

DENSITY INC.

MASTER SUBSCRIPTION AGREEMENT

Version 1.1 :: Updated January 4, 2019

THE FOLLOWING STANDARD TERMS AND CONDITIONS (“**AGREEMENT**”) APPLY TO ALL ORDERS FOR DENSITY PRODUCTS, INCLUDING ANY SOFTWARE EMBEDDED IN DENSITY PRODUCTS, ISSUED BY **DENSITY INC.** (“**DENSITY**”) TO CUSTOMER. DENSITY’S ACCEPTANCE OF ANY CUSTOMER ORDER IS EXPRESSLY CONDITIONED ON CUSTOMER’S ASSENT TO THIS AGREEMENT. NO TERMS OR CONDITIONS SET FORTH IN ANY CUSTOMER ORDER FORM, TO WHICH NOTICE OF OBJECTION IS HEREBY GIVEN, OR IN ANY FUTURE CORRESPONDENCE BETWEEN CUSTOMER AND DENSITY WILL ALTER OR SUPPLEMENT THIS AGREEMENT UNLESS BOTH PARTIES HAVE AGREED IN WRITING TO MODIFY THIS AGREEMENT. NEITHER DENSITY’S COMMENCEMENT OF PERFORMANCE NOR DELIVERY WILL BE DEEMED OR CONSTRUED AS ACCEPTANCE OF CUSTOMER’S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS.

**1. DEFINITIONS**

1.1 “**Density Hardware**” means any device leased by Density that is identified on an Order Form.

1.2 “**Density Products**” means, collectively, the Density Hardware and the Density Subscriptions.

1.3 “**Density Subscriptions**” means those subscriptions to Density services identified on an Order Form.

**2. LEASE OF DENSITY PRODUCTS**

2.1 Lease. Subject to the terms and conditions of this Agreement, Density hereby leases to Customer the Density Hardware ordered pursuant to any Order Form for the term stated in the applicable Order Form. The Density Hardware is leased to Customer solely for use by Customer in connection with Density Subscriptions. Customer will not use the Density Hardware for any purpose other than use in connection with the Density Subscriptions.

2.2 UCC True Lease. The parties intend that this Agreement constitutes a true lease under the Uniform Commercial Code (“**UCC**”) (as in effect in the state of California) and not a sale of equipment subject to a security interest under Article 9 of the UCC to secure the purchase price of the equipment paid over time. Density has title to the Density Hardware at all times. Customer acquires no ownership, title, property, right, equity, or interest in the Density Hardware other than its leasehold interest solely as lessee subject to all the terms and conditions of this Agreement.

2.3 Orders and Acceptance. If Customer initiates an order for Density Products with a written order form or other written request submitted to Density, such order must set forth the details for the order of Density Products (e.g., type and quantity ordered, delivery destination, requested shipment date). Orders must comply with the order lead-time requirements established by Density. Density reserves the right to accept or reject orders, in whole or in part, in its sole discretion, or to cancel any order previously accepted if Density determines that Customer is in default or otherwise. No partial acceptance of an order will constitute the acceptance of the entire order. The terms of this Agreement will govern the order. The terms of a Customer order form or any other document that conflict with, or in any way purport to amend, any of the terms of this Agreement are hereby specifically objected to and will be of no force or effect.

2.4 Fulfillment of Orders and Invoicing. Density will use commercially reasonable efforts to fill orders by Customer promptly upon acceptance by Density, or as otherwise agreed by the parties. Density retains the right to fulfill orders in part, based upon a Density-approved schedule. Any Customer requests for partial fulfillment are subject to approval by Density. Density will not be liable for any failure to deliver Density Products by any particular date or, if the specified Density Product has not been commercially released, during the term of this Agreement.

2.5 Shipment Terms. All Density Hardware delivered pursuant to this Agreement will be suitably packed for shipment in Density’s standard shipping cartons, marked for shipment, and delivered to Customer or its carrier agent EXW Density’s facility, at which time risk of loss and title will pass to Customer. Density will select the carrier, unless the carrier chosen by Density will not fulfill the delivery, in which case Customer’s choice of substitute carrier is subject to Density approval. Customer will pay all freight, insurance, and other shipping expenses, as well as any special packing expense, unless otherwise agreed between the parties. Customer will also bear all applicable taxes, duties and similar charges that may be assessed against the Density Hardware after delivery to the carrier at Density’s facilities. As used in this Agreement, the term EXW will be construed in accordance with the International Chamber of Commerce “Incoterms 2010”.

2.6 Replacement Hardware. If any Density Hardware fails, is nonoperational, or is otherwise faulty during the term of this Agreement, Customer may submit a request to Density for replacement Density Hardware. Density will evaluate any such request, and if Density determines in its sole discretion that the Density Hardware is faulty, Density will replace the Density Hardware. Customer will return any faulty Density Hardware to Density upon Density’s request, but in no event later than 30 days after receipt of replacement Density Hardware.

2.7 Subscriptions. Subject to the terms and conditions of this Agreement, solely during any paid Density Subscriptions agreed in one or more Order Forms, Density grants to Customer a limited, non-exclusive, non-transferable right during the term of the applicable Density Subscription to access and use the Density dashboard solely in connection with Customer’s internal business operations.

2.8 Embedded Software. The Density Hardware includes embedded software and firmware running on the Density Hardware (collectively, “**Embedded Software**”). Subject to Customer’s compliance with this Agreement, Density hereby grants Customer a limited, non-exclusive, non-transferable license to use the Embedded Software solely in connection with Customer’s authorized use of the Density Hardware under this Agreement. If Density integrates any modifications into the Density Hardware or Embedded Software, each such modification will be deemed to be part of the Density Hardware or Embedded Software and made available to Customer only under the terms of this Agreement.

2.9 API Access. Subject to the terms and conditions of this Agreement, Density grants to Customer a limited, non-exclusive, non-transferable, revocable license during the term of this Agreement to access and use the Density API materials in accordance with the related documentation provided by Density, and this Agreement, solely for the purposes of developing and operating an implementation of the Density API that permits Customer to access Customer Data and import it into other software applications. Customer must only use the Density API materials and documentation in accordance with applicable law.

2.10 General Restrictions. Except as otherwise explicitly provided in this Agreement or as may be expressly permitted by applicable law, Customer will not, and will not permit or authorize third parties to: (a) reproduce, modify, translate, enhance, create derivative works of, decompile, disassemble, reverse engineer, or otherwise attempt to discover the source code or underlying ideas or algorithms of any portion of any Density Products; (b) remove software from equipment on which it is preloaded; (c) modify or attempt to service or repair the Density Hardware; nor (d) circumvent or disable any technological features or measures in the Density Products, including security features. Customer shall take reasonable measures to prevent the Density Products from being stolen or accessed without authorization and to prevent third parties from carrying out the restricted activities set forth in this Section 2.10.

2.11 Maintenance. Customer must maintain the Density Hardware in the same condition as when delivered to Customer (subject to normal wear and tear) and will promptly report to Density any damage to the Density Hardware that it becomes aware of. Customer will be solely responsible for any loss or damage to the Density Hardware and will assume all risk of loss, damage, theft, or destruction of the Density Hardware while it is in its possession or control or that of its agents, including any carrier. Customer will reimburse Density for any costs of repair or replacement of the Density Hardware. Customer will permit Density remote access to the Density Hardware at all times for the purpose of inspection, providing support, upgrading the Density Hardware, and for any other purpose contemplated in this Agreement.

2.12 Ownership of Density Hardware. The Density Hardware is leased, not sold, to Customer, and Density will own and retain title to all Density Hardware. Customer, at its expense, will protect Density's title and keep the Density Hardware free from all claims, liens, encumbrances, and legal processes. Customer agrees that the Density Hardware is not and will not be subject to any lien, encumbrance, mortgage, or deed of trust, or any other such interest originating from or through Customer. The Density Hardware is the personal property of Density and is not to be regarded as a fixture or otherwise part of the real estate on which it may be located.

2.13 Return: Repossession. Upon expiration or earlier termination of this Agreement: (a) Customer will promptly return to Density any and all Density Hardware; and (b) Customer will pay Density for any damage to the Density Hardware beyond normal wear and tear. If, following the expiration or earlier termination of this Agreement, Customer fails to promptly return to Density any and all Density Hardware, Density may: (i) demand that Customer return the Density Hardware to Density; (ii) take possession of the Density Hardware, wherever it may be located, without demand or notice, without any court order or other process of law and without liability to Customer for any damages occasioned by such taking of possession, and any such taking of possession will not constitute a breach of this Agreement; and (iii) pursue any other remedy available at law or in equity, including seeking damages, specific performance or an injunction.

2.14 Service Level Agreement. Density will use commercially reasonable efforts to provide Customer with the services during the applicable term set forth in an Order Form and in accordance with the service levels set forth in the Density Service Level Agreement available at: [www.density.io/legal](http://www.density.io/legal).

2.15 Support Policy. Density will use commercially reasonable efforts to provide Customer with the services during the applicable term set forth in an Order Form and in accordance with the support levels set forth in the Density Support Policy available at: [www.density.io/legal](http://www.density.io/legal).

### 3. PAYMENTS

3.1 Payment. The order form signed by Density ("Order Form") will reflect the total order made by Customer. The same billing terms will apply to all Density Products reflected on an individual Order Form. Unless otherwise agreed by Density, Customer must pay all fees and other amounts specified on an Order Form prior to shipment by wire transfer or other payment method agreed upon by the parties ("Payment Method").

3.2 Density Subscription Renewals. ALL DENSITY SUBSCRIPTIONS RENEW AUTOMATICALLY AT THE END OF THE SUBSCRIPTION PERIOD SPECIFIED ON THE APPLICABLE ORDER FORM UNLESS CUSTOMER PROVIDES DENSITY AT LEAST 30 DAYS' WRITTEN NOTICE OF ITS ELECTION NOT TO RENEW THE DENSITY SUBSCRIPTION. ALL RENEWAL SUBSCRIPTION PERIODS WILL BE FOR A PERIOD EQUAL TO THE INITIAL SUBSCRIPTION PERIOD THAT OCCURRED PRIOR TO RENEWAL. UPON RENEWAL OF A DENSITY SUBSCRIPTION, CUSTOMER'S PAYMENT METHOD WILL BE CHARGED IN ACCORDANCE WITH DENSITY'S THEN-CURRENT PRICING FOR THE DENSITY PRODUCTS ORDERED IN THE APPLICABLE ORDER FORM (UNLESS OTHERWISE AGREED BY THE PARTIES IN WRITING), AND CUSTOMER HEREBY AGREES TO SUCH RECURRING CHARGES UPON RENEWAL. IF CUSTOMER CANCELS A DENSITY SUBSCRIPTION PRIOR TO THE END OF THE APPLICABLE SUBSCRIPTION PERIOD, CUSTOMER WILL NOT RECEIVE A REFUND OR CREDIT FOR THE REMAINDER OF THE SUBSCRIPTION PERIOD.

3.3 Currency and Late Payment. Any amount not paid when due will be subject to finance charges equal to 1.5% of the unpaid balance per month or the highest rate permitted by applicable usury law, whichever is less, determined and compounded daily from the date due until the date paid. Customer will reimburse any costs or expenses (including reasonable attorneys' fees) incurred by Density to collect any amount that is not paid when due. Density may accept any payment in any amount without prejudice to Density's right to recover the balance of the amount due or to pursue any other right or remedy. Amounts due from Customer under this Agreement may not be withheld or offset by Customer against amounts due to Customer for any reason. If amounts remain due following 30 days' notice of required payment, Customer will be in material breach of this Agreement. All amounts payable under this Agreement are denominated in United States dollars, and Customer will pay all such amounts in United States dollars.

3.4 Taxes. Other than federal and state net income taxes imposed on Density by the United States, Customer will bear all taxes, duties, and

other governmental charges (collectively, "taxes") resulting from this Agreement. Customer will pay any additional taxes as are necessary to ensure that the net amounts received by Density after all such taxes are paid are equal to the amounts which Density would have been entitled to in accordance with this Agreement as if the taxes did not exist.

3.5 Solvency. Customer warrants to Density that it is (and will be) financially solvent on the date on which it places each order for Density Products and expects to be solvent on the date of delivery. Density reserves the right, in its discretion, to suspend or cease performance, or to change the credit terms provided herein, when in Density's opinion, the financial condition or previous payment record of Customer so warrants. Density may enforce its rights and remedies under this Section 3.5 without prior notice or demand.

### 4. TERM AND TERMINATION

4.1 Termination for Cause. If either party fails to perform any of its material obligations under this Agreement, the other party may terminate this Agreement by giving 30 days prior written notice if the matters set forth in such notice are not cured to the other party's reasonable satisfaction within the 30-day period.

4.2 No Liability for Termination. Except as expressly required by law, if either party terminates this Agreement in accordance with any of the provisions of this Agreement, neither party will be liable to the other because of such termination for compensation, reimbursement, or damages on account of the loss of prospective profits or anticipated sales or on account of expenditures, inventory, investments, leases, or commitments in connection with the business or goodwill of Density or Customer. Termination will not, however, relieve either party of obligations incurred prior to the effective date of the termination.

4.3 Effects of Termination. In addition, the following provisions will survive any expiration or termination of this Agreement: Sections 2.2, 2.10, 2.12, 2.13, 3 through 6, and 8 through 11. The termination or expiration of this Agreement will not relieve Customer of (a) the obligation to pay any fees that are due to Density under this Agreement and (b) Customer's obligation to indemnify Density as specified in this Agreement.

### 5. PROPRIETARY RIGHTS AND NOTICES

5.1 Proprietary Rights. Density and its licensors own all right, title, and interest, including all intellectual property rights, in and to the Density Products. Customer will not act to jeopardize, limit, or interfere in any manner with Density's ownership of and rights with respect to the Density Products. Customer will have only those rights in or to the Density Products and documentation granted to it pursuant to this Agreement.

5.2 Customer Data. Customer will own all right, title, and interest in and to any data collected by Density Hardware used by Customer, including any such data processed in connection with Density Subscriptions ("Customer Data"). Customer hereby grants to Density a nonexclusive, worldwide, royalty-free, fully paid right and license to the Customer Data for the term of any Density Subscriptions to the extent necessary for Density to provide the services in connection with the Density Subscriptions. Customer hereby grants to Density a nonexclusive, worldwide, perpetual, royalty-free, fully paid right and license to the Customer Data (i) for Density's internal use only for research and development purposes and to improve Density's products and services, and (ii) in aggregate, anonymized format, so long as Density does not disclose Customer as the source of the data.

5.3 Proprietary Rights Notices. Customer and its employees and agents will not remove or alter any trademark, trade name, copyright, patent, patent pending, or other proprietary notices, legends, symbols, or labels appearing on the Density Products or related documentation delivered by Density.

5.4 Third Party Copyright Notices. The Density Products include third-party code licensed to Density for use and redistribution under open-source licenses ("Third Party Software"). The terms of certain open-source licenses may be applicable to your use of the Density Products, as set forth in the applicable open-source license. A list of disclosures and disclaimers in connection with Density's incorporation of certain open-source licensed software into the Density Products is provided upon request.

### 6. WARRANTY DISCLAIMER

OTHER THAN AS SET FORTH IN THIS AGREEMENT, DENSITY MAKES NO ADDITIONAL REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY

OPERATION OF LAW), OR STATUTORY, AS TO ANY MATTER WHATSOEVER. DENSITY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE. DENSITY DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF THE DENSITY PRODUCTS OR AGAINST INFRINGEMENT. DENSITY DOES NOT WARRANT THAT THE DENSITY PRODUCTS ARE ERROR-FREE OR THAT OPERATION OF THE DENSITY PRODUCTS WILL BE SECURE OR UNINTERRUPTED. DENSITY EXERCISES NO CONTROL OVER AND EXPRESSLY DISCLAIMS ANY LIABILITY ARISING OUT OF OR BASED ON A CUSTOMER'S USE OF THE DENSITY PRODUCTS.

DENSITY PRODUCTS ARE NOT DESIGNED, OR INTENDED FOR USE IN ANY MEDICAL, LIFE SAVING OR LIFE SUSTAINING SYSTEMS, OR FOR ANY OTHER MISSION CRITICAL APPLICATION IN WHICH THE FAILURE OF THE DENSITY PRODUCTS COULD CREATE A SITUATION WHERE SUBSTANTIAL PROPERTY DAMAGE OR PERSONAL INJURY OR DEATH MAY OCCUR. DENSITY RECOMMENDS AGAINST, AND DISCLAIMS ANY LIABILITY FOR, USE OF THE DENSITY PRODUCTS IN ANY SUCH MANNER.

## 7. INFRINGEMENT INDEMNIFICATION

7.1 Defense of Claims. Density will, at its option and expense, defend Customer and its officers, employees, directors, agents, and representatives ("**Customer Indemnified Parties**") from or settle any claim, proceeding, or suit ("**Claim**") brought by a third party against a Customer Indemnified Party alleging that Customer's use of the Density Product (excluding Third Party Software) infringes or misappropriates any United States patent, copyright, trade secret, trademark, or other intellectual property right if: (a) the Customer Indemnified Party gives Density prompt written notice of the Claim; (b) Density has full and complete control over the defense and settlement of such Claim; (c) the Customer Indemnified Parties provide assistance, at Density's expense as specified in Section 7.2, in connection with the defense and settlement of such Claim as Density may reasonably request; and (d) the Customer Indemnified Parties comply with any settlement or court order made in connection with such Claim (e.g., relating to the future use, sale, or distribution of any infringing Density Products). The Customer Indemnified Parties will not defend or settle any such Claim without Density's prior written consent. The applicable Customer Indemnified Party shall have the right to participate in the defense of such Claim at its own expense and with counsel of its own choosing, but Density will have sole control over the defense and settlement of the Claim.

7.2 Indemnification. Density will indemnify the Customer Indemnified Parties against and pay (a) all damages, costs, and attorneys' fees finally awarded against a Customer Indemnified Party in any Claim under Section 7.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defense of such Claim, including assistance provided under Section 7.1(c) (other than attorneys' fees and costs incurred without Density's consent after Density has accepted defense of such claim); and, (c) if any Claim arising under Section 7.1 is settled, all amounts to be paid to any third party in settlement of any such Claim (as agreed to by Density).

7.3 Mitigation. If Customer's or their respective agents' use, sale, or distribution of a Density Product is, or in Density's reasonable opinion is likely to become, enjoined or materially diminished as a result of a Claim under Section 7.1, then Density will either: (a) procure the continuing right of Customer to use the Density Product; (b) replace or modify the Density Product in a functionally equivalent manner while maintaining the same form, fit, and function so that it no longer infringes; or if, despite its commercially reasonable efforts, Density is unable to do either (a) or (b), Density will (c) terminate Customer's rights to the Density Products under this Agreement and Customer will return all Density Hardware for a prorated refund by Density of prepaid fees covering the remainder of the term of this Agreement.

7.4 Exceptions. Density will have no obligation under this Section 7 for any alleged infringement or misappropriation to the extent that it arises out of or is based upon (a) use of a Density Product in combination with other products, including other Density Products, if such alleged infringement or misappropriation would not have arisen but for such combination; (b) a Density Product that is provided to comply with designs, requirements, or specifications required by or provided by Customer, if the alleged infringement or misappropriation would not have arisen but for the compliance with such designs, requirements, or specifications; (c) use of a Density Product for purposes not intended; (d) use of Density Products after Customer has been notified of any termination of its right to use the Density

Products pursuant to Section 7.3(c); (e) Customer's failure to use a Density Product in accordance with instructions provided by Density, if the alleged infringement or misappropriation would not have occurred but for such failure; or (f) any modification of a Density Product not made or authorized in writing by Density where such alleged infringement or misappropriation would not have occurred absent such modification. Customer is responsible for any costs or damages that result from these actions.

7.5 Exclusive Remedy. This Section 7 states Density's sole and exclusive liability, and Customer's sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party intellectual property right by a Density Product.

## 8. CUSTOMER INDEMNIFICATION

8.1 Defense of Claims. Customer will defend Density and its affiliates and their employees, directors, agents, and representatives ("**Density Indemnified Parties**") from any actual or threatened third party claim arising out of or based upon Customer's performance or failure to perform under this Agreement, its negligence or willful misconduct, or its breach of this Agreement. The Density Indemnified Parties will: (a) give Customer prompt written notice of the claim; (b) grant Customer full and complete control over the defense and settlement of the claim; and (c) assist Customer with the defense and settlement of the claim as Customer may reasonably request.

8.2 Indemnification. Customer will indemnify each of the Density Indemnified Parties against (a) all damages, costs, and attorneys' fees finally awarded against any of them in any proceeding under Section 8.1; (b) all out-of-pocket costs (including reasonable attorneys' fees) reasonably incurred by any of them in connection with the defense of such proceeding (other than attorneys' fees and costs incurred without Customer's consent after Customer has accepted defense of such claim); and, (c) if any proceeding arising under Section 8.1 is settled, Customer will pay any amounts to any third party agreed to by Customer in settlement of any such claims.

## 9. CONFIDENTIAL INFORMATION

9.1 "Confidential Information" means any trade secrets or other information of a party, whether of a technical, business, or other nature (including information relating to a party's technology, software, products, services, designs, methodologies, business plans, finances, marketing plans, distributors, prospects, or other affairs), that is disclosed to a party during the term of this Agreement. The Density Products and related information will be the Confidential Information of Density. Confidential Information does not include any information that: (a) was known to the receiving party prior to receiving the same from the disclosing party in connection with this Agreement; (b) is independently developed by the receiving party without use of or reference to the Confidential Information of the disclosing party; (c) is acquired by the receiving party from another source without restriction as to use or disclosure; or (d) is or becomes part of the public domain through no fault or action of the receiving party.

9.2 Nondisclosure. During and after the term of this Agreement, each party will: (a) not disclose the other party's Confidential Information to a third party unless the third party must access the Confidential Information to perform in accordance with this Agreement and the third party has executed a written agreement that contains terms that are substantially similar to the terms contained in this Section 9; and (b) protect the other party's Confidential Information from unauthorized disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature.

9.3 Confidentiality of Agreement. Neither party to this Agreement will disclose the terms of this Agreement to any third party without the consent of the other party, except as required by securities or other applicable laws. Notwithstanding the above provisions, each party may disclose the terms of this Agreement (a) in connection with the requirements of a public offering or securities filing; (b) in confidence, to accountants, banks, and financing sources and their advisors; (c) in confidence, in connection with the enforcement of this Agreement or rights under this Agreement; or (d) in confidence, in connection with a merger or acquisition or proposed merger or acquisition, or the like.

9.4 Return of Materials. Upon the termination or expiration of this Agreement, or upon earlier request, each party will deliver to the other all Confidential Information that it may have in its possession or control. Notwithstanding the foregoing, neither party will be required to return materials that it must retain in order to receive the benefits of this Agreement or properly perform in accordance with this Agreement.

9.5 Existing Obligations. The obligations in this Section 9 are in addition to, and supplement, each party's obligations of confidentiality under any nondisclosure or other agreement between the parties.

## 10. LIMITATION OF LIABILITY

10.1 Disclaimer of Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, DENSITY WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO CUSTOMER FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF DENSITY IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING.

10.2 Cap on Liability. UNDER NO CIRCUMSTANCES WILL DENSITY'S TOTAL LIABILITY OF ALL KINDS ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING BUT NOT LIMITED TO WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY CUSTOMER TO DENSITY UNDER THIS AGREEMENT.

10.3 Independent Allocations of Risk. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY DENSITY TO CUSTOMER AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE REMEDIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

## 11. GENERAL

11.1 Marketing. Customer agrees Density may publicly use Customer's logo and name to identify Customer as a customer of Density.

11.2 Export Restrictions. Customer will not resell or otherwise distribute the Density Products in any foreign territory where applicable laws would not provide the protections to Density and the Density Products intended under this Agreement, or where there is a significant risk that the Density Products would fall into the public domain. Customer will not directly or indirectly import, export, or re-export the Density Products outside the United States without obtaining all permits and licenses as may be required by, and conforming with, all applicable laws and regulations of the governments of the United States and the foreign territory.

11.3 Independent Contractors. The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement should be construed to give either party the power to (a) act as an agent or (b) direct or control the day-to-day activities of the other. Financial and other obligations associated with each party's business are the sole responsibility of that party.

11.4 Assignability. Customer may not assign its right, duties, or obligations under this Agreement without Density's prior written consent. As used in this Section 11.4, "assign" includes undergoing any direct or indirect change in control, whether via a merger, acquisition, or sale of all or substantially all assets of Customer. If consent is given, this Agreement will bind Customer's successors and assigns. Any attempt by Customer to transfer its rights, duties, or obligations under this Agreement except as expressly provided in this Agreement is void.

11.5 Nonsolicitation. During the term of this Agreement and for a period of one year thereafter, Customer will not, directly or indirectly, employ or solicit the employment or services of a Density employee or independent contractor without the prior written consent of Density.

11.6 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested, to the appropriate party at the address set forth in the Order Form and with the appropriate postage affixed. Density may also be contacted at the email address listed in the Order Form. Either party may change its address for receipt of notice by notice to the other party in accordance with this Section. Notices are deemed given two business days following the date of mailing or one business day following delivery to a courier.

11.7 Force Majeure. Density will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Density's reasonable control, so long as Density uses commercially reasonable efforts to avoid or remove such causes of non-performance.

11.8 Foreign Corrupt Practices Act. In conformity with the United States Foreign Corrupt Practices Act and with Density's corporate policies regarding foreign business practices, Customer and its employees and agents shall not directly or indirectly make and offer, payment, promise to pay, or authorize payment, or offer a gift, promise to give, or authorize the giving of anything of value for the purpose of influencing an act or decision of an official of any government, including the United States Government (including a decision not to act) or inducing such a person to use his influence to affect any such governmental act or decision in order to assist Density in obtaining, retaining, or directing any such business.

11.9 Governing Law. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the local laws of the State of California, U.S.A without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods.

11.10 Arbitration. The parties agree to resolve all disputes arising under or in connection with this Agreement through binding arbitration. The arbitration will be held in San Francisco County, California, USA. If Customer is an entity incorporated or formed under the state or federal laws of the United States of America, the arbitration will be conducted in accordance with the applicable rules of the American Arbitration Association ("AAA"). If Customer is an entity incorporated or formed under the laws of a foreign jurisdiction, the arbitration will be conducted in accordance with the International Chamber of Commerce ("ICC") Rules of Arbitration. If there is a dispute between the parties under this Agreement, the parties will use good faith efforts to agree upon and appoint one arbitrator no later than 20 days after the notice of arbitration is received from the other party. If the parties do not agree on an arbitrator, the arbitrator will be selected in accordance with the applicable rules of the AAA or ICC (as applicable) for the appointment of an arbitrator. The selection of an arbitrator under the rules of the AAA or ICC will be final and binding on the parties. The arbitrator must be independent of the parties. The arbitrator will conduct the arbitration in accordance with the applicable rules of the AAA or ICC (as applicable). The arbitrator will limit discovery as reasonably practicable to complete the arbitration as soon as practicable. The arbitrator's decision will be final and binding on both parties. The costs and expenses of the arbitration will be shared equally by both parties. This Section 11.10 will not prohibit either party from seeking injunctive relief in a court of competent jurisdiction.

11.11 Waiver. The waiver by either party of any breach of any provision of this Agreement does not waive any other breach. The failure of any party to insist on strict performance of any covenant or obligation in accordance with this Agreement will not be a waiver of such party's right to demand strict compliance in the future, nor will the same be construed as a novation of this Agreement.

11.12 Severability. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. If any material limitation or restriction on the grant of any rights to Customer under this Agreement is found to be illegal, unenforceable, or invalid, the right granted will immediately terminate.

11.13 Interpretation. The parties have had an equal opportunity to participate in the drafting of this Agreement and the attached exhibits, if any. No ambiguity will be construed against any party based upon a claim that that party drafted the ambiguous language. The headings appearing at the beginning of several sections contained in this Agreement have been inserted for identification and reference purposes only and must not be used to construe or interpret this Agreement. Whenever required by context, a singular number will include the plural, the plural number will include the singular, and the gender of any pronoun will include all genders. Whenever the words "include", "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." The word "or" is used in the inclusive sense of "and/or." The terms "or," "any" and "either" are not exclusive.

11.14 Entire Agreement. This Agreement, including any applicable Order Forms, is the final and complete expression of the agreement between these parties regarding the Density Products. This Agreement

supersedes, and the terms of this Agreement govern, all previous oral and written communications regarding these matters, all of which are merged into this Agreement. No employee, agent, or other representative of Density has any authority to bind Density with respect to any statement, representation, warranty, or other expression unless the same is specifically set forth in this Agreement. No usage of trade or other regular practice or method of dealing between the parties will be used to modify, interpret, supplement, or alter the terms of this Agreement. This Agreement may be changed only by a written agreement signed by an authorized agent of the party against whom enforcement is sought.