to compensate or reimburse Customer, to use, incorporate and otherwise fully exercise and exploit any such suggestions or comments in connection with its products and services.

4.4 <u>Confidentiality</u>. Each party agrees that it will use the Confidential Information of the other party solely in accordance with the provisions of these Terms and Conditions and it will not disclose the same to any third party without the other party's prior written consent, except as otherwise permitted hereunder. However, either party may disclose Confidential Information: (a) to its employees, officers, directors, attorneys, auditors, financial advisors and other representatives who have a need to know and are legally bound to keep such information confidential by confidentiality obligations consistent with this Section; and (b) as required by law (in which case the receiving party will provide the disclosing party with prior written notification thereof, will provide the disclosing party with the opportunity to contest such disclosure, and will use its Commercially Reasonable Efforts to minimize such disclosure to the extent permitted by applicable law). Neither party will disclose the non-public terms of these Terms and Conditions to any third party, except that either party may confidentially disclose such terms to actual or potential lenders, investors or acquirers. Each party agrees to exercise due care in protecting the Confidential Information from unauthorized use and disclosure. In the event of actual or threatened breach of the provisions of this Section or the License Restrictions, the non-breaching party will, notwithstanding anything in these Terms and Conditions, be entitled to seek immediate injunctive and other equitable relief in any jurisdiction, without waiving any other rights or remedies available to it. Each party will promptly notify the other in writing if it becomes aware of any violations of the confidentiality obligations set forth in these Terms and Conditions.

4.5 <u>Customer Data</u>. Notwithstanding anything to the contrary, Customer agrees that deepset and its Affiliates is hereby granted a non-exclusive, non-transferable, sub-licensable (through multiple tiers), fully paid-up worldwide right and license to use Customer Data and Bespoke Configurations: (a) to provide the Services and Professional Services; (b) internally to develop and improve its products and services; and (c) to create System Data.

4.6 <u>Third Party Information.</u> The Services may contain Intellectual Property, including open source software owned by third parties. Such third party Intellectual Property may be licensed by deepset or the third party to Customer under separate or different terms and conditions ("***Third Party Terms***") and are not licensed to Customer under these Terms and Conditions. Such Third Party Terms are available on the platform for the Services and Customer agrees to comply with such Third Party Terms, including any obligation to pay any fees due to third parties (such as fees due to third party model service providers for OpenAI API calls) directly to the relevant third party. Customer agrees to indemnify deepset in respect of any losses, damages, liabilities, costs, charges, and expenses, including reasonable legal fees and/or penalties deepset incurs as a result of any breach by Customer of any Third Party Terms.

5. **Warranties**

5.1 <u>Mutual.</u> Each party warrants and represents to the other that it: (a) has full power and authority to enter into and perform its obligations under these Terms and Conditions; (b) shall obtain and maintain all necessary licenses, clearances, permissions, and consents necessary to carry out all of its obligations under these Terms and Conditions, provide any information, data or other materials that it provides hereunder, and to permit the other party to use the same as contemplated hereunder; and (c) shall employ a sufficient number of suitably qualified personnel to ensure the proper fulfilment of its obligations under these Terms and Conditions.

5.2 <u>deepset</u>. deepset warrants that: (a) the Services will conform in all material respects with the relevant Documentation; and (b) it will provide the Professional Services in a professional manner and in accordance with the applicable Subscription. If deepset breaches the foregoing warranty then to the extent allowable by applicable law, Customer's exclusive remedy shall be repair or replacement (as determined by deepset) of the deficient Services or re-performance of the deficient Professional Services. If deepset cannot repair or replace the deficient Services or re-perform the Professional Services, in each case so they are as warranted herein, Customer shall be entitled to a pro-rata refund of the fees received by deepset for such deficient Services or Professional Services.

6. **DISCLAIMERS**

6.1 EXCEPT AS EXPRESSLY SET FORTH HEREIN, THE SERVICES, PROFESSIONAL SERVICES ANY AI APPLICATIONS AND BESPOKE CONFIGURATIONS CREATED PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS AND TO THE EXTENT ALLOWABLE BY APPLICABLE LAW, EACH PARTY DISCLAIMS ALL WARRANTIES AND CONDITIONS EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. IN PARTICULAR, DEEPSET DOES NOT WARRANT THAT THE SERVICES, AI APPLICATIONS OR BESPOKE CONFIGURATIONS: (A) WILL BE PROVIDED FREE FROM INTERRUPTION; (B) WILL RUN ON ANY PARTICULAR COMPUTER SYSTEM OR BROWSER; (C) ARE ACCURATE, COMPLETE, RELIABLE, SECURE, USEFUL, FIT FOR PURPOSE OR TIMELY; (D) WILL BE TESTED FOR USE; (E) WILL BE SUITABLE FOR OR BE CAPABLE OF BEING USED BY CUSTOMER OR ANY THIRD PARTY; OR (F) WILL COMPLY WITH APPLICABLE LAW. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE SERVICES, AI APPLICATIONS AND BESPOKE CONFIGURATIONS MAY CONTAIN BUGS, VIRUSES, MAKE ERRORS OR MISINTERPRET ISSUES, AND THEREFORE CUSTOMER SHALL ENSURE IT USES ANTI-VIRUS SOFTWARE CONSISTENT WITH PREVAILING INDUSTRY STANDARDS.

6.2 IT IS CUSTOMER'S SOLE RESPONSIBILITY TO REVIEW AND DECIDE THE MANNER IN WHICH IT THIRD PARTIES USE AI APPLICATIONS AND BESPOKE CONFIGURATIONS. CUSTOMER SHALL, AND SHALL PROCURE THAT THIRD PARTY USERS OF AI APPLICATIONS AND BESPOKE CONFIGURATIONS SHALL, USE INDEPENDENT JUDGEMENT AND DISCRETION BEFORE RELYING ON OR OTHERWISE USING AI APPLICATIONS AND BESPOKE CONFIGURATIONS, AND CUSTOMER IS SOLELY RESPONSIBLE FOR: (A) MONITORING AND APPROVING ANY SUCH USE; AND (B) ANY DECISION OR ACTION THAT IT OR ANY THIRD PARTY MAY TAKE REGARDING THE USE, PUBLICATION OR DISTRIBUTION OF AI

APPLICATIONS AND BESPOKE CONFIGURATIONS. DEEPSET ACCEPTS NO RESPONSIBILITY FOR ANY LOSS, COST, DAMAGE, EXPENSE OR OTHER CONSEQUENCES ARISING FROM SUCH USE, PUBLICATION OR DISTRIBUTION (INCLUDING ANY CLAIM FOR PLAGIARISM, INFRINGEMENT, ROYALTIES OR OTHERWISE).

7. Indemnification

7.1 <u>Indemnity by deepset</u>. deepset will defend Customer against any claim, demand, suit, or proceeding ("*Claim*") made or brought against Customer by a third party alleging that the use of the Services in accordance with these Terms and Conditions infringes or misappropriates the Intellectual Property of that third party and will, subject to Section 8, indemnify Customer for any damages finally awarded by a court of competent jurisdiction against Customer (or any settlement approved by deepset in writing) in connection with any such Claim. If the use of the Services by Customer has become, or in deepset's opinion is likely to become, the subject of any Claim of infringement, deepset may at its option and expense: (a) procure for Customer the right to continue using and receiving the Services as set forth hereunder; (b) replace or modify the Services to make them non-infringing (with comparable functionality); or (c) if the options in subsections (a) or (b) are not reasonably practicable, terminate these Terms and Conditions and provide a pro rata refund of any prepaid fees received by deepset corresponding to the terminated portion of the applicable subscription term. deepset will have no liability or obligation with respect to any Claim to the extent such Claim is caused by: (i) compliance with designs, guidelines, plans or specifications provided by Customer; (ii) use by Customer of any version of any downloadable component of the Services other than the latest version made available to Customer; (iii) modification of the Services by any party other than deepset without deepset's express written consent; (iv) Customer Data, Customer Confidential Information, AI Applications or Bespoke Configurations; (v) the combination, operation or use of the Services with other applications, portions of applications, product(s) or services where the Services would not by itself be infringing; or (vi) continued use of the Services after Customer was aware of the Claim or deepset had notified it of the possibility of the Claim (subsections (i) through (vi), "*Excluded Claims*"). To the extent allowable by applicable law, this Section represents Customer's exclusive remedy for infringement or misappropriation of Intellectual Property.

7.2 <u>Indemnification by Customer</u>. Customer will defend deepset against any Claim made or brought against deepset by a third party arising out of the Excluded Claims, and Customer will indemnify deepset for any damages finally awarded against deepset (or any settlement approved by Customer) in connection with any such Claim.

7.3 <u>Conduct of Claims.</u> In connection with any Claim: (a) the indemnified party will promptly notify the indemnifying party of such Claim in writing; (b) the indemnifying party will have the sole and exclusive authority to defend and/or settle such Claim (provided that it may not settle any Claim without the indemnified party's prior written consent, which will not be unreasonably withheld, conditioned or delayed where it unconditionally releases the indemnified party of all associated liability); and (c) the indemnified party reasonably cooperates with the indemnifying party in connection therewith.

8. LIABILITY UNDER ENGLISH AND NEW YORK LAW

8.1 THIS SECTION APPLIES IF THESE TERMS AND CONDITIONS ARE GOVERNED BY ENGLISH OR NEW YORK LAW.

8.2 NOTHING IN THESE TERMS AND CONDITIONS EXCLUDES OR RESTRICTS ANY LIABILITY THAT CANNOT BE EXCLUDED OR RESTRICTED UNDER APPLICABLE LAW.

8.3 SUBJECT TO SECTION 8.2, DEEPSET IS NOT LIABLE TO CUSTOMER FOR ANY: (A) LOSS OF ACTUAL OR ANTICIPATED PROFITS; (B) LOSS OF SALES, BUSINESS OR REVENUE; (C) LOSS OF AGREEMENTS OR CONTRACTS; (D) WASTED EXPENDITURE (EXCLUDING AMOUNTS PAID UNDER THESE TERMS AND CONDITIONS); (E) LOSS OF ANTICIPATED SAVINGS; (F) LOSS OF OR DAMAGE TO REPUTATION OR GOODWILL; (G) LOSS OF USE OR CORRUPTION OF SOFTWARE, DATA OR INFORMATION, IN EACH CASE (A) TO (G), WHETHER DIRECT OR INDIRECT; OR (H) INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY CHARACTER, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.

8.4 SUBJECT TO SECTION 8.2, THE TOTAL AGGREGATE LIABILITY OF DEEPSET IN ANY CONTRACT YEAR WILL NOT EXCEED THE AMOUNTS RECEIVED BY DEEPSET UNDER THE APPLICABLE SUBSCRIPTION DURING THAT CONTRACT YEAR.

9. LIABILITY UNDER GERMAN LAW

9.1 THIS SECTION APPLIES IF THESE TERMS AND CONDITIONS ARE GOVERNED BY GERMAN LAW.

9.2 EITHER PARTY IS LIABLE IN ALL CASES OF CONTRACTUAL AND NON-CONTRACTUAL LIABILITY FOR INTENT AND GROSS NEGLIGENCE IN ACCORDANCE WITH THE STATUTORY PROVISIONS OF DAMAGE OR COMPENSATION FOR FUTILE EXPENSES. IN CASE OF SLIGHT NEGLIGENCE, EITHER PARTY IS ONLY LIABLE – UNLESS OTHERWISE PROVIDED FOR IN SECTION 9.3 BELOW – IF SUCH NEGLIGENCE RESULTS IN THE BREACH OF AN ESSENTIAL CONTRACTUAL DUTY (KARDINALPFLICHT, A DUTY WHICH ITSELF IS A NECESSARY PREREQUISITE FOR THE CONTRACTUAL PERFORMANCE OR A DUTY THE BREACH OF WHICH JEOPARDIZES THE PURPOSE OF THE AGREEMENT AND UPON FULFILLMENT OF WHICH THE OTHER PARTY COULD LEGITIMATELY RELY), IN WHICH CASE SUCH PARTY'S LIABILITY SHALL BE LIMITED TO TYPICAL DAMAGES WHICH ARE FORESEEABLE AT THE TIME THIS AGREEMENT IS BEING ENTERED INTO; THE PARTIES AGREE THAT THE TYPICAL AND FORESEEABLE DAMAGES UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNTS RECEIVED OR PAYABLE TO DEEPSET FOR THE SERVICE GIVING RISE TO THE LIABILITY DURING THE TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE CLAIM. IN ALL OTHER CASES, THE LIABILITY OF EITHER PARTY IS EXCLUDED SUBJECT TO THE PROVISIONS OF SECTION 9.3 BELOW.

9.3 THE LIABILITY OF EITHER PARTY: (A) FOR DAMAGES FOR INJURY TO LIFE, BODY OR HEALTH; (B) DUE TO THE ABSENCE OF A WARRANTED QUALITY OR IN CASE OF

FRAUDULENTLY CONCEALED DEFECTS; AND (C) DUE TO MANDATORY LIABILITY, SUCH AS UNDER THE GERMAN PRODUCT LIABILITY ACT (PRODUKTHAFTUNGSGESETZ), IN EACH CASE REMAINS UNAFFECTED BY THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION.

9.4 AS FAR AS THE LIABILITY OF A PARTY IS EXCLUDED OR LIMITED, THIS ALSO APPLIES REGARDING THE REPRESENTATIVES OF SUCH PARTY.

10. Termination

10.1 Term. The term of these Terms and Conditions will commence on the Effective Date and continue for the Service Term unless terminated as set forth below.

10.2 Termination. deepset may terminate these Terms and Conditions or any Subscription at any time by providing Customer with six (6) months' prior written notice. Each party may terminate these Terms and Conditions upon written notice to the other party if: (i) there are no Subscriptions then in effect: (ii) the other party commits any material breach of these Terms and Conditions and fails to remedy such breach within thirty (30) days after written notice of such breach, provided, however, that if such breach is capable of remedy but cannot be remedied within such period and the breaching party initiates actions to remedy the breach and thereafter diligently pursues such actions, the breaching party shall have such additional period as is necessary in the circumstances to cure the breach; or (iii) subject to applicable law, the other party's liquidation occurs, commencement of dissolution proceedings or an assignment of substantially all of its assets for the benefit of creditors occurs, or if the other party becomes the subject of bankruptcy, insolvency or similar proceeding that is not dismissed within sixty (60) days. If these Terms and Conditions are governed by German law, the right of either party to terminate these Terms and Conditions or an Subscription on important grounds remains unaffected.

10.3 Consequences of Termination. Following termination of an Subscription for any reason: (a) Customer shall pay on demand all sums due under or in connection with these Terms and Conditions; (b) subject to Sections 4.5(b) and (c), all rights and licenses granted under these Terms and Conditions shall terminate and Customer's access to the Services relevant to that Subscription shall be disabled; (c) each party shall promptly return to the other or otherwise dispose of (as the other party may instruct), all materials, documents (including Documentation) or papers whatsoever including Confidential Information of the other party which are in its possession or under its control in whatever form they are recorded or stored, including any electronic or digital storage media; and (d) the parties shall have no further obligations or rights under these Terms and Conditions with respect to that Subscription, without prejudice to those which have accrued to either party prior to termination.

10.4 Survival. Upon termination of these Terms and Conditions, all Subscriptions and all rights and obligations will immediately terminate except that accrued payment obligations and any terms or conditions that by their nature should survive such termination will survive, including the License Restrictions and provisions relating to proprietary rights and confidentiality, disclaimers, indemnification, limitations of liability, termination and the general provisions below. Nothing in this Section will relieve Customer of its obligation to pay any amounts that are due as at the effective date of such termination.

11. General

11.1 Records. Customer shall keep detailed, accurate and up-to-date records of all payments made under or in connection with these Terms and Conditions ("**Records**"). Records shall be retained by Customer for three (3) years after termination of these Terms and Conditions. deepset and/or its third party representatives (including designated auditor), may on reasonable notice during normal business hours request copies of the Records and any other relevant information held by Customer. The cost of an audit shall be borne by deepset, except where an underpayment of amounts payable under these Terms and Conditions is identified, in that case, the amounts due and the costs of the audit shall be borne by Customer and payable on demand. The rights in this Section shall continue for three (3) years after termination of these Terms and Conditions.

11.2 Publicity. Customer agrees that deepset may refer to Customer's name and trademarks in deepset's marketing materials and website. Customer agrees that deepset may prepare and publish a case study about Customer and Customer's use of Services. Following the successful roll-out of Services, deepset shall prepare and publish a press release announcing Customer's use of Services.

11.3 Export Compliance. Each party will comply with the export laws and regulations of the United States, European Union and other applicable jurisdictions in providing and using the Services.

11.4 Assignment and Delegation. Neither party hereto may assign or otherwise transfer these Terms and Conditions, in whole or in part, without the other party's prior written consent, except that deepset may assign these Terms and Conditions without consent to an Affiliate or a successor to all or substantially all of its assets or business related to these Terms and Conditions. Any attempted assignment, delegation, or transfer by either party in violation hereof will be null or void. Subject to the foregoing, these Terms and Conditions will be binding on the parties and their successors and assigns.

11.5 Amendment and Waiver. No amendment or modification to these Terms and Conditions, nor any waiver of any rights hereunder, will be effective unless agreed to in writing by both parties. Any such waiver will be only to the specific provision and under the specific circumstances for which it was given and will not apply with respect to any repeated or continued violation of the same provision or any other provision. Failure or delay by either party to enforce any provision of these Terms and Conditions will not be deemed a waiver of future enforcement of that or any other provision.

11.6 Third Party Rights. A person who is not a party to these Terms and Conditions shall not have any rights under or in connection with it.

11.7 Relationship. Nothing contained herein will in any way constitute any association, partnership, agency, employment or joint venture between the parties hereto, or be construed to evidence the intention of the parties to establish any such relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained will give rise or is intended to give rise to any rights of any kind to any third parties.

11.8 Unenforceability. If a court of competent jurisdiction determines that any provision of these Terms and Conditions is invalid, illegal, or otherwise unenforceable, such provision will be enforced as nearly as possible in accordance with the stated intention of the parties, while the remainder of these Terms and Conditions will remain in full force and effect and bind the parties according to its terms.

11.9 <u>Governing Law and Jurisdiction</u>. Each party irrevocably agrees that these Terms and Conditions (and any non-contractual obligations arising out of or in connection with them and any claim or dispute in relation to their formation) shall be interpreted and governed by the applicable Governing Law, without giving effect to its choice-of-law rules, and subject to the exclusive jurisdiction of the applicable Governing Courts (each as defined in Section 11.10) and each party waives any objection to venue with respect to the actions brought in those courts. Furthermore, each party waives all right to trial by jury in any action or proceeding relating to these Terms and Conditions.

11.10 "**Governing Law**" and "**Governing Courts**" mean, depending on Customer's location, the following laws and courts:

Location	Governing Law	Governing Courts
European Economic Area	Federal Republic of Germany	Berlin, Germany
United Kingdom	England	London, England
All other territories	State of New York	State and federal courts in New York

11.11 <u>Notices</u>. Any notice required or permitted to be given hereunder will be given in writing by personal delivery, certified mail, return receipt requested, by overnight delivery or by email (provided no automated bounceback received). Notices to the parties must be sent using the details stated in the relevant Subscription.

11.12 <u>Entire Agreement</u>. These Terms and Conditions and all Subscriptions constitute the entire agreement and understanding between the parties relating to their subject matter and supersede any previous agreements, discussions, correspondence, negotiations, drafts, promises, assurances, warranties, representations and/or undertakings between the parties including any usage or custom and any terms arising through any course of dealing relating to such subject matter.

11.13 <u>Non-Reliance.</u> Each party agrees that in entering these Terms and Conditions all statements, representations, warranties and undertakings on which it relies are incorporated into these Terms and Conditions and it does not rely on (and shall have no remedy in respect of) any statement, representation (including any misrepresentation), warranty or undertaking (whether negligently or innocently made) of any person (whether party to these Terms and Conditions or not) (in each case whether contractual or non-contractual) which is not expressly set out in these Terms and Conditions. Without prejudice to: (a) any other provision of these Terms and Conditions limiting the remedies available to either party, each party agrees that it will have no remedy in relation to these Terms and Conditions for innocent or negligent misrepresentation, negligent misstatement or mistake based on any statement in or made in relation to these Terms and Conditions; and (b) the indemnification obligations contained herein and either party's ability to seek injunctive or equitable relief in any court of competent jurisdiction for actual or threatened misuse of its Intellectual Property or Confidential Information, the only remedy available to each party in relation to any breach of these Terms and Conditions shall be for damages for breach of contract under the terms of these Terms and Conditions.

11.14 <u>Force Majeure</u>. Neither party will be deemed in breach hereunder for any cessation, interruption, delay or failure in the performance of its obligations due to causes beyond its reasonable control ("***Force Majeure Event***"), including earthquake, flood, or other natural disaster, act of God, labour controversy, civil disturbance, terrorism, war (whether or not officially declared), pandemic, cyber-attack (including denial of service attacks), failure of any third party or Customer software, hardware or communications network, or any change in or the adoption of any law, regulation, judgment or decree. Other than as expressly required herein, deepset shall not be obliged to take any action to prevent or mitigate Force Majeure Events.

11.15 <u>Interpretation</u>. Any words following the terms 'including', 'include', 'in particular', 'for example', 'i.e.,', 'other' and 'otherwise' or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms. In the event of any conflict between the Sections of these Terms and Conditions, the documentation incorporated into these Terms and Conditions by reference and any Subscription, the Subscription shall prevail, followed by the documentation incorporated by reference and finally these Terms and Conditions. References to Sections are to sections in these Terms and Conditions and headings shall not affect the interpretation of these Terms and Conditions. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality). A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established. A reference to a party includes that party's personal representatives, successors and permitted assignees. Unless the context requires otherwise, words in the singular include the plural and vice versa and a reference to one gender shall include a reference to the other genders. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and includes all subordinate legislation made from time to time under that statute or statutory provision. A reference to these Terms and Conditions or to any other agreement or document referred to in these Terms and Conditions is a reference to these Terms and Conditions or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of these Terms and Conditions) from time to time. A reference to writing or written includes e-mail but not fax. When a number is expressed both in words and numbers, in the event of a conflict the words shall be deemed correct.